

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

N.K.,
c/o One Battery Park Plaza, Fourth Floor, New
York, New York, 10004,¹

Plaintiff,

v.

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. 8:23-cv-20

COMPLAINT

INTRODUCTION

1. Plaintiff N.K., who came to the United States as a refugee fleeing political and religious persecution, files this lawsuit seeking prompt adjudication of her petition to have her husband join her and their daughters in the United States.

2. N.K.'s family is Burmese Muslim and belongs to a religious minority that has been historically subjected to heightened levels of violent persecution during times of civil unrest. When conditions in Burma deteriorated in around 2013, N.K. and her four daughters fled due to fear of persecution against Muslims and particularly violence perpetrated against women

¹ N.K. respectfully requests that the Court waive the requirement to provide her name and home address, as explained in a concurrently filed motion.

and girls. Her husband stayed behind because the family lacked resources to leave as one family unit and they wanted to prioritize getting the female members of the family out to safety.

3. In June 2020, after arriving in the United States, N.K. filed a refugee family reunification petition for her husband.

4. The Refugee Act guarantees refugees in N.K.'s situation the right to petition for family reunification with their spouse and the right to bring them to the United States, so long as the petitioner establishes the family connection and the beneficiaries are found to be admissible.

5. It has been over 2 years since N.K. filed the petition, and other than the receipt notice and a notice that her files have been transferred because of an administrative policy decision, N.K. has not received any indication from the government that her petition has made progress.

6. N.K. is still waiting to reunite with her husband, worrying constantly about his safety and well-being as violence continues in Burma.

THE PARTIES

7. Plaintiff N.K. is a legal permanent resident residing in Indiana.

8. Defendant Ur M. Jaddou is sued in her official capacity as Director of the United States Citizenship and Immigration Service ("USCIS"), a component agency of the Department of Homeland Security. Defendant Jaddou directly oversees USCIS's operations, including processing and adjudication of Plaintiff's family reunification petition.

9. 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. DHS has delegated certain authority over the processing and adjudication of family reunification petitions to Consular Affairs. Defendant Bitter directly oversees all U.S. embassies, including the U.S.

Embassy in Burma which is responsible for certain stages of the processing and adjudication of Plaintiff's family reunification petition.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction under 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)

11. 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 USCIS resides in the Southern Division of this District, where the Defendant agency has its headquarters. A substantial part of the events or omissions giving rise to the claim 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.

FACTUAL BACKGROUND

N.K.'s Passage to Safety and Separation From Her Husband

12. N.K. and her husband grew up in the same neighborhood in Yangon, Burma, where their families were friends. They married over twenty years ago and have four daughters.

13. As Burmese Muslims, N.K. and her family were and are persecuted based on their religion in Burma.

14. In around 2013, the family feared the escalating violence in the country, particularly against women and girls. The family sold their home and other valuables to pay for passage out of Burma.

15. As they had limited resources, N.K. and her husband decided that she would leave Burma with their four daughters. N.K.'s husband stayed behind in Burma.

16. After a dangerous journey by sea and prolonged detention on Nauru Island, N.K. and her daughters entered the United States as refugees in June 2018.

17. Although N.K. was able to reach safety in the United States, she encountered various challenges caring for four young daughters on her own without any other family. N.K. recalls her first cold winter in Indiana and how helpless she felt because of the new environment and the weight of figuring out how to raise her children in a new country without her husband.

N.K.'s Right to Family Reunification

18. Congress enacted a refugee's right to family reunification as part of the Refugee Act of 1980. *See* Pub. L. No. 96-212, 94 Stat. 102, 103 (1980).

19. Under the Refugee Act, a refugee who has been admitted to the United States has the right to bring their spouses and unmarried children to join them here as long as they establish the family connection and as long as the spouses and the children are not inadmissible. *See* 8 U.S.C. § 1157(c)(2)(A).

20. To exercise this right, a refugee who has reached the United States must file a Form I-730 petition to USCIS for each eligible family member demonstrating 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 unmarried minor child; and (3) the petition is being filed within two years of their admission to the United States as a refugee. *See* 8 C.F.R. § 207.7(d), (e).

21. 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 petition pending an admissibility determination of the petition's beneficiary.

22. Once USCIS approves the petition, it sends the approved petition to the National Visa Center with the State Department.

23. The National Visa Center then forwards the approved petition to an overseas post for a determination on whether the petition's beneficiary is admissible. The overseas post may be a USCIS International Office or a U.S. Embassy, depending on the geographic location of the beneficiary.

24. The overseas post makes the admissibility determination by interviewing the beneficiary, collecting fingerprints if necessary, and reviewing results from a medical exam, security vetting, and background checks.

