UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[redacted]	
Plaintiff,	
v.	Civ. No.
ALEJANDRO MAYORKAS, Director U.S. Citizenship and Immigration Services 20 Massachusetts Avenue, N.W. Washington, DC 20529	
JANET NAPOLITANO, Secretary U.S. Department of Homeland Security 245 Murray Lane, S.W. Washington, DC 20528	**VERIFIED COMPLAINT FOR MANDAMUS AND DECLARATORY JUDGMENT**
DAVID L. ROARK, Director U.S. Citizenship and Immigration Services Texas Service Center P.O. Box 851488 – Dept. A Mesquite, TX 75185	
Defendants.	

The Plaintiff, [redacted] by counsel, complains of the Defendants, ALEJANDRO MAYORKAS, Director, U.S. Citizenship and Immigration Services; JANET NAPOLITANO, Secretary, U.S. Department of Homeland Security; and DAVID L. ROARK, Director, U.S. Citizenship and Immigration Services, Texas Service Center, as follows:

I. PREFATORY STATEMENT

1. This is a mandamus action to compel the Defendants and those acting under them to take all appropriate action to adjudicate the Plaintiff's Application to Adjust Status to Lawful Permanent Resident (Form I-485) without further delay.

2. The Plaintiff was granted asylum in the United States on July 8, 1999, and he properly filed an adjustment of status application with the Defendant U.S. Citizenship and Immigration Services ("USCIS") on May 4, 2005. The Plaintiff's application remains within the jurisdiction of the Defendants, who have improperly withheld action on the application for an unreasonable period of time, to the detriment of the Plaintiff.

II. JURISDICTION

3. This is a civil action brought pursuant to 28 U.S.C. § 1361 ("The district courts shall have original jurisdiction of any action 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 plaintiff."). Jurisdiction is further conferred by 8 U.S.C. § 1329 (jurisdiction of the district courts) and 28 U.S.C. § 1331 (federal subject matter jurisdiction).

4. Jurisdiction is also conferred pursuant to 5 U.S.C. §§ 555(b) and 702, the Administrative Procedure Act ("APA"). The APA requires USCIS to carry out its duties within a reasonable time. 5 U.S.C. § 555(b) provides that "[w]ith due regard for the convenience and necessity of the parties or their representatives and *within a reasonable time*, each agency *shall* proceed to conclude a matter presented to it." (Emphasis added). USCIS is subject to 5 U.S.C. § 555(b). *See Trudeau v. FTC*, 456 F.3d 178, 185 (D.C. Cir. 2006) (finding that district court has jurisdiction under the APA, in conjunction with 28 U.S.C. § 1331, to review plaintiff's complaint for declaratory and injunctive relief against

federal agency); *Liberty Fund, Inc. v. Chao*, 394 F. Supp. 2d 105, 114 (D.D.C. 2005) ("The Administrative Procedure Act requires an agency to act 'within a reasonable time,' 5 U.S.C. § 555(b), and authorizes a reviewing court to 'compel agency action … unreasonably delayed,' 5 U.S.C. § 706(1).").

5. Section 242 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1252, does not deprive this Court of jurisdiction. INA § 242(a)(5) provides that "a petition for review filed with an appropriate court of appeals in accordance with this section, shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this Act[.]" As the present action does not seek review of a removal order, but is simply an action to compel USCIS to adjudicate the Plaintiff's unreasonably delayed application, this Court retains original mandamus jurisdiction under 28 U.S.C. § 1361. *See Liu v. Novak*, 509 F. Supp. 2d 1, 5 (D.D.C. 2007) ("[T]here is … significant district court authority holding that [8 U.S.C.] § 1252(a)(2)(B)(ii) does not bar judicial review of the pace of application processing or the failure to take action.").

6. Furthermore, INA § 242(a)(2)(B) provides that no court shall have jurisdiction to review either (i) "any judgment regarding the granting of" various forms of relief from removal, or (ii) "any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified … to be in the discretion of the Attorney General or the Secretary of Homeland Security[.]" Because adjudication of a properly filed adjustment of status application is neither a judgment regarding the granting of relief from removal nor a decision or action that is specified to be in the discretion of the Attorney General or the Secretary of Homeland Security, the Court retains original mandamus jurisdiction over this claim. *See Liu*, 509 F. Supp. 2d at 9 (holding that "the

