

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

XXXXXXXXXX,)	
)	
Plaintiff,)	
v.)	
)	Civil Action No.
ELAINE DUKE, Acting Secretary,)	
Department of Homeland Security;)	Agency No. A000-000-000
JAMES MCCAMENT, in his official)	
capacity as Director of the United States)	
Citizenship and Immigration Services;)	
JEFF SESSIONS, in his official)	
Capacity as Attorney General; and)	
XXXX, in her official capacity as Director of the)	
USCIS Vermont Service Center,)	
)	
Defendants.)	
)	

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF; PETITION FOR U
NONIMMIGRANT STATUS**

To the Honorable Judges of Said Court:

Plaintiff, XXXXXXXXXXXXX, through undersigned counsel, alleges as follows:

INTRODUCTION

1. Plaintiff is a citizen of Mexico who has resided in the United States for the past 26 years.
His application for U non-immigrant status has been unlawfully and unreasonably delayed.
2. Plaintiff applied for U status based on his marriage to his spouse, who received her U status on August 19, 2013.

JURISDICTION

3. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 because Plaintiff's claims arise under the Immigration and Nationality Act, 8 U.S.C. §1101 *et seq.* and regulations arising thereunder.
4. This Court also has jurisdiction under 28 U.S.C. § 2201*et seq.* (Declaratory Judgment Act). This Court may grant declaratory and injunctive relief pursuant to 28 U.S.C. § 1361, 2202, and 5 U.S.C. §702. Under 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.”
5. Jurisdiction is also conferred pursuant to 5 U.S.C. §§ 555(b) and 702, the Administrative Procedures Act (“APA”). The APA requires USCIS to carry out its duties within a reasonable time and USCIS is subject to 5 U.S.C. §§ 555(b). *See Trudeau v. FTC*, 456 F.3d 178, 185 (D.C. Cir. 2006).
6. This Court retains original mandamus jurisdiction under 28 U.S.C. § 1361. 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.
7. As set forth below, the delay in processing the Plaintiff's properly filed U visa application is unreasonable.

VENUE

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and § 1391(e) because Respondents/Defendants (“Defendants”) are officers or employees of agencies of the United States government, acting in their official capacity under color of legal authority, and a substantial portion of the events and omissions giving rise to the claims herein occurred in this district. No real property is involved in this action.

9. Because national policy concerning adjudication of applications for immigrant benefits is formulated by the DHS and implemented by USCIS, venue is proper in this district.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

10. No exhaustion requirements apply to the Plaintiff's complaint. The Plaintiff is owed a duty, for the Department of Homeland Security ("DHS") and United States Citizenship and Immigration Service ("USCIS") to adjudicate his application for U status, which has been duly filed with USCIS. Defendants have unreasonably delayed and failed to adjudicate the Plaintiff's application for almost a year. The Plaintiff has no other adequate remedy available for the harm he seeks to redress.

FACTS AND PROCEDURAL HISTORY

11. The Plaintiff is a citizen of Mexico who has lived in the United States since he arrived on September 21, 1991 at the age of six. He is now thirty-two years old. Client has been detained by the Department of Homeland Security in Georgia, at the tax-payers expense, since mid-August, 2016.
12. Defendants are officials of the government agencies that have failed to adjudicate Plaintiff's U status application within a reasonable time period prescribed by law.
13. Because Mr. XXXXXXXX ' s wife, XXXXXXXXXXXX XXXXXXXX, was a victim of a serious crime, she filed an application for U non-immigrant status under 8 USC §101(a)(15)(U), 214(p), with USCIS. It was approved on August 19, 2013. Mr. XXXXXXXXXXXX filed an application for U non-immigrant status and waiver, as the derivative spouse of a U status recipient, on August 26, 2016.
14. CIS determined that Plaintiff was *prima facie* eligible for U status under 8 CFR 214.14(b) on January 24, 2017. Plaintiff received a Request for Evidence ("RFE") notice on May 3,

2017, seeking additional information about his eligibility for U status. Plaintiff sent the additional information to USCIS on June 14, 2017.

15. CIS has failed to adjudicate Plaintiff's application for the past eleven-and-a-half months. He has been unlawfully deprived of relief for almost a year, because of unreasonably and extraordinary agency delays. Plaintiff has fulfilled all of the statutory requirements for filing this application, yet, CIS has failed to adjudicate Plaintiff's application.
16. Plaintiff through his counsel has made numerous written, telephonic, congressional, inquiries with USCIS over the past year concerning the Plaintiff's pending U status application. Plaintiff's counsel has also contacted Senator Johnny Isakson's office in April and July 2017 to request that Plaintiff's case adjudicated.
17. The Plaintiff has been detained by ICE at the United States tax-payers expense since August 23, 2017. He was issued a Notice to Appear on August 23, 2016. He is subject to mandatory detention and is not eligible for bond.
18. At the Plaintiff's final Master Calendar hearing on July 19, 2017, the Immigration Judge denied Plaintiff's request for a continuance to allow DHS additional time to decide Plaintiff's U status application. Plaintiff was order removed on July 19, 2017 and he filed an appeal of this decision with the Board of Immigration Appeals on August 17, 2017. The appeal is currently pending.
19. Plaintiff's long and unnecessary detention is due to the Defendants' failure to timely adjudicate his U status. The Defendants' inaction in the Plaintiff's case has caused an unnecessary amount of expense to the US government.
20. The cost to the US taxpayers will immediately cease once the Department of Homeland Security adjudicates Plaintiff's case. If the case is approved, Plaintiff will be released from

custody as a U-status non-immigrant. If the case is denied, Plaintiff will withdraw his appeal to the BIA and be removed from the United States.

