

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

HAZEM MAHMOUD ALOBAID and AHMAD AL
KATOUF;

Plaintiffs,

– *versus* –

UR M. JADDOU, in her official capacity as Director of
United States Citizenship and Immigration Services,
c/o United States Department of Homeland Security,
5900 Capital Gateway Drive,
Camp Springs, MD 20746;

Defendant.

Case No. 24-cv-241

COMPLAINT

1. This case is about two U.S. citizens, former refugees, who have been waiting years for their siblings to be able to join them in safety and security in the United States under a special family reunification program for Syrian refugees.

2. As citizens, Plaintiffs are eligible to bring their siblings to the United States through the family-sponsored immigrant visa process. They have started the first part of this process: filing a form called an “I-130 petition” with United States Citizenship and Immigration Services (USCIS) to confirm their relationship to their siblings. Because of statutory visa caps and the large backlog, however, Plaintiffs’ siblings will not be able to start the second part of the process—applying for an immigrant visa—for years, if not decades, even if their I-130 petitions are approved.

3. Recognizing these delays and the humanitarian concerns at stake, the U.S. government created a faster option for Syrian refugees in the family-sponsored visa pipeline to reunite with their relatives in the United States. This special program (the “Syrian Refugee

Family Reunification Program”) allows Syrian refugees who have cleared the initial stage of getting I-130 approval to be admitted to the United States as refugees through the U.S. Refugee Admissions Program (“USRAP”), without needing to wait for a visa to be available.

4. Plaintiffs are eligible to bring their siblings to the United States through the Syrian Refugee Family Reunification Program. None of these siblings can apply for the program, however, because USCIS has yet to adjudicate their I-130 petitions under its arbitrary processing policy.

5. Under its policy, USCIS withholds adjudication of an I-130 petition until an immigrant visa is available—an often years-long wait—even for those petitioners, like Plaintiffs, who have indicated that their relatives intend to use their I-130 approval to apply for the refugee program now and do not require a visa to do so.

6. This policy forecloses Syrian refugees, like Plaintiffs’ siblings, from applying for the refugee program for years, if not decades, further delaying the day when they can finally reunite with their relatives in the United States.

7. Meanwhile, Plaintiffs’ siblings, having escaped the bombings and warfare at their doorsteps in Syria, navigate discrimination, harassment, and uncertainty as refugees in Jordan. Plaintiffs stay in regular contact with their siblings, attempting to provide support and reassurance from afar as they worry about whether and when their siblings might get one step closer to safety in the United States.

8. Plaintiffs ask the Court to find USCIS’s decision to withhold adjudication of their applications unlawful and give them and their family members a fair chance to benefit from the very program created to reunite families like theirs in the United States.

THE PARTIES

9. Plaintiff Hazem Mahmoud Alobaid is a U.S. citizen of Syrian origin who lives in Buffalo, New York. Mr. Alobaid filed an I-130 petition for his sister in October 2022 so that she could apply for admission as a refugee through the Syrian Refugee Family Reunification Program. Mr. Alobaid is still waiting for a decision on the petition.

10. Plaintiff Ahmad Al Katouf is a U.S. citizen of Syrian origin who lives in Dearborn, Michigan. Mr. Al Katouf filed an I-130 petition for his sister in January 2023 so that she could apply for admission as a refugee through the Syrian Refugee Family Reunification Program. Mr. Al Katouf is still waiting for a decision on the petition.

11. 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 Plaintiffs' and other I-130 petitions.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction under 28 U.S.C. § 1331, as this action arises under the laws of the United States, including the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701 et seq.

13. Venue is proper in this district under 28 U.S.C. § 1391(e) because Defendant is an officer of the United States, the action does not involve real property, and Plaintiff Hazem Mahmoud Alobaid resides in this district.

ALLEGATIONS

I-130 Petitions Confirm Family Relationships for Various Immigration Benefits, Including Immigrant Visas

14. The Form I-130 Petition for Alien Relative (“I-130” or “I-130 petition”) is an application that U.S. citizens or lawful permanent residents (or “petitioners”) can file on behalf of certain eligible relatives (or “beneficiaries”) to establish that a qualifying family relationship exists between them.