25. If the overseas post determines that the beneficiary is admissible, it will issue a "travel packet" and a boarding foil that will allow the beneficiary to travel to the United States.

26. The International Organization for Migration, which is contracted with the State Department, assists the approved beneficiary in arranging travel to the United States.

27. Until the beneficiary is finally admitted into the United States, any of the U.S. government agencies involved in processing the I-730 petition may revoke a prior approval, cancel any scheduled travel to the United States, and return the petition to previous processing steps.

28. Medical exams, security checks, and the boarding foil all have expiration dates. If the beneficiary does not travel before the expiration date, the beneficiary will have to repeat those processing steps.

The Delay in Adjudicating N.K.'s Family Reunification Petition

29. In June 2020, within two years of arriving in the United States as a refugee, N.K. filed an I-730 petition to USCIS seeking reunification with her husband.

30. Shortly after filing, N.K. received a receipt of the I-730 petition filing from the USCIS Nebraska Service Center.

31. After N.K. filed her I-730 petition, USCIS made a policy decision to transfer processing of I-730 petitions to the Los Angeles Asylum office.

32. In around October 2020, N.K. received notice that USCIS transferred her I-730 petition to the Los Angeles Asylum office.

33. After N.K.'s I-730 petition was transferred to the Los Angeles Asylum office, USCIS made another policy decision to transfer processing of I-730 petitions to the Atlanta Asylum Vetting Center.

34. N.K. has not received notice that her petition has been transferred to the Atlanta office.

35. Other than the receipt of filing and notice of transfer to the Los Angeles Asylum office, N.K. has not received any other notices about the progress of her I-730 petition as of the filing of this Complaint.

36. The continued family separation has been incredibly difficult for N.K. Although N.K. has overcome the initial challenging years of resettlement to the United States, the emotional toll of separation from her husband is still raw and constant.

37. N.K. has been the primary wage earner in her family since coming to the United States. She works full time and often takes on extra hours of overtime in order to earn money for her family's basic needs.

38. The most challenging part of being separated from her husband has been seeing the emotional impact it has had on her children. Her daughters were all young girls when they last saw their father, and they are growing up quickly.

39. When the children were younger, they often compared themselves to other children at school who had fathers. N.K. recalls it being most difficult for her children during Father's Day, when the children made gifts at school but then did not have their father with them to give the present.

40. N.K. constantly fears for her husband's safety, especially following the military coup in February 2021. N.K.'s family is Burmese Muslim and belongs to a religious minority that has been historically subjected to heightened levels of violent persecution during times of civil unrest. As has happened to other Muslims in Burma during the current civil unrest, N.K.'s husband is at risk of being assaulted, arbitrarily detained, tortured, and even killed.

FIRST CAUSE OF ACTION
Administrative Procedure Act ("APA")

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

42. Defendants have a non-discretionary duty to adjudicate Plaintiff's I-730 petition. *See* 8 U.S.C. § 1157(c)(2); 8 C.F.R. § 207.7; 5 U.S.C. § 555(b).

43. Defendants have violated the APA by failing to adjudicate Plaintiff's I-730 petition within a reasonable time. *See* 5 U.S.C. § 555(b).

44. Plaintiff is entitled to an order compelling Defendants to promptly adjudicate Plaintiff's I-730 petition. *See* 5 U.S.C. § 706(1).

SECOND CAUSE OF ACTION
Mandamus

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

46. Defendants owe Plaintiff a non-discretionary duty to adjudicate Plaintiff's I-730 petition. *See* 8 U.S.C. § 1157(c)(2); 8 C.F.R. § 207.7; 5 U.S.C. § 555(b).

47. Plaintiff has no other means to compel Defendants to perform the nondiscretionary duty that Defendants owe Plaintiff.

48. Plaintiff is entitled to a writ of mandamus under 28 U.S.C. §§ 1361 and 1651 and this Court's inherent equitable authority compelling Defendants to promptly adjudicate Plaintiff's I-730 petition.

THIRD CAUSE OF ACTION
Fifth Amendment – Due Process

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

50. Defendants' egregious delay in adjudicating Plaintiff's I-730 petition violates the Fifth Amendment of the Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request 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 I-730 petition 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 Plaintiffs' I-730 petition. *See* 5 U.S.C. § 706(1).

3. Issue a writ of mandamus, pursuant to 28 U.S.C. §§ 1361 and 1651, directing Defendants to promptly adjudicate Plaintiff's I-730 petition.

4. Retain jurisdiction over this action and any attendant proceedings until Defendants have in fact adjudicated Plaintiff's I-730 petition, 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: January 5, 2023

Respectfully submitted,

/s/ Mariko Hirose

Mariko Hirose (Bar No. 22337)

International Refugee Assistance Project

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