

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

AFKAB MOHAMED HUSSEIN,

Plaintiff,

– *versus* –

UR M. JADDOU, in her official capacity as Director
of United States Citizenship and Immigration Services,

Defendant.

Civil Action No.

Judge:

Magistrate Judge:

**COMPLAINT FOR WRIT OF
MANDAMUS & RELIEF FROM
A VIOLATION OF ADMINISTRATIVE
PROCEDURE ACT**

INTRODUCTION

1. Plaintiff Afkab Mohamed Hussein (Afkab) is a Somali refugee who came to the United States more than six years ago. When he arrived, he quickly filed petitions requesting permission for his wife and eldest son to be reunited with him here in Ohio. The petitions were approved, and his family was slated to travel and be reunited with him soon thereafter. Unfortunately, former President Trump's efforts to ban refugees from Muslim-majority countries, including Somalia, prevented Afkab's family from traveling. And although Afkab successfully challenged the ban in federal court, which resulted in a February 2020 settlement agreement whereby Defendant U.S. Citizenship and Immigration Services ("USCIS") agreed to prioritize processing of his family's case, his petitions remain pending to this day.

2. Early this year, Afkab's family received an update that their cases were approved for travel, and they were booked on a flight that was to arrive in the United States on or about January 26, 2022. In anticipation of their imminent departure, Afkab's family relinquished their apartment and most of their personal belongings. Afkab also prepared for their arrival: he took time off work and moved into a bigger house so that his family could finally be together. On the eve of travel, however, the family's travel booking was canceled without explanation. For several weeks, Afkab's family was stuck living in a hotel room, having no other place to go and no indication about when their cases may be again ready for travel.

3. Since filing his petitions in March 2016, Afkab has waited six years for a decision from USCIS. Afkab now seeks an order from this Court pursuant to the Administrative Procedure Act ("APA") and the Mandamus Act to compel Defendant to promptly adjudicate his petitions.

THE PARTIES

4. Plaintiff Afkab Mohamed Hussein is a U.S. Legal Permanent Resident residing in the Columbus, Ohio area, originally from Somalia. Afkab filed I-730 petitions for his wife, Rhodo Hassan Abdirahman (Rhodo) and eldest son, Abdullahi Afkab Mohamed (Abdullahi), in March 2016 and has not yet received a final adjudication of his petitions.

5. Defendant Ur M. Jaddou is sued in her official capacity as the Director of U.S. Citizenship and Immigration Services, a component agency of the Department of Homeland Security. Defendant Jaddou directly oversees USCIS's operations, which includes processing and adjudication of Plaintiff's petitions.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1361 (Mandamus Act). This Court has additional remedial authority under 28 U.S.C. §§ 2201-02 (Declaratory Judgment Act)

7. Venue is proper in the Southern District of Ohio under 28 U.S.C. § 1391(e)(1) and in this division under S.D. Ohio Civ. R. 82.1. Plaintiff resides in the Eastern Division of this District. Defendant is an agency of the United States or an officer of the United States sued in her official capacity. No real property is involved in this action.

FACTUAL BACKGROUND

The Follow-to-Join Program

8. Congress enacted the follow-to-join ("FTJ") statute as part of the Refugee Act of 1980. *See* Pub. L. No. 96-212, 94 Stat. 102, 103 (1980).

9. Although the decision of whether to admit a particular individual as a refugee is typically discretionary, the follow-to-join process is unique.

10. The follow-to-join statute creates a non-discretionary entitlement to admission for spouses and unmarried children of refugees who have met the eligibility requirements and who are not subject to any applicable inadmissibility grounds. *See* 8 U.S.C. § 1157(c)(2)(A) (“A spouse or child . . . of any refugee . . . shall . . . be entitled to the same admission status as such refugee if . . . following to join[] such refugee”) (emphasis added); *see also* 8 C.F.R. § 207.7.

11. The statute reflects Congress’ considered judgement that family reunification is an important goal of U.S. refugee law.

