

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION**

JAYARAJAH ANTONY RAJEEVAN KULAS
c/o One Battery Park Plaza, 4th Floor
New York, NY 10004,¹

Plaintiff,

– *versus* –

UR M. JADDOU, in her official capacity as Director of
United States Citizenship and Immigration Services,
5900 Capital Gateway Drive
Camp Springs, MD 20746
Prince George’s County;

RENA BITTER, in her official capacity as Assistant
Secretary of State for Consular Affairs,
2201 C Street NW
Washington, DC 20520,

Defendants.

Case No.

COMPLAINT

¹ Plaintiff respectfully requests that the Court waive the requirement under Local Rule 102.2(a) to provide his address, as explained in his concurrently filed motion.

INTRODUCTION

1. Plaintiff Jayarajah Antony Rajeevan Kulas (“Mr. Kulas”) is a refugee who fled his home in Sri Lanka to escape kidnapping, torture, and murder by the Sri Lankan army. Mr. Kulas is now safely resettled in Texas, but his wife and two young sons, from whom he has been separated for eight years, remain in grave danger in Sri Lanka.

2. After arriving in the United States, Mr. Kulas filed “follow-to-join” (“FTJ”) petitions with Defendant U.S. Citizenship and Immigration Services (“USCIS”) to be reunited in the United States with his wife and children. In the nearly two years since, USCIS has transferred Mr. Kulas’s petitions to three different processing centers, but has made no discernible progress in adjudicating his petitions.

3. Mr. Kulas worries constantly for the safety and wellbeing of his wife and children. Since Mr. Kulas left Sri Lanka, his wife has endured near constant harassment and attacks from men as a single woman whose husband fled the country. She has filed police reports, including after being assaulted in the street and after an attempted break-in to her home, but the harassment has not stopped.

4. Mr. Kulas submitted a request to expedite his family’s petitions based on the urgent humanitarian concerns his family faces, but to date, his petitions have not been expedited and remain pending with USCIS. Mr. Kulas’s wife and children continue to suffer harassment and assault, which has been prolonged by USCIS’s failure to adjudicate Mr. Kulas’s request to bring them to join him in the United States.

5. Mr. Kulas now seeks an order from this Court pursuant to the Administrative Procedure Act (“APA”) and the Mandamus Act to compel Defendants to promptly adjudicate his FTJ petitions.

THE PARTIES

6. Plaintiff Jayarajah Antony Rajeevan Kulas is a U.S. lawful permanent resident, originally from Sri Lanka. Mr. Kulas filed FTJ petitions for his wife and two sons in July 2020 and has not yet received a final adjudication of his petitions.

7. Defendant Ur M. Jaddou is sued in her official capacity as Director of USCIS, a component agency of the Department of Homeland Security. Defendant Jaddou directly oversees USCIS's operations, including processing and adjudication of Plaintiff's FTJ petitions.

8. Defendant Rena Bitter is sued in her official capacity as Assistant Secretary of State for Consular Affairs, a component agency of the U.S. Department of State ("State Department"). Defendant Bitter directly oversees all U.S. embassies, including the U.S. Embassy in Sri Lanka, which is responsible for certain stages of the processing and adjudication of Plaintiff's FTJ petitions.

JURISDICTION AND VENUE

9. 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).

10. Venue is proper in the District of Maryland under 28 U.S.C. § 1391(e)(1) and in this division under Local Rule 501.4.b. Defendant Jaddou, sued in her official capacity as Director of USCIS, resides in the Southern Division of this District (where USCIS is headquartered), and a substantial part of the events or omissions giving rise to Mr. Kulas's claims occurred in the Southern Division of this District. Each Defendant is an agency of the United States or an officer of the United States sued in their official capacity. No real property is involved in this action.

FACTUAL BACKGROUND

The Follow-to-Join Program

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

12. Although the decision of whether to admit a particular individual as a refugee is typically discretionary, 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. 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 (“A spouse . . . and/or child(ren) . . . *shall be granted refugee status if . . . following-to-join the principal alien.*”) (emphasis added).

13. The FTJ statute reflects Congress’s considered judgement that refugees have a right to bring their families to safety.

The Follow-to-Join Application Process

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

15. 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 lawful permanent resident, (2) the proposed beneficiary is an eligible spouse or child, and (3) the petition is being 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).

16. If USCIS determines that the petition is complete and 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 of the petition's beneficiary.

17. USCIS then sends the approved petition to the National Visa Center ("NVC"), which is within the State Department, for the second stage of processing.

