UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SD 6041/ES 2663

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RAISA YAKUBOVA, EMMA UNGURYAN, BELLA VESNOVSKAYA, DAVID VESNOVSKIY, VYACHESLAV VOLOSIKOV, and SHEHATA AWAD IBRAHIM, on behalf of themselves and all other similarly situated individuals,

Plaintiffs,

- against -

MICHAEL CHERTOFF, in his official capacity as Secretary of the Department of Homeland Security, EMILIO GONZALEZ, in his official capacity as the Director of the United States Citizenship and Immigration Services, MARY ANN GANTNER, in her official capacity as the District Director of the New York City District of the United States Citizenship and Immigration Services, ALBERTO GONZALES, in his official capacity as the Attorney General of the United States, and ROBERT S. MUELLER, in his official capacity as Director of the Federal Bureau of Investigation,

Defendants.

Civil Action
No. CV-06-3203

(Korman, C.J.)

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MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION AND FOR CLASS CERTIFICATION

PRELIMINARY STATEMENT

Plaintiffs, individuals seeking the privilege of naturalization whose applications have allegedly been pending over 120 days after their naturalization interview, seek a preliminary injunction from this Court. Under the terms of the mandatory injunction sought by the plaintiffs, the Court would remand their cases to the United States Citizenship and Immigration Services (USCIS), would order the Federal Bureau of Investigation (FBI) to complete its background checks on all of the plaintiffs within twenty-five days of the remand, would direct the USCIS to adjudicate the plaintiffs' naturalization applications within thirty-five days of the remand, and would order the USCIS to grant or deny those applications within forty-five days of the remand. In addition, plaintiffs seek certification of a class, comprised of other naturalization applicants residing in this District whose applications have also been pending 120 days after their naturalization interview.

The standards for issuance of a mandatory injunction against the government - a clear showing of entitlement to the relief requested, and a clear showing that extreme or serious damage will result unless relief is granted - are extremely high, and plaintiffs have failed to meet them in this case.

Plaintiffs have made no showing at all, much less a clear showing, that extreme or serious damage will result unless the

Court orders the mandatory injunctive relief they are requesting. Indeed, of the six plaintiffs named in the caption and the 118 individuals referenced in the complaint, 77 have already had their cases adjudicated, with most being naturalized or scheduled for an oath ceremony. Of the remaining 47, all but 10 have now cleared the FBI background clearance process, and many of those are in the final stages of the administrative adjudication process for their naturalization applications. The remaining cases are being worked through the process and the particular problems existing in their cases, such as pending fraud investigations or requests for additional evidence, are being addressed. Given that the government has already taken action to resolve the bottleneck involving the vast majority of the 124 individuals specifically referenced in the complaint, emergency relief is not necessary.

Plaintiffs have also failed to establish that they are clearly entitled to the relief they seek. Indeed, neither 8 U.S.C. § 1447(b) nor the Administrative Procedure Act (APA), cited by plaintiffs, serves as a basis for permitting the type of broad-based relief plaintiffs seek, namely an across-the-board remand of their cases with an order that their background investigations be completed within specific limited time frames.

Finally, class certification is neither necessary nor appropriate. In particular, because naturalization applications are "delayed" for many different reasons, and each case has its own

unique set of facts, plaintiffs have failed to demonstrate the commonality of interests required for certification of a plaintiff class.

BACKGROUND

I. THE NATURALIZATION PROCESS

The sole authority to naturalize persons as citizens of the United States lies with the Secretary of Homeland Security. 8 U.S.C. § 1103(a) [INA § 103(a)]. During fiscal year 2005, the USCIS New York District Office completed 102,461 naturalization cases. Declaration of Mary Ann Gantner (Gantner Decl.), at ¶ 26. During fiscal year 2006, as of June 30, 2006, the office completed 92,447 cases. Id. Currently, the office generally processes naturalization applications in approximately 6 months. Id. at ¶ 27.

A lawful permanent resident seeking naturalization squarely bears the burden of proving his eligibility to receive the privilege of United States citizenship by establishing the requisites for naturalization which include residency, good moral character and an understanding of the English language and the history, principles and form of government of the United States. See 8 U.S.C. § 1423 [INA § 312]; 8 U.S.C. § 1427(a), (e) [INA § 316(a), (e)]; 8 U.S.C. § 1429 [INA § 318]; 8 C.F.R. §§ 316.5, 316.10.

Indeed, "[n]o alien has the slightest right to naturalization unless all the statutory rights are complied with." U.S. v. Ginsberg, 243 U.S. 472, 474 (1917). Any doubts concerning the alien's naturalization application are resolved against the applicant and in favor of the government. See INS v. Pangilinan, 486 U.S. 875, 876 (1988). "American citizenship is the treasured and worthy goal of most immigrants in this country. It is, appropriately, a goal that is not easily attained; the path is often long and arduous. Some applicants stumble or falter along this path; some fail in their quest." Laryea v. United States, 300 F. Supp. 2d 404, 405 (E.D. Va. 2004).

Under the Immigration and Nationality Act [INA], the applicant completes and submits a naturalization application (N-400) and the requisite fee. 8 U.S.C. §§ 1427(a); 1445(a); 8 C.F.R. §§ 316.4, 334.2. With the application, an applicant must provide supporting information pertaining to the applicant's good moral character, and must provide a complete account of any criminal background.[1]

When USCIS receives an application at a service center, it keys specific information into its computer systems, including the applicant's name, date of birth, country of birth, sex, race,

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[1] In November 1996, USCIS modified its naturalization application process by establishing Naturalization Quality Procedures (NQP). As part of the NQP, an applicant is no longer required to attach a fingerprint form with his or her naturalization application. Rather, USCIS schedules the applicant for an appointment to get fingerprinted directly by USCIS.

current address and residency history, employment history, marital and children information, basis of eligibility and responses to eligibility questions. The system makes a fingerprint appointment for the applicant at an Application Support Center, and initiates an examination of the applicant, including but not limited to review of all pertinent USCIS records and a full background check, which includes both the fingerprint check and the name check.[2] 8 U.S.C. § 1446(a) [INA § 335(a)]; 8 C.F.R. § 335.1. See Gantner Decl. at ¶ 10. Once the fingerprints are received, USCIS initiates the fingerprint checks. These law enforcement checks have in many cases revealed significant derogatory information about naturalization applicants - information which resulted in the denial of the applications, or in the applicants' being arrested, or in the applicants' being charged with removability from the United States. Gantner Decl. at ¶ 11. If a background check reveals derogatory information, USCIS is called upon to investigate that information. Gantner Decl. at ¶ 12.