The Follow-to-Join Application Process

12. The FTJ application process consists of two stages: domestic and international processing.

13. In the domestic processing stage, the refugee in the United States submits a separate Form I-730 (“Refugee/Asylee Relative Petition”) to USCIS for each eligible family member. The refugee petitioner must demonstrate that (1) they are a refugee or have adjusted from refugee status to become a legal permanent resident, (2) the proposed beneficiary is an eligible spouse or child, and (3) that the petition was filed within two years of the petitioner’s admission to the United States as a refugee. *See* 8 C.F.R. § 207.7(d), (e).

14. If USCIS determines that the petition is complete, timely, and that the petitioner and beneficiary appear to be eligible for this immigration benefit, USCIS approves the I-730 petition pending an admissibility determination regarding the petition’s beneficiary.

15. To start the international processing stage, the petition is either forwarded to a USCIS International Office (“IO”) or U.S. Embassy (together “overseas post”), depending on the geographic location of the petition’s beneficiary.

16. The overseas post conducts further processing. Even where a U.S. Embassy is involved in processing, USCIS is responsible for final adjudication of FTJ petitions pursuant to 8 U.S.C. § 1157(c).

17. During this stage, the overseas post confirms that the beneficiary of the approved petition is eligible to “follow to join” their spouse or parent and be admitted to the United States as a refugee.

18. To facilitate these determinations, the overseas post conducts an interview of the beneficiary.

19. The beneficiary’s biometric fingerprints are typically collected at the interview.

20. Before final approval, a beneficiary must complete a medical examination and clear security vetting and background checks.

21. With limited exceptions, a medical exam is valid for no more than 6 months from the examination date and must be repeated if it expires before entry to the United States.

22. Before final approval and travel, an FTJ beneficiary must receive a “sponsorship assurance,” which matches the beneficiary with one of nine U.S.-based voluntary resettlement agencies that contract with the State Department to assist refugees during their initial resettlement in the United States.

23. After a beneficiary receives a final approval, the U.S. Embassy will issue a “Travel Packet” and a Boarding Foil, valid for 180 days, for the beneficiary’s passport.

24. The International Organization for Migration (“IOM”) assists all approved FTJ beneficiaries in arranging for their departure to the United States.

25. An approved Form I-730 is valid indefinitely so long as the qualifying relationship between the petitioner and beneficiary continues to exist and the petitioner's status has not been revoked. 8 C.F.R. § 207.7(f)(3).

Afkab's Follow-to-Join Petitions

26. Afkab is a refugee from Somalia. His family was forced to flee when he was very young because, after the Somali government fell in 1991, they were targeted by militias due to their clan identity.

27. At the age of three, Afkab arrived with his family at the Dadaab Refugee Camp in Kenya, where he spent all his childhood.

28. In the refugee camp, Afkab and his family struggled to find enough food and water to survive.

29. In the Fall of 2014, Afkab met and married his wife, Rhodo Hassan Abdirahman, who was also living in the Dadaab Refugee Camp.

30. Just over a year after their marriage, Afkab received permission to be resettled in the United States as a refugee.

31. Afkab arrived in the United States in September 2015.

32. At the time, his wife Rhodo was pregnant with their son.

33. Starting a new life in the U.S. without his wife was very difficult, but Afkab knew he needed to provide shelter and safety for his family and that he would be unable to do so if he remained in the Dadaab Refugee Camp.

34. When he first arrived in the U.S., Afkab worked in a warehouse.

35. Then he obtained a job as a truck driver, which is his current profession.

36. At the time, Afkab did not have any family in the U.S. and lived with several friends to save money in anticipation of bringing his wife and young son to be reunited with him here.

37. Just months after arriving, in March 2016, Afkab filed FTJ petitions on behalf of his wife and son.

38. In June 2016, USCIS completed domestic processing of Afkab's petitions, and the petitions were approved.

39. Shortly after, USCIS transferred the petitions to the USCIS IO Nairobi for further processing.

40. Afkab's approved petitions have been pending at the USCIS IO Nairobi for almost six years—since approximately late summer 2016.

41. Since then, Afkab's family has completed several stages of the screening process.

42. Rhodo was interviewed.

43. Both she and Abdullahi have completed multiple medical examinations because the results of prior medical examinations have expired while they continued to wait for processing to be completed.