Court does have jurisdiction over plaintiff's APA claim that defendants have unreasonably delayed adjudicating his application" for adjustment of status); *see also Villa v. U.S. Dep't of Homeland Sec.*, 607 F. Supp. 2d 359, 366 (N.D.N.Y. 2009) ("[T]he Defendant has the discretionary power to grant or deny applications, but it does not have the discretion as to whether or not to decide at all."); *Aslam v. Mukasey*, 531 F. Supp. 2d 736, 739 (E.D. Va. 2008) ("[T]he Court retains jurisdiction under the APA to determine whether the Secretary [of Homeland Security] has unlawfully delayed or withheld final adjudication of a status adjustment application."). Numerous federal district courts have ruled that adjudication of a properly filed adjustment of status application, including completion of all necessary background checks, is a purely ministerial, non-discretionary act which the Government is under obligation to perform in a timely manner. *See, e.g.*, *Shahid Khan v. Scharfen*, 2009 U.S. Dist. LEXIS 28948 (N.D. Cal. Apr. 6, 2009); *Nigmadzhanov v. Mueller*, 550 F. Supp. 2d 540 (S.D.N.Y. 2008); *Jones v. Gonzales*, Slip Copy, 2007 U.S. Dist. LEXIS 45012 (S.D. Fla. June 21, 2007) ("[N]o agency responsible for resolving matters of public interest should be free to let those matters pend in perpetuity; otherwise would be to relieve the agency of its Congressionally-mandated duty to the public.").

7. Both the regulations and the INA provide numerous examples of duties owed by USCIS in the adjustment of status process. 8 U.S.C. § 1103 provides that "[t]he Secretary of Homeland Security *shall* be charged with the administration and enforcement of this Act and all other laws relating to the immigration and naturalization of aliens[.]" (Emphasis added). The Code of Federal Regulations provides that "[e]ach applicant for adjustment of status . . . *shall* be interviewed by an immigration officer." 8 C.F.R. § 245.6 (emphasis

added). The regulations further provide that "the applicant *shall* be notified of the decision of the director and, if the application is denied, the reasons for the denial." 8 C.F.R. § 245.2(a)(5)(i) (emphasis added). The language of the statute and the above-cited regulations is mandatory, not discretionary, and the Defendants have a clear duty to adjudicate the applications for adjustment of status pending before them. *See Matter of Sealed Case*, 151 F.3d 1059, 1063 (D.C. Cir. 1998); *see also First Federal Savings and Loan Association of Durham v. Baker*, 860 F.2d 135, 138 (4th Cir. 1988).

8. As set forth below, the delay in processing the Plaintiff's properly filed application for adjustment of status is unreasonable.

III. VENUE

9. Venue is proper under 28 U.S.C. § 1391(e), because this is an action against officers and agencies of the United States in their official capacities, brought in the district where a substantial part of the events or omissions giving rise to the Plaintiff's claim occurred. The Defendant Alejandro Mayorkas is sued in his official capacity as Director of USCIS, a United States federal agency and resident in this district. The Defendant Janet Napolitano is sued in her official capacity as Secretary of the U.S. Department of Homeland Security ("DHS"), a United States federal agency and resident in this district. The Defendant David L. Roark is sued in his official capacity as Director of the USCIS Texas Service Center, a United States federal agency. Because national policy concerning adjudication of applications for immigration benefits – including adjustment of status – is formulated by the DHS and implemented by USCIS, venue is proper in this district.

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

10. No exhaustion requirements apply to the Plaintiff's complaint for a Writ of Mandamus. The Plaintiff is owed a duty – the adjudication of his properly filed application to adjust status, which has been duly filed with USCIS. Defendants have unreasonably delayed and failed to adjudicate the Plaintiff's application for more than 5 years. The Plaintiff has no other adequate remedy available for the harm he seeks to redress – the failure of USCIS to process his application to adjust status in a timely manner.

V. PARTIES

11. The Plaintiff, [redacted] resides in [redacted]. He was born in Khartoum, Sudan in 1969 and is a citizen of Sudan. His alien registration number is [redacted].

12. The Defendants, ALEJANDRO MAYORKAS, Director, USCIS; JANET NAPOLITANO, Secretary, DHS; and DAVID L. ROARK, Director, USCIS Texas Service Center, are charged by law with the statutory and regulatory obligation to perform background security checks and determine eligibility for adjustment of status to lawful permanent resident, pursuant to INA §§ 103 and 245, 8 U.S.C. §§ 1103 and 1255, and 8 C.F.R. §§ 245.2(a)(5)(i) and 245.6. USCIS received the Plaintiff's application for adjustment of status on May 4, 2005. USCIS is the agency of DHS responsible for adjudicating adjustment of status applications under the INA and has the sole authority to do so, pursuant to 8 C.F.R. § 245.2(a)(1) (requiring any alien who believes he meets the eligibility requirements of Section 245 of the Act to apply to the director having jurisdiction over his place of residence).

VI. FACTS AND PROCEDURAL HISTORY

13. The Plaintiff, [redacted] was born in Sudan in 1969 and came to the United States in 1998 on a B-1 nonimmigrant visitor's visa. He was granted asylum status in the United States on July 8, 1999. [redacted] has been steadily employed in this country as a veterinarian and biotechnology researcher. He currently works in the pharmaceutical industry on the development of cancer-fighting drugs. He is a law-abiding individual, has always paid his taxes, and has never been arrested, charged, or convicted of any crime.

14. [redacted] filed his I-485 application for adjustment of status with USCIS on May 4, 2005, more than 5 years ago. The application is currently pending at the USCIS Texas Service Center. USCIS's published case adjudication guidelines indicate that the agency is currently reviewing I-485 applications filed approximately 6 months ago; the adjudication of Plaintiff's adjustment application clearly extends far beyond USCIS's normal processing timeframe. USCIS Texas Service Center Processing Dates, *available at* *https://egov.uscis.gov/cris/processingTimesDisplay.do* (last visited October 4, 2010).

15. [redacted]s adjustment application is based on his July 8, 1999 grant of asylum. *See* INA § 209(b), 8 U.S.C. § 1159(b).

16. [redacted] has made numerous written, telephonic, congressional, and in-person status inquiries with USCIS over the past 5 years that his I-485 application has been pending, and he has repeatedly has been informed that his case remains unadjudicated due to uncompleted background or security checks. In May 2009, in response to a status inquiry from Senator Edward Kennedy's office, [redacted] was informed that his case is on hold

because "he appears to be inadmissible under [INA] §212(a)(3)(B)" based on alleged involvement in or support for terrorist activities.

17. In January 2009, Plaintiff was offered a post-doctoral fellowship by Harvard Medical School, for a 3-year appointment to conduct research in comparative pathology at the New England Primate Research Center, Harvard Medical School. Plaintiff immediately contacted USCIS in an effort to expedite the adjudication of his I-485, as lawful permanent resident status was a condition of his accepting the fellowship. However, USCIS failed to release the case from hold and Plaintiff was forced to decline the offered appointment with Harvard Medical School.

18. On September 1, 2010, Plaintiff's undersigned counsel sent a letter to Defendant David L. Roark, Director of the USCIS Texas Service Center, declaring the Plaintiff's intent to file a complaint for writ of mandamus absent a response within 30 days. To date, counsel has received no response from USCIS. Plaintiff's application for adjustment of status remains pending.

19. Plaintiff is eager to obtain lawful permanent resident status and the lengthy delay by the Defendants in adjudicating his application is of great concern to him. [redacted]s ability to pursue opportunities for professional advancement – including a prestigious 3-year post-doctoral fellowship with Harvard Medical School – have been negatively impacted by the Defendants' failure to adjudicate his application within a reasonable period of time. [redacted]s uncertain immigration status has interfered with his ability to gain the professional and personal stability he deserves and for which he has worked so hard. Furthermore, the delay in adjudication has prevented [redacted] from the ability to

sponsor family members for immigration benefits, and it has also interfered with his travel needs.

20. The Defendant USCIS has unreasonably failed to issue a final decision on Plaintiff's application for adjustment of status. As more than 5 years have elapsed since the Plaintiff filed his application to adjust status, he requests that this Court instruct USCIS to release the case from hold and adjudicate the I-485 application without further delay.

VII. CAUSE OF ACTION

21. The Plaintiff is entitled to adjust his status to lawful permanent resident pursuant to INA § 209, 8 U.S.C. § 1159. He is prepared to present all necessary evidence establishing that he is not inadmissible under INA § 212(a)(3)(B), as he has never participated in or knowingly provided material support for any terrorist activities.

22. The Defendants have sufficient information to determine the Plaintiff's eligibility for adjustment of status pursuant to applicable requirements. Notwithstanding, the Defendant USCIS has unreasonably delayed and refused to adjudicate the Plaintiff's application to adjust status for more than 5 years, thereby depriving the Plaintiff of his right to a decision on his immigration status and the peace of mind to which he is entitled.

23. Although [redacted] is very highly qualified, he also has been unable to advance his career and secure other employment opportunities, because the lack of lawful permanent resident status makes him less appealing to prospective employers and also prevents him from obtaining security clearances required for certain positions. Most notably, [redacted] was deprived of the opportunity to accept a prestigious 3-year post-doctoral fellowship with Harvard Medical School, because he lacks permanent resident status.

[redacted]s inability to advance his career has restricted him both financially and professionally.

24. The Plaintiff's ability to travel out of the country has also been restricted, as he is required to renew his Refugee Travel Document annually before traveling abroad, for as long as his immigration status remains pending.

25. The Defendants' inaction in the Plaintiff's case has caused inordinate and unfair amounts of stress, expense, and hassle for the Plaintiff, who is entitled to a decision on his application to adjust status without further unreasonable delay.

VIII. CLAIMS

26. A mandamus plaintiff must demonstrate that: (i) he or she has a clear right to the relief requested; (ii) the defendant has a clear duty to perform the act in question; and (iii) no other adequate remedy is available. *Power v. Barnhart*, 292 F.3d 781, 784 (D.C. Cir. 2002); *Citizens for Ethics and Responsibility in Wash. v. Cheney*, 593 F. Supp. 2d 194, 219 (D.D.C. 2009); *see also Liu*, 509 F. Supp. 2d at 10 (holding, in mandamus suit alleging unreasonable agency delay, that "'the statutory duty involved [in such cases] … does not specify what course of action shall be taken. Rather, regardless of what course it chooses, the agency is under a duty not to delay unreasonably in making that choice'") (quoting *Sierra Club v. Thomas*, 828 F.3d 783, 794 (D.C. Cir. 1987)); *Aslam*, 531 F. Supp. 2d at 743 ("[T]he Court concludes that CIS has a legal obligation to adjudicate Aslam's petition within a reasonable period of time."). The Plaintiff clearly meets all three of these criteria.

27. The Plaintiff has fully complied with all of the statutory and regulatory requirements for seeking adjustment of status, including submission of all necessary forms and supporting documents.

28. The Defendant USCIS has unreasonably failed to adjudicate the Plaintiff's application to adjust status for over 5 years, thereby depriving the Plaintiff of his rights under INA § 209, 8 U.S.C. § 1159. Pursuant to 5 U.S.C. §§ 555(b) and 702 (APA), "[w]ith due regard for the convenience and necessity of the parties or their representatives and *within a reasonable time*, each agency shall proceed to conclude a matter presented to it." (Emphasis added).

29. The Defendants owe the Plaintiff a duty to adjudicate his adjustment of status application, pursuant to the INA and its implementing regulations, and have unreasonably failed to perform that duty. *See, e.g.*, *Northern States Power Co. v. U.S. Dep't of Energy*, 128 F.3d 754, 761 (D.C. Cir. 1997) (issuing writ of mandamus to preclude government defendant "from excusing its own delay" in complying with a clear statutory obligation). The Plaintiff has no alternative means to obtain adjudication of his I-485 adjustment application and his right to issuance of the writ is "clear and indisputable." *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 289 (1988); *see also Power*, 292 F.3d at 784; *Matter of Sealed Case,* 151 F.3d at 1063 (holding that mandamus is an appropriate remedy whenever a party demonstrates a clear right to have an action performed by a government official who refuses to act and that no other adequate means to attain the relief exist); *Liberty Fund, Inc.*, 394 F. Supp. 2d at 114 (same).

30. The Court's intervention is also appropriate because Defendants have failed to act within a reasonable period of time. *See, e.g.*, *Sierra Club*, 828 F.3d at 794 (holding that

"regardless of what course it chooses, the agency is under a duty not to delay unreasonably in making that choice"); *Northern States Power*, 128 F.3d at 760 ("Given DOE's repeated attempts to excuse its delay … we find it appropriate to issue a writ of mandamus …."); *Liu,* 509 F. Supp. 2d at 9-10 (holding that the APA requires the government to act within a reasonable period of time). The Plaintiff has already waited more than 5 years for adjudication of his pending I-485 application, well beyond the agency's own published processing timeframe for such applications. This is an unacceptable and unreasonable delay.

31. The Plaintiff is entitled to action on his long-pending adjustment of status application, because an unreasonable amount of time has passed since his application was filed. Defendants have failed to carry out the adjudicative and administrative functions delegated to them by law, to the ongoing harm and prejudice of the Plaintiff.

32. Defendants' delay is without justification and has forced the Plaintiff to resort to this Court for relief, and the Plaintiff is entitled to attorney's fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d)(2).

IX. PRAYER

WHEREFORE, the Plaintiff prays that this Court:

1. Compel the Defendants and those acting under them to take all appropriate action to adjudicate the Plaintiff's I-485 Application to Adjust Status without further delay;
2. Grant attorney's fees and costs of court to the Plaintiff under the Equal Access to Justice Act ("EAJA");
3. Grant such other and further relief as this Court deems proper.

Respectfully submitted this ____ day of October 2010,

[redacted]

By counsel,

_____

[redacted]
DC Bar Number: [redacted]

[redacted]
[redacted]
[redacted]
Phone: [redacted] Fax: [redacted]

Counsel for Plaintiff