

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

RABI AWIL MOHAMED

Plaintiff,

v.

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

RENA BITTER, in her official capacity
as Assistant Secretary of State for
Consular Affairs

Defendants.

**FIRST AMENDED
COMPLAINT**

Civil Action No. 0:23-cv-00902-
JRT-LIB

INTRODUCTION

1. Plaintiff Rabi Awil Mohamed (“Mr. Mohamed”), who came to the United States as a refugee after fleeing violence and persecution in Somalia, files this lawsuit seeking prompt adjudication of his applications to enable his wife and two sons to join him in the United States after nearly seven years of waiting.

2. Under the Refugee Act, refugees like Mr. Mohamed can apply for their spouse and children to join them in the United States. Defendants must admit Mr. Mohamed’s family to the United States as refugees if they determine that he is married to his wife, that he is the father of his children, and that the beneficiaries are otherwise admissible to the United States.

3. In August 2016, Mr. Mohamed applied for his wife and two sons to join him. Over the next six and a half years, Mr. Mohamed responded to multiple requests for additional documentation, obtained assistance from his congressional representative, and repeatedly requested his family’s immigration files. Still, Mr. Mohamed’s applications remained stuck at the first stage of processing, waiting for Defendant United States Citizenship & Immigration Services (“USCIS”) to verify his relationship to his wife and sons.

4. In March 2023, Mr. Mohamed obtained his family’s immigration files and learned, for the first time, that USCIS may have temporarily closed his sons’ cases because he did not submit DNA evidence—even though DNA testing is

optional and Mr. Mohamed previously submitted the evidence that Defendants' regulations require.

5. Only after Mr. Mohamed filed the present lawsuit did USCIS conditionally approve his Form I-730 petitions, signifying that he had completed this first stage of processing. Still, Mr. Mohamed's wait is far from over. Before Defendants decide whether to admit Mr. Mohamed's family to the United States, his applications must pass through additional processing stages, which are administered by Defendant U.S. Department of State ("State Department") on behalf of USCIS.

6. While Mr. Mohamed waits for Defendants to decide his family reunification applications, his wife and sons are living under difficult circumstances in a refugee camp in Ethiopia. And Mr. Mohamed has missed watching his sons grow up. He was not present when his second son was born or took his first steps – and he has never met his youngest son, who was born more than three years after Mr. Mohamed first applied to reunite with his family.

7. Mr. Mohamed has waited nearly seven years for his family to join him in safety, so that they can build a life together in Minnesota. He and his family are harmed by each additional day that they spend apart.

THE PARTIES

8. Plaintiff Rabi Awil Mohamed is a U.S. lawful permanent resident residing in Saint Cloud, Minnesota. Mr. Mohamed filed family reunification applications for his wife and their two oldest sons in August 2016 and is still waiting for a final decision.

9. 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 the processing and adjudication of Mr. Mohamed's family reunification applications.

10. 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 Addis Ababa, Ethiopia, to which USCIS has delegated responsibility for certain stages of the processing of Mr. Mohamed's family reunification applications, including conducting in-person interviews with the beneficiaries, collecting biometrics, arranging medical exams, and facilitating travel to the United States.

JURISDICTION AND VENUE

11. 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).

12. Venue is proper in the District of Minnesota under 28 U.S.C. § 1391(e)(1). Mr. Mohamed resides in this District. Each 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

Mr. Mohamed's Path to Safety and Separation from His Family

13. Mr. Mohamed was resettled as a refugee in Minnesota in 2015 and has lived in Minnesota for more than seven years.

14. When Mr. Mohamed was a young child, he and his family fled Somalia to escape war and persecution. Mr. Mohamed grew up in a refugee camp in Ethiopia.

15. After arriving in the camp, Mr. Mohamed's parents filed a case for the family to be resettled to the United States as refugees. The United Nations High Commissioner for Refugees referred their case to the U.S. Refugee Admissions Program, a process that can take many years.

16. While living in the camp, Mr. Mohamed met and began dating Sahra Abdi Abdulahi (“Ms. Abdulahi”). Like Mr. Mohamed, Ms. Abdulahi is a refugee from Somalia and grew up in the refugee camp.

17. Life in the camp was difficult and bleak: refugees had few, if any, work opportunities and there was not always enough food. Mr. Mohamed and Ms. Abdulahi entertained themselves by daydreaming together about what their lives would be like outside the camp.

18. Mr. Mohamed and Ms. Abdulahi got married in 2011.

19. In April 2012, the couple’s oldest son was born.

20. While life was a struggle, Mr. Mohamed and Ms. Abdulahi were happy together. Mr. Mohamed adored his young son, whom he would often carry around on his back.

