

APPENDIX C-1
[COMPLAINT FOR INJUNCTIVE AND MANDAMUS RELIEF]
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

LISA DOE and
BORIS DOE,

Plaintiffs,

v.

JANET NAPOLITANO, SECRETARY
OF UNITED STATES DEPARTMENT
OF HOMELAND SECURITY;
MICHAEL AYLES, ACTING
DIRECTOR OF UNITED STATES
CITIZENSHIP AND IMMIGRATION
SERVICES; KEITH BROWN, ACTING
FIELD OFFICE DIRECTOR OF
SEATTLE SERVICE CENTER,
UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES; U.S.
DEPARTMENT OF HOMELAND
SECURITY; and UNITED STATES
CITIZENSHIP AND IMMIGRATION
SERVICES,

Defendants.

NO.

PLAINTIFF'S COMPLAINT
FOR INJUNCTIVE AND
MANDAMUS RELIEF

Agency Doc. No. A100-975-321

INTRODUCTION

1. Plaintiffs Lisa Doe (a United States citizen) and her husband, Boris Doe (a citizen of Mongolia), bring this mandamus action to compel defendants to complete the adjudication of their I-130, Petition for Alien Relative, pending since June 14, 2007. This delay is unreasonable as a matter of law.

2. Ms. Doe and Mr. Doe married on April 7, 2007, and filed an I-130 petition on June 14, 2007, the first step in the process for Mr. Doe to obtain permanent-resident status. To date, CIS has not adjudicated the I-130 petition.
3. The couple appeared before Citizenship and Immigration Services (CIS) on September 13, 2007, for the I-130 interview. In response to counsel's May 2008 status inquiries regarding the agency's delay in adjudicating the I-130, Seattle Field Office Director Julia Harrison replied merely that the office "is prioritizing N-400s [applications for citizenship] for the next couple of months."
4. Mr. Doe and his wife are prejudiced by the undue delay in the processing of this petition. Mr. Doe is in removal proceedings; his application for asylum, withholding of removal, and protection under the Convention Against Torture was denied by the Immigration Judge (IJ). The Board of Immigration Appeals (BIA) dismissed his appeal of the IJ's decision, and he appealed to the Ninth Circuit Court of Appeals. On September 30, 2008, the Ninth Circuit granted his petition for review and remanded the case to the BIA. A decision in his case is pending. Because the case is pending before the BIA, the I-130 petition must be approved before Mr. Doe can file his application for adjustment of status. But for the delay in adjudicating the I-130, Mr. Doe would be able to file his application for adjustment of status. CIS has acted in bad faith in refusing to adjudicate the adjustment application in a timely manner. CIS knows that because of its failure to adjudicate the I-130 petition, Mr. Doe may be forced to leave the United States without being able to file an application for adjustment of status. Plaintiffs file this lawsuit in order to ensure that the I-130 petition is promptly adjudicated, and in order to ensure that Mr. Doe can have his application for adjustment of status adjudicated before he is forced to leave the United States.

PARTIES

5. Plaintiff Lisa Doe is a U.S. citizen who is married to Mr. Doe. The Petition for Alien Relative (Form I-130), filed on behalf of Ms. Doe's husband, has been pending with CIS since June 14, 2007. Ms. Doe and her husband reside in George, Washington.
6. Plaintiff Doe is the husband of Ms. Doe and the beneficiary an I-130 petition, pending since June 14, 2007, filed by his wife on his behalf. He resides with his wife in George, Washington.
7. Defendant Janet Napolitano is the Secretary of the United States Department of Homeland Security and is sued in her official capacity only. Defendant Napolitano is charged with the administration of the United States Citizenship and Immigration Services (CIS) and implementing the Immigration and Nationality Act. 8 CFR §2.1.
8. Defendant Michael Aytes is the Acting Director of CIS and is sued in his official capacity only. CIS is the component of the Department of Homeland Security that is responsible for adjudicating Plaintiffs' I-130 petition.

9. Defendant Keith Brown is the Acting Field Office Director of the Seattle Service Center of CIS and is sued in his official capacity only. The Seattle Service Center is charged with the administration of the Immigration and Nationality Act and the adjudication of petitions Doeed by people living in the Seattle area. Plaintiffs' I-130 petition is currently pending at the Seattle Service Center.

