

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

SFUAUN ALI NASIR)	CASE NO:
)	
Plaintiff,)	
)	
v.)	
)	
WILLIAM BARR, Attorney General)	
of the United States of America,)	
)	
CHAD WOLF, Acting Secretary of the)	
United States Department of Homeland)	
Security,)	
)	
KENNETH CUCCINELLI, Senior Official)	
Performing the Duties of the Director,)	
United States Citizenship and Immigration)	
Services,)	
)	
TRACY RENAUD, Associate Director,)	
Service Center Operations, United States)	
Citizenship & Immigration Services,)	
)	
<u>Defendants.</u>)	

COMPLAINT FOR WRIT OF MANDAMUS

This action is brought by Plaintiff Sfuauun Ali Nasir (“Plaintiff”), by and through his attorneys, to respectfully request an order directing Defendants to adjudicate Plaintiff’s I-130 Petition for Alien Relative (“I-130 Application”) and issue Plaintiff’s spouse Rabab Rafiq Hassan Fadel (“Beneficiary”) permission for entry into the United States of America. In support of said request, Plaintiff states as follows:

JURISDICTION AND VENUE

1. This is a civil action brought pursuant to 28 U.S.C. § 1361 to redress the deprivation of rights, privileges, and immunities secured to Plaintiff, and to compel

Defendants, officers of the United States, to perform their duty owed to Plaintiff. Jurisdiction is proper pursuant to 28 U.S.C. § 1331, which provides “[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” As this Court is a district court of the United States and this action arises under 28 U.S.C. § 1361, and a law of the United States, namely the Immigration and Nationality Act (“INA”), this Court is conferred jurisdiction. Jurisdiction is additionally conferred upon this Court pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 et seq.

2. Venue is proper under 28 U.S.C. § 1391(e)(3), because Defendants are acting in their official capacity as agents of the United States Department of Homeland Security (“DHS”), an agency of the United States Government, and Plaintiff resides in Brooklyn, New York within this district.

PARTIES

3. Plaintiff Sfuau Ali Nasir is a United States’ citizen. Mr. Nasir currently resides at 1922 Fulton St., Apt. 1, Brooklyn, NY 11233. Beneficiary is a native and citizen of Yemen.

4. Defendant William Barr is named in his official capacity as the Attorney General of the United States of America. Pursuant to 8 U.S.C. § 1103(g)(1), he is charged with controlling determination of all issues of law on immigration and with representing the United States of America in various legal matters.

5. Defendant Chad Wolf is named in his official capacity as the Acting Director of the United States Department of Homeland Security. Defendant Wolf is charged with the

administration of the United States Citizenship and Immigration Services (“USCIS”) and implementing the Immigration and Nationality Act. 8 C.F.R. § 2.1.

6. Defendant Kenneth Cuccinelli is named in his official capacity as the Senior Official performing the duties of the Director of USCIS. As such, he is responsible for the processing of immigration applications.

7. Defendant Tracy Renaud is named in her official capacity as the Associate Director of Service Center Operations for USCIS, which includes the Texas Service Center, where Plaintiff’s application has been sitting unadjudicated for over three years. Defendant is charged with the duty of administration and enforcement of all the functions, powers, and duties of the Texas Service Center.

FACTUAL BACKGROUND

8. Plaintiff married Beneficiary in June 2014 in Yemen.

9. On July 13, 2017, Plaintiff filed a Form I-130 Petition for Alien Relative on behalf of his Beneficiary wife. The Defendants provided a receipt number for this petition, SRC-17-906-08084.

10. A Request for Evidence letter dated February 5, 2018 was sent to Plaintiff, and he provided all information that was needed and requested. Plaintiff has not been informed of the status of the pending I-130 Application since that time.

11. Several attempts at ascertaining the status of Plaintiff’s petition have been made by Plaintiff, and the response he received from USCIS in November of 2019, via his Congressman Hakeem Jeffries’ office, was that his I-130 Application had “been placed in the queue for an interview scheduling.” See Exhibit A.

12. The only update on Defendant USCIS's case status portal is that "On May 8, 2018, we received your Form I-130, Petition for Alien Relative, Receipt Number SRC1790608084, at your local office. See Exhibit B (generated on August 17, 2020).