21. In 2015, Mr. Mohamed was approved to be resettled to the United States as a refugee based on the application his parents filed when he was a minor.

22. Because he understood that adding his wife and young son to his refugee case would significantly delay processing, Mr. Mohamed made the difficult decision to travel to the United States alone, hoping that his family would soon be able to join him in the United States.

23. By the time Mr. Mohamed left for the United States, Ms. Abdulahi was pregnant with their second child.

Mr. Mohamed's Right to Family Reunification

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

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

26. The right to family reunification encompasses the entire follow-to-join family reunification application process, until such time as eligible beneficiaries are physically admitted to the United States as refugees.

27. Adjudicating family reunification applications encompasses both conditional approval of the Form I-730 petitions and final approval of the applications following overseas processing.

28. In countries where USCIS does not maintain a designated field office, including Ethiopia, USCIS delegates responsibility for overseas processing of refugees, including follow-to-join beneficiaries, to the State Department.

29. USCIS, as the delegating agency, retains responsibility for the entire family reunification application process, which begins with submission of the Form I-730 petition(s) and does not conclude until such time as the beneficiaries

are either admitted to the United States as refugees or the family reunification applications are finally denied.

Phase I: Initial Eligibility Determination

30. To exercise the right to family reunification, a refugee who has reached the United States must file a Form I-730 petition with USCIS for each eligible family member demonstrating that: (1) the petitioner entered the United States as a refugee; (2) the proposed beneficiary is an eligible spouse or unmarried minor child; and (3) the petition has been 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).

31. Per USCIS's regulation, "[i]f the evidence submitted with a benefit request establishes eligibility, USCIS *will* approve the benefit" if the benefit in question is non-discretionary. 8 C.F.R. § 103.2 (b)(8)(i) (emphasis added).

32. Benefits under the follow-to-join family reunification application process for eligible beneficiaries are non-discretionary. *See* 8 U.S.C. § 1157(c)(2)(A).

33. Primary evidence is evidence that, on its own, demonstrates that the beneficiary is eligible for a particular immigration benefit.

34. A civil marriage certificate, combined with proof of termination of any prior marriages, constitutes primary evidence of the existence of a spousal relationship under Defendants' regulations. 8 C.F.R. § 204.2(a)(2).

35. A birth certificate issued by civil authorities, which lists both parents' names, and a copy of the parents' civil marriage certificate constitutes primary evidence of a parent-child relationship. 8 C.F.R. § 204.2(d)(2)(i).

36. If primary evidence is unavailable, USCIS policy provides that secondary evidence may be used to establish that the beneficiary is a qualifying spouse or minor child. 8 C.F.R. §§ 103.2(b)(2), 204.2(d)(2)(v).

37. USCIS considers DNA evidence to be secondary evidence. USCIS Policy Manual, Ch. 6 n.20, <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-6#footnotelink-20> (last visited Apr. 10, 2023).

38. USCIS policy is clear that submission of DNA evidence is voluntary and can never be required. *Id.*

39. The USCIS Policy Manual provides that "an officer should not issue an RFE [Request for Evidence] . . . if the officer determines the evidence already submitted establishes eligibility or ineligibility for the request." USCIS Policy Manual, Ch. 6(F) - Evidence, *available at* <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-6> (last visited Apr. 10, 2023)

40. The USCIS Policy Manual further warns that "[a]n unnecessary RFE . . . can delay case completion and result in additional unnecessary costs to both the government and the benefit requestor." *Id.*

41. USCIS looks to the State Department's visa reciprocity table to determine, on a country-by-country basis, which specific documents qualify as primary evidence of a spousal or parent-child relationship.

42. If USCIS determines that the I-730 petition is complete and timely and that the petitioner and beneficiary appear to be eligible for this immigration benefit, USCIS must conditionally approve the petition pending an admissibility determination of the beneficiary.

43. Once USCIS conditionally approves the I-730 petition, it sends the approved petition to the National Visa Center within the State Department.

Phase II: Overseas Processing and Admission to the United States

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

45. 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.

46. If the overseas post determines that the beneficiary is not admissible or uncovers information suggesting that the I-730 petition should not have been

conditionally approved, the post must return the I-730 petition to USCIS for reconsideration and possible denial. This process is known as a consular return.

47. Following a consular return, USCIS may: (1) reaffirm the I-730 petition and send it back to the overseas post, via the National Visa Center, for continued processing; (2) request that the petitioner provide additional evidence to prove eligibility; and/or (3) finally deny the I-730 petition.

