

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RUDINA CINARI,

Petitioner,

Case No.:

v.

KEVIN MCALEENAN, in his official capacity as
Acting Secretary of the United States Department of
Homeland Security, KENNETH CUCCINELLI, in
his official capacity as Acting Director, United States
Citizenship and Immigration Services, and THOMAS
CIOPPA, in his official capacity as District Director,
United States Citizenship and Immigration Services,

Respondents.
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COMPLAINT FOR WRIT OF MANDAMUS

Plaintiff Rudina Cinari (hereinafter “Plaintiff” or “Ms. Cinari”), through undersigned counsel, files this instant Complaint for Writ of Mandamus against Defendants and alleges:

INTRODUCTION

1. Plaintiff Rudina Cinari (Ms. Cinari”) is a long-term lawful permanent resident of the United States. In July 2014, having met all statutory requirements to become a citizen of the United States, Ms. Cinari applied for naturalization.

2. Ms. Cinari appeared for a naturalization interview with the responsible federal agency, United States Citizenship and Immigration Services (“USCIS”), on November 17, 2014. Ms. Cinari was informed she had passed the required portions of the examinations and that her naturalization application was recommended for approval. In a letter dated November 21, 2014, Ms. Cinari’s naturalization oath was scheduled to be held on December 17, 2014. However, less than a week later, USCIS informed Plaintiff that her oath ceremony was cancelled due to “unforeseen circumstances.”

Fifty-six months later, USCIS has not re-scheduled Ms. Cinari's oath ceremony despite approving her naturalization application.

JURISDICTION AND VENUE

3. This is a civil action brought pursuant to 28 U.S.C. §§ 1331 and 1361 to redress the deprivation of rights, privileges and immunities secured to Plaintiff, by which jurisdiction is conferred, to compel Defendants to perform duties owed to Plaintiff.

4. Jurisdiction is also conferred by 5 U.S.C. §§ 555(b) and 704. Plaintiff is aggrieved by adverse agency action or a failure to act, as the Administrative Procedure Act requires in order to confer jurisdiction on the District Courts. 5 U.S.C. § 702 *et. seq.*

5. Costs and attorney fees will be sought pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, and 28 U.S.C. § 2412(d) *et. seq.*

6. Venue is proper under 29 U.S.C. § 1391 on the following grounds: (1) the plaintiff resides in the judicial district, the defendants are officers of the United States or agencies of the United States, and no real property is involved (28 U.S.C. § 1391(e)(3)); and (2) acts or omissions giving rise to the action occurred in this district.

PARTIES

7. Plaintiff Rudina Cinari is a resident of Brooklyn, New York. Plaintiff is a native of Albania and has been a lawful permanent resident ("LPR") for over 10 years, since 2008. Ms. Cinari applied for naturalization on July 1, 2014, and in November 2014 passed all required portions of her naturalization interview and examination. On November 21, 2014, Ms. Cinari's oath ceremony was scheduled for December 17, 2014 but was subsequently cancelled for "unforeseen circumstances." She has been waiting for her oath ceremony to be rescheduled ever since that date.

8. Defendant Keven McAleenan is sued in his official capacity as the Acting Secretary of the Department of Homeland Security (“DHS”). In this capacity, he is responsible for the administration and enforcement of the immigration and naturalization laws. 8 U.S.C. § 1103(a).

9. Defendant Kenneth Cuccinelli is sued in his official capacity as the Acting Director of U.S. Citizenship and Immigration Services, a component agency within the U.S. Department of Homeland Security. USCIS is the agency responsible for the adjudication of applications for naturalization.

10. Defendant Thomas Cioppa is sued in his official capacity as the District Director of the New York City, U.S. Citizenship and Immigration Services. As District Director, he is designated by the Secretary of Homeland Security to administer and enforce the immigration laws within New York City. One of the duties of USCIS is the processing of naturalization applications.

FACTUAL BACKGROUND

11. Plaintiff Rudina Cinari is a native citizen of Albania and a lawful permanent resident of the United States for over 11 years. She was admitted into the United States as an LPR on August 16, 2008.

12. Satisfying all requirements for naturalization, Plaintiff properly filed a naturalization application on July 1, 2014, along with the necessary supporting documents.

13. On November 17, 2014, USCIS conducted Ms. Cinari’s naturalization interview pursuant to 8 U.S.C. § 1446. Ms. Cinari was informed she had passed her examination. See Exhibit A – N-652, Naturalization Interview Results.

