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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SRIHARSHA GUDLA

2416 CANDLER CLUB WAY
LITTLE ELM, TX 75068

SAI LAXMI KAULLU,

4103 WOODMONT CIR.
MACUNGIE, PA 18062

SAI DURGAM VASAVI

5515 CARRINGTON PL.
CUMMING, GA 30040

SREE VINDHYA NAGANDLA

43 PALISADES BLVD.
HAWTHORN WOODS, IL 60047

Plaintiffs,

vs.

MARK KOUMANS, ACTING DIRECTOR,
UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICE,

20 MASSACHUSETTS AVE. NW
WASHINGTON, D.C. 29529

Defendant

Case No.:

COMPLAINT

I. INTRODUCTION

1
2 1. This case presents this Court with the latest in a series of coordinated actions
3 taken by the United States Citizenship and Immigration Service (“Defendant” or “USCIS”) to
4 unlawfully delay the adjudication of nonimmigrant visa benefits.

5
6 2. Each fiscal year, the Immigration and Nationality Act allows 65,000 initial H-1B
7 visas to be issued to professionals working in mostly the information technology sector. An
8 additional 20,000 initial H-1B visas are available to foreign professionals holding a master’s
9 degree.

10 3. If USCIS approves the H-1B petition, the approved H-1B status is valid for an
11 initial period of up to three years. USCIS may grant extensions for up to an additional three
12 years, such that the total period of the H-1B nonimmigrant’s admission in the United States does
13 not exceed six years.

14
15 4. The dependents of the H-1B nonimmigrant (i.e. spouse and unmarried children
16 under 21 years of age) are entitled to H-4 status and are subject to the same period of admission
17 and limitations as the H-1B nonimmigrant.

18 5. At the end of the six-year period, the H-1B and H-4 nonimmigrants generally
19 must depart from the United States unless they: (1) fall within one of the exceptions to the six-
20 year limit; (2) have changed to another nonimmigrant status; or (3) have an approved Form I-
21 140, Petition for Immigrant Worker, which allows them to eventually apply to adjust status to
22 that of a lawful permanent resident (“LPR”).

23
24 6. For H-1B and H-4 nonimmigrants seeking to adjust their status to or otherwise
25 acquire LPR status through employment-based immigration, an employer generally must file an
26 immigrant visa petition on their half. There are five preference categories for employment based

1 immigrant visas, EB-1 through EB-5. Generally, EB-2 and EB-3 are most common categories
2 used by employers seeking to permanently hire for H-1B beneficiaries. These require the
3 employer to obtain an approved permanent labor certification (“PERM”) from Department of
4 Labor (“DOL”) prior to filing an immigration petition with USCIS on behalf of the worker. .
5 The approved PERM certifies that there are insufficient qualified, willing, and able United States
6 workers for the position in the locality.

7
8 7. To apply for adjustment to LPR status, the H-1B nonimmigrant must be the
9 beneficiary of an immigrant visa that is immediately available. The Immigration & Nationality
10 Act (“INA”) limits the supply of visas available for each fiscal year and also limits the number of
11 available visas for each particular category based upon an annual per-country numerical limit.
12 Presently, the number of available visas issued to nationals of a particular country is capped at
13 seven percent of the total number of immigrant visas each year. This had previously created
14 uncertainty in the workforce as H-1B nonimmigrants would hit their six year limit but still not
15 have the ability to adjust to LPR. This created disruptions to US businesses that employed or
16 utilized the services of H-1B nonimmigrants.

17
18 8. Congress enacted provisions in the American Competitiveness in the 21st Century
19 Act (“AC21”), Pub. L. 106–313, title I, §106(a), (b), (Oct. 17, 2000), 114 Stat. 1253, 1254, as
20 amended by Pub. L. 107–273, div. C, title I, §11030A (Nov. 2, 2002), that allow for the
21 extension of H-1B and H-4 status past the sixth year for workers who are the beneficiaries of
22 certain pending or approved employment-based immigrant visa petitions or labor certification
23 applications. While this allowed workers and their dependents to stay in the United States, many
24 still left the US because their dependent spouses lacked the ability to work for years on end.
25 Despite the allowance of extensions beyond the sixth year, foreign nationals leaving the US

1 because the dependent spouse could not work continued to cause interruptions to American
2 businesses.