15. I-130 petitions are adjudicated by USCIS.

16. I-130 approval is a prerequisite to apply for a family-sponsored immigrant visa.

17. Family-sponsored immigrant visas are adjudicated by the Department of State.

18. Due to a statutory annual cap on the availability of family-sponsored visas, the Department of State controls when a person with an I-130 approval is eligible to apply for a visa.

19. The Department of State issues a monthly visa bulletin that reports the current availability of visas and when it is a beneficiary’s turn to apply, based on the family relationship category and the date of I-130 receipt by USCIS (“priority date”).

20. Each visa bulletin includes charts listing the priority dates that are “current” for each visa category, sometimes differentiated by the beneficiary’s country.

21. A beneficiary whose priority date is earlier than the date listed in the chart for “final action dates” is considered to have a visa available to be issued to them. The following chart for final action dates for family-sponsored visa cases appears in the visa bulletin for March 2024 on the Department of State’s website:

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	08FEB15	08FEB15	08FEB15	01MAY01	01MAR12
F2A	22JUN20	22JUN20	22JUN20	15JUN20	22JUN20
F2B	22NOV15	22NOV15	22NOV15	22OCT03	22OCT11
F3	01OCT09	01OCT09	01OCT09	08SEP98	08JUN02
F4	08JUN07	08JUN07	15DEC05	15OCT00	15JUN03

22. A beneficiary whose priority date is earlier than the date listed in the chart for “dates for filing” may apply for a visa, and will be contacted by the Department of State to begin their application. The following chart for dates for filing family-sponsored visa applications appears in the visa bulletin for March 2024 on the Department of State’s website:

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	01SEP17	01SEP17	01SEP17	01APR05	22APR15
F2A	01SEP23	01SEP23	01SEP23	01SEP23	01SEP23
F2B	01JAN17	01JAN17	01JAN17	01AUG04	01OCT13
F3	01MAR10	01MAR10	01MAR10	15JUN01	08NOV03
F4	01MAR08	01MAR08	22FEB06	15APR01	22APR04

23. Annual demand for each family-sponsored immigrant visa category has exceeded its cap each year for decades, resulting in an approximately 7.1-million-person backlog.

24. For siblings of adult U.S. citizens, that translates into a nearly two-decade wait for a visa. This relationship category is the most backlogged of all family-sponsored visas, with visas currently available for I-130 petitions filed earlier than June 8, 2007.

The Syrian Refugee Family Reunification Program Was Created to Allow Refugees to More Quickly Relocate to the United States

25. The Secretary of the Department of Homeland Security is authorized to admit to the United States “any refugee who is not firmly resettled in any foreign country, is determined

to be of special humanitarian concern to the United States, and is admissible . . . as an immigrant.” 8 U.S.C. § 1157(c)(1).

26. Groups of refugees with shared characteristics may be designated to be of “special humanitarian concern” to the United States by statute or by the Department of State, in consultation with USCIS and other governmental and nongovernmental entities.

27. Some refugee groups designated as of special humanitarian concern have “direct access” to the USRAP, meaning that members of those groups can themselves apply to the refugee program if they meet the defined criteria.

28. One such group granted direct access to the USRAP is Syrian beneficiaries of approved I-130 petitions, through the Syrian Refugee Family Reunification Program. The Syrian Refugee Family Reunification Program was modeled off an analogous program for Iraqi refugees created in 2007.

29. Recognizing that backlogs in the family-sponsored immigration process and other pathways were limiting Iraqi immigration to the United States at a time of increasing instability and displacement in Iraq, Congress passed the Refugee Crisis in Iraq Act in June 2007. The Act authorized Iraqis who have certain close family members in the United States and are members of a religious or minority community identified by the Secretary of State as a persecuted group to apply directly to the USRAP, and expressly stated that they could not be denied that opportunity, even if they qualified for another immigrant classification such as a family-sponsored immigrant. To implement these provisions of the Act, the Department of State designated all Iraqi beneficiaries of an approved I-130, who reside in certain countries and have not received an immigrant visa, as a group of special humanitarian concern to the United States and afforded them direct access to the USRAP.