14. On or around November 21, 2014, Ms. Cinari received a letter informing her that her oath ceremony was scheduled for December 17, 2014. See Exhibit B – Notification of Oath Ceremony. Ms. Cinari was overjoyed to reach the final step in becoming a citizen.

15. On November 24, 2014, Ms. Cinari received notice from Defendant USCIS that her oath ceremony was cancelled due to “unforeseen circumstances.” See Exhibit C – Notification of Oath Cancellation.

16. Pursuant to 8 U.S.C. § 335.5, once USCIS has granted a naturalization application but before the applicant has taken the oath of allegiance, USCIS must serve the applicant with a motion to reopen the naturalization application:

USCIS shall notify the applicant in writing of the receipt of the specific derogatory information, **with a motion to reopen the previously adjudicated application**, giving the applicant 15 days to respond.

(emphasis added).

17. Defendant USCIS adjudicated Plaintiff’s naturalization application, granted it, and scheduled her Naturalization Oath Ceremony. See Exhibit B.

18. Defendants unlawfully cancelled Plaintiff’s Naturalization Oath Ceremony. Defendants have not notified Plaintiff of the receipt of any specific derogatory information.

19. Defendants have not provided Plaintiff with a motion to reopen her previously adjudicated application.

20. Defendants continue to unlawfully delay the rescheduling of Plaintiff’s Naturalization Oath Ceremony.

21. Plaintiff has taken numerous steps to prompt Defendants to perform its duty to schedule her oath ceremony.

22. Plaintiff has made multiple calls to Defendant USCIS to check in on the status of rescheduling her oath ceremony, beginning in 2015.

23. In response to a call Plaintiff made to USCIS on February 17, 2015 to inquire about the status of her application, Plaintiff received a letter from USCIS dated February 26, 2015, stating, “[W]e have to perform additional review on this case and this has caused a longer processing time. If

you do not receive a decision on this case within 6 months of this letter, please contact customer service at the number provided below.” See Exhibit D – USCIS Letter Dated Feb. 26, 2015.

24. Despite Defendant USCIS’s February 26, 2015 letter, Defendant USCIS has already adjudicated Plaintiff’s naturalization application, and Defendant USCIS has not taken the steps it is legally required to re-open a naturalization application that has already been granted.

25. In response to another inquiry by Plaintiff on or around April 27, 2015, Plaintiff received written confirmation that “pending security checks, the scheduling of [her] oath ceremony has been placed on hold.” See Exhibit E – USCIS Letter Dated April 27, 2015.

26. After waiting over six months, Plaintiff contacted USCIS for a status update on her application. The following day, Plaintiff received an e-mail from USCIS on August 28, 2015, stating: “Our records show that your N-400 application is currently pending security checks. We cannot provide you with a completion date at this time.” See Exhibit F – USCIS Email Dated Aug. 28, 2015.

27. Plaintiff requested assistance through Congresswoman Yvette Clark’s office multiple times beginning in 2017, concerning the status of her application.

28. On October 19, 2017, Congresswoman Clark’s office informed Plaintiff of USCIS’s response: “[A]ccording to USCIS records, [Plaintiff’s] N-400 case (NBC*005142342) is currently pending extensive background checks.”

29. On January 3, 2018, Congresswoman Clark’s office informed Plaintiff of USCIS’s response: “We have checked into [Plaintiff’s] case and have been assured that the agency is aware of your inquiry, and is monitoring progress related to it. However, unresolved issues in your constituent’s case require thorough review before a decision can be rendered. Unfortunately, we cannot speculate as to when this review process will be completed.”

30. On May 8, 2018, Congresswoman Clark’s office informed Plaintiff of USCIS’s response: “We have checked into [Plaintiff’s] case and have been assured that the agency is aware of

your inquiry, and is monitoring progress related to it. However, unresolved issues in your constituent's case require thorough review before a decision can be rendered.”

31. On March 22, 2019, Congresswoman Clark's office informed Plaintiff of USCIS's response: “We have checked into [Plaintiff's] case and have been assured that the agency is aware of your inquiry, and is monitoring progress related to it. However, unresolved issues in your constituent's case require thorough review before a decision can be rendered Unfortunately, no time frame can be offered as to when completion of the background checks will take place.”