18. In the international processing stage, NVC forwards the petition overseas for further processing.

19. DHS is responsible for final adjudication of FTJ petitions pursuant to 8 U.S.C. § 1157(c). In some instances, however, DHS has delegated this authority to the State Department.

20. The petition is either forwarded to a USCIS International Office or a U.S. Embassy (together "overseas post"), depending on the geographic location of the petition's beneficiary.

21. 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.

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

23. The beneficiary's fingerprints are typically collected at the interview.

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

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

26. Before final approval and travel, an FTJ beneficiary also must receive a "sponsorship assurance," which matches the beneficiary with one of nine U.S.-based resettlement

agencies that contract with the State Department to assist refugees during their initial resettlement in the United States.

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

28. The International Organization for Migration (“IOM”) contracts with the State Department to assist all approved FTJ beneficiaries in arranging for their departure to the United States.

29. 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).

Plaintiff’s Follow-to-Join Petitions

30. Mr. Kulas and his wife, Sujo Christabel Fernando, who are ethnically Tamil, grew up in Sri Lanka.

31. Mr. Kulas and Ms. Fernando met in school and later got to know each other when they worked at the same transport company. They married in 2010. In April 2011, their first son was born.

32. It was and is very important to Ms. Fernando for her children to have their father in their lives because she herself had grown up without a father. When Ms. Fernando was four years old, the Sri Lankan navy abducted and murdered her father while he was out fishing, and she grew up knowing him only from a photo.

33. Mr. Kulas and Ms. Fernando grew up during the Sri Lankan Civil War. In 2009, the Sri Lankan army defeated the Liberation Tigers of Tamil Eelam (LTTE), a rebel organization, ending the war.

34. Shortly after Mr. Kulas's marriage to Ms. Fernando, the Sri Lankan army sought revenge in former strongholds of the LTTE, including Mr. Kulas's neighborhood. The army frequently kidnapped young men in the area, torturing and returning some and murdering others. For example, the army abducted Ms. Fernando's cousin at night and he was never seen again.

35. The army kidnapped and tortured Mr. Kulas on several occasions, beating him severely. The army knew where he lived and would show up at the family's home looking for him.

36. Around 2012 or 2013, the family decided to send Mr. Kulas to India to save his life. The boat journey was too dangerous for Ms. Fernando to make with their baby son, so Mr. Kulas went alone. Mr. Kulas had to leave in the middle of the night because it would have been too difficult to say goodbye to his son, who was so fond of him that they slept in the same bed every night. In India, Mr. Kulas was unable to work, so Ms. Fernando sold his family's land to send him money to survive.

37. Though Mr. Kulas's life in India was difficult, the separation from his family was so excruciating that Ms. Fernando obtained Indian visas and saved up for plane tickets so that she and her son could join Mr. Kulas. In India, Mr. Kulas and Ms. Fernando were unable to work and feed their baby, and Ms. Fernando feared deportation as her visa neared expiration.

38. After a few months, Mr. Kulas told Ms. Fernando that he was thinking of leaving for Australia, and Ms. Fernando returned to Sri Lanka with their son. Soon after her return, Ms. Fernando learned that she was pregnant, but she was unable to contact her husband for around 40 or 50 days. When she was unable to reach him, she became afraid that he had traveled to Australia by boat. Because she had heard stories about boats carrying migrants capsizing, and because she had not heard from her husband, Ms. Fernando was afraid he had been killed.

39. When they finally made contact again, Ms. Fernando learned that Mr. Kulas was on Nauru Island, an island country in the Central Pacific with migrant detention camps that is infamous for its violence, sexual abuse, suicide rates, and conditions akin to torture. There, Mr. Kulas was made to work without pay. Mr. Kulas languished on Nauru Island for three or four years before he was resettled in the United States.

40. Mr. Kulas and Ms. Fernando's second son was born in 2014. Mr. Kulas has never had the chance to meet his younger son.

41. After Ms. Fernando returned to Sri Lanka, men began harassing her, knowing that she did not have a husband present to protect her. They would sexually harass her by text message, send her obscene images, and assault her in the street.

42. In Sri Lanka, female-headed households are often targeted by criminals, who terrorize them with break-ins and sexual violence. Tamil women are at particular risk of sexual violence.

43. The danger Ms. Fernando faces has only escalated since Mr. Kulas was resettled in the United States. Her assailants try to blackmail her, knowing that Mr. Kulas sends money home from the United States.

44. On one occasion, a man called her repeatedly in the middle of the night. When Ms. Fernando did not answer, the caller became infuriated. Later, while she was out with her son, the man found her and cursed her out, then tried to hit her.