30. Nine years later, seeking to increase opportunities for U.S.-affiliated Syrian refugees to come to the United States during the escalating humanitarian crisis, the Department of State extended this direct access program to Syrians. The Syrian Refugee Family Reunification Program is available to approved I-130 beneficiaries of Syrian nationality, who reside in certain countries and have not received an immigrant visa, and their derivatives (spouses and unmarried children younger than 21).

31. In practice, when the Department of State receives an I-130 approval for a Syrian national from USCIS, it mails an “Expression of Interest” form for the Syrian Refugee Family Reunification Program to the beneficiary, in care of the U.S.-based petitioner.

32. Beneficiaries interested in pursuing refugee processing then complete and return the required forms to the Department of State.

33. Unlike the immigrant visa process, the beneficiary begins refugee processing immediately once the Department of State receives their expression of interest.

USCIS Arbitrarily Prejudices Syrian Refugees by Withholding Adjudication of Their I-130 Petitions Based on the Visa Backlog

34. Before a refugee can apply to Syrian Refugee Family Reunification Program, USCIS must approve the I-130 filed on their behalf.

35. USCIS does not adjudicate I-130s in a first-in, first-out manner.

36. Instead, USCIS policy is to adjudicate an I-130 petition based on when an immigrant visa is available for the petition’s beneficiary.

37. USCIS’s website for looking up current processing times for I-130 petitions notes that:

USCIS service centers are now prioritizing the processing of Form I-130 preference petitions for which the Department of State Visa Bulletin shows that an immigrant visa is available. The visa bulletin, published monthly, lists available immigrant visas by priority date.

USCIS uses the visa bulletin to determine the current visa categories and priority dates before processing a Form I-130 preference petition. Service centers have prioritized our adjudication efforts so that we can focus on those cases that have visas available.

<https://egov.uscis.gov/processing-times/> (last visited March 18, 2024).

38. USCIS applies this policy to withhold adjudication of I-130 petitions for which the petitioner has indicated that the beneficiary intends to use I-130 approval to apply for the Syrian Refugee Family Reunification Program, which does not require a visa to be available (the “withholding policy”).

39. In plain terms, USCIS applies a policy designed for prospective visa applications to prospective refugee applications. This policy undermines the U.S. government’s efforts to create a refugee pathway that bypasses visa delays.

40. As a result, these U.S. citizens and permanent residents are arbitrarily and unreasonably denied adjudication of their I-130 petitions based on a criterion (visa availability) that does not pertain to the refugee family members they seek to reunite with.

41. USCIS’s withholding policy arbitrarily and unreasonably prolongs the separation of these refugee families and compounds the danger that their overseas family members face.

Plaintiffs Were Subjected To and Harmed By Defendant’s Withholding Policy

Plaintiff Hazem Mahmoud Alobaid

42. Hazem Mahmoud Alobaid lives in Buffalo, New York with his mother and brother. He became a U.S. citizen in September 2021 after coming to the United States as a refugee.

43. Mr. Alobaid grew up in Syria with his parents, two brothers, and two sisters. In 2012, his mother was forced to flee Syria to Jordan with him and his brothers due to the

spreading civil war. His two sisters, who were married, also fled to Jordan: one was able to resettle in Germany as a refugee, but his eldest sister is still there.

44. Mr. Alobaid filed an I-130 petition for his eldest sister on or about October 9, 2022.

45. The same day, Mr. Alobaid submitted a request to USCIS to expedite consideration of his petition, on the basis that his eldest sister is a refugee who had fled war in Syria and is eligible to directly apply for the Syrian Refugee Family Reunification Program upon approval of the petition.

46. He received a receipt notice from USCIS indicating that his petition was assigned the priority date of October 9, 2022.