3 9. To rectify this issue, DHS issued a final rule to extend eligibility for employment
4 authorization to H-4 dependent spouses of H-1B nonimmigrants remaining in the United States
5 pursuant to extensions of stay based on sections 106(a) and (b) of AC21, and to H-4
6 nonimmigrants whose H-1B nonimmigrant spouses are beneficiaries of an approved Form I-140.
7 This rule was consistent with the congressional intent expressed in AC21 as this rule encouraged
8 potential H-1B nonimmigrants seeking LPR status and their H-4 dependents to remain in the
9 United States. Through this rule, the H-4 employment authorization document (“H-4 EAD”) was
10 created.
11

12 10. The benefits conferred by the H-4 EAD regulation are only available to those
13 dependents whose primary H-1B beneficiary is eligible to extend beyond the six year limit by
14 virtue of an approved Form I-140. In doing so, DHS has limited employment authorization to H-
15 4 dependents of H-1B spouses who have taken steps in attaining LPR status. This limitation was
16 appropriate in furthering the congressional goals of retaining high-skilled workers by providing
17 greater incentive to H-1B principals and their spouses who have taken steps to remain in the US
18 until such time as they are admitted as LPRs.
19

20 11. Those seeking to obtain an H-4 EAD or continue the H-4 EAD must have an
21 approval and a valid H-4 EAD card in order to have the necessary work authorization. Unlike the
22 H-1B, which allows the H-1B nonimmigrant to work pursuant to a pending H-1B extension, no
23 such rule exists for H-4 EAD. This creates a significant need for H-4 EAD applications to be
24 adjudicated in a timely and expeditious manner.
25
26

1 12. In the past, many H-4 and H-4 EAD applicants would file their H-4 (I-539) and
2 H-4 EAD (I-765) applications concurrently with their spouses H-1B petition. Often times, these
3 cases would be filed in premium processing which would ensure a fifteen day adjudication of the
4 H-1B. Many H-4 and H-4 EAD applicants saw this as a necessary step as H-4 adjudication could
5 take as long as twelve months if adjudicated separately from the H-1B, thus delaying or ending
6 any H-4 EAD work authorization. While there was no requirement to adjudicate the H-4 and H-4
7 EAD in fifteen days, USCIS had habitually adjudicated the H-4 and H-4 EAD along with the H-
8 1B as the cases required little review.

9
10 13. The H-4 extension of status and H-4 EAD adjudication consists of an extremely
11 perfunctory review. For the H-4 extension petition, the beneficiary submits a Form I-539,
12 Application to Extend/Change Nonimmigrant Status. This form is used by primary and
13 derivative beneficiaries for all nonimmigrant visa categories. Applicants pay \$370 per
14 beneficiary for the processing of the form. 81 Fed. Reg. 73294 (October 24, 2016). The agency
15 states that the average time spent by its adjudicators processing a Form I-536 is 0.40 hours, or 24
16 minutes. 81 Fed. Reg. 26925 (May 4, 2016). To process an H-4 extension the adjudicator
17 merely examines the record for a qualifying relationship with the primary H-1B beneficiary. In
18 the vast majority of extension cases the has been done multiple times before.

19
20 14. To apply for an H-4 EAD the applicant submits a Form I-765, Application for
21 Employment Authorization. This form is used by all nonimmigrants who are eligible to seek
22 employment authorization and not automatically granted it by the visa category. Applicants pay
23 \$410 per application for the processing of the form. 81 Fed. Reg. 73295 (October 24, 2016).
24 The agency states that the average time spent by its adjudicators processing all Form I-765 is
25 0.20 hours, or 12 minutes. 81 Fed. Reg. 26925 (May 4, 2016).

