

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO**

ISSE ABDI ALI)
WARSAN HASSAN DIRIYE)
)
)
Plaintiffs,)
)
v.)
)
JEFF SESSIONS, Attorney General of the)
United States of America,)
)
L. FRANCIS CISSNA, Director of)
the United States Citizenship and)
Immigration Services,)
)
CHARLES WRIGHT, Director of the Nairobi)
Field Office of the United States Citizenship)
and Immigration Services)
)
KIRSTJEN NIELSEN, Secretary of the)
Department of Homeland Security)
)
)
Defendants.)

Case No.: 2:18-cv-760

COMPLAINT FOR WRIT OF MANDAMUS

This action is brought by Plaintiffs to compel Defendants to adjudicate their I-730 petition for Asylee/Refugee Relative that has been pending since April, 2014. Plaintiffs have made numerous inquiries and requests for adjudication of the petition. Nonetheless, Defendants have failed to adjudicate the Plaintiff’s I-730 petition in a timely manner.

JURISDICTION

1. This is a civil action brought pursuant to 8 U.S.C. § 1329 (jurisdiction of the district courts) and 28 U.S.C. § 1331 (federal question jurisdiction) and § 1361 (action to compel an officer

of the United States to perform his duty) to redress the deprivation of rights, privileges, and immunities secured to the Plaintiffs, by which statutes jurisdiction is conferred, to compel the Defendants to perform a duty that the Defendants owe to the Plaintiffs. Jurisdiction is also conferred by 5 U.S.C. § 555(b) and § 704, the Administrative Procedure Act (“APA”).

2. Under 28 U.S.C. § 1361, “[t]he district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.” Only USCIS has authority to decide I-730 asylee/refugee relative petitions. *See* INA § 207, 8 U.S.C. § 1157 generally (giving the U.S. Attorney General authority to grant refugee status) and §207(c)(2)(A), 8 U.S.C. § 1157(c)(2) (pertaining to spouses and children of refugees); *see also* 8 C.F.R. § 207.7 (USCIS regulations governing refugee relative petitions).

3. The filing of the I-730 with USCIS is a necessary first step in a two-step process. After the I-730 is approved by USCIS, the second step is for the National Visa Center to forward the petition to the appropriate international USCIS Field Office for confirmation of the family relationship and to determine the relative’s eligibility; to determine if there are any issues that would interfere with the relative’s admission into the U.S.; and to issue necessary travel documents so that the beneficiary can travel to the United States. *See* FAM Vol. 9, App. O. §§ 700, 705, 706.

4. The Foreign Affairs Manual (“FAM”) makes clear that USCIS employees can, and most of the time do, perform all of these tasks. *See* FAM Vol. 9, App. O. § 702 (“In countries with a permanent U.S. Citizenship and Immigration Services (USCIS) office, USCIS officers will usually interview V93 beneficiaries and prepare the travel packets”). Only when a USCIS officer is unavailable to carry out the job, does a consular officer step in; when a consular officer does perform such tasks, it is as a “delegate” for USCIS not in the role of a consular officer for DOS. The only aspect the consular section may assist USCIS with are the Consular Lookout and Support

System (CLASS) namechecks and Security Advisory Opinions (SAO), if needed. *See* FAM Vol. 9, App. O. §702.

5. The APA requires the Defendants to carry out their duties within a reasonable time. 5 U.S.C. § 555(b) provides that “[w]ith due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it.”

6. The Defendants have a mandatory and affirmative duty to adjudicate a properly filed I-730 petition that has been approved by USCIS and forwarded to the appropriate overseas office. *See* INA § 207(c)(2)(A).

VENUE

7. Venue is proper in Columbus, Ohio and the Southern District of Ohio because Plaintiff Isse Ali resides in Columbus, Ohio.

PARTIES

8. Plaintiff Isse Ali (“Plaintiff Ali”) a legal permanent resident of the United States and the Petitioner of an I-730 Refugee/Asylee Relative Petition filed on behalf of his wife, Warsan Hassan Diriye, in April 2014. He currently resides in Columbus, Ohio, within this judicial district. His A# is 212-153-193.

9. Plaintiff Warsan Hassan Diriye, is the Beneficiary of an approved I-730 Refugee/Asylee Relative Petition that was approved on March 10, 2015 and forwarded to the USCIS Nairobi Field office for interview and issuance of travel documents. The petition has now remained pending in Nairobi for over four years.

10. Defendant Jeff Sessions is being sued in his official capacity as the Attorney General of the United States. Pursuant, *inter alia*, to 8 U.S.C. § 1103, he is charged with controlling

determination of all issues of law pertaining to immigration and with representing the United States of America in various legal matters.

11. Defendant L. Francis Cissna is being sued in his official capacity as the Director of USCIS. As such, he is charged with the duty of administration and enforcement of all the functions, powers and duties of USCIS.

12. Defendant Charles Wright is being sued in his official capacity as the Director of the USCIS Nairobi Field Office. As such, he is charged with the duty of administration and enforcement of all the functions, powers and duties of USCIS at the Nairobi Field Office.

