

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA**

OMAR TAYEH,

61 Boston Harbor Rd
Dover, NH 03820

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY,

Serve: Office of the General Counsel
Department of Homeland Security
Mail Stop 3650
Washington, D.C. 20528

UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES,

Serve: U.S. Citizenship & Immigration
Services
425 I. Street, N.W., Room 6100
Washington, D.C. 20536

CHAD WOLF, Secretary of the Department of
Homeland Security,

Serve: Office of the General Counsel
Department of Homeland Security
Mail Stop 3650
Washington, D.C. 20528

KENNETH CUCCINELLI, Director of the
United States Citizenship and Immigration
Services,

Serve: U.S. Citizenship & Immigration
Services

Case No. 1:20-cv-01854

425 I. Street, N.W., Room 6100
Washington, D.C. 20536

DANIEL M. RENAUD, Director of the
Vermont Service Center of the United States
Citizenship and Immigration Services,

Serve: Daniel M. Renaud
USCIS
75 Lower Welden St.
St. Albans, VT 05479

and

KATHY A. BARAN, Director of the California
Service Center, U.S. Citizenship and
Immigration Services;

Serve: Kathy A. Baran
USCIS
California Service Center
Laguna Niguel, CA 92607

Defendants.

**COMPLAINT IN THE NATURE OF MANDAMUS ARISING FROM DEFENDANTS’
REFUSAL TO ADJUDICATE PLAINTIFF’S APPLICATION TO WAIVE FOREIGN
RESIDENCE REQUIREMENTS AND PETITION FOR A NONIMMIGRANT WORKER**

Plaintiff Omar Tayeh respectfully requests a hearing before this Honorable Court to make a determination on Plaintiff’s I-612 Application to Waive Foreign Residence Requirements and his employer’s I-129 Petition for a Nonimmigrant Worker, or alternatively requesting that this Honorable Court issue a writ of mandamus compelling Defendants to adjudicate Plaintiff’s long-delayed applications.

PARTIES

1. Plaintiff Omar Tayeh is a citizen of Syria.

2. Plaintiff is currently in the United States as a physician on a J1 Exchange Visitor Visa. He is graduating from Lincoln Hospital, which is affiliated with Weill Cornell Medicine in New York.

3. During the current COVID-19 pandemic, Plaintiff has been providing services to the sickest COVID-19 patients who were on ventilators and in shock. These patients needed complex management in Lincoln Hospital, which was the second busiest New York City HHC hospital during COVID -19.

4. Pursuant to his current Visa, Plaintiff is subject to Rule 212(e), which requires said visa holders to return to their home country for two years for two years following the completion of their exchange program.

5. The Immigration and Nationality Act allows for a waiver of the Rule 212(e) requirement. Plaintiff seeks to serve patients from these designated areas at Portsmouth Regional Hospital in Rockingham County, New Hampshire.

6. On November 21, 2019, Plaintiff requested such a waiver of the two-year home residency requirement with the New Hampshire Department of Health and Human Services (NH DHHS).

7. On January 2, 2020, NH DHHS issued a favorable recommendation of the waiver of the two-year home residency requirement.

8. On January 6, 2020: NH DHHS forwarded the favorable recommendation to the U.S. Department of State (DOS).

9. On February 20, 2020, DOS issued a favorable recommendation of the two-year home residency requirement and forwarded the case to the USCIS Vermont Service Center.

10. On February 27, 2020, USCIS receipted in the J-1 Waiver application, and issued receipt notice: EAC-20-130-50099. These waivers are typically processed in one to four weeks.

This waiver request also covered his spouse who was in the U.S. on a J-2 derivative visa.

11. On April 6, 2020, USCIS received in the I-129 H-1B change of status petition filed on behalf of the Plaintiff. The case is pending at the California Service Center and was assigned case number WAC2015550269. Also on April 6, 2020, USCIS received an accompanying I-539 Application to Change Nonimmigrant Status filed on behalf of Plaintiff's spouse Ranim Katmawi Sabbagh. The case was assigned case number WAC2015550291.

12. On May 12, 2020, Plaintiff filed a Congressional Liaison Assistance/Expedite Request with U.S. Senator Jeanne Shaheen.

13. Shortly thereafter, Senator Shaheen sent an inquiry and expedite request to USCIS.

14. On June 10, 2020, USCIS responded to Senator Shaheen's inquiry, stating that a security check was holding the waiver case up.

15. On June 18, 2020, contrary to USCIS's California Service Center (CSC) policy, the CSC issued a Request for Evidence for the I-612 J-1 Waiver approval notice.

16. Since that time, the Defendants have refused to process the applications at issue.

17. Omar Tayeh has made repeated requests to have his case finally adjudicated.

18. Despite numerous calls to USCIS and his attempts to prompt movement on the case, Omar Tayeh's applications have remained pending far longer than is reasonable. Plaintiff has also reached out to the USCIS ombudsman, but to no avail.

19. USCIS has refused to adjudicate Omar Tayeh's application in accordance with applicable legal criteria.

20. Plaintiff brings this action to compel the USCIS to finally adjudicate the pending applications as required by law.

21. Plaintiff is committed to serve medical patients in an underserved area just as he

served COVID-19 patients in New York City.