As part of the examination, once USCIS receives the results of the FBI fingerprint check, the applicant is scheduled for a naturalization interview and then interviewed by a designated USCIS

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[2] During the naturalization process, the review of an applicant's USCIS record and police record is critical in confirming that the applicant has established good moral character and is eligible for naturalization. See 8 U.S.C. § 1446(a) [INA § 335(a)]; 8 C.F.R. § 335.1. Neither the INA nor the regulations mandate a time period within which this investigation must be completed.

officer (a naturalization officer), who has discretion to grant or deny the application, once USCIS receives the FBI name check results. 8 U.S.C. § 1446(b), (d) [INA § 335(b), (d)]; 8 C.F.R. § 335.3. The interview encompasses all factors relating to the naturalization application, but centers primarily on proficiency in the English language and knowledge of American government and history. See 8 C.F.R. §§ 312.1-312.5, 335.2(a)

Next, the application is decided.[3] If denied, an applicant may, within 180 days, request an administrative hearing before a senior immigration officer. 8 U.S.C. § 1447(a) [INA § 336(a)]; 8 C.F.R. § 336.2. If denied again, the applicant, if he has exhausted his administrative remedies, may file for judicial review of the denial of his naturalization application in United States District Court, which then exercises *de novo* review over the denial of the naturalization application. 8 U.S.C. § 1410(c) [INA § 310(c)]; 8 C.F.R. § 336.9(b), (c), (d). If approved, the applicant is required to take the oath of allegiance to become a United States citizen. 8 U.S.C. § 1447(a) [INA § 337(a)]; 8 C.F.R. § 337.1-337.10.

In 1997, in response to heightened national security concerns, Congress required completion of a full criminal background

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[3] Pursuant to 8 U.S.C. § 1447(b), see infra at 15, if USCIS fails to adjudicate the application within 120 days after the examination under 8 U.S.C. § 1446, the applicant may seek a hearing in district court.

investigation of the applicant before citizenship by naturalization could be conferred. Pub. L. 105-119, Tit. I, Nov. 26, 1997, 111 Stat. 2448, provides in part that:

> During fiscal year 1998 and each fiscal year thereafter, none of the funds appropriated or otherwise made available to the Immigration and Naturalization Service shall be used to complete adjudication of an application for naturalization unless the Immigration and Naturalization Service has received confirmation from the Federal Bureau of Investigation that a full criminal background check has been completed, except for those exempted by regulation as of January 1, 1997.

To give effect to Congress' statutory requirement, USCIS adopted a regulation in 1998 requiring that no naturalization examination can begin until after USCIS has received the FBI's final report of its criminal background check. The regulation, 8 C.F.R. § 335.2(b), provides:

> (b) Completion of criminal background checks before examination. The Service [i.e., USCIS] will notify applicants for naturalization to appear before a Service officer for initial examination on the naturalization application only after the Service has received a definitive response from the Federal Bureau of Investigation that a full criminal background check of an applicant has been completed. A definitive response that a full criminal background check on an applicant has been completed includes:
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> (1) Confirmation from the Federal Bureau of Investigation that an applicant does not have an administrative or a criminal record;
> (2) Confirmation from the Federal Bureau of Investigation that an applicant has an administrative or a criminal record; or
> (3) Confirmation from the Federal Bureau of Investigation that two properly prepared fingerprint cards (Form FD-258) have been determined unclassifiable for the purpose of conducting a criminal background check and have been rejected.

8 C.F.R. § 335.2(b), adopted March 17, 1998, 63 FR 12987.

Under this regulation, USCIS may not complete its adjudication of a naturalization application until a complete background check is done. Additionally, in 2002, USCIS and the FBI responded to even greater national security concerns and provided for a more stringent security check review. The agencies have expanded the search criteria, from ordinary criminal background investigations to matters of national security, a step that necessarily involves the cooperation of foreign governments.[4]

II. FBI BACKGOUND CHECKS

The FBI's National Name Check Program (NNCP) is responsible for disseminating information from the Central Records System (CRS) in response to requests from federal agencies, congressional committees, the federal judiciary, friendly foreign police, intelligence agencies, and state and local criminal justice agencies. Declaration of Michael A. Cannon (Cannon Decl.) at ¶ 4.

In recent years, the NNCP has grown exponentially, with more customers seeking background information from FBI files on

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[4] In an effort to more expeditiously adjudicate naturalization applications, some USCIS offices, including the New York District Office, began scheduling interviews with applicants before the FBI had completed its name check, assuming that the name check would be completed by the time of the interview date. See, e.g., Damra v. Chertoff, 2006 WL 1786246, at * 3 (N.D. Ohio June 23, 2006). While this approach served more than ninety percent of nationwide applicants well, it also resulted in cases such as this, in which a response from the FBI was not received before the interview, and thus individuals left those interviews with their applications still pending. This practice has now ended. Gantner Dec. at ¶ 25.

individuals before bestowing a privilege - whether that privilege is government employment; appointment; security clearance; attendance at a White House function; naturalization; admission to the bar; or a visa to our country. More than 70 federal, state, and local agencies regularly request FBI name searches. Id. In addition to serving its regular government customers, the FBI conducts numerous name searches for the FBI's counterintelligence, counterterrorism, and homeland security efforts. Id.

The FBI's system of records contains an index of approximately 94.6 million records of investigative and administrative cases. Id. at ¶ 9(c). When the FBI searches for a person's name, the name is electronically checked against this index, seeking all instances of the individual's name, approximate date of birth, and social security number. Id. at ¶ 11. Each name is searched in a number of different permutations, switching the order of first, last, and middle names, as well as permutations with just the first and last, first and middle, et cetera. Id.

Approximately 68% of name checks are returned as having "No Record" within 48 hours. Id. at ¶ 13. A "No Record" result indicates that the FBI's CRS contains no identifiable information regarding a particular individual. Id. The remaining 32% of name checks are subjected to a secondary, manual name search, which results in an additional 22% of the name check requests being returned as having a "No Record" within 30 to 60 days. Id. at

¶ 14. Thus, a total of 90% of all name checks result in a final response of "No Record" within three months. Id. The remaining 10% are identified as possibly the subject of an FBI record. Id. For this 10%, the FBI's electronic and paper records are reviewed, and a more thorough investigation is conducted. Overall, less than 1% of the total name check requests result in a response containing possible derogatory information. Id. at ¶ 15. If applicable, the FBI forwards a summary of the derogatory information to USCIS. Ibid.