48. On the other hand, if the overseas post determines that the beneficiary is admissible, it must issue a “travel packet” and a boarding foil that allow the beneficiary to travel to the United States.

49. The International Organization for Migration, a State Department contractor, assists the approved beneficiary in arranging travel to the United States.

50. Before the beneficiary is admitted into the United States, the government agencies involved in processing the family reunification applications may revoke a prior approval, cancel scheduled travel to the United States, and/or return the application to previous processing steps.

51. Medical exams, security checks, and the boarding foil all have expiration dates after which they must be repeated or reissued. If the beneficiary does not travel before the respective expiration dates, the beneficiary will have to repeat these processing steps.

The Delay in Adjudicating Mr. Mohamed's Family Reunification Applications

52. Mr. Mohamed initiated the follow-to-join family reunification application process by filing Form I-730 petitions for his wife and their two young sons in August 2016.

53. After Mr. Mohamed had submitted his petitions, USCIS changed its policy to require an additional form (called a Form I-590) to be completed for each beneficiary of a family reunification application.

54. In 2018, USCIS requested that Mr. Mohamed submit a Form I-590 for each of the beneficiaries. Mr. Mohamed responded to this request in August 2018.

55. That same year, Mr. Mohamed reached out to his congressional representative to ask for help with his pending I-730 petitions. Congressman Emmer submitted an inquiry to USCIS, which highlighted Mr. Mohamed's concerns about his family's well-being.

56. In August 2021 – five years after Mr. Mohamed submitted his initial petitions and three years after he responded to the request for I-590s – USCIS issued a request asking Mr. Mohamed to submit even more evidence to prove his relationship to his wife and sons.

57. Among other things, USCIS requested that Mr. Mohamed submit to DNA testing to prove his relationship to his sons. USCIS's request for evidence

specified that DNA testing was voluntary and that Mr. Mohamed was required to bear all associated costs.

58. Mr. Mohamed responded to USCIS's request in December 2021. This submission included copies of his sons' birth certificates, which were issued by the Ethiopian Vital Events Statistics Registration Agency, and an updated marriage certificate issued by the Ethiopian Vital Events Statistics Registration Agency.

59. According to the State Department Visa Reciprocity Table, the U.S. government recognizes birth and marriage certificates issued by the Ethiopian Vital Events Statistics Registration Agency as official documentation. *See* Reciprocity Schedule, Ethiopia, *available at* <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Ethiopia.html> (last visited Apr. 10, 2023).

60. Pursuant to USCIS regulations, the documents Mr. Mohamed submitted constitute primary evidence of his relationship to his wife and sons.

61. Nonetheless, in or around February 2022, Mr. Mohamed completed DNA testing through an AABB accredited laboratory.

62. In order for follow-to-join beneficiaries, like Mr. Mohamed's sons, to complete their portion of the DNA testing, the appropriate U.S. Embassy must contact them to schedule an appointment.

63. For more than a year, the U.S. Embassy in Addis Ababa did not contact Mr. Mohamed's wife or sons to schedule an appointment for DNA collection.

64. In February 2022, USCIS transferred Mr. Mohamed's I-730 petitions to the Asylum Vetting Center in Atlanta, Georgia.

65. For more than a year, USCIS did not update Mr. Mohamed on the status of his family reunification applications.

66. Beginning in November 2022, Mr. Mohamed and his family filed several Freedom of Information Act requests for their immigration files, in an effort to understand why the petitions had been pending over six years.

67. USCIS produced some responsive records in March 2023.

68. These records contained notices stating that the I-730 petitions for Mr. Mohamed's sons were being administratively (temporarily) closed until Mr. Mohamed submitted DNA evidence.

69. By administratively closing the cases, USCIS was effectively requiring Mr. Mohamed to submit DNA evidence to prove his relationship with his sons.

70. Mr. Mohamed never received these notices.

71. Because these notices were undated, unsigned, and stamped as a "file copy," it is unclear whether they were ever finalized or sent to Mr. Mohamed.

72. In April 2023, Mr. Mohamed filed the present lawsuit.

73. USCIS approved Mr. Mohamed's I-730 petitions in May 2023 and forwarded the petitions to the National Visa Center.

74. Although the notices of approval purport to "complete[] USCIS action on this matter," initial approval of the I-730 petitions does not authorize travel, nor does it finally decide whether Mr. Mohamed's wife and sons will be admitted to the United States as refugees. Further, the notices reserve the right for USCIS to verify information, including through in-person interviews, and to reconsider the initial approval.