22. Defendant Department of Homeland Security (hereinafter sometimes referred to as “the DHS”) is the agency of the United States that is responsible for implementing Immigration and Nationality Act (hereinafter sometimes referred to as “the INA”), and for ensuring compliance with applicable federal law, including the Administrative Procedures Act (hereinafter sometimes referred to as “the APA”) Defendant United States Citizenship and Immigration Services (hereinafter sometimes referred to as “the USCIS”) is the component of the DHS that is responsible for processing I-612 and I-129 applications.

23. Defendant Chad Wolf, the Secretary of the DHS, is the highest ranking official within the DHS. Wolf, by and through his agency for the DHS, is responsible for the implementation of the INA, including the APA. Wolf is sued in an official capacity as an agent of the government of the United States.

24. Defendant Kenneth Cuccinelli, Director of the USCIS, is the highest ranking official within the USCIS. Cuccinelli is responsible for the implantation of the INA and for ensuring compliance with all applicable federal laws, including the APA. Cuccinelli is sued in an official capacity as an agent of the government of the United States.

25. Defendant Daniel M. Renaud is the Director of the USCIS Vermont Service Center and is sued only in an official capacity, as well as any successors and assigns. The Vermont Service Center has jurisdiction over the I-612. Renaud is responsible for the implantation of the INA and for ensuring compliance with all applicable federal laws, including the APA. Daniel M. Renaud is sued in an official capacity as an agent of the government of the United States.

26. Defendant Kathy A. Baran is the Director of the USCIS California Service Center and is sued only in an official capacity, as well as any successors and assigns. The California

Service Center has jurisdiction over the I-129. Renaud is responsible for the implantation of the INA and for ensuring compliance with all applicable federal laws, including the APA. Daniel M. Renaud is sued in an official capacity as an agent of the government of the United States.

JURISDICTION AND VENUE

27. This Honorable Court has federal question jurisdiction over this cause pursuant to 28 U.S.C. § 1331, as it raises claims under the Constitution of the United States, the INA, 8 U.S.C. § 1101 et seq., and the APA, 5 U.S.C. § 701 et seq, in conjunction with the Mandamus Act, 28 USC § 1361.

28. Venue is proper pursuant to 28 U.S.C. § 1391(e)(1) because (1) Defendants are agencies of the United States or officers or employees thereof acting in their official capacity or under color of legal authority; (2) no real property is involved in this action, and; (3) the Defendants all maintain offices within this district.

FIRST CLAIM FOR RELIEF **(Agency Action Unlawfully Withheld and Unreasonably Delayed)**

For the first claim for relief against all Defendants, Plaintiff alleges and state as follows:

29. Plaintiff realleges and incorporates by reference the foregoing paragraphs as though fully set out herein.

30. The APA requires 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.” 5 U.S.C. § 555(b). Section 555(b) creates a non-discretionary duty to conclude agency matters. *Litton Microwave Cooking Prods. v. NLRB*, 949 F.2d 249, 253 (8th Cir. 1991). A violation of this duty is a sufficient basis for mandamus relief.

31. The APA permits this Honorable Court to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).

32. Plaintiff alleges that the application has been in administrative processing beyond a reasonable time period for completing the applications.

33. The combined delay and failure to act on Omar Tayeh's applications is attributable to the failure of Defendants to adhere to their legal duty to avoid unreasonable delays under the INA and the applicable rules and regulations.

34. There are no alternative adequate or reasonable forms of relief available to Plaintiff.

35. Plaintiff has exhausted all available administrative remedies in pursuit of a resolution of this matter, including repeatedly requesting the processing of the case with the Defendants.

SECOND CLAIM FOR RELIEF
(Violation of Right to Due Process of Law)

For the second claim for relief against all Defendants, Plaintiff alleges and states as follows:

36. Plaintiff realleges and incorporates by reference the foregoing paragraphs as though fully set out herein.

37. The right to fundamental fairness in administrative adjudication is protected by the Due Process Clause of the Fifth Amendment to the United States Constitution. Plaintiff may seek redress in this Court for Defendants' combined failures to provide a reasonable and just framework of adjudication in accordance with applicable law.

38. The combined delay and failure to act by Defendants has violated the due process rights of Plaintiff.

39. The combined delay and failure to act by Defendants has irrevocably harmed Plaintiff in the denial of an opportunity to remain in the U.S. and to serve U.S. citizens in a

medically-underserved area.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff Omar Tayeh requests the following relief:

1. That this Honorable Court assume jurisdiction over this action;
2. That this Honorable Court issue a writ of mandamus compelling Defendants to promptly complete all processing of Omar Tayeh's applications within thirty days;
3. That this Honorable Court take jurisdiction of this matter and adjudicate Omar Tayeh's applications pursuant to this Court's declaratory judgment authority;
4. That this Honorable Court issue a writ of mandamus compelling Defendants to issue a waiver and an H1b visa to Omar Tayeh;
5. That this Honorable Court issue a writ of mandamus compelling Defendants to explain to Plaintiff the cause and nature of the delay and inform Plaintiff of any action he may take to accelerate processing of the applications;
6. Attorney's fees, legal interests, and costs expended herein, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412;
7. Such other and further relief as this Honorable Court may deem just and proper.

RESPECTFULLY SUBMITTED
July 9, 2020

/s/ James O. Hacking, III

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