44. Although Afkab's family was at the final stages of processing, their travel was never booked because of former President Trump's Muslim Ban executive orders, which were first issued in January 2017.

45. On November 13, 2017, Afkab stepped forward with other plaintiffs to challenge former President Trump's October 23, 2017 Muslim Ban that, among other things, indefinitely suspended FTJ processing. *See generally* Compl., *Jewish Family Service of Seattle, et al. v. Trump*, No. 2:17-cv-01707 (W.D. Wash. Nov. 13, 2017).

46. The litigation successfully sought and obtained a preliminary injunction enjoining the suspension of FTJ processing. *See Doe v. Trump*, 288 F. Supp. 3d 1045, 1078-79, 1086 (W.D. Wash. 2017).

47. Pursuant to the preliminary injunction, USCIS was obligated to continue processing Afkab's FTJ petitions.

48. In April 2019, after almost four years of separation, Afkab saved enough money to visit Rhodo in Nairobi.

49. This was also the first opportunity Afkab had to meet his son, Abdullahi.

50. Abdullahi was about three years old.

51. During this visit, Rhodo became pregnant with the couple's youngest son, Zain Afkab Mohamed (Zain).

52. Afkab was overjoyed to meet Abdullahi and spend time with his wife, but it was very painful to say goodbye and return to the United States without them.

53. Meanwhile, in the litigation against the Muslim Ban, the parties resolved the remaining disputes through a joint settlement agreement filed with the district court on February 10, 2020.

54. Pursuant to the settlement agreement, USCIS agreed to "prioritize the processing of the cases identified," which include Afkab's family's case, and the agreement specifies that "prioritization means moving an individual to the front of other similarly situated cases in the processing queue for each applicable processing step."

55. More than two years passed under the settlement agreement and Afkab's family's case remained pending, and his family was still separated.

56. Unable to withstand the continued separation, Afkab again visited his family in Kenya in June 2021.

57. Each time he visits his family, it is financially very difficult for Afkab. Not only are there expenses related to his travel, but he must also take unpaid time off work. Still, visiting his family is worth the price, especially as it is currently the only way that Afkab can spend time with his wife and sons.

58. Although it was very painful for him to miss the pregnancy and birth of his son Zain, Afkab was very happy to meet him during this visit.

59. Finally, in January 2022, Afkab was informed that his family was approved for travel to the U.S. He was overjoyed and believed that his long-awaited reunion with his family was imminent.

60. With travel to the U.S. approaching, Rhodo relinquished the lease on the family's apartment in Nairobi and gave away any personal possessions that they did not intend to bring with them on the journey.

61. The family was booked on a flight that was to depart Nairobi on January 26, 2022.

62. On January 24, they were told they needed to report the following day for a Covid test.

63. The family completed a Covid test on January 25 and prepared for their flight the following day.

64. Then, Rhodo received a call on or about the evening before the family's flight the following day.

65. During this call, Rhodo was told the family was no longer traveling the next day, but she was not provided an explanation of the reason.

66. The day following their expected departure date, the refugee resettlement agency assisting Afkab's family received an email that read: "[The family] was removed from booking due to pending security checks. We are not able to provide you with a timeframe for when they will be able to travel."

67. Because they had relinquished the lease on their apartment, Afkab's family was forced to live in a hotel room.

68. The children have not been able to remain in school because now they are temporarily living in a different part of the city.

69. Rhodo and the children have little more than the clothing that can fit in travel luggage. It is as though the family is living between lives with no real place to call home.

70. Afkab worries daily about his family's safety and wellbeing. The last-minute cancellation of the family's travel has been particularly difficult for Rhodo to comprehend and she now suffers from depression and a lost sense of hope that her family will ever be reunited.

71. Afkab struggles to sleep and feels hopeless about whether his family will ever be allowed to join him in the U.S.

72. The prolonged separation has also created a tremendous financial strain for Afkab. Upon learning that his family's travel had been booked, he moved out of the house he was living in with roommates to secure a home for his family. Now, he struggles to pay for his family's temporary and precarious living situation in Nairobi while at the same time paying for the home that he expected to welcome his family to more than a month ago.