75. Because Defendants must still determine that the beneficiaries are admissible and eligible to travel, USCIS's initial approval of the I-730 petitions is conditional and does not constitute final adjudication of Mr. Mohamed's family reunification applications.

76. In June 2023, Mr. Mohamed's wife and sons received a phone call from the U.S. Embassy in Addis Ababa, instructing his two older sons to appear in-person at the Embassy for DNA testing.

77. At the time that the Embassy contacted Mr. Mohamed's wife and sons about DNA testing, it had not yet received the family's approved I-730 petitions from the National Visa Center.

78. Subsequently, Mr. Mohamed's sons traveled to the Embassy and completed DNA testing, notwithstanding that the I-730 petitions had already been conditionally approved.

79. Nearly seven years after Mr. Mohamed first submitted his family reunification applications, he is still waiting for a decision.

The Harms of Prolonged Family Separation

80. The lengthy separation and continued uncertainty about when they will be able to be together is very painful for Mr. Mohamed, Ms. Abdulahi, and their children.

81. After Mr. Mohamed left Ethiopia, his oldest son, still a young child at the time, had trouble sleeping at night. Mr. Mohamed's son used to cry and ask when his father would come home.

82. When his second son was born in April 2016, Mr. Mohamed was not able to be present to hold his baby son, or to support his wife in recovering from childbirth and caring for their children.

83. Ms. Abdulahi told him that the family's food rations had been cut and that she and his sons were hungry much of the time. Mr. Mohamed felt distressed by his family's difficult living situation and wished that he could be with his wife and sons to provide for and protect them.

84. Since coming to the United States more than seven years ago, Mr. Mohamed has only been able to visit his family once.

85. During Mr. Mohamed's visit, Ms. Abdulahi became pregnant with their third and youngest son, who was born in October 2019. Mr. Mohamed has never met his youngest son in person.

86. Because so much time has elapsed with his family reunification petitions pending before USCIS, Mr. Mohamed's youngest son was born too late to be added to the original petitions. As a result, Mr. Mohamed needed to file a separate I-130 petition for his youngest son, which is currently pending.

87. Ms. Abdulahi tells Mr. Mohamed that she misses him very much, and that she also feels lonely and sad.

88. Although Mr. Mohamed talks to his wife and children by phone whenever he can, he cannot physically be there to care for his young children, ensure they are clothed and fed, and hug and comfort his family.

89. Mr. Mohamed regularly sends money to support his wife and children. However, maintaining two households is financially burdensome for Mr. Mohamed, and he worries that he will not be able to do this indefinitely.

FIRST CAUSE OF ACTION
Administrative Procedure Act

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

91. Defendants have a nondiscretionary duty to adjudicate Plaintiff's family reunification applications. *See* 8 U.S.C. § 1157(c)(2); 8 C.F.R. § 207.7; 5 U.S.C. § 555(b).

92. Defendants have violated the Administrative Procedure Act by failing to adjudicate Plaintiff's family reunification applications within a reasonable time. *See* 5 U.S.C. § 555(b).

93. Plaintiff is entitled to an order compelling Defendants to adjudicate his family reunification applications. *See* 5 U.S.C. § 706(1).

SECOND CAUSE OF ACTION
Mandamus

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

95. Defendants owe Plaintiff a non-discretionary duty to adjudicate his family reunification applications. *See* U.S.C. § 1157(c)(2); 8 C.F.R. § 207.7; 5 U.S.C. § 555(b).

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

97. Plaintiff is entitled to a writ of mandamus under 28 U.S.C. §§ 1361 and 1651 and the Court's inherent equitable authority compelling Defendants' to promptly adjudicate Plaintiff's family reunification applications.

THIRD CAUSE OF ACTION
Fifth Amendment - Due Process

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

99. Plaintiff, who is a legal permanent resident who adjusted from refugee status, has a statutorily created entitlement to the adjudication of his family reunification applications. Defendants' delay in adjudicating Plaintiff's applications constitutes a deprivation of Plaintiff's protected interest without due process.

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

101. Defendants' conduct violates Plaintiff's procedural due process rights protected by 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 family reunification applications 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 family reunification applications;

3. Issue a writ of mandamus, pursuant to 28 U.S.C. §§ 1361 and 1651, directing Defendants to adjudicate Plaintiff's family reunification applications;
4. Retain jurisdiction over this action and any attendant proceedings until Defendants have finally adjudicated Plaintiff's family reunification applications, and have communicated the results of such adjudications 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: July 12, 2023

Respectfully submitted,

/s/Alexandra Zaretsky

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