Prior to September 11, 2001, the FBI processed approximately 2.5 million name check requests per year. Id. at ¶ 16. As a result of the FBI's post-September 11 counter-terrorism efforts, the number of FBI name checks has grown steadily. Id. For fiscal year 2005, the FBI processed in excess of 3.7 million name checks. Id.

Due to heightened national security concerns, a review of the background check procedures employed by the then-INS was conducted in November 2002. Id. at ¶ 17. It was determined that, to better protect our country, a more intensive clearance procedure was required. Id. One of these procedures involved the name check clearance performed by the FBI. Id. At that time, only those "main" files that could be positively identified with an individual were considered responsive. Id. The risk of missing possible derogatory information by restricting the search scope was too

great, and therefore the search scope was expanded to include references. Id. at ¶ 17; see id. at ¶ 10. Accordingly, additional time was required for processing. Id.

In December 2002 and January 2003, the then-INS resubmitted 2.7 million name check requests to the FBI for all then-pending applications for benefits under the INA for which name checks were required. Id. at ¶ 18. The 2.7 million requests were in addition to the approximately 2.5 million regular submissions by all entities. Id.; see id. at ¶ 4. Approximately sixteen percent of these resubmitted name checks (over 440,000) indicated that the FBI may have information that related to the subject of the inquiry. Id. at 18. These 440,000 requests are still in the process of resolution. Id.

The FBI's processing of the more than 440,000 residual name check requests has delayed the processing of regular submissions from USCIS. Id. at ¶ 19. As directed by USCIS specifically, the FBI processes regular name check requests on a first-in, first-out basis unless USCIS directs that a name check be expedited. Id.

III. FACTS

Prior to the commencement of this action, plaintiffs submitted a list of 49 names to defendants asking for assistance in securing the adjudication of their cases. See list, annexed hereto. Defendants completed the processing of approximately 40 of these cases prior to the commencement of this action and have since

adjudicated four more cases.[5] Id. The remaining cases all have issues that need to be resolved prior to adjudication.

Independent of this, a number of individuals have filed actions in this district under 8 U.S.C. § 1447(b), seeking adjudication of their naturalization applications. Since the beginning of the fiscal year to date, over 40 such actions have been filed, and approximately 20 have already been adjudicated.

To date, all of the FBI name checks for the six named plaintiffs have been completed. See Declaration of Glen Andrew Scott (Scott Decl.) at ¶ 6. Of the six named plaintiffs, one, Raisa Yakubova, has already been naturalized, and one, Emma Unguryan, has been scheduled for a naturalization ceremony. Two other plaintiffs, David Vesnovskiy and Vyacheslav Volosikov, are in the final stages of the administrative adjudication process. Gantner Decl. at ¶ 28. The FBI just completed the background check for Bella Vesnovskaya. See Scott Decl. at ¶ 6. The application of the sixth and final plaintiff, Shehata Awad Ibrahim, has issues which remain to be resolved. See Gantner Decl. at 28.

Likewise, of the 118 putative class members referenced in the Complaint, Complaint at ¶ 65, approximately 75 have had their cases adjudicated with most being naturalized or scheduled for naturalization. Gantner Decl. at ¶ 29. Of the remaining 43

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[5] In addition, USCIS has demonstrated its willingness to assist naturalization applicants who face difficulties relating to SSI benefits. See Gantner Decl. at ¶ 30.

individuals, the FBI name check has been completed for all but 10. Scott Decl. at ¶ 5.[6] Of the remaining 33 individuals, some have issues to resolve, including issues relating to fraud and inadequate documentation. Gantner Decl. at ¶ 29. However, with the potential exception of this last group of individuals, it is anticipated that most of the remaining cases will be adjudicated shortly.

ARGUMENT

I. Plaintiffs Have failed To Establish Entitlement To The Mandatory Injunctive Relief They Seek.

Plaintiffs have moved this Court for a preliminary injunction requiring that naturalization applications of the 124 individuals referenced in the Complaint be remanded to USCIS, that the FBI complete background clearances within 25 days of the remand, that USCIS adjudicate the naturalization applications of these individuals within 35 days of the remand, and that USCIS grant or deny the naturalization applications of these individuals within 45 days of the remand. Order to Show Cause. As plaintiffs fail to establish entitlement to injunctive relief, their motion for a preliminary injunction should be denied.

A preliminary injunction is a drastic remedy, and it should only be granted in extraordinary circumstances. Borey v. Nat'l

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[6] The Gantner declaration indicated that 18 name checks have yet to be completed by the FBI. Gantner Decl. at ¶ 29. This difference is because 8 names have yet to be downloaded into the USCIS computer system.

Union Fire Ins., 934 F.2d 30, 33 (2d Cir. 1991) (preliminary injunctive relief is "drastic" remedy); Patton v. Dole, 806 F.2d 24, 28 (2d Cir. 1986) (preliminary injunctive relief is "extraordinary" remedy). A party seeking preliminary injunctive relief ordinarily must show that it will suffer irreparable harm in the absence of the injunction and a likelihood of success on the merits. See Jackson Dairy, Inc. v. H.P. Hood & Sons, Inc., 596 F.2d 70, 72 (2d Cir. 1979). However, where, as here, a party seeks relief that will alter the status quo or provide the movant with substantially all the relief he seeks, the party must make a clear showing of entitlement to the relief sought. See Tom Doherty Assocs., Inc. v. Saban Entm't, Inc. 60 F.3d 27, 33 (2d Cir. 1995). In addition, the public interest is always "a factor to be considered in the granting of a preliminary injunction." Carey v. Klutznick, 637 F.2d 834, 839 (2d Cir. 1980).

Here, plaintiffs have failed to establish any of the prerequisites for the issuance of a preliminary injunction. As described above, a system is in place to ensure that the applications of the 124 referenced individuals are promptly addressed. Indeed, the majority of those applications either have already been addressed or are in the final stages of being addressed. Gantner Decl. at ¶¶ 28-29; Scott Decl. at ¶¶ 5-6.

Plaintiffs also do not show they are clearly entitled to the relief that they seek. Asserting jurisdiction under 8 U.S.C.

§ 1447(b) and the APA, Plaintiffs request that this Court remand plaintiffs' cases to USCIS, and they demand that this Court set specific time lines for completion of the FBI background investigation and for the adjudication of their naturalization applications. However, plaintiffs have wholly failed to establish a clear entitlement to such relief under any theory.