47. On or about November 15, 2022, having not received a response to his expedite request, he sent a follow up message to USCIS requesting an update.

48. USCIS never responded to his request to expedite the petition.

49. Mr. Alobaid's petition for his eldest sister remains pending.

50. In October 2022, when he filed the petition, visas were available for siblings of U.S. citizens who had an I-130 priority date of March 22, 2007 or earlier.

51. USCIS is aware that Mr. Alobaid's eldest sister will use I-130 approval, if received, to apply immediately for the Syrian Refugee Family Reunification Program.

52. Nonetheless, USCIS applied the withholding policy to Mr. Alobaid's petition because a visa is not yet available for his eldest sister.

53. Mr. Alobaid and his eldest sister have been separated for nearly seven years. He talks to her once or twice a week, knowing that she feels alone in Jordan as the one sibling in their family still stranded there. Although Mr. Alobaid was able to visit her in Jordan, his eldest

sister has not been able to see their mother for seven years, and did not get to see their father again before he passed away from cancer. Mr. Alobaid worries for the safety of his eldest sister and her family and wishes he could return the support she provided him growing up.

54. Mr. Alobaid awaits USCIS's adjudication of his I-130 petition so that his eldest sister can apply for the refugee program without additional arbitrarily imposed delay and reunite with him in New York.

Plaintiff Ahmad Al Katouf

55. Ahmad Al Katouf lives in Michigan with wife and son. They became U.S. citizens in January 2022 after coming to the United States as refugees.

56. Mr. Al Katouf grew up in Syria with his parents, brother, and sister. His mother passed away when he was young and his sister played a large role in raising him and his brother.

57. After the family endured bombardments and artillery shelling during the war, Mr. Al Katouf's wife and children fled to Jordan. Mr. Al Katouf stayed behind with his sister and her family to ensure their safety before they all fled to Jordan three months later.

58. In 2016, Mr. Al Khatouf and his brother were approved to come to the United States as refugees and made the impossible decision to leave without their sister and her family to ensure a better life for their own children.

59. Mr. Al Katouf filed an I-130 petition for his sister on or about January 25, 2023.

60. The following day, on or about January 26, 2023, he submitted a request to expedite consideration of his petition, on the basis that his sister is a refugee who had fled war in Syria and is eligible to directly apply for the Syrian Refugee Family Reunification Program upon approval of the I-130 petition.

61. He received a receipt notice from USCIS indicating that his petition was assigned the priority date of January 25, 2023.

62. USCIS never responded to his request to expedite the petition.

63. Mr. Khatouf's petition for his sister remains pending.

64. In January 2023, when he filed the petition, visas were available for siblings of U.S. citizens who had an I-130 priority date of March 22, 2007 or earlier.

65. USCIS is aware that Mr. Al Katouf's sister will use I-130 approval, if received, to apply immediately for the Syrian Refugee Family Reunification Program.

66. Nonetheless, USCIS applied the withholding policy to Mr. Al Katouf's petition because a visa is not yet available for his sister.

67. Mr. Al Katouf and his sister have been separated for over seven and a half years. In that time, her family has faced escalating harassment, abuse, and discrimination in Jordan due to their refugee status, including a physical attack on her son. Mr. Al Katouf talks to his sister weekly, if not daily, and worries about the danger her family must face without his support.

68. Mr. Al Katouf awaits USCIS's adjudication of his I-130 petition so that his sister can apply for the refugee program without additional arbitrarily imposed delay and reunite with him in Michigan.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF ADMINISTRATIVE PROCEDURE ACT – UNLAWFUL AGENCY ACTION

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

70. Defendant has a policy of withholding adjudication of I-130 petitions based on their visa availability date, notwithstanding the petitioner's indication that their beneficiary

family member intends to use I-130 approval to apply for the Syrian Refugee Family Reunification Program. This policy represents the consummation of the agency's decision-making process. As applied to withhold adjudication of Plaintiffs' I-130 petitions, this policy has the consequence of denying adjudication and prolonging family separation.