1 15. Unlike other Form I-765 adjudications, the only adjudicative facts required to
2 establish eligibility are: an approved H-4; and, the primary beneficiary's approved Form I-140.

3 16. Due to the synergy of adjudicating multiple petitions using the same facts at the
4 same time and the minimal effort required to adjudicate H-4 and H-4 EAD applications, these
5 petitions were historically adjudicated at the same time as the primary H-1B beneficiary's
6 extension.

7
8 17. On February 11, 2019, USCIS announced that effective March 22, 2019, the
9 Service was revising the Form I-539 used to apply for H-4 extensions to include an \$85
10 biometrics services fee and a requirement that anyone filing an I-539 must attend a biometrics
11 appointment and be finger printed for every I-539 filed. This requirement is not required by
12 regulation or statute and was a creation of USCIS not supported by any rule of law.

13 18. On or about March 1, 2019, USCIS hosted a public engagement teleconference
14 regarding the new I-539 requirements. During this call USCIS recognized the fact that many H-4
15 and H-4 EAD applications were filed concurrently with a premium processing H-1B in order to
16 obtain an expedited adjudication. USCIS noted that since biometrics would take an average of
17 seventeen days, it was possible that the H-4 and H-4 EAD would still be pending after an H-1B
18 was adjudicated in the fifteen days required for premium processing. USCIS stated that they
19 would take steps to adjudicate these H-4 and H-4 EAD applications in an expeditious manner.
20

21 19. Sometime after March 22, 2019, on information and belief, USCIS changed their
22 internal policy of adjudicating H-4 and H-4 EAD applications concurrently with premium
23 processing H-1B petitions and would now begin processing such cases in regular processing
24 separate from the H-1B.
25

1 25. Plaintiff Sriharsha Gudla's spouse is the beneficiary of an approved employment
2 based immigrant visa (Form I-140) which was approved on February 9, 2015 (SRC1490358837).
3 Plaintiff Gudla is a resident of Texas. Plaintiff Gudla's spouse's H-1B extension was filed on
4 January 14, 2019 (WAC1909650502). This H-1B was originally filed in regular processing, but
5 was upgraded to premium on April 24, 2019. Plaintiff Gudla is an H-4 visa applicant dependent
6 on his wife's H-1B. Plaintiff Gudla is also the applicant for a renewal of his H-4 EAD. Plaintiff
7 Gudla's application to extend H-4 status and EAD application were filed concurrently with his
8 spouse's H-1B petition on January 14, 2019 (WAC1909650519).

10 26. Plaintiff Gudla's spouse's H-1B was approved on May 1, 2019 and was given a
11 validity period through March 31, 2020. On his prior EAD Plaintiff Gudla had been employed
12 as a customer care center service representative working pursuant to his previous H-4 EAD.

13 27. Plaintiff Gudla's H-4 application and H-4 EAD application are still pending.
14 Plaintiff Gudla's most recent H-4 EAD expired on May 11, 2019. However, due to Agency
15 Delay, Plaintiff Gudla has been placed on unpaid leave since May 11, 2019. Further Agency
16 delay will lead to Plaintiff Gudla losing his job entirely as well as losing the medical insurance
17 benefits that his company is still providing for his entire family through the end of the year on
18 condition that he is making monthly insurance payments. Plaintiff Gudla's provides insurance
19 for his family which consists of Plaintiff Gudla, his wife, seven year old child, and an eleven
20 month old child. Both of Plaintiff Gudla's children are United States citizens.

22 28. Plaintiff Sai Laxmi Kallu's spouse is the beneficiary of an approved employment
23 based immigrant visa which was approved on August 10, 2012 (SRC1290310751). Plaintiff
24 Kallu is a resident of Pennsylvania. Plaintiff Kallu's spouse's H-1B extension was filed on
25 March 21, 2019 (LIN1912951638). This H-1B was originally filed in regular processing, but
26

1 was upgraded to premium on April 11, 2019. Plaintiff Kallu is an H-4 visa extension applicant
2 dependent on her husband's H-1B. Plaintiff Kallu is also the applicant for a renewal of her H-4
3 EAD. Plaintiff Kallu's application to extend H-4 status and EAD application were filed
4 concurrently with her spouse's H-1B petition on March 21, 2019 (LIN1912951651).