A. Plaintiffs Are Not Entitled to Relief Under The INA.

Pursuant to 8 U.S.C. § 1447(b),

> if there is a failure to make a determination under § 1446 [(investigation and examination of naturalization applicants] . . . before the end of the 120-day period after the date on which the examination is conducted under such section, the applicant may apply to the United States district court for the district in which the applicant resides for a hearing on the matter. Such court has jurisdiction over the matter and may either determine the matter or remand the matter, with appropriate instructions, to the Service to determine the matter.

With a single exception, courts which have found jurisdiction for claims such as this one, brought under 8 U.S.C. § 1447(b), have refused to provide time limitations to the immigration adjudication authorities upon remand of naturalization applications. See Daami v. Gonzales, No. 05-3667, 2006 WL 1457862 (D.N.J. May 22, 2006); Essa v. USCIS, No. Civ 051449, 2005 WL 3440827(D. Minn. Dec. 14, 2005); El Dour v. Chertoff, 417 F. Supp. 2d 679 (W.D. Pa. 2005). See also Plaintiffs' Memorandum at pp. 20-21 (cases cited). And the one court that did provide a time limitation, Al-Kudsi v. Gonzales, No. 05-1584, 2006 WL 752556 (D. Or. Mar 22, 2006), did so only after an individual hearing, concluding that Al-Kudsi had

satisfied all the requirements for naturalization. Id. at * 3. Accordingly, with this single exception,[7] if courts have found it inappropriate to remand with time restrictions when dealing with a single plaintiff, how much more inappropriate would a remand be in a case such as this, where the plaintiffs seek a broad-based remand affecting dozens of aliens?[8]

Alternatively, other courts have found that 8 U.S.C. § 1447(b) is not available to naturalization applicants until later in the adjudicative process. Danilov v. Aquirre, 370 F. Supp. 2d 441, 443 (E.D. Va. 2005); Damra, 2006 WL 1786246; Abdelkhaleq v. BCIS Director, 2006 U.S. Dist. LEXIS 50949 (N.D. Ind. July 26, 2006). USCIS considers the interview to be part of the examination process. See Johnny N. Williams Nov. 13, 2002 Memorandum (attached); William R. Yates Apr. 5, 2004 Memorandum (attached); William R. Yates Aug. 4, 2004 Memorandum (attached). Under the well-established rubric of Chevron v. NRDC, 467 U.S. 837 (1984), a court must defer to an agency's reasonable interpretation of an ambiguous statute that the agency is charged with enforcing.

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[7] This decision serves to reinforce the individualized nature of claims under 8 U.S.C. § 1447(b). Indeed, that statute refers to a hearing being conducted prior to remand, which is exactly what occurred. Accordingly, consistent with the language of this statute, which appears to require an individual hearing, the issuance of a general remand with an across-the-board time mandate would be inappropriate.

[8] Independent of the above, 8 U.S.C. § 1447(b), by its very terms, only allows for a remand with instructions to the USCIS and would not allow for any order relating to the FBI.

Because USCIS has made a reasonable interpretation of ambiguous terms in the statute regarding the examination process, that interpretation is entitled to deference.

The term "examination" in 8 U.S.C. §§ 1446(b) & 1447(a)&(b) is ambiguous, as it does not require that the "exam" be a discrete event. See 8 U.S.C. §§ 1446(b) & 1447(a)&(b). Instead, it describes a process of examining the applicant and background materials to determine whether the applicant has met the standards of naturalization. The ambiguity of the term "examination" is reinforced due to the lack of a discussion of the relationship between the "investigation" in § 1446(a) and the "examination" in § 1446(b). The "examination" could be one aspect of the "investigation" (the "examination" could turn up information about the applicant's residence and employment history over the past five years); the "examination" and "investigation" could overlap; or the "investigation" and "examination" could cover two different areas completely. Therefore, the INA creates an ambiguity as to the extent and process under which an "examination" may be conducted. Cf. Forbes v. Napolitano, 236 F.3d 1009, 1011 (9th Cir. 2000) (finding that terms such as "investigation" and "routine examination" were inherently ambiguous in upholding vagueness challenge). Because the term "examination" is ambiguous, Chevron step 1 has been satisfied and USCIS is entitled to provide a

reasonable interpretation of the term.[9]

The argument that the initial interview constitutes the "examination" is at most one of several competing interpretations, but is not compelled by the terms of the statute. It is not enough for this Court to determine that another interpretation of the relevant statute and regulations is a better interpretation than that offered by defendants; this Court must determine simply whether the interpretation offered by defendants is reasonable. USCIS has taken the reasonable view that the examination is a process and that process cannot be complete without a finalized background check. The "'examination' is a process, not an isolated event, which necessarily may include one or more in-person interviews, as well as other activities." Danilov v. Aguirre, 370 F. Supp. 2d 441, 443 (E.D. Va. 2005). Indeed, USCIS's interpretation of "examination" is reasonable because Congress does not allow that process to be completed until a full background check has occurred. See Pub. L. 105-119, Tit. I, Nov. 26, 1997, 111 Stat. 2448. As the required security check that is without a statutory time restriction has not been completed, the time allowed

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[9] Deference to USCIS is particularly appropriate in this circumstance because of the national security and international relationship aspects of immigration. INS v. Aguirre-Aguirre, 526 U.S. 415, 425 (1999). In addition, absent constitutional constraints or compelling circumstances, an agency must be permitted to fashion its own procedures to optimize its resources to most effectively discharge its multitude of administrative responsibilities. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 543 (1978).

by law for USCIS to adjudicate an application has not yet expired. 8 C.F.R. § 336.9(d); Danilov, 370 F. Supp. 2d at 443.

B. Plaintiffs' APA Claims Fail To Make A Clear Showing Of Entitlement To The Relief Sought.

Plaintiffs are also not likely to prevail on their APA claim alleging that defendants have "unlawfully withheld" or "unreasonably delayed" adjudication of their applications or completion of their background checks. The only statute under which a claim such as this can be asserted is 8 U.S.C. § 1447(b), which deals specifically with naturalization applications and delay. See U.S. v. Fausto, 484 U.S. 439, 448-49 (1988) (general grants of jurisdiction cannot be relied upon in the face of a specific statute that confers and conditions jurisdiction); Danilov, 370 F. Supp. 2d at 445 (finding APA inapplicable to claim that naturalization adjudication delayed in light of 8 U.S.C. § 1447(b)). Accordingly, the APA is not available to plaintiffs.