13. Defendant Kirstjen Nielsen is being sued in her official capacity as the Acting Secretary of the Department of Homeland Security (DHS). She is charged with the enforcement of the Immigration and Nationality Act, and is further authorized to delegate such powers and authority to subordinate employees of the DHS. 8 U.S.C. § 1103(a). USCIS and its international field offices are agencies within the DHS subject to Defendant Nielsen's supervision.

FACTUAL BACKGROUND

14. On October 13, 2011, Plaintiffs Ali and Diriye were married in a refugee camp in Dadaab, Kenya.

15. On April 29, 2014, Plaintiff Ali filed a Form I-730 Petition for Refugee/Asylee Relative on behalf of his wife, pursuant to INA § 207(c)(2)(A). The receipt number for the application is LIN1414450273.

16. On March 10, 2015, the I-730 application was approved by USCIS and forwarded to the Nairobi Field Office for interview, final adjudication and issuance of travel documents.

17. On April 28, 2016, Plaintiff Diriye attended her first interview with USCIS in Nairobi. She was not informed of any problems or deficiencies in her petition.

18. On July 24, 2017, Plaintiff Diriye attended a second interview with USCIS in Nairobi and again was not informed of any problems or deficiencies in her petition.

19. Plaintiffs have inquired as to the status of the case multiple times, both through their attorney and through Senator Portman's office. The response to those inquiries is that the case is pending security check clearances and that they are unable to provide a timeline for completion.

20. The Defendants' more than four-year delay in issuing a final adjudication on the pending I-730s unacceptable and unreasonable.

INJURY TO PETITIONERS

21. Due to the unreasonable delay in adjudication of Plaintiffs' I-730 petition, the Plaintiffs have had to live separate and apart for the majority of their marriage. During the time the petition has been pending they have had two children together.

22. An I-130 petition for the Plaintiff's older child, Mohamed Isse, was approved over two and a half years ago on January 26, 2016. Their second child was born in November, 2017. The children cannot travel to the United States without their mother.

GROUND FOR RELIEF

Count I: Request for Adjudication of Plaintiff's I-730

Petition Pursuant to the Mandamus Act, 28 U.S.C. §1361

23. Plaintiffs reassert and reallege paragraphs 1-22 as if set forth fully herein.

24. Defendants have a ministerial, non-discretionary duty to Plaintiffs to timely adjudicate the I-730 Petition and to complete the necessary processing at the USCIS field office in Nairobi, which includes interviewing and approving Plaintiff Diriye for travel. They have failed in that duty.

25. Plaintiffs assert that Defendants have no legal basis for failing to proceed with the I-730 processing, and that they have no adequate remedy at law for Defendants' failure to timely adjudicate the petition.

26. Defendants have failed in their duty to adjudicate Plaintiff's I-730 Application by refusing to make a decision despite the passage of four years – an entirely unreasonable period of time.

27. Over the past four years, Plaintiffs have attempted to ascertain the nature of the delay by making numerous inquiries through their attorney and U.S. Senator Portman's office.

28. The Court should grant relief in the form of a Writ of Mandamus compelling Defendants to complete the I-730 adjudication immediately and by a date certain.

**Count II: Request for Adjudication of Plaintiff's I-730 Petition Pursuant to the
Administrative Procedures Act, 5 USC §§ 701 et seq.**

29. Plaintiff reasserts and realleges paragraphs 1-22 as if set forth fully herein.

30. The Administrative Procedure Act requires administrative agencies to conclude matters presented to them "within a reasonable time." 5 U.S.C. § 555. A district court reviewing agency action may "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). The court also may hold unlawful and set aside agency action that, inter alia, is found to be: "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A); "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," 5 U.S.C. § 706(2)(C); or "without observance of procedure required by law," 5 U.S.C. § 706(2)(D). "Agency action" includes, in relevant part, "an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. §551(13).

31. The failure of the Defendants to adjudicate Plaintiff's petition within a reasonable time violates the Administrative Procedures Act, 5 U.S.C. § 555(b); 5 U.S.C. §§ 706(1), 706(2)(A), 706(2)(C), 706(2)(D).

32. As a result of Defendants' actions, Plaintiffs have suffered and continue to suffer injury.

Prayer for Relief

WHEREFORE, Plaintiff respectfully request that this Honorable Court:

- A. Compel the Defendants and those acting under them to immediately adjudicate Plaintiff's I-730 Petition and clear Plaintiff Diriye for travel to the United States pursuant to the Administrative Procedure Act, 5 U.S.C. § 555(b) and 701 *et. seq.*;
- B. Compel the Defendants and those acting under them to immediately adjudicate Plaintiff's I-730 Petition and clear Plaintiff Diriye for travel to the United States pursuant to the Court's mandamus authority under 28 U.S.C. § 1361;
- C. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412;
- D. Grant any other relief as this Honorable Court deems just and proper.

Respectfully submitted,

/s/ Jennifer Nimer
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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2018 the foregoing complaint was electronically filed and summons uploaded with the Clerk of Court, Southern District of Ohio. Summons will be sent by certified mail, return receipt requested, to all Defendants and to the U.S. Attorney for Southern District of Ohio.

/s/ Jennifer Nimer
Jennifer Nimer (0079475)
Attorney for Plaintiffs