

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

DEEPTHI WARRIER EDAKUNNI, *et al.*,

Plaintiff,

v.

ALEJANDRO MAYORKAS, Secretary
of the Department of Homeland Security,

Defendant.

Case No. 21-cv-393-RAJ

Noting Date: May 7, 2021

DECLARATION OF CONNIE L. NOLAN

I, CONNIE L. NOLAN, declare the following:

1. I am the Acting Associate Director of Service Center Operations (SCOPS) for the United States Citizenship and Immigration Services (USCIS), which is within the Department of Homeland Security (DHS). I have held this position since January 2021. Prior to that, I was the Deputy Associate Director of SCOPS since June 2019 and occupied this same position in an Acting capacity from January to April 2019. I began my federal career in 1992 with the former Immigration and Naturalization Service (INS) and have served in numerous capacities with INS and now USCIS at the Vermont Service Center, Potomac Service Center, and SCOPS headquarters.
2. In my current position, I oversee all planning, management, and operational functions of Service Center Operations, which includes overseeing all activities at the five service centers located in California, Texas, Nebraska, Vermont, and Virginia, respectively. Service Center Operations employs over 7100 federal and contract staff and adjudicated nearly 5 million requests for immigration benefits in FY2020.

3. The Form I-539, *Application to Extend/Change Nonimmigrant Status*, is filed by noncitizens requesting an extension of stay in or change of status to certain nonimmigrant classifications.
4. As part of its administration of immigration benefits, USCIS has the general authority to require and collect biometrics, which include fingerprints, photographs, and digital signatures for any person seeking an immigration benefit. Beginning March 11, 2019, USCIS implemented a nationwide requirement to have all individuals submitting a Form I-539 application complete biometrics. USCIS collects biometrics at 131 Application Support Centers across the United States and its territories.
5. In the normal course of business, there are several steps associated with the biometrics collection process. Appointment notices are sent to applicants between two and three weeks in advance of their appointments. In addition to this, there are several factors beyond USCIS' control that may affect the timeframe for biometrics collection including, but not limited to, the applicant's availability to appear at the scheduled time, applicant's request to reschedule, unplanned ASC closures for weather, wildfires, etc.
6. Due to the worldwide COVID-19 pandemic, USCIS closed all offices to the public, including all ASCs, on March 18, 2020.
7. USCIS began the process of reopening ASCs on July 13, 2020, doing so in a phased manner dependent on a number of factors, including the ability to procure and deliver protective barriers and other engineering controls and pandemic-related circumstances in each particular ASC's locale, such as state and local stay-at-home orders. ASC closures and subsequent re-openings were detailed at <https://egov.uscis.gov/office-locator/#/asc>.
8. Even after reopening, ASCs remain challenged by reduced capacity related to measures instituted to combat the spread of COVID-19. From July 2020 to September 2020, ASCs were operating at below 50% of pre-COVID levels. In late October 2020, ASCs were able to increase efficiencies to operate at about 65% of pre-COVID-19 throughout, and remain at those levels today. Some of the factors limiting capacity include reduced waiting-room

space due to social-distancing requirements, the need to clean equipment and barriers between each applicant, and the need to conduct screening (ensuring a valid appointment and asking standard COVID-19 questions) before allowing entry to the ASC. Appointment availability also varies according to geographic location, with some ASCs having a larger backlog than others.