IN any event, plaintiffs' claim under the APA also must fail because any delay caused by the backlog in the completion of the background checks is not "agency action unlawfully withheld or unreasonably delayed". 5 U.S.C. § 706(2). Many courts have refused to grant relief under the APA, even when naturalization or other immigration applications were pending for significant time periods. See Saleh v. Ridge, 367 F. Supp. 2d 508, 513 (S.D.N.Y. 2005) (finding 5-year delay not in violation of APA in part in light of volume of applications); Espin v. Gantner, 381 F. Supp. 2d

261, 266 (S.D.N.Y. 2005) (over 3-year delay not unreasonable because of government's limited resources and substantial caseload); Alkenani v. Barrows 356 F. Supp. 2d. 652, 656-657 (N.D. Tex. 2005) (no unreasonable delay found in naturalization context because of need to wait for completion of FBI investigation).

Plaintiffs assert, however, that 8 U.S.C. § 1447(b), which references a 120-day time period after interview, provides a clear deadline for USCIS to meet, and therefore that failure to adjudicate an application within that time frame means that action has been "unlawfully withheld" under the APA. Pl. Mem. at 22. Plaintiffs also claim, that, at the least, the statute forms a guide by which to judge reasonableness. Pl. Mem. at 25. Plaintiffs are incorrect. Rather, much like 28 C.F.R. § 2675, the statute merely provides a jurisdictional basis through which an individual can secure judicial review, but does not speak to any issues of reasonableness. Indeed, it effectively ends the inquiry by providing the individual with a forum for his claim relating to the naturalization application. Moreover, given that a separate statute precludes adjudication until the FBI name checks are complete, it cannot be said that the USCIS is unlawfully withholding adjudication of the application or acting unreasonably in failing to adjudicate the application. Alkenani, 356 F. Supp. 2d at 657 (not unreasonable for USCIS to await results of the name check).

In any event, concerning the FBI's name-check backlog, as explained previously, the backlog of name checks applies to only a small number of the overall applications for naturalization (less than 1 percent). Cannon Decl. at ¶ 15. In addition, defendants must use limited resources to complete the background checks required, not only for plaintiffs, but also for other naturalization applicants and for other individuals. Cannon Decl. at ¶ 4 (name checks are performed for "Federal agencies, congressional committees, the Federal judiciary, friendly foreign police and intelligence agencies, and state and local criminal justice agencies"). Because defendants have required background checks in a broader range of circumstances post-9/11, a resource strain has been placed on defendants. "[W]here resource allocation is the source of delay, courts have declined to expedite action because of the impact of competing priorities." Liberty Fund, Inc. v. Chao, 394 F. Supp. 2d 105, 117 (D.D.C. 2005). Even in the face of a statutory deadline, moving some individuals to the front of the queue has not been authorized by the courts because granting such relief for one group of petitioners would simply move that group ahead of others who had also been waiting, resulting in no net gain in processing. See In re Barr Lab., 930 F.2d 72, 75 (D.C. Cir. 1991); Mashpee Wampanoag Tribal Council, Inc. v. Norton, 336

F.3d 1094, 1101 (D.C. Cir. 2003).[10]

Defendants also continue to address the backlog of background checks and have generally been processing the backlog on a first-in, first-out basis. Cannon Decl. at ¶¶ 18-19. Courts have been reluctant to find that such a process violates the undue delay standard. Liberty Fund, 394 F. Supp. 2d at 116-17 (denying such a claim against the Department of Labor for backlog processing of employer applications for permanent labor certifications on behalf of aliens).[11]

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[10] Citing to Forest Guardians v. Babbit, 164 F.3d 1261 (10th Cir. 1998), plaintiffs argue that when Congress sets a specific deadline by which an agency must comply, that the agency's failure to adhere to the deadline constitutes action "unlawfully withheld" or "unreasonably delayed". Pl. Mem. at 22-23. Forest Guardians, however, is inapposite. As a threshold matter, here, unlike in Forest Guardians, there is no statutory deadline that an agency must meet. Rather, as stated, there is a statute which gives a district court jurisdiction under certain circumstances to address unadjudicated naturalization applications. Moreover, and most important, here, there is no statute that requires the FBI to complete its adjudication by any time period. Finally, as the Court in Forest Guardians recognized itself, its decision is not compatible with In re Barr Lab.

[11] Plaintiffs also reference 8 U.S.C. § 1571, which provides that it is the "sense" of Congress that immigration benefit applications be completed within 6 months of filing, in support of the claim that defendants have unreasonably delayed adjudication of their naturalization applications. Of course, such non-binding language has no legal effect in general, but is particularly inapplicable here given that 8 U.S.C. § 1447(b)itself even provides a period of four months from the examination, but leaves open ended any time period for processing prior to the interview, a time period which may be more extensive. Further, under general circumstances, in the naturalization context, applications can be and are adjudicated in 6 months. This "sense" of Congress provision, however, does not speak, of course, to the specific circumstances present in this action.

Not all of the plaintiffs' cases remain unadjudicated because of the backlog. While the time required to complete the FBI name check is certainly the primary reason that some of the plaintiffs' cases have not been adjudicated, a myriad of reasons exist as to why other cases remain pending final adjudication, including fraud investigations and pending evidence requests. Gantner Decl. at ¶ 29. As for these cases, plaintiffs have failed to show that they clearly will prevail on their claims of unreasonable delay. Indeed, without an individual hearing, evaluating the particular facts of each case, including the length of the delay, plaintiffs cannot possibly make out a claim on these cases. For that matter, without an individual hearing, they cannot make out a claim on any of their cases, including those relating to delays because of the names check process, much less establish the higher standard for the issuance of a mandatory injunction.

Finally, the public interest is always "a factor to be considered in the granting of a preliminary injunction." Carey v. Klutznick, 637 F.2d at 839. Here, particularly in light of heightened security concerns in the post-September 11, 2001, world, as well as the importance of the benefit sought, it would not be in the public interest to in any way order the FBI or USCIS to rush through these applications or to limit their investigations to a specific duration. Limiting the time to conduct an FBI investigation may require the FBI to cut short a promising lead in

an ongoing investigation relating to a terrorist group or criminal concerns, and may also require the FBI to channel resources in a way that limits its ability to conduct other investigations. The weight of plaintiffs' arguments regarding public interest are lessened by the fact that they have the benefits of lawful permanent resident status, including the ability to work and travel. Thus, the public interest weighs against plaintiffs' request for a preliminary injunction.