45. On another occasion, late at night, a man tried to break into her home. She and the children hid inside, fearing for their lives.

46. Ms. Fernando reported the incidents to the police and a village elder, but the harassment has not stopped.

47. Fearing retribution, Ms. Fernando stopped reporting the incidents. She remains inside the house with her children all day, only leaving when absolutely necessary.

48. In the past few months, Sri Lanka has spiraled into a nationwide debt and humanitarian crisis. Fuel shortages mean frequent blackouts, hospitals are postponing treatment due to medicine shortages, schools are shuttered because transportation is at a standstill, and the Sri Lankan government has applied for emergency food aid to combat rampant famine.

49. For around four months, Mr. Kulas and Ms. Fernando's sons have been unable to attend school because of the crisis. They cannot learn remotely, because they do not have computers and the power outages mean they cannot access the internet. Ms. Fernando is too afraid to let them go outside because of increased reports of crime.

50. The ceaseless harassment and worsening crisis have taken a toll on the family's health. Ms. Fernando has high blood pressure and high blood sugar, and she has been diagnosed with depression. Both of their sons have worked hard in their English classes in preparation to live with their father. But the emotional strain of his absence made it difficult to focus, and their grades were falling before their school shuttered due to the crisis.

51. Mr. Kulas has also suffered greatly as a result of their separation. To this day, Mr. Kulas has never met his youngest son. During the day, Mr. Kulas works as a kitchen helper at a restaurant. His stress and worry have led him to falter and lose balance while working, once causing him to cut his own hand while preparing meat. At night, Mr. Kulas has difficulty sleeping, and he lies awake talking on the phone with his wife. Lately, he finds it difficult to talk to her without breaking down in tears. His wife tells him that his sons, now eleven and seven, are growing up without him, and that the entire family is depressed without him.

52. Mr. Kulas and Ms. Fernando greatly miss one another's companionship. For example, Ms. Fernando wishes she could care for Mr. Kulas when he is sick, and that they could have more children together. Similarly, Mr. Kulas says that he has never been able to pick out the right clothes for himself, but his wife knows him so well that when she sends clothes from Sri Lanka, they fit perfectly.

53. In July 2020, as soon as he learned that he was eligible to file FTJ petitions for his wife and sons, Mr. Kulas filed FTJ petitions with USCIS.

54. Mr. Kulas's FTJ petitions have still not been adjudicated.

55. Since filing, Mr. Kulas's FTJ petitions have been transferred multiple times.

56. Mr. Kulas's lawyer filed an expedite request, based on his wife and children's dire humanitarian circumstances. To date, his petitions have not been expedited.

57. The lengthy delay has put significant strain on Mr. Kulas and Ms. Fernando's relationship. Mr. Kulas feels powerless to bring his wife and children to safety, and Ms. Fernando suffers every day without her husband to protect their family.

58. Mr. Kulas now seeks an order from this Court compelling action under the APA and the Mandamus Act.

**FIRST CAUSE OF ACTION
Administrative Procedure Act**

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

60. 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, Defendants have a nondiscretionary duty to adjudicate Plaintiff's FTJ petitions.

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

62. Defendants have failed to adjudicate Plaintiff’s FTJ petitions within a reasonable time, which caused and continues to cause irreparable harm to Plaintiff.

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

SECOND CAUSE OF ACTION
Mandamus

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

65. 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.

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

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

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

69. Defendants have failed to adjudicate Plaintiff’s FTJ petitions within a reasonable time.

70. Plaintiff has brought this action because he has no other means to compel Defendants to perform the nondiscretionary duty that Defendants owe him.

71. 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 Defendants to adjudicate his FTJ petitions.

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

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

73. Plaintiff, a lawful permanent resident, has a statutorily created entitlement to adjudication of his FTJ petitions. Defendants' delay in adjudicating Plaintiff's petitions constitutes a deprivation of Plaintiff's protected interest without due process.

74. Defendants' delay is egregious and it is without any rational justification.

75. Defendants' conduct violates Plaintiff's substantive and procedural due process rights protected by the Fifth Amendment of the Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Declare pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, that Defendants' 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 Defendants to promptly adjudicate Plaintiff's FTJ petitions;

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

4. Retain jurisdiction over this action and any attendant proceedings until Defendants have in fact adjudicated Plaintiff's FTJ applications, and have 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.

Dated: June 2, 2022

Respectfully submitted,

/s/ Mariko Hirose

Ary Hansen*

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* Admission pending