5
6 29. The H-1B extension filed on behalf of Plaintiff Kallu's husband was approved on
7 April 15, 2019. On her previously approved EAD, Plaintiff Kallu was employed as a software
8 developer.

9 30. Plaintiff Kallu's H-4 application and H-4 EAD application are still pending.
10 Agency delay will lead to Plaintiff Kallu losing her job and driver's license if the Court does not
11 compel the Agency to act.

12 31. Plaintiff Vasavi Sai Durgam's spouse is the beneficiary of an approved
13 employment based immigrant visa which was approved on July 11, 2013 (SRC1318751304).
14 Plaintiff Durgam is a resident of Georgia. Plaintiff Durgam's spouse's H-1B extension was filed
15 on April 10, 2019 (EAC1914951678). This H-1B was filed in premium processing. Plaintiff
16 Durgam's application to extend H-4 status for her and her dependent child as well as her EAD
17 application were filed concurrently with her spouse's H-1B petition on April 10, 2019
18 (EAC1914951706).

19
20 32. Plaintiff Durgam's spouse's H-1B was approved on April 10, 2019 and given a
21 validity period through July 12, 2022. Plaintiff Durgam currently works on software for an
22 insurance company pursuant to her current H-4 EAD.

23
24 33. Plaintiff Durgam's H-4 application and H-4 EAD application are still pending.
25 Agency delay will cause Plaintiff Durgam to be unable to accept a federal government job that
26

1 has been offered to her causing significant detriment to her career as well as a risk to her current
2 job if the Court does not compel the Agency to act.

3 34. Plaintiff Sree Vindhya Nagandla's spouse is the beneficiary of an approved
4 employment based immigrant visa which was approved on July 11, 2018 (LIN1819350674).
5 Mrs. Nagandla is a resident of Illinois. Plaintiff Nagandla's spouse's H-1B extension was filed
6 on April 26, 2019 (LIN1915850363). This H-1B was filed in premium processing. Plaintiff
7 Nagandla is an H-4 visa applicant dependent on her husband's H-1B. Her H-4 visa extension
8 application was also filed with a dependent minor. Mrs. Nagandla is also the applicant for a
9 renewal of her H-4 EAD. Plaintiff Nagandla's application to extend application to extend H-4
10 status and EAD application were filed concurrently with his spouse's H-1B petition on on April
11 26, 2019 (LIN1915850401).
12

13 35. The H-1B extension filed on behalf of her husband was approved on May 28,
14 2019. On her previously approved EAD she was employed as a Lead SAP Business Analyst.
15

16 36. Plaintiff Nagandla's H-4 application and H-4 EAD application are still pending.
17 Agency delay will lead to Mrs. Nagandla losing her job, driver's license, and her family would
18 be unable to continue to make necessary mortgage payments of the house that is in her name if
19 the Court does not compel the Agency to act.

20 37. Defendant Mark Koumans is the Acting Director of the United States Citizenship
21 and Immigration Service ("USCIS" or "Defendant"). USCIS is a component of the Department
22 of Homeland Security ("DHS"). DHS is an executive agency of the United States, and an
23 "agency" within the meaning of the APA, 5 U.S.C. § 551(1). DHS assumed responsibility from
24 the Immigration and Nationality Service ("INS" or "Defendant") on March 1, 2003, to
25
26

1 administer responsibilities under the Immigration and Nationality Act (INA) and in particular to
2 fulfill its duties to adjudicate employment-based immigrant and nonimmigrant visa petitions.

3 **III. JURISDICTION**

4 38. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
5 1331, as this is a civil action arising under the Constitution, laws, or treaties of the United States.
6 This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 2201, as this is a civil
7 action seeking, in addition to other remedies, a declaratory judgment.
8

9 39. The United States has waived sovereign immunity, allowing this Court to review
10 challenges to final agency actions and unlawfully withheld action under Administrative
11 Procedure Act (“APA”). 5 U.S.C. § 702. The standards of review for these actions are found in
12 5 U.S.C. § 706.

13 **IV. VENUE**

14 40. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e)(1), because
15 Defendant is headquartered in this district.
16

17 **V. PROCEDURAL HISTORY**

18 41. On January 14, 2019, Defendant accepted Plaintiff Gudla’s H-4 visa application,
19 issued receipt number WAC1909650519, and accepted \$370 for application fees. On January 14,
20 2019, Defendant also accepted Plaintiff Gudla’s H-4 EAD application, issued receipt number
21 WAC1909650533, and accepted \$410 for application fees. Defendant has not made a decision on
22 either application.
23

24 42. On March 21, 2019, Defendant accepted Plaintiff Kallu’s H-4 visa application,
25 issued receipt number LIN1912951651, and accepted \$370 for application fees. On March 21,
26 2019, Defendant also accepted Plaintiff Kallu’s H-4 EAD application, issued receipt number
27

1 LIN1912951667, and accepted \$410 for application fees. Defendant has not made a decision on
2 either application.

3 43. On April 10, 2019, Defendant accepted Plaintiff Durgam's H-4 visa application
4 filed on behalf of her and her dependent minor child, issued receipt number EAC1914951733,
5 and accepted \$540 for application fees for the H-4 application and biometrics fees. On April 10,
6 2019, Defendant also accepted Plaintiff Durgam's H-4 EAD application, issued receipt number
7 EAC1914951733, and accepted \$410 for application fees. Defendant has not made a decision on
8 either application.
9

10 44. On April 26, 2019, Defendant accepted Plaintiff Nagandla's H-4 visa application filed on
11 behalf of her and her dependent minor child, issued receipt number LIN1915850375, and
12 accepted \$455 for application fees for the H-4 application and biometrics fees. On April 26,
13 2019, Defendant also accepted Plaintiff Nagandla's H-4 EAD application, issued receipt number
14 LIN1915850401, and accepted \$410 for application fees. Defendant has not made a decision on
15 either application.
16

17 **VI. LEGAL BACKGROUND**

18 **A. ADMINISTRATIVE PROCEDURE ACT**

19 45. Federal agencies must comply with the Administrative Procedure Act ("APA")
20 when crafting and enforcing decisions, regulations, legislative rules. 5 U.S.C. § 553.

21 46. Courts have authority to review and invalidate final agency actions that are not in
22 accordance with the law, exceed agency authority, lack substantial evidence, or are arbitrary and
23 capricious. 5 U.S.C. § 706.
24

25 **B. IMMIGRATION AND NATIONALITY ACT**

1 47. The Immigration and Nationality Act (INA) of 1990 separates employment-based
2 visas into two categories: nonimmigrant (temporary) and immigrant (permanent, or green card).
3 *See* 8 U.S.C. §§ 1101(a)(15), 1153 and 1182. Generally speaking each nonimmigrant visa has a
4 corresponding immigrant visa category. *See id.*

5 48. Professional workers (requiring a bachelor's, master's degree, or equivalent to
6 such degrees) can temporarily enter and work for a United States employer using an H-1B visa.
7 8 U.S.C. § 1101(a)(15)(H)(i)(b). Spouses and minor children of such H-1B workers are
8 permitted to enter the United States through 8 U.S.C. § 1101(a)(15)(H) which also allows for
9 entry of "the alien spouse and minor children of such alien specified in this paragraph if
10 accompanying him or following to join him."
11

12 49. H-4 and H-4 EAD are nonimmigrant benefits as defined in the INA.

13 VII. CAUSE OF ACTION

14 COUNT I

15 (Violation of the Administrative Procedure Act for delay of H-4 application processing)

16 50. Plaintiffs re-allege all allegations herein as though restated here.

17 51. Plaintiffs have been waiting an average of seventy-eight days for decisions on
18 pending H-4 applications.
19

20 52. This is an unreasonable delay.