10. Defendant Department of Homeland Security is the department within which the CIS adjudicates petitions for alien relatives. DHS operates within this district, with headquarters in Washington, D.C.

11. Defendant Citizenship and Immigration Services is the component of DHS that adjudicates petitions for alien relatives. CIS operates within this district, with headquarters in Washington, D.C.

JURISDICTION AND VENUE

12. Jurisdiction of the Court is predicated upon 28 USC §§1331 and 1346(a)(2) in that the matter in controversy arises under the Constitution and laws of the United States, and the United States is a Defendant. This Court also has jurisdiction over the present action pursuant to 28 USC §2201, the Declaratory Judgment Act; 5 USC §702, the Administrative Procedures Act; and 28 USC §1361, regarding an action to compel an officer of the United States to perform his or her duty.

13. Venue is proper in this District under 28 USC §1391(e), because a substantial part of the events and omissions giving rise to the claim occurred in this district, and because Defendants operate within this district.

FACTS AND BACKGROUND

14. Plaintiff Lisa Doe is a U.S. citizen residing in George, Washington. She is married to Plaintiff Boris Doe, a citizen of Mongolia. Mr. Doe entered the United States on January 22, 2003, as a nonimmigrant visitor for pleasure (B-2) with authorization to remain in the United States until July 21, 2003. He filed for asylum on June 21, 2003. His case was referred to the Immigration Court. Judge Anna Ho denied his application on June 3, 2004, and granted him voluntary departure. An appeal of this decision was dismissed by the Board of Immigration Appeals (BIA) on August 15, 2005. Mr. Doe appealed the BIA decision to the Ninth Circuit Court of Appeals. On September 30, 2008, the Ninth Circuit granted his petition for review and remanded the case to the BIA. The case is currently pending at the BIA.

15. Ms. Doe and Mr. Doe married on April 7, 2007, and filed an I-130, Petition for Alien Relative, on June 14, 2007. Because Mr. Doe is the spouse of a U.S. citizen, visa availability is not an issue; there is no numerical limitation for immediate relatives of U.S. citizens. INA §201(b)(2)(A)(i); 8 USC §1151(b)(2)(A)(i). With the I-130 petition, the couple submitted the requisite fee and evidence of their bona fide marriage, including their marriage certificate, a joint bank account statement,

photographs of the couple's wedding, photographs of the couple with friends and family. 8 CFR §204.2(a)(1)(iii)(B). Concurrently with the filing of the I-130 petition, Ms. Doe and her husband filed an I-485 Application to Register Permanent Residence or Adjust Status.

16. Plaintiff Doe reported for a biometrics appointment at Defendant CIS and was fingerprinted on July 18, 2007.

17. Plaintiffs attended the I-130 interview at the Seattle CIS Field Office on September 13, 2007. The only issue in the adjudication of the I-130 petition is whether Ms. Doe and Mr. Doe have a bona fide marital relationship. The couple is living in a bona fide marital relationship, and there is no legitimate reason to doubt that they are living in a bona fide marital relationship.

18. CIS has provided no explanation to Ms. Doe and Mr. Doe of the reason for the delay in the adjudication of their I-130 petition. CIS has not provided any indication to the couple that CIS has any reason to doubt the validity of their marriage, and CIS has not requested Ms. Doe or Mr. Doe to provide any additional information concerning the bona fides of their marriage.

19. To date, CIS has failed to take any steps to complete the adjudication of Mr. Doe and Ms. Doe's I-130 petition.

20. Plaintiffs' counsel made status inquiries to CIS regarding the adjudication of the I-130 on May 7, 2008, and again on May 28, 2008, and on October 30, 2008. Seattle Field Office Director Julia Harrison responded that the office is "prioritizing N-400s [applications for citizenship] for the next couple months" and that the office would "get this I-130 adjudicated as soon as possible."

21. Plaintiffs have provided ample evidence of the bona fide nature of their marriage with their I-130 petition and during their September 13, 2007, interview at CIS.

22. Defendants' refusal to timely adjudicate the I-130 petition has caused and will cause Plaintiffs great hardship. Plaