

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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BUSHRA MOHAMED SALMAN AL-MULA;	:	
ABDULJABBAR MAHMOOD AHMED AL-	:	CIVIL ACTION NO. 1:17-cv-00008
HAYANI; SAMA ABDULJABBAR	:	
MAHMOOD AL-HAYANI; and EBRAHIM	:	
ABDULJABBAR MAHMOOD AL-HAYANI	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
U.S. CITIZENSHIP AND IMMIGRATION	:	
SERVICES (USCIS); ARLINGTON ASYLUM	:	
OFFICE, USCIS; LEÓN RODRÍGUEZ,	:	
DIRECTOR, USCIS; JOSEPH E. LANGLOIS,	:	
ASSOCIATE DIRECTOR, REFUGEE,	:	
ASYLUM, AND INTERNATIONAL	:	
OPERATIONS, USCIS; MATTHEW D.	:	
EMRICH, ASSOCIATE DIRECTOR, FRAUD	:	
DETECTION AND NATIONAL SECURITY,	:	
USCIS; and JEDIDAH HUSSEY, DIRECTOR,	:	
ARLINGTON ASYLUM OFFICE, USCIS;	:	
	:	
Defendants.	:	
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COMPLAINT AND ACTION IN MANDAMUS

Plaintiffs, Bushra Mohammed Salman Al-Mula (“Bushra”), Abduljabbar Mahmood Ahmed Al-Hayani (“Abduljabbar”), Sama Abduljabbar Mahmood Al-Hayani (“Sama”), and Ebrahim Abduljabbar Mahmood Al-Hayani (“Ebrahim”) (collectively “Plaintiffs” or the “Al-Mula Family”), by their attorneys, request issuance of a writ of mandamus or in the nature of mandamus and/or an order to compel under the Administrative Procedure Act (“APA”) ordering Defendants to adjudicate Plaintiffs’ Form I-589, Application for Asylum and for

Withholding of Removal which was received and pending as of April 11, 2014 (the “Asylum Application”) and which has still not been adjudicated more than 2.5 years after it was filed.

JURISDICTION AND VENUE

1. This Court has jurisdiction over the claims asserted in this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1361, and 28 U.S.C. § 1651 because Plaintiffs ask this Court to compel Defendants, officers of the United States, to perform a duty owed under 8 U.S.C. § 1158(d)(5)(A)(iii).

2. Jurisdiction is also conferred on this Court pursuant to 5 U.S.C. § 704 as Plaintiffs are aggrieved by adverse agency action which this Court is authorized to remedy under the Administrative Procedures Act, 5 U.S.C. §§ 702 *et seq.*

3. The jurisdiction of this Court is also invoked pursuant to 28 U.S.C. §§ 2201-02 which authorizes the issuance a declaratory judgment.

4. Costs and fees are sought pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412(2), *et seq.*

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because this judicial district is where the Defendants, acting through the Arlington Asylum Office of the United States Citizenship and Immigration Services, have failed to take action required by law.

PARTIES

6. Bushra is a native and citizen of Iraq who served in various official capacities for the Iraqi government and whose extended family served as translators and advisers for the United States government and military in Iraq.

7. Abduljabbar is a native and citizen of Iraq who also served in various official capacities for the Iraqi government and whose extended family served as translators and advisers for the United States government and military in Iraq. He is the husband of Bushra.

8. Sama is a native and citizen of Iraq and the 7-year-old daughter of Bushra and Abduljabbar.

9. Ebrahim is a native and citizen of Iraq and the 6-year-old son of Bushra and Abduljabbar.

10. In April 2014, Bushra applied for asylum on behalf of herself, Abduljabbar, Sama, and Ebrahim.

11. The United States Citizenship and Immigration Services (“USCIS”), is the defendant Agency charged with *inter alia* adjudicating applications for asylum. It has the obligation to adjudicate Plaintiffs’ Asylum Application.

12. The Arlington Asylum Office is an office within USCIS and the federal agency with direct authority and responsibility to adjudicate Plaintiffs’ Asylum Application.

13. Defendant León Rodríguez is the director of USCIS, the Agency charged with adjudicating Plaintiffs’ Asylum Application. Defendant Rodríguez is named in his official capacity.

14. Defendant Joseph Langlois is the USCIS Associate Director for Refugee, Asylum and International Operations. He has supervision over all asylum offices, including the Arlington Asylum Office. He requires that some applications be forwarded to headquarters before final adjudication and may, upon information and belief, have ordered that Plaintiffs case be forwarded to his office for its review. Defendant Langlois is named in his official capacity.

15. Defendant Matthew D. Emrich is the USCIS Associate Director of the Fraud Detection and National Security Directorate. He has supervision of all USCIS staff who review asylum applications to ensure that immigration benefits are not granted to individuals who pose a threat to national security or public safety, or who seek to defraud the immigration system. Certain applications must be reviewed by the Fraud Detection and National Security Directorate before their final adjudication. Upon information and belief, USCIS has not adjudicated the Asylum Application because the Fraud Detection and National Security Directorate has never completed its review. Defendant Emrich is named in his official capacity.

16. Defendant Jedidah Hussey is the Director of the Arlington Asylum Office, within USCIS, which is charged with adjudicating Plaintiffs' Asylum Application. Defendant Hussey is named in her official capacity.

ADMINISTRATIVE PROCEDURE ACT FRAMEWORK

17. Under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(1), the Court is authorized to compel agency action which has been unreasonably delayed.

18. Assessing reasonableness is frequently found to involve a balancing test, in which a statutory requirement is a very substantial factor. *See Telecommunications Research & Action Ctr. v. FCC*, 750 F.2d, 70, 77-78 (D.C. Cir. 1984).

19. The APA also provides pursuant to 5 U.S.C. § 706(1) that courts "shall compel agency action unlawfully withheld." Courts have held that this provision eliminates court discretion to grant relief once an agency has violated a statutory deadline as is the situation here. *See Forrest Guardians v. Babbit*, 174 F.3d 1178 (10th Cir. 1998); *see also Biodiversity Legal Foundation v. Badgley*, 309 F.3d 1166, 1178 (9th Cir. 2002) (noting that when "Congress

has specifically provided a deadline for performance ... no balancing of factors is required or permitted”).

20. Plaintiffs Bushra, Abduljabbar, Sama, and Ebrahim have a statutory right to apply for asylum and to be considered for that relief pursuant to 8 U.S.C. § 1158(a).

21. Defendants generally have a statutory duty to adjudicate asylum requests within 180 days of filing pursuant to 8 U.S.C. § 1158(d)(5)(A)(iii).

22. Plaintiffs have no adequate remedy at law, and will suffer irreparable harm if their Asylum Application is not promptly adjudicated.

MANDAMUS FRAMEWORK

23. Plaintiffs Bushra, Abduljabbar, Sama, and Ebrahim have a statutory right to apply for asylum and to be considered for that relief pursuant to 8 U.S.C. § 1158(a).

24. Defendants generally have a statutory duty to adjudicate asylum requests within 180 days of filing pursuant to 8 U.S.C. § 1158(d)(5)(A)(iii).

25. Plaintiffs have no adequate remedy at law, and will suffer irreparable harm if their Asylum Application is not promptly adjudicated.

26. Pursuant to 28 U.S.C. § 1361, this Court has “original jurisdiction in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the [Plaintiffs.]”

27. Pursuant to 28 U.S.C. § 1651, this Court may issue any and all “writs necessary or appropriate in aid of [the Court’s] respective jurisdiction[] and agreeable to the usages and principles of law.”

FACTUAL ALLEGATIONS

28. Bushra is a native and citizen of Iraq who filed an Asylum Application on behalf of herself, her husband, Abduljabbar, her daughter, Sama, and her son, Ebrahim in April 2014. Defendants acknowledged receipt of the Asylum Application with receipt number ZAR1400016020, dated April 15, 2014 (Exhibit 1).

29. On April 30, 2014 Defendants sent Plaintiffs notice that their asylum interview would occur on May 21, 2014 at 10:00 a.m. at the Arlington Asylum Office. Plaintiffs appeared at this interview with legal counsel and explained how they had a reasonable fear of persecution based upon their religion, political opinion, and membership in a particular social group of Iraqis who had supported the United States military and government in Iraq. Plaintiffs also explained that they were entitled to withholding of removal and protection under the Convention Against Torture.

30. After a year of silence regarding the Asylum Application, counsel filed on April 15, 2015 a DHS Form 7001, Case Assistance Form. This filing sought the assistance of the Department of Homeland Security Citizenship and Immigration Services Ombudsman (“DHS Ombudsman”) in getting Plaintiffs’ Asylum Application adjudicated. Despite repeated email communications between Plaintiffs, Counsel, and the DHS Ombudsman over the next 1.5 years, the Asylum Application remains pending with the DHS Ombudsman unable to assist further in this matter.

31. Indeed, on February 9, 2016, the Arlington Asylum Office emailed Counsel requesting that duplicate supporting affidavits be resent as Defendants had somehow lost the supporting affidavits submitted along with the Asylum Application nearly 1.9 years prior. More

than 10 months have passed since this last communication and the Asylum Application remains pending.

32. While the nearly 2.5-year delay in adjudicating the Asylum Application is itself causing irreparable harm to Plaintiffs, it is particularly troubling in view of the fact that nearly every single other member of the Al-Mula family has each received Special Immigrant Visas, permanent residency, or asylum without issue and in very rapid time.

33. Stated differently, Bushra's brother, Ahmed Mohammed Dawood and his family, arrived here on October 1, 2007 on a Special Immigrant Visa because of his work and the work of his wife on behalf of the United States government in Iraq. They are now citizens.

34. Bushra's other brother, Daowd Mohammed Salman Al-Mula arrived here from Iraq on October 18, 2009, applied for asylum on November 13, 2009, and was approved by the Arlington Asylum Office (the very same office adjudicating Bushra's Asylum Application) on January 16, 2010 (less than three months in comparison to the 2.5 years that Bushra has been waiting for Defendants to adjudicate her Asylum Application).

35. Likewise, Bushra's other brother, Suliman Mohammed Salman Al-Mula (who was then living in Egypt after having fled Iraq), applied to resettle in the United States as a refugee on July 28, 2008 and arrived here as a refugee from Egypt on October 19, 2009, a mere 1.3 years after seeking status here in comparison to Bushra and her family who have been waiting 2.5 years for such status. Unlike Bushra and her family who live in constant fear of potentially having to return to Iraq, Suliman is now a United States citizen and studying dentistry at Columbia University in New York City.

36. In fact, Bushra's family members submitted I-130, Petitions for Alien Relatives and accompanying I-485 Applications to Register as Permanent Residents or Adjust

Status (i.e. to receive “Green Cards”) for Bushra’s mother, Zahida Mohammed Ali, and father, Mohammed Salman Dawood, on August 29, 2014 **after** Bushra filed her Asylum Application. Zahida received her Green Card on April 13, 2015 and Mohammed received his Green Card on March 26, 2015, meaning that nearly every single immediate family member of Bushra has legal status in this country save for Bushra, her husband, and her children who remain waiting.¹

37. This delay is causing irreparable harm to Bushra, her husband, and her two young children who are not able to commence their lives in the United States without fear of potentially returning to Iraq—a country where they most certainly would be persecuted, tortured, and/or killed.

38. Defendants’ delay, actions, and omissions in this case are unreasonable.

39. Defendants, in violation of law, are unlawfully withholding or unreasonably delaying action on Plaintiffs’ Asylum Application and have failed to carry out the adjudicative and administrative functions delegated to them by law with regard to Plaintiffs’ Asylum Application.

40. The duty owed to Plaintiffs is ministerial and so plainly prescribed as to be free from doubt.

41. No other adequate remedy is available.

42. Plaintiffs have been greatly damaged by the failure of Defendants to act in accord with their duties under the law.

¹ Bushra has another sister (Zena Mohammed Salman) who is a citizen of and resides in Canada with her husband and children and another sister (Lina Shakiry) who is a citizen of and resides in the United Kingdom with her husband and children.

COUNT ONE
(ADMINISTRATIVE PROCEDURES ACT)

43. Plaintiffs repeat and reallege paragraphs 1 through 42 as if fully set forth herein and incorporates them by reference.

44. Defendants have unreasonably delayed adjudication of Plaintiffs' Asylum Application, despite a clear statutory deadline requiring them to adjudicate it within 180 days.

45. No adequate remedy exists at law.

46. Plaintiffs will suffer and are suffering irreparable harm from the delay in adjudicating their case.

47. This delay is unreasonable and leaves Plaintiff without an adequate remedy.

48. Having diligently followed the procedures set forth by Defendants and exhausted all administrative remedies, Plaintiffs seek a court order compelling Defendants to adjudicate their Asylum Application pursuant to 5 U.S.C. § 706(1).

COUNT TWO
(MANDAMUS)

49. Plaintiffs repeat and reallege paragraphs 1 through 48 as if fully set forth herein and incorporates them by reference.

50. Pursuant to 28 U.S.C. § 1361, this Court may compel an officer or employee of the United States to perform a duty owed to the Plaintiffs. *See Burnett v. Tolson*, 474 F.2d 877, 880 (4th Cir. 1973).

51. Pursuant to 28 U.S.C. § 1651, this Court may issue any and all "writs necessary or appropriate in aid of [the Court's] respective jurisdiction[] and agreeable to the usages and principles of law."

52. Plaintiffs Bushra, Abduljabbar, Sama, and Ebrahim have a right to apply for asylum and to receive a timely decision on their Asylum Application.

53. Defendants owe Bushra, Abduljabbar, Sama, and Ebrahim the duty to adjudicate their Asylum Application within 180 days pursuant to 8 U.S.C. § 1158(d)(5)(A)(iii).

54. No adequate remedy exists at law, for the reasons set forth above. Further, Plaintiffs will suffer irreparable harm from the delays in adjudicating their case.

55. This delay is unreasonable and leaves Plaintiffs without an adequate remedy.

56. Having diligently followed the procedures set forth by Defendants and exhausted all administrative remedies, Plaintiffs seek a writ of mandamus or in the nature of mandamus to end Defendants unreasonable delay and refusal to adjudicate Plaintiffs' Asylum Application.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests the Court to:

- a. Accept jurisdiction and maintain continuing jurisdiction of this action;
- b. Declare Defendants actions in this matter as arbitrary and capricious, an abuse of discretion and not in accordance with the law pursuant to 5 U.S.C. § 706(1) and 28 U.S.C. §§ 2201-02;
- c. Issue a preliminary and permanent injunction pursuant to 28 U.S.C. § 1361 and 5 U.S.C. § 706(1) compelling Defendants to make a determination on Plaintiffs' I-589, Application for Asylum and Withholding of Removal;

d. Issue a writ of mandamus or in the nature of mandamus, pursuant to 28 U.S.C. § 1361, 28 U.S.C. § 1651, and/or 5 U.S.C. § 706(1), compelling to Defendants to make a determination on Plaintiffs' I-589, Application for Asylum and Withholding of Removal;

e. Grant attorneys' fees and costs of this suit under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412(2), *et seq.*

g. Grant such other relief as the Court deems necessary and proper.

Dated: Arlington, VA
January 3, 2017

Respectfully submitted,

/s/ John J. McDermott
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