21. The continued delay in adjudicating Plaintiff's application is in direct conflict with current government policy. At the direction of the President, the Office of Management and Budget (OMB) has initiated efforts across the government to reduce inefficiency and government waste. On April 12, 2017, the OMB announced the initiative, *Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce*, with a mission "to chart the course for a restrained, effective, and accountable Government to better serve the American people." The plan instructs agencies to "immediately act to streamline the Government while developing their longer-term plans to:

- Take immediate action to save taxpayer money and reduce their workforces.
- Develop a plan to maximize the performance of Government workers by the end of June.
- Submit an Agency Reform Plan in 180 days to modernize and streamline their operations."

22. The Department of Homeland Security has failed to realize these important government goals in the Plaintiff's case, by keeping Plaintiff detained for almost a year, and failing to save taxpayer money by adjudicating this case.

23. Plaintiff seeks declaratory and injunctive relief to require the Defendants to adjudicate his application for U-status within a reasonable amount of time, and asks the Court to declare the agencies' delay to be in violation of laws and regulations governing administrative agency action.

CAUSE OF ACTION

24. The Victims of Trafficking and Violence Protection Act of 2000 (amended by the Violence Against Women and Department of Justice Reauthorization Act of 2005 and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008) created the “U” non-immigrant status and visa classification for those who can establish that they “suffered substantial physical or mental abuse” as a result of having been the victim of specified criminal activity, and have assisted law enforcement in investigating or prosecuting the related criminal activity. 8 U.S.C. § 1101(a)(15)(U). 10,000 visas are provided per year to person who are eligible; however this 10,000 “cap” only applies to principal aliens, not to spouses or other derivatives. 8 U.S.C. § 1184(p)(2)(B).
25. The Plaintiff filed for U status as a derivative spouse to an approved U-1 applicant, XXXXXX XXXXXX. Mrs. XXXXXXXXX received her U status on August 19, 2013.
26. The Defendants have sufficient information to determine the Plaintiff’s eligibility for U status pursuant to applicable requirements. The Defendant USCIS has unreasonably delayed the adjudication of Plaintiff’s application for U status for almost one year, thereby depriving the Plaintiff of his right to a timely decision on his immigration status.

FIRST CLAIM OF RELIEF

27. A mandamus plaintiff must demonstrate the following: (1) that he has a clear right to the relief requested; (2) that the defendant has a clear duty to perform the act in question; and (3) no other adequate remedy is available. *Power v. Barnhart*, 292 F.3d 781, 784 (D.C. Cir. 2002). The Plaintiff here meets all of these criteria listed.
28. The Plaintiff has fully complied with all of the statutory and regulatory requirements for seeking U status, including submission of all necessary forms and supporting documents.

29. The Defendant USCIS has unreasonably failed to adjudicate the Plaintiff's application for U status for almost a year, thereby depriving the Plaintiff of his rights under 5 U.S.C. §§ 555(b) ("With 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") and 5 USC § 702

("A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.") In this case, the governments in action - failing to adjudicate an application- is the same as an action.

30. The Defendants owe the Plaintiff a duty to adjudicate his U status application pursuant to the INA and its implementing regulations, and have unreasonably failed to perform that duty. The Plaintiff has no alternative means to obtain adjudication of his U status application and his right to issuance of the writ is clear and indisputable. *Power*, 292 F.3d at 784; see also *Matter of Sealed Case*, 151 F.3d at 1063.

31. The Court's intervention is appropriate because Defendants have failed to act within a reasonable period of time. The Plaintiff has already waited almost a year for adjudication of his U status and spent all of that time detained under ICE custody. This is an unacceptable and unreasonably delay.

32. As a result of Defendants actions, Plaintiff has suffered and continues to suffer injury. Declaratory and injunctive relief is therefore warranted.

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

SECOND CLAIM OF RELIEF

34. Plaintiff re-alleges and reasserts the foregoing paragraphs as if set forth fully herein.
35. 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).
36. The court also may hold unlawful and set aside agency action that 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).

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Assume jurisdiction over the matter;
2. Order Defendants and those acting under them to promptly adjudicate, in a time period not to exceed 30 days, Plaintiff’s application for U status;
3. Issue a declaratory judgment holding unlawful the failure of Defendants Duke, Mccament and Sessions to adjudicate Plaintiff’s application for U status;
4. Grant reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. §504, 28 U.S.C. §2412, and
5. Grant such other and further relief as this Court deems proper under the circumstances.

Respectfully Submitted this ____ day of _____, 2017.

LAW OFFICE OF KERRY E. MCGRATH

Kerry E. McGrath
Georgia State Bar No. 493113
1100 Spring Street NW, Suite 760
Atlanta, GA 30309
404-377-6600 (phone)
888-517-4287 (fax)

CERTIFICATE OF SERVICE

I hereby certify that the forgoing Complaint For Declaratory and Injunctive Relief; Petition For Naturalization was served by **Certified Mail, Postage Pre-Paid** on:

United States Attorney's Office
75 Spring Street, SW, Suite 600
Atlanta, GA 30303

Paul Onyango
Director of the Vermont Service Center
United States Citizenship and Immigration Services
75 Lower Welden
St. Albans, VT 05479-0001

Elaine Duke
Acting Secretary
Department of Homeland Security
Washington, DC 20528

James McCament
Acting Director, United States Citizenship and Immigration Services
Department of Homeland Security
245 Murray Lane SW
Washington, DC 20528

Jeff Sessions, Attorney General
US Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Kerry E. McGrath
Ga. Bar No. 493113
1100 Spring Street NW, Suite 760
Atlanta, GA 30309
404-377-6600 (phone)
888-517-4287 (fax)