13. To date, Plaintiff continues to be separated from his wife, because no decision has been rendered as to Plaintiff's I-130 Application filed on July 13, 2017.

14. The Form I-130 has therefore been pending for over three years, an entirely unreasonable amount of time considering that USCIS is currently processing I-130 Applications filed on or after December 27, 2019, over two years after Plaintiff's I-130 Application was filed.

15. In 2019, Plaintiff graduate from CUNY's Baruch College with a BBA in International Business.

16. In March 2020, Plaintiff's wife moved to Egypt to receive medical treatments as Plaintiff and his wife try to have a baby.

17. In June 2020, Plaintiff temporarily moved to Cairo, Egypt to be with his wife. As a result, Plaintiff has left his family and home in Brooklyn and he is unable to continue his career in the United States.

18. Plaintiff has exhausted any and all administrative remedies that may exist. The failure to adjudicate the pending Form I-130 in this situation acts as a final administrative action since Plaintiff is left with no recourse to proceed.

CLAIMS FOR RELIEF

COUNT ONE

**REQUEST FOR ADJUDICATION OF PLAINTIFF'S I-130
APPLICATION PURSUANT TO THE MANDAMUS ACT**

19. Plaintiff reasserts and realleges paragraphs 1-18 as if set forth fully herein.
20. Defendants owe a duty to the Plaintiff to adjudicate his I-130 Application in a timely manner.
21. Defendants have failed to fulfill their duty to adjudicate Plaintiff's I-130 Application by refusing to make a decision on his application, despites USCIS's own policy of approving such petitions subject to revocation in the event a name check renders applicants ineligible for the immigration benefit sought.
22. Plaintiff has exhausted all administrative remedies by a) providing USCIS with all requested documents; and b) making numerous inquiries by phone, and through his congressional representative's office regarding his case.

COUNT TWO

**UNREASONABLE DELAY IN VIOLATION OF THE
ADMINISTRATIVE PROCEDURE ACT**

23. The allegations contained in paragraphs 1-18 above are repeated and incorporated as fully set forth herein.
24. The Administrative Procedure Act requires administrative agencies to conclude matters presented to them "within a reasonable time." 5 U.S.C. § 555. A district court reviewing agency action may "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). The court may also hold unlawful and set aside agency action that, inter alia, is found to be: "arbitrary, capricious, an abuse of discretion, or otherwise not

in accordance with law,” 5 U.S.C. § 706(2)(A); “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right,” 5 U.S.C. § 706(2)(C); or “without observance of procedure required by law,” 5 U.S.C. § 706(2)(D). “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).

25. The failure of Defendants to adjudicate Plaintiff’s I-130 within a reasonable time violates the Administrative Procedure Act, 5 U.S.C. § 555(b); 5 U.S.C. §§ 706(1), 706(2)(A), 706(2)(C), 706(2)(D).

26. As a result of Defendants’ actions, Plaintiff has suffered and continues to suffer injury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Sfuaun Ali Nasir respectfully requests that this Honorable Court:

- A. Compel Defendants and those acting under them to perform their duty and adjudicate Plaintiff’s pending I-130 Petition for Alien Relative within 30 days, or within a reasonable period of time determined by this Court;
- B. Retain jurisdiction during the adjudication of the I-130 petition in order to ensure compliance with this Court’s orders;
- C. Award reasonable costs and attorneys’ fees pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504. 28 U.S.C. § 2412; and
- D. Grant any other relief as this Honorable Court deems just and proper.

Dated: August 26, 2020

Respectfully submitted,

DAVIS NDANUSA IKHLAS & SALEEM LLP

/s/
Mohammad A. Saleem, Esq.
26 Court Street Suite 603
Brooklyn NY 11242
718.783.6819
msaleem@dnislaw.com

COUNCIL ON AMERICAN-ISLAMIC
RELATIONS, NEW YORK INC. (CAIR-NY)

/s/
Ahmed Mohamed (N.Y. 5536701)
Legal Director
46-01 20th Avenue
Queens, NY 11105
Tel: (646) 665-7599
ahmedmohamed@cair.com