Accordingly, plaintiffs' claims fail to establish that they are clearly entitled to the relief sought, whether under 8 U.S.C. § 1447(b) or under the APA.

B. The Motion for Class Certification

Plaintiffs request that the following class be certified:

> All persons residing in Kings, Nassau, Queens, Richmond, and Suffolk counties in New York state, who have properly submitted or will properly submit applications to be naturalized as U.S. Citizens whose naturalization applications are not adjudicated within one hundred and twenty days after the date of initial examinations.

Complaint, ¶ 23.

A party seeking class certification must prove that the proposed class meets the four requirements of Federal Rule of Civil Procedure 23(a): (1) the class is so numerous that the joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and 4) the representative parties will fairly and adequately

protect the interests of the class. In re Visa Check/Master Money Antitrust Litig. 280 F.3d 124, 133 (2d Cir. 2001). In addition, the party seeking class certification must show that the proposed class action falls within one of the types of class actions maintainable under Rule 23(b). For the proposed class to be certified, plaintiffs must satisfy all of these requisites. Marisol A. v. Guiliani, 126 F.3d 372, 375-76 (2d Cir. 1997).

In evaluating whether class certification is appropriate, the Supreme Court has held that a court must make a "rigorous analysis" to determine if the requirements of Rule 23 have been met. Gen Tel. Co. of the Southwest v. Falcon, 457 U.S. 147, 161 (1982). The party seeking class certification bears the burden of establishing the requirements of Rule 23. Amchem Prods. Inc. v. Windsor, 521 U.S. 591, 614 (1997). Finally, the determination of whether an action can be maintained as a class action, and particularly whether a class action is the superior method of resolving the controversy, is one which is peculiarly within the discretion of the trial judge. Becker v. Shenley Indus., 557 F.2d 346, 348 (2d Cir. 1977).

For the reasons set forth above, it is not necessary to certify a class in this matter. Indeed, defendants are steadily processing plaintiffs' cases. Gantner Decl. at ¶¶ 28-29. Moreover, as set forth in the Gantner declaration, USCIS will no longer conduct an interview prior to the completion of the

background checks, making this class unnecessary for the future. Gantner Decl. at ¶ 25.

Second, and consistent with 8 U.S.C. § 1447(b), classwide relief is inappropriate in this case. Indeed, and as reflected by the courts adjudicating cases under the statute, the statute calls for an individual hearing to determine what action a court will follow with regard to each naturalization applicant, based on the particular facts of that case. Accordingly, classwide relief is inappropriate.

Third, while there are some common issues of law and fact, ultimately, as set forth in the Cannon and Gantner declarations, the nature of the wait for final adjudication depends on the facts of each individual case. Indeed, the wait could be because of the backlog, or because of the need for further evidence, or because of a fraud investigation, or for any number of reasons. And even if the wait had been because of the backlog, the case could still be with the FBI because of a more extensive FBI investigation, or with the USCIS for further investigation or processing. Finally, the length of the wait will vary in each case; a 121-day wait is different from a three-year wait.

"[What] constitutes an unreasonable delay in the context of immigration applications depends to a great extent on the facts of the particular case." Saleh, 367 F. Supp. 2d at 512. Accordingly, where individual issues predominate over the common ones, class

action relief is not appropriate. See Continental Orthopedic Appliances v. Health Ins. Plan of Greater New York, 198 F.R.D. 41, 47-48 (E.D.N.Y. 2000).

In addition, Plaintiffs cannot show that they are adequate representatives of the class they purport to represent. See Fed. R. Civ. P. 23(a)(4). A showing of adequate representation requires named plaintiffs to demonstrate that their claims and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in the class members' absence. Falcon, 457 U.S. at 158 n.13.[12] Moreover, plaintiffs must demonstrate that they do not have interests that are antagonistic to those of the class. See Achem Products, Inc., 521 U.S. at 625-26. By seeking a preliminary injunction that would require adjudication of their applications before those of the putative class, even where the putative class members' applications were filed before those of plaintiffs, plaintiffs have created an interest antagonistic to the interests of the class as a whole.

As a result, plaintiffs have failed to demonstrate that they meet all of the required elements for class certification under Rule 23(a).

Finally, Plaintiffs have also failed to demonstrate that the proposed class is maintainable under one of the subsections of Rule

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[12] Defendants do not assert that counsel for Plaintiffs are not adequate to represent the interests of the putative class.

23(b). Here, Plaintiffs assert that their class is maintainable under subsection (b)(2), which applies if the "party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Fed. R. Civ. P. 23(b)(2); In re Visa Check/Master Money Antitrust Litig., 280 F.3d at 146. Plaintiffs assert that defendants have failed to act by failing to take action on their naturalization applications within 120 days of the interview and within a reasonable time. Defendants contend however, that they have not "refused" to act. In fact, they have taken various steps to adjudicate plaintiffs' applications, and have yet to adjudicate only 37 of 124 applications for a variety of reasons, i.e., the name check backlog, a need for additional evidence, or a need for further investigation. Accordingly, as plaintiffs fail to demonstrate that they meet the additional requirements of Rule 23(b), the Court should deny class certification.

CONCLUSION

For the reasons set forth above, plaintiffs' motion for injunctive relief and for class certification should be denied.