71. Defendants have not articulated a reasoned explanation for their decision to apply the withholding policy to Plaintiffs; failed to consider relevant factors in applying the withholding policy to them; relied on factors Congress did not intend to be considered; and failed to consider reasonable alternatives that were less restrictive.

72. Defendant did not consider the fact that Plaintiffs' family members are immediately eligible to apply for the Syrian Refugee Family Reunification Program in applying the withholding policy to Plaintiffs.

73. In applying the withholding policy to Plaintiffs, Defendant did not consider that Congress and the Department of State have authorized Iraqi and Syrian refugees, like Plaintiffs' siblings, to apply for the refugee program with I-130 approval specifically so that they need not wait years for an immigrant visa to become available.

74. Instead, Defendant relied on lack of current visa availability to apply the withholding policy to Plaintiffs.

75. Defendant's decisions to withhold adjudication of Plaintiffs' I-130 petitions pursuant to the withholding policy are unlawful, including because they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." The decisions should therefore be set aside pursuant to 5 U.S.C. § 702 and 5 U.S.C. § 706(2).

**SECOND CLAIM FOR RELIEF
ADMINISTRATIVE PROCEDURE ACT – UNREASONABLE DELAY**

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

77. Defendant has a non-discretionary duty to adjudicate Plaintiffs' I-130 petitions. *See* 5 U.S.C. § 555(b); 8 U.S.C. § 1154(b).

78. Defendant has failed to make final decisions on Plaintiffs' I-130 petitions within a reasonable time. *See* 5 U.S.C. § 555(b).

79. Defendant is unlawfully withholding adjudication of Plaintiffs' I-130 petitions. *See* 5 U.S.C. § 706(1).

80. Plaintiffs are entitled to an order compelling Defendant to decide their I-130 petitions. *See* 5 U.S.C. § 706(1).

**THIRD CLAIM FOR RELIEF
MANDAMUS ACT**

81. All the foregoing allegations are repeated and realleged as though fully set forth herein.

82. Defendant owes Plaintiffs a non-discretionary duty to decide their I-130 petitions. *See* 5 U.S.C. § 555(b); 8 U.S.C. § 1154(b).

83. Plaintiffs have no other means to compel Defendant to perform the non-discretionary duty that Defendant owes them.

84. Plaintiffs are entitled to a writ of mandamus under 28 U.S.C. §§ 1361 and 1651 and this Court's inherent equitable authority, compelling Defendant to decide their I-130 petitions.

**FOURTH CLAIM FOR RELIEF
FIFTH AMENDMENT – DUE PROCESS**

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

86. Plaintiffs, who are U.S. citizens, have a statutorily created entitlement to a decision on their I-130 petitions. Defendant's decision to withhold adjudication of Plaintiffs' I-130 petitions constitutes a deprivation of their protected interests without due process.

87. Defendant's withholding of adjudication and resultant delay is egregious and without any rational justification.

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

**FIFTH CLAIM FOR RELIEF
DECLARATORY JUDGMENT**

89. An actual controversy exists between the parties because Defendant seeks to rely upon the withholding policy to continue to deny Plaintiffs adjudication of their I-130 petitions, and Plaintiffs seek a determination that the withholding policy as applied to them is invalid and unlawful.

90. For the reasons stated herein and pursuant to 28 U.S.C. §§ 2201-02, Plaintiffs ask the Court to declare that the withholding policy is unlawful as applied to Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Declare that the withholding policy as applied to Plaintiffs is unlawful;
2. Set aside the withholding policy as applied to Plaintiffs;
3. Compel Defendant to adjudicate Plaintiffs' I-130 petitions;
4. Award Plaintiffs reasonable attorneys' fees and costs for this action; and

5. Grant any other relief the Court deems just and proper.

Dated: March 19, 2024

Respectfully submitted,

/s/ Deepa Alagesan _____

Deepa Alagesan

*Attorney for Plaintiffs Hazem Mahmoud Alobaid and
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PROJECT

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