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E-FILED 8/24/06

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

JIONG PENG,

Plaintiff,

v.

MICHAEL CHERTOFF, et al.,

Defendants.

Case Number C 06-05051 RS

ORDER TO SHOW CAUSE

On August 22, 2006, plaintiff Jiong Peng, appearing through counsel, filed a “Complaint For Writ in the Nature of Mandamus” against defendants Michael Chertoff, Secretary of the Department of Homeland Security; Emilio Gonzalez, Director of the United States Citizenship and Immigration Services (“CIS”); Francis D. Siciliano, Officer-in charge of the San Jose suboffice of the CIS; and Robert Mueller, Director of the Federal Bureau of Investigation.

Plaintiff alleges defendants have failed to process her Form I-485 (Application to Register Permanent Resident or Adjust Status) in a timely manner, apparently as a result of delays in obtaining a completed background check clearance from the Federal Bureau of

1 Investigation. Plaintiff contends that defendants have violated the Administrative Procedures
2 Act, 5 U.S.C § 701 et. seq., by “withholding or unreasonably delaying action on the Plaintiff’s I-
3 485 application and [by] fail[ing] to carry out the adjudicative functions delegated to them by
4 law.” Plaintiff requests that this Court enter an order directing defendants to complete the
5 background check and the processing of her application.

6 Good cause therefore appearing, IT IS HEREBY ORDERED as follows:

7 (1) The Clerk of the Court shall serve by certified mail a copy of the complaint and a
8 copy of this Order upon counsel for Defendants, the Office of the United States Attorney. The
9 Clerk of the Court also shall serve a copy of this Order upon Plaintiff’s counsel.

10 (2) Defendants shall, within sixty (60) days after receiving service of the complaint,
11 file and serve upon Plaintiff an answer, showing cause why the relief prayed for should not be
12 granted. At the time the answer is filed, Defendants shall lodge with the Court all records
13 relevant to a determination of the issues presented by the complaint. If Defendants contend that
14 Plaintiff has failed to exhaust administrative remedies as to any ground for relief asserted in the
15 complaint, Defendants shall specify what administrative remedy remains available to Plaintiff.
16 If Defendants waive or concede the issue of exhaustion, Defendants shall so state in their
17 answer.

18 (3) Plaintiff may file a response to the matters raised in the answer within twenty (20)
19 days after receiving the answer.

20 (4) Unless otherwise ordered by the Court, the matter will be deemed submitted upon
21 the filing of the response or upon the expiration of time to file a response.

22 (5) No later than the time their respective responses hereunder are due, the parties
23 shall make their determination regarding the issue of consent to the jurisdiction of the Magistrate
24 Judge and file the appropriate form. In the event any party declines to consent to the jurisdiction
25 of the Magistrate Judge, this action will be reassigned to a District Judge for further proceedings.

1 (6) The Order Setting Initial Case Management Conference and ADR deadlines entered
2 on August 22, 2006 in this action is hereby VACATED.

3
4 IT IS SO ORDERED.

5 Dated: August 24, 2006

/s/ Nandor J. Vadas _____
NANDOR J. VADAS
United States Magistrate Judge

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1 **THIS IS TO CERTIFY THAT NOTICE OF THIS ORDER HAS BEEN DELIVERED**
2 **TO:**

3 Justin X. Wang lawbw@aol.com

4 Counsel are responsible for distributing copies of this document to co-counsel who have not
5 registered for e-filing under the Court's CM/ECF program.

6 **Dated: 8/24/06**

Chambers

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8 **By:** _____ */s/ BAK* _____
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