

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

[REDACTED],)	
)	
Plaintiff,)	
)	
v.)	
)	
Jeh Johnson, SECRETARY)	Case No.
DEPARTMENT OF HOMELAND)	
SECURITY; Leon Rodriguez,)	
DIRECTOR OF U.S. CITIZENSHIP)	
AND IMMIGRATION SERVICES;)	
Mark J. Hazuda, DIRECTOR OF)	
THE NEBRASKA SERVICE)	
CENTER;)	
)	
Defendants.)	
_____)	

PLAINTIFF'S ORIGINAL COMPLAINT

The Plaintiff, [REDACTED], respectfully brings this action seeking an order mandating the Defendants to immediately adjudicate her application for adjustment of status, which has been unlawfully delayed for over ten years.

I. INTRODUCTION

1. Plaintiff is a citizen of Iran residing lawfully in the United States with asylum status. On November 1, 2004, she filed for adjustment of status to a lawful permanent resident with the Defendants pursuant to 8 U.S.C. § 1159.

To date, the Defendants have wholly failed to adjudicate her application for adjustment of status in violation of law. Plaintiff sues to compel the Defendants to decide this application.

II. PARTIES

2. Plaintiff [REDACTED] is a citizen of Iran who currently resides in the [REDACTED] Georgia area. She is lawfully present in the United States in asylum status.

3. Defendant Leon Rodriguez is the Director of United States Citizenship and Immigration Services (USCIS) and is generally charged with the administration of benefits governed by the Immigration and Nationality Act. In this capacity, he directs the Nebraska Service Center (NSC), a subgroup of USCIS. He is being sued in his official capacity.

4. Defendant Mark J. Hazuda is the Director of the NSC. In this capacity, he directs and oversees the NSC where Plaintiff's application is pending. He is being sued in his official capacity.

5. Defendant Jeh Johnson is the Secretary of the Department of Homeland Security (DHS). He is charged with overseeing USCIS and is being sued in his official capacity.

III. JURISDICTION AND VENUE

6. This Court has jurisdiction over Plaintiff's claim under 28 U.S.C. § 1361 (Mandamus Act), and 5 U.S.C. § 701 *et seq.*, (Administrative Procedures Act), in conjunction with 28 U.S.C. § 1331 (Federal Question Jurisdiction).

7. The Mandamus Act vests the Court with original jurisdiction over "any action in the nature of mandamus to compel an officer or employee of the United States or an agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. § 1361.

8. Under the APA, a person suffering legal wrong because of agency action, or adversely aggrieved by agency action within the meaning of a relevant statute, is entitled to review thereof. 5 U.S.C. § 702. This includes judicial review to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). The Court has jurisdiction to consider an APA cause of action under 28 U.S.C. § 1331.

9. Venue is proper in this district because the Plaintiff resides in [REDACTED], Georgia. 28 U.S.C. § 1391(e).

IV. FACTUAL BACKGROUND

10. Plaintiff is a native and citizen of Iran who migrated to the United States on or around January 14, 1994.

11. On or around January 25, 1994, Plaintiff applied for asylum in the United States.

12. On March 23, 1994, an officer from the former Immigration and Naturalization Service (INS) interviewed Plaintiff in connection with her application for asylum.

13. Plaintiff's application for asylum was granted on December 30, 1994. *See Exh. A.*

14. On or around November 1, 2004, the Plaintiff filed for adjustment of status pursuant to 8 U.S.C. § 1159. *See Exh. B.*

15. The Defendant's duty to make a decision over Plaintiff's application for adjustment of status is a discrete agency action, which it is required to take.

16. To date, the Defendants have failed to decide Plaintiff's application in violation of law. The Defendants' delay in adjudicating Plaintiff's application is not justified and is far longer than reasonably necessary to enter a decision.

17. Plaintiff is eligible for the relief sought.

18. USCIS' unlawful failure to timely decide Plaintiff's application is causing her profound emotional distress and hardship. But for the Defendants' unlawful failure to adjudicate the petitions, she is not a lawful permanent resident of the United States and unable to naturalize in the foreseeable future.

V. EXHAUSTION OF REMEDIES

19. Plaintiff exhausted her administrative remedies. She complied with all of the Defendants' requests for information and has made numerous inquiries into the status of her case – all to no avail.

VI. CLAIMS FOR RELIEF

20. Plaintiff re-alleges sections I-V as if fully set forth herein.

A. RELIEF UNDER THE MANDAMUS ACT

21. Plaintiff requests the Court to order the Defendants to immediately adjudicate her application for adjustment of status pursuant to the Mandamus Act, 28 U.S.C. § 1361.

22. Plaintiff has a clear and certain right to the relief requested.

23. Plaintiff is within the zone of interests that are protected by the Immigration and Nationality Act and its implementing regulations. *Clarke v. Security Industries, Ass'n*, 479 U.S. 388, 399 (1987); 8 U.S.C. § 1159.

24. The Defendants have a certain, mandatory, and ministerial duty to adjudicate the Plaintiff's application.

25. Federal regulations provide that the Defendants *shall* notify the Plaintiff about the decision made concerning her application for adjustment of status. *See* 8 C.F.R. § 245.2(a)(5)(i) and 8 C.F.R. § 103.2(b)(19). The duty

to timely notify Plaintiff about its decision on her application is mandatory and non-discretionary.

26. The Defendants have not performed the duties owed to the Plaintiff in a reasonable time period. The withholding of adjudication on the application is not in compliance with federal regulations or the government's own internal memorandums.

27. Plaintiff has no administrative remedy available to her.

28. Plaintiff contacted the Defendants in an attempt to have the Defendants perform the duties owed to her. The Defendants, nevertheless, unreasonably failed to perform their mandatory, non-discretionary duty.

B. RELIEF UNDER THE ADMINISTRATIVE PROCEDURES ACT

29. Plaintiff re-alleges all preceding paragraphs.

30. Pursuant to the APA, 5 U.S.C. § 706, 5 U.S.C. § 702 and 28 U.S.C. § 1331, Plaintiff requests the Court to compel agency action unreasonably withheld and order the Defendants to immediately adjudicate the application she filed.

31. Plaintiff has standing to bring this cause of action under the APA because the Defendants' inaction to perform their mandatory duties is causing her to suffer a legal wrong.

32. Plaintiff's claim falls under the "zone of interests" protected by the Immigration & Nationality Act." Her claim is specifically under the zone of interests covered by 8 U.S.C. § 1159.

33. The Defendants have a duty to adjudicate Plaintiff's adjustment application in a reasonable time period.

34. The Defendants' duty to adjudicate Plaintiff's adjustment application in a reasonable time period is a discrete agency action that they are required to take.

35. In violation of this duty, the Defendants have wholly failed to provide a decision.

36. Plaintiff has no administrative remedy available to her.

C. RELIEF UNDER THE EQUAL ACCESS TO JUSTICE ACT

37. Plaintiff seeks and is entitled to recover reasonable attorney fees, expenses, and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

VII. PRAYER FOR RELIEF

For the foregoing reasons, Plaintiff requests that the Court enter an order:

- a. mandating the Defendants to adjudicate her application for adjustment of status within thirty (30) days under the Mandamus Act and the APA;

- b. awarding her reasonable attorney's fees, expenses and costs;
and
- c. granting her such other and further relief as the Court may
deem just and proper.

Respectfully submitted,

/s/ Attorney

ATTORNEY FOR PLAINTIFF

EXHIBIT LIST

- A. Notice of approval of Plaintiff's application for asylum.
- B. Copy of Plaintiff's application for adjustment of status.