9. The closures and capacity limitations created a substantial backlog of cases awaiting biometrics appointments at the ASCs. The biometrics appointment delays for Forms I-539 related to H-4 and L-2 spouses resulted in adjudication delays of both the Form I-539 and related Form I-765, *Application for Employment Authorization*.
10. The I-765 application cannot be approved until after the dependent spouse's underlying H-4 or L-2 nonimmigrant status is granted or extended upon approval of the Form I-539.
11. DHS regulations provide for an automatic 180-day extension of employment authorization for certain EAD renewal applications, but the applicable automatic extension provisions do not cover H-4 and L-2 nonimmigrants because the regulations confer an automatic extension of employment authorization only if the Form I-765 is not contingent upon the approval of an underlying application (e.g. contingent upon approval of an I-539 application). *See* 8 CFR 274a.13(d).
12. USCIS is experiencing an unprecedented backlog of Form I-539 applications, which is having the greatest impact on those nonimmigrants seeking a nonimmigrant classification that makes them eligible to apply for work authorization, such as L-2 spouses and some H-4 spouses, because the backlog is also delaying the adjudication of their I-765 applications.
13. The current number of Form I-539s for H-4 and L-2 spouses in the backlog is approximately 123,000. The current number of Form I-765s for H-4 and L-2 spouses in the backlog is approximately 57,500.
14. These delays have resulted in numerous lawsuits against USCIS challenging the reasonableness of processing times, particularly as they pertain to I-765 applications filed by H-4 and L-2 nonimmigrant spouses seeking to renew their employment authorization.

15. In recognition of the significant backlog and hardship posed by the extended time it has been taking to provide employment authorization documents to H-4 and L-2 spouses, USCIS has been scheduling appointments with all deliberate speed to collect biometrics from applicants affected by the ASC closures and return to a more normal operating posture as soon as conditions allow.
16. Recently, USCIS has undertaken a variety of adjudicative actions to aggressively address the backlog. Service centers currently have approximately 120 officers adjudicating Form I-539 for the H-4 and L-2 classifications with another 33 officers scheduled for training in May 2021. In the past 60 days, service centers completed approximately 25,000 related to H-4 and L-2 spouses.
17. Additionally, USCIS is finalizing a policy that will temporarily suspend biometrics submission requirements for individuals filing Form I-539 to request an extension of stay in or change of status to H-4, L-2 and certain E nonimmigrants due to the extended processing times resulting from limited ASC capacity due to ongoing COVID-19 health and safety protocols.
18. Expected to begin on May 17, 2021, the new policy suspending biometrics submission requirements for the H-4, L-2 and E nonimmigrants is intended to be in effect for 24 months, and is intended to automatically expire after May 17, 2023, subject to affirmative extension or revocation by the USCIS Director.
19. The suspension of biometrics is intended to apply only to H-4, L-2 and E-1, E-2 and E-3 categories of Form I-539 applications that are pending as of the effective date of the policy and have not yet received a biometric services appointment notice, and new applications received by USCIS after the effective date of the policy through the stated expiration date, subject to affirmative extension or revocation by the USCIS Director.
20. USCIS will retain discretion on a case-by-case basis to require biometrics, and any applicant may be scheduled for an ASC appointment to submit biometrics for identity verification and other screening purposes.

21. USCIS projects there will be approximately 125,000 pending I-539s for the H-4 and L-2 categories as of May 17, 2021. Applications where the principal nonimmigrant's Form I-129, *Petition for a Nonimmigrant Worker*, has been approved will become adjudication-ready on that date.
22. I-539s for the H-4 and L-2 categories will generally be assigned for adjudication based on filing date, a process known as First In First Out ("FIFO"). The FIFO methodology permits applicants who filed earlier in time to reserve their place in the queue based on the receipt date of the respective application. Although service centers strive for comparable processing times, there may be deviations from strict FIFO policy based on individual center workloads, expedite requests and other mitigating circumstances.
23. The chart attached as Appendix 1 includes information about the named-plaintiffs and the applications identified in the Second Amended Complaint.
24. I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge and belief based upon my personal knowledge acquired in my official capacity and in the performance of my official duties as well as upon information provided to me by other USCIS personnel in the course of my official duties.

Executed on May 3, 2021 at Woodford, Virginia.



Connie L. Nolan
Associate Director
USCIS Service Center Operations Directorate
U.S. Citizenship and Immigration Services
Department of Homeland Security