21 53. The Administrative Procedure Act ("APA") requires the Agency to make a
22 decision on Plaintiffs' Applications "within a reasonable amount of time." 5 U.S.C. § 555(b).
23

24 54. Congressional policy indicates that all nonimmigrant visa applications should be
25 decided within 30 days:
26

1 It is the sense of Congress that the processing of ... a petition for a nonimmigrant
2 visa under section 1184(c) of this title should be processed not later than 30 days
3 after the filing of the petition.

4 8 U.S.C. § 1571(b).

5 55. This is an unreasonable delay under the five factors laid out in
6 *Telecommunications Research & Action Ctr. v. FCC* (“TRAC”), 750 F.2d 70 (D.C. Cir. 1984).

7 Those factors comprise:

8 (1) “the time an agency takes to make a decision should be governed by a ‘rule of
9 reason’ ”; (2) “[t]he content of a rule of reason can sometimes be supplied by a
10 congressional indication of the speed at which the agency should act”; (3) “the
11 reasonableness of a delay will differ based on the nature of the regulation; that is,
12 an unreasonable delay on a matter affecting human health and welfare might be
13 reasonable in the sphere of economic regulation”; (4) “the effect of expediting
14 delayed actions on agency activity of a higher or competing priority . . . [and] the
15 extent of the interests prejudiced by the delay”; and (5) “a finding of
16 unreasonableness does not require a finding of impropriety by the agency.”

17 56. First, USCIS has no rule of reason that governs when it makes decisions on H-4
18 visa applications. To the extent that Defendant has a rule of reason, its current delay on
19 Plaintiffs’ H-4 applications violates any such rule because the delay of the H-4 causes
20 subsequent delay of H-4 EAD applications and impacts driver’s license eligibility, and Agency
21 delay is not commensurate with the amount of work required to process these applications. This
22 factor weighs in favor of compelling agency action.

23 57. Moreover, Defendant takes fees from applicants when applying for H-4 visa
24 applications in exchange for processing the applications. Defendant sets the fee rate based upon
25 the cost it incurs to process visa and benefit applications in a timely fashion. Defendant cannot
26 defend its actions by alleging a lack of resources when it charges fees to pay for resources
27 needed to fulfil its statutory duty.

1 58. Second, Congress has provided content to any “rule of reason” by declaring the
2 Agency should act on nonimmigrant applications within 30 days. 8 U.S.C. § 1571(b). USCIS
3 attempts to comport with this legislative aspiration. *See, e.g., Shihuan Cheng v. Baran*, No. 17-
4 2001, 2017 WL 3326451, at *4 (C.D. Cal. Aug. 3, 2017). Thus, Congress indicates it should take
5 30 days to act on nonimmigrant visa applications and Defendant purports to follow this
6 legislative aspiration. Because Congress has indicated a period of 30 days, Defendant follows
7 such legislative aspiration in this context, and Plaintiffs’ H-4 applications have been pending
8 outside this timeline, this factor weighs in favor of compelling agency action.

10 59. Third, the Agency’s delay impacts human health and welfare, not merely
11 economic interests.

12 60. Fourth, compelling agency action here would have no effect on a USCIS activity
13 of a higher or competing priority.

14 61. The current delay of Plaintiff’s petitions is not due to a lack of agency resources
15 because USCIS has historically processed these cases within 15 days or at the very least
16 simultaneously with the H-1B when the two were filed concurrently. Defendant sets the fees it
17 charges to pay for personnel to process petitions in a timely fashion.

18 62. Compelling agency action on Plaintiffs’ H-4 applications would not come at the
19 expense of agency action in similar cases because similar cases are being adjudicated in shorter
20 period of time and the Agency has historically adjudicated H-4 applications simultaneously with
21 H-1B petitions when the two were filed concurrently.