Dated: Brooklyn, New York
July 31, 2006

Respectfully submitted,

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NYLAG Natz Interviews (by A-number)						
Last Name	**First Name**[1]	**A-No.**	**Interview Date**	**Location**	**Resolution**	**Comments:**
Flyuis	Sofia	45-662-979	August 17, 2005	GC		
Egiazaryan	Vladimir	46-314-712	January 15, 2004	GC	June 2, 2006	Naturalized
Goncharov	Valeriy	47-138-045	July 22, 2005	GC	June 30, 2006	Naturalized
Sofyan	Aida	71-131-348	August 13, 2005	NYC	July 21, 2006	Natz ceremony scheduled
Meblina	**Esdi...**	71-174-355	August, 2005	GC	June 16, 2006	Naturalized
Astashkevich	Bela	71-214-995	March 10, 2005	GC	January 27, 2006	Naturalized
Guttsayt	Nina	71-215-861	February 10, 2005	GC	July 21, 2006	F/P scheduled; Name check valid
Furman	Yevgenia	71-217-559	August 17, 2005	GC	June 13, 2006	Naturalized
Kharchevnikov	Vladimir	71-220-319	May 19, 2005	GC	May 3, 2006	Naturalized
Gershova	**Seraf...**	71-282-510	June 10, 2005	GC	May 31, 2006	Naturalized
Murokh	**Seraf...**	71-282-690	May 4, 2005	GC	May 25, 2006	Naturalized
Chertin	Leonid	71-283-551	September 28, 2005	GC	April 24, 2006	Naturalized
Lyubich	Mark	71-307-157	March 15, 2005	GC	May 4, 2006	Naturalized
Kolotinskiy	Arkadiy	71-307-521	November 9, 2004	GC	April 28, 2006	Naturalized
Abdurakhmanov	Boris	71-307-990	September 27, 2005	GC	May 23, 2006	Naturalized
Rukhlov	**Yevgen...**	71-315-630	July 15, 2005	GC	May 3, 2006	Naturalized
Gelman	Yuriy	71-319-720	August 9, 2005	GC	May 3, 2006	Naturalized
Khlyavich	Yakov	71-353-212	March 11, 2005	NYC	May 26, 2006	Naturalized
Pustovoytov	Yevgen...	71-353-405	March 11, 2005	NYC	May 26, 2006	Naturalized
Mostovaya	Dora	71-360-921	May 10, 2005	NYC		
Kompaniyets	Maya	71-376-517	July 19, 2005	GC	May 4, 2006	Naturalized
Kuznetsova	Ella	71-379-050	August 24, 2004	GC	December 28, 2004	Naturalized
Sctynbok	Roza	71-383-363	January 12, 2005	GC	June 1, 2006	Naturalized
Zabezhinksiy	Dariy	71-393-940	October 4, 2005	NYC	July 27, 2006	Natz ceremony scheduled
Karebo	Alla	71-396-645	May 21, 2003	GC	May 12, 2006	Naturalized
Unguryan	Emma	71-397-385	October 13, 2004	NYC	July 27, 2006	Natz ceremony scheduled

[1] Incomplete first names are illegible.

NYLAG Natz Interviews (by A-number)

Last Name	First Name[1]	A-No.	Interview Date	Location	Resolution	Comments:
Lerner	Nadezhda	71-398-422	May 6, 2005	NYC	August 2, 2006	Natz ceremony scheduled
Druzhinsky	Rudolf	71-398-539	June 3, 2005	NYC	March 14, 2006	Naturalized
Malenkova	Irina	71-404-287	October 19, 2004	GC	May 26, 2006	Naturalized
Malenkov	Aleksandr	71-404-288	October 19, 2004	GC	June 1, 2006	Naturalized
Khusidman	Izrail	71-404-880	May 6, 2004	GC	June 7, 2006	Naturalized
Smirnova	Alevtina	71-406-895	August 13, 2003	GC	May 31, 2006	Naturalized
Chesakova	Frida	71-411-174	March 8, 2005	GC	May 17, 2006	Naturalized
Begun	Aleksandr	71-411-377	June 3, 2004	GC	June 13, 2006	Naturalized
Kushner	Aleksandr	71-413-263	July 27, 2005	GC	May 3, 2006	Naturalized
Ginzburg	Izabella	71-413-432	February 2, 2005	NYC	June 16, 2006	Naturalized
Dolgopyatov	Lev	71-417-123	June 3, 2005	NYC	May 19, 2006	Naturalized
Gavrilchik	**Mar...**	71-419-333	June 3, 2005	GC	April 10, 2006	Naturalized
Gavrilchik	Vladimr	71-419-334	June 3, 2005	GC	April 10, 2006	Naturalized
Nemoytin	Aleksandr	71-419-734	November 5, 2004	NYC	June 16, 2006	Naturalized
Roukhmanova	Khai Moussa	71-961-663	August 4, 2005	NYC	July 27, 2006	Naturalized
Koulbitskaya	Marina	72-556-468	March 10, 2005	GC		
Berezanskaya	Sima	73-159-229	May, 2003	GC	July 20, 2006	Natz ceremony scheduled
Souravleva	**Nadej...**	73-552-959	September 13, 2005	GC	May 3, 2006	Naturalized
Koulbitskiy	Alexdre	74-888-588	March 10, 2005	GC		Awaiting related file
Krivitskaya	Yelena	76-035-197	September 30, 2005	GC	June 1, 2006	Naturalized
Krivitskiy	Sergev	76-035-198	September 30, 2005	GC	May 3, 2006	Naturalized
Kushelman	Aleksandr	76-035-795	September 9, 2005	GC	June 14, 2006	Naturalized
Reznikova	Emma	76-044-725	June 17, 2005	GC	May 6, 2006	Naturalized

U.S. Department of Justice
Immigration and Naturalization Service

HQISD70

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

NOV 13 2002

MEMORANDUM FOR DISTRIBUTION LIST

FROM: Johnny N. Williams
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Responsibilities of Adjudicators

Over the past several years we have instituted processes to identify law enforcement interest in persons who apply for immigration benefits. The purpose of this memorandum is to reiterate and stress the importance of these processes and to refine, these processes to ensure that benefits are not granted to ineligible applicants. The instructions in this memorandum apply to the adjudication of all applications and petitions for benefits and to all officers who adjudicate those applications and petitions.

District Directors and Service Center Directors must take steps to ensure that all employees assigned to adjudications responsibilities have received a copy of this memorandum. Supervisors should take immediate action to explain the contents of this memorandum to all employees assigned to the adjudication of applications and petitions for benefits. A record bearing the signature of each employee must be maintained.

General Requirements

There is substantial information available to our adjudicators. This includes a system of national checks such as electronic fingerprinting, automated background checks, etc. It remains, however, the responsibility of each and every officer to determine eligibility for a benefit. In **arriving at that determination officers are required to obtain and review any and all information**

provided through national or local background checks. It also is a responsibility of adjudicators to review the full contents of the A-file or petition for any potentially disqualifying information or evidence that such information may exist.

1. Officers reviewing the results of IBIS checks must determine whether the file contains aliases and must initiate further checks of IBIS if aliases are present in the file.
2. if, in response to a name check, the FBI indicates to the INS that a record may possibly exist (referred to in Service guidance as "IP" or "indices popular") the application may not be decided until the adjudicator obtains and reviews the information or receives a specific determination from the FBI that the record does not relate to the applicant. The disposition of the IP response must be documented in the file.