73. Afkab depleted his savings to move into a family home and purchase a car for his family. Afkab is worried about his family's future and anxious about how long he can continue to maintain two households—one here in the U.S. and the other in Nairobi.

74. Notwithstanding USCIS's commitment to prioritize processing of Afkab's FTJ petitions, his petitions are still pending and his family remains separated.

75. The delay in adjudication of Afkab's petitions has been caused solely by Defendant's conduct. Afkab and his family have responded promptly to any requests made by Defendant to provide additional information or complete a necessary processing step.

FIRST CAUSE OF ACTION
Administrative Procedure Act

76. The foregoing allegations are repeated and incorporated as though fully set forth herein.

77. Pursuant to the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1157(c)(2), and the regulations governing FTJ petitions, 8 C.F.R. § 207.7, Defendant has a nondiscretionary duty to adjudicate Plaintiff's FTJ petitions.

78. The APA obligates Defendant to take these nondiscretionary actions within a "reasonable time," 5 U.S.C. § 555(b), and directs this Court to compel Defendant to take these actions when they are "unreasonably delayed," *id.* § 706(1).

79. Defendant has failed to adjudicate Plaintiff's FTJ petitions within a reasonable time, which caused and continues to cause irreparable harm to Plaintiff.

80. Plaintiff is entitled to relief pursuant to 5 U.S.C. § 706(1) compelling Defendant to adjudicate his FTJ petitions.

SECOND CAUSE OF ACTION
Mandamus

81. The foregoing allegations are repeated and incorporated as though fully set forth herein.

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

83. The All Writs Act, 28 U.S.C. § 1651, authorizes this Court to issue all writs “necessary or appropriate” in aid of its jurisdiction.

84. Pursuant to the INA, 8 U.S.C. § 1157(c)(2), and the regulations governing FTJ petitions, 8 C.F.R. § 207.7, Defendant has a nondiscretionary duty to adjudicate Plaintiff’s FTJ petitions.

85. The APA obligates Defendant to complete these nondiscretionary actions within a “reasonable time.” 5 U.S.C. § 555(b).

86. Defendant has failed to adjudicate Plaintiff’s FTJ petitions within a reasonable time.

87. Plaintiff has brought this action because he has no other means to compel Defendant to perform the nondiscretionary duty that Defendant owes Plaintiff.

88. Plaintiff is entitled to a writ of mandamus pursuant to 28 U.S.C. §§ 1361 and 1651 and this Court’s inherent equitable authority compelling Defendant to adjudicate his FTJ petitions.

**THIRD CAUSE OF ACTION
Fifth Amendment – Due Process**

89. The foregoing allegations are repeated and incorporated as though fully set forth herein.

90. Plaintiff has a statutorily created entitlement to adjudication of his FTJ petitions. Defendant's delay in adjudicating Plaintiff's petitions constitutes a deprivation of Plaintiff's protected interest without due process.

91. Defendant's delay is egregious and it is without any rational justification.

92. Defendant's conduct violates Plaintiff's due process rights protected by the Fifth Amendment of the Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that this Court:

1. Declare pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, that Defendant's delay in the adjudication of Plaintiff's FTJ petitions is unreasonable under the APA, 5 U.S.C. § 706(1), and a violation of Plaintiff's Fifth Amendment Due Process rights.

2. Issue an order that requires Defendant to promptly adjudicate Plaintiff's FTJ petitions;

3. Issue a writ of mandamus, pursuant to 28 U.S.C. §§ 1361 and 1651, directing Defendant to adjudicate Plaintiff's FTJ petitions;

4. Retain jurisdiction over this action and any attendant proceedings until Defendant has in fact adjudicated Plaintiff's FTJ applications, and has communicated the results of such adjudication to Plaintiff and the Court;

5. Award Plaintiff's attorneys' fees and costs pursuant to 28 U.S.C. § 2412; and

6. Award such other and further relief that the Court may deem just and proper.

By: /s/ John S. Marshall
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