22 63. It strains credulity to say compelling government action to make a decision would
23 only put Plaintiffs’ applications to the front of the line. *See* TRAC, 750 F.2d at 80 (nothing
24 courts should consider the prejudice to the agency’s claimed interest). By every metric, the
25

1 “line” for H-4 processing should not exist beyond thirty days. These are not fact intensive
2 petitions and Agency review should not be too extensive. Defendant has intentionally delayed
3 the processing of H-4 applications that are filed with H-1B petitions in a completely arbitrary
4 and capricious change in adjudication policy. Even without premium processing, previous H-4
5 and H-4 EAD applications were approved simultaneously with the H-1B. This factor, therefore,
6 weighs in favor of compelling agency action.
7

8 64. Finally, while the circumstantial evidence of impropriety is palpable, this Court
9 need not find such evidence to find the delay is unreasonable.

10 65. Each TRAC factor weighs in favor of ordering the Agency to issue a decision on
11 Plaintiffs’ applications; thus, Defendant’s delay is arbitrary and capricious under 5 U.S.C. § 706.

12 66. Plaintiff demands discovery from Defendant to develop the administrative record,
13 and establish his delay is unlawful, intentional, and targeted at a specific and identifiable group.
14 This includes document discover, interrogatories, and depositions of Defendant Koumans,
15 USCIS Chief Counsel Craig Symons, California Service Center Director, Vermont Service
16 Center Director, Nebraska Service Center Director, and others.
17

18 67. This delay is not substantially justified.

19 **COUNT 2**

20 (Violation of the Administrative Procedure Act for delay of H-4 application processing)
21

22 68. Plaintiffs re-allege all allegations herein as though restated here.

23 69. Plaintiffs have been waiting an average of seventy-eight days for decisions on
24 pending H-4 EAD applications.
25

26 70. This is an unreasonable delay.

1 71. The Administrative Procedure Act (“APA”) requires the Agency to make a
2 decision on Plaintiffs’ Applications “within a reasonable amount of time.” 5 U.S.C. § 555(b).

3 72. Congressional policy indicates that all nonimmigrant visa applications should be
4 decided within 30 days:

5 It is the sense of Congress that the processing of ... a petition for a nonimmigrant
6 visa under section 1184(c) of this title should be processed not later than 30 days
7 after the filing of the petition.

8 8 U.S.C. § 1571(b).

9 73. This is an unreasonable delay under the five factors laid out in
10 *Telecommunications Research & Action Ctr. v. FCC* (“TRAC”), 750 F.2d 70 (D.C. Cir. 1984).

11 Those factors comprise:

12 (1) “the time an agency takes to make a decision should be governed by a ‘rule of
13 reason’ ”; (2) “[t]he content of a rule of reason can sometimes be supplied by a
14 congressional indication of the speed at which the agency should act”; (3) “the
15 reasonableness of a delay will differ based on the nature of the regulation; that is,
16 an unreasonable delay on a matter affecting human health and welfare might be
17 reasonable in the sphere of economic regulation”; (4) “the effect of expediting
18 delayed actions on agency activity of a higher or competing priority . . . [and] the
19 extent of the interests prejudiced by the delay”; and (5) “a finding of
20 unreasonableness does not require a finding of impropriety by the agency.”

21 74. First, USCIS has no rule of reason that governs when it makes decisions on H-4
22 EAD applications. To the extent that Defendant has a rule of reason, its current delay on
23 Plaintiffs’ H-4 EAD violates any such rule because the delay of the H-4 EADs can lead and has
24 led to several months of work eligibility, delays in potential start times for employees, creates
25 uncertainty for businesses, creates uncertainty for families both financially and with regard to
26 employment related benefits such as insurance, and Agency delay is not commensurate with the
27 amount of work required to process these applications. This factor weighs in favor of compelling
agency action.

1 75. Moreover, Defendant takes fees from applicants when applying for H-4 EADs in
2 exchange for processing the applications. Defendant sets the fee rate based upon the cost it
3 incurs to process visa and benefit applications in a timely fashion. Defendant cannot defend its
4 actions by alleging a lack of resources when it charges fees to pay for resources needed to fulfill
5 its statutory duty.