Adjudicating applications and petitions from a Temporary A-file

Extra care must be taken in adjudicating applications and petitions from a Temporary A-file. Applications that are adjudicated from a Temporary A-file must undergo all the normally required background checks, and must include the following additional steps. These additional requirements amplify the current guidelines contained in the N-400 NQP, and create new guidelines for other adjudications.

1. The Central Index System (CIS) printout must be reviewed to determine if records exist in other INS systems. If so, the adjudicator must obtain, review, and attach to the file that information prior to adjudicating the application.
2. If background checks are negative (no record), this fact and the data checks that were made/reviewed must be noted on a processing sheet that is attached to the file. A supervisory adjudications officer must review and approve the adjudication of that application on the temporary A-file.
3. If background checks are positive (a record or possible record exists), this fact and the data checks that were made must be recorded on the processing sheet. In any instance where a check is positive the information must be obtained, resolved and made a part of the record. In addition, the adjudication may not proceed until the Assistant District Director for Adjudications, or the Assistant Service Center Director, or the Officer in Charge having jurisdiction over the adjudication has reviewed and approved the decision. This authority may not be delegated.
4. Because special precautions must be taken in adjudicating applications on a Temporary A-file, and to permit supervisors adequate time to review records, no same-day oath ceremony may take place if the adjudication involves a Temporary A-file. The Assistant Director for Adjudications, or the Assistant Service Center Director, or the Officer in Charge may waive this requirement in appropriate cases. Such waivers shall be in writing and placed in the file.

DISTRIBUTION LIST

Regional Directors
District Directors
Service Center Directors
Officers in Charge
Acting Director, Office of International Affairs
Director, Immigration Officer Academy EAC,
Office of Policy and Planning
General Counsel
DEAC, Immigration Services Division

U.S. Department of Homeland Security

U.S. Citizenship and Immigration Services

April 05, 2004

Interoffice Memorandum

To: REGIONAL DIRECTORS
SERVICE CENTER DIRECTORS
NATIONAL BENEFITS CENTER DIRECTOR
FRAUD DETECTION AND NATIONAL SECURITY DIRECTOR
OFFICE OF REFUGEE, ASYLUM, AND INTERNATIONAL OPERATIONS DIRECTOR

From: William R. Yates
Associate Director for Operations

Re: Closing of Cases with Pending Law Enforcement Checks

Citizenship and Immigration Services (CIS) conducts law enforcement checks on all pending applications and petitions for two purposes—to enhance public safety by initiating appropriate law enforcement action, in those cases that warrant it, and to obtain information that may be relevant to the adjudication of the application. It is important that CIS continues to ensure both purposes are met in all cases.

This memorandum supercedes the Johnny Williams Memorandum of November 13, 2002, Responsibilities of Adjudicators, as it relates to FBI name checks, and any other similar instructions.

Effective with this memorandum, applications warranting denial may be adjudicated prior to obtaining the final results of all required law enforcement checks. Offices denying an application, without the results from the law enforcement checks, will be responsible for monitoring the final results when they become available, and taking appropriate action if public safety concerns are identified. Offices will be required to develop a post-audit system to receive, review and forward referrals to the appropriate law enforcement entity after an application has been denied. This post-audit system is also required for all cases where an NTA has been issued in accordance with the William R. Yates Memorandum of March 2, 2004, entitled Security Check Requirements Preceding Notice to Appear Issuance.

If preferred, offices may continue to withhold final adjudication until all required law enforcement check results are received. Offices continuing to follow the guidance outlined in the above-referenced Johnny Williams Memorandum relating to FBI name checks will complete final adjudication and law enforcement referrals at the same time, with no post-audit system required.

If you have any questions regarding this memorandum, please contact Patricia Nolin, Field Operations, at 202/514-2982.

U.S. Department of Homeland Security
Street Address
City, State Zip

U.S. Citizenship and Immigration Services

August 4, 2004

Interoffice Memorandum

To: REGIONAL DIRECTORS
DISTRICT DIRECTORS
SERVICE CENTER DIRECTORS
NATIONAL BENEFITS CENTER DIRECTOR

From: William R. Yates
Associate Director of Operations

Re: Required Security Checks

This memorandum updates and explains existing policy regarding required security checks. Field Offices are reminded that prior to issuing documentation evidencing or resulting from a grant of lawful permanent resident (LPR) status or asylum, including an I-551 Alien Documentation Identification Technology Stamp (ADIT), an asylee-endorsed Arrival/Departure Record (I-94), or an Employment Authorization Document (EAD) based upon 8 CFR 274a.12(a)(5), all of the security checks listed below must be completed. These checks must be accomplished in all circumstances, whether the final grant of LPR status or asylum has been given by U.S. Citizenship and Immigration Service (USCIS) or the Executive Office for Immigration Review (EOIR) as a form of relief from removal. In those instances when USCIS is unsure whether the appropriate Security Checks have been conducted, the following checks must be completed by USCIS.

Interagency Border Inspection System (IBIS). IBIS is a multi-agency effort started by the Immigration and Naturalization Service, Department of Agriculture, US Customs Service, and the Department of State. Twenty-four individual agencies have contributed information to this lookout system. An IBIS query also includes a check of the National Crime Information Center (NCIC), managed by the Federal Bureau of Investigation (FBI) for federal, state, and local law enforcement entities to share data concerning wanted persons, criminals, persons of interest, and routine legal administrative matters.

Ten-print fingerprint. This check is completed through the taking of fingerprints at the local Application Support Center (ASC). The Criminal Justice Information Services (CJIS) Division of the FBI conducts Fingerprint Background Checks through the submission of fingerprints and a search of the FBI's Criminal History Master File. The Fingerprint Background Check will include only information that has been submitted to the FBI by local, state, federal, or international criminal justice agencies. In addition to the fingerprint search, a name search only is conducted against the NCIC Gang and Terrorist Organization File.

FBI Name Check. This check is conducted against two separate databases. A Main Index search matches the applicant's name against the name of people who are, or have been, the subject of an investigation; a

Reference search matches the applicant's name against names that appear in investigative reports, even though s/he may not be the subject of the investigation.

Following the attacks of September 11, 2001, law enforcement and intelligence agencies have increased information sharing. An IBIS check performed today provides information from numerous enforcement and intelligence agencies. As a result of these efforts, it is no longer necessary for USCIS to conduct a separate Central Intelligence Agency (CIA) Check. Effective immediately field offices may discontinue the practice of waiting 60 days for a response from the CIA.

If you have any questions regarding this memorandum, please contact Patricia Nolin, Field Operations, at 202/514-2982.