32. On May 21, 2019, Congresswoman Clark's office informed Plaintiff of USCIS's response: “We have checked into [Plaintiff's] case and have been assured that the agency is aware of your inquiry, and is monitoring progress related to it. However, unresolved issues in your constituent's case require thorough review before a decision can be rendered. Unfortunately, we cannot speculate as to when this review process will be completed.”

33. Defendant USCIS is unlawfully re-processing Plaintiff's Naturalization application. Defendant USCIS has already granted Plaintiff's Naturalization application. Defendant USCIS has not served a motion to reopen the naturalization application.

34. To date, more than 1,767 days (58 months) after the date that Defendants granted Ms. Cinari's naturalization application, Defendants have failed to schedule Plaintiff's oath ceremony.

35. As a result of Defendants' failure to reschedule Plaintiff's oath ceremony, Plaintiff has been deprived of the rights that flow from citizenship, including the ability to travel freely as a U.S. citizen as well as the right to vote in federal and state elections.

36. Ms. Cinari seeks the security of U.S. citizenship and would be proud to take the oath and become a citizen but instead has been living in a state of constant uncertainty.

EXHAUSTION OF REMEDIES

37. Plaintiff is not required to exhaust any administrative remedies prior to bringing an action under the Administrative Procedure Act or for a Writ of Mandamus.

38. Plaintiff has, however, attempted to ascertain the reasons for the delays in rescheduling her oath ceremony and has been informed that her oath ceremony is on hold pending security checks even though Plaintiff's has already passed her security check and had her naturalization application granted. Despite Plaintiff's numerous inquiries, USCIS has failed to act.

CLAIMS FOR RELIEF

COUNT 1

UNREASONABLE DELAY IN VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

39. The allegations contained in paragraphs 1 through 38 above are repeated and incorporated as though fully set forth herein.

40. The Administrative Procedure Act requires administrative agencies to conclude matters presented to them "within a reasonable time." 5 U.S.C. § 555.

41. It is the sense of Congress that the processing of an immigration benefit application should be completed no later than 180 days after the initial filing of the application. 8 U.S.C. § 1571.¹

42. A district court reviewing agency action may "compel the agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). "Agency action" includes, in relevant part, "an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13).

¹ Additionally, 8 U.S.C. §1447(b) creates a statutory duty for USCIS to adjudicate a naturalization application within 120 days of an examination conducted under 8 U.S.C. § 1446. In this case, Defendant USCIS adjudicated and granted Plaintiff's naturalization application in or around November 17 or 21, 2014. In the alternative, Defendants have failed to adjudicate Plaintiff's application within 120 days of her examination which occurred on November 17, 2014.

43. Plaintiff's application was favorably adjudicated, and her oath ceremony initially scheduled for December 17, 2014. Defendants' unlawfully cancelled Plaintiff's oath ceremony on November 24, 2014. Plaintiff has been waiting for 1,767 days (more than 58 months) for Defendants to reschedule her oath ceremony so she can become a U.S. citizen. Defendants' failure to reschedule Plaintiff's oath ceremony within a reasonable time violates the Administrative Procedure Act, 5 U.S.C. § 555(b) and 701 *et seq.*

44. As a result of Defendants' failure to act, Plaintiff suffered and continues to suffer injury.

COUNT II

WRIT OF MANDAMUS

45. The allegations in paragraphs 1-38 above are repeated and incorporated as though full set forth herein.

46. Defendants have a ministerial duty to Plaintiff to timely reschedule her oath ceremony for her adjudicated naturalization application. Defendants have failed in that duty.

47. Plaintiff has no adequate remedy at law for Defendants' failure to timely reschedule her oath ceremony.

48. The Court should grant relief in the form of a writ of mandamus, pursuant to the Court's mandamus authority under 28 U.S.C. § 1361, compelling Defendants to reschedule Plaintiff's oath ceremony by a date certain.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Rudina Cinari prays for the Court to:

- (1) Compel Defendants to reschedule Plaintiff's oath ceremony within 14 days, pursuant to the Court's mandamus authority under 28 U.S.C. §1361;

(2) Award Plaintiff her costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412, or other statute; and

(3) Grant such further relief this Court deems just and proper.

Dated: September 19, 2019

Respectfully submitted,

Davis Ndanusa Ikhlas & Saleem LLP

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**Admission Pending*

Attorneys for Plaintiff R.C