6
7 76. Second, Congress has provided content to any “rule of reason” by declaring the
8 Agency should act on nonimmigrant applications within 30 days. 8 U.S.C. § 1571(b). USCIS
9 attempts to comport with this legislative aspiration. *See, e.g., Shihuan Cheng v. Baran*, No. 17-
10 2001, 2017 WL 3326451, at *4 (C.D. Cal. Aug. 3, 2017). Thus, Congress indicates it should take
11 30 days to act on nonimmigrant visa applications and Defendant purports to follow this
12 legislative aspiration. Because Congress has indicated a period of 30 days, Defendant follows
13 such legislative aspiration in this context, and Plaintiffs’ H-4 EAD applications have been
14 pending outside this timeline, this factor weighs in favor of compelling agency action.

15
16 77. Third, the Agency’s delay impacts human health and welfare, not merely
17 economic interests. Delay can lead to Applicants losing their employment based insurance.

18 78. Fourth, compelling agency action here would have no effect on a USCIS activity
19 of a higher or competing priority.

20 79. The current delay of Plaintiff’s petitions is not due to a lack of agency resources
21 because USCIS has historically processed these cases within 15 days or at the very least
22 simultaneously with the H-1B when filed concurrently. Defendant sets the fees it charges to pay
23 for personnel to process petitions in a timely fashion.

24
25 80. Compelling agency action on Plaintiffs’ H-4 EAD applications would not come at
26 the expense of agency action in similar cases because similar cases are being adjudicated in

1 shorter period of time and the Agency has historically adjudicated H-4 EAD applications
2 simultaneously with H-1B petitions when the two were filed concurrently.

3 81. It strains credulity to say compelling government action to make a decision would
4 only put Plaintiffs' applications to the front of the line. *See* TRAC, 750 F.2d at 80 (nothing
5 courts should consider the prejudice to the agency's claimed interest). By every metric, the
6 "line" for H-4 EAD processing should not exist beyond thirty days. These are not fact intensive
7 petitions and Agency review should not be too extensive. Defendant has intentionally delayed
8 the processing of H-4 EAD applications that are filed with H-1B petitions in a completely
9 arbitrary and capricious change in adjudication policy. Even without premium processing,
10 previous H-4 and H-4 EAD applications were approved simultaneously with the H-1B. This
11 factor, therefore, weighs in favor of compelling agency action.
12

13 82. Finally, while the circumstantial evidence of impropriety is palpable, this Court
14 need not find such evidence to find the delay is unreasonable.
15

16 83. Each TRAC factor weighs in favor of ordering the Agency to issue a decision on
17 Plaintiffs' applications; thus, Defendant's delay is arbitrary and capricious under 5 U.S.C. § 706.
18

19 84. Plaintiff demands discovery from Defendant to develop the administrative record,
20 and establish his delay is unlawful, intentional, and targeted at a specific and identifiable group.
21 This includes document discover, interrogatories, and depositions of Defendant Koumans,
22 USCIS Chief Counsel Craig Symons, California Service Center Director, Vermont Service
23 Center Director, Nebraska Service Center Director, and others.

24 85. This delay is not substantially justified.

25 **CLAIM FOR EQUAL ACCESS TO JUSTICE ACT FEES**

26 86. Plaintiffs re-allege all allegations contained herein.

1 87. Defendant's current delay is substantially unjustified under the APA.

2 88. Plaintiffs are otherwise qualified for fees under the Equal Access to Justice Act.

3 89. Plaintiffs are entitled to reasonable attorney's fees under the Equal Access to
4 Justice Act.

5 **PRAYER FOR RELIEF**

6 90. Plaintiffs pray that this Court will:

7 91. Enter an order compelling the Agency to make a decision on all of Plaintiffs'
8 Forms I-539 Application to Extend/Change Nonimmigrant Status and Forms I-765 Application
9 for Employment Authorization.

10 92. Declare a delay in adjudication of a nonimmigrant visa petition per se
11 unreasonable;

12 93. Order USCIS to pay reasonable attorney's fees; and

13 94. Enter and issue other relief that this Court deems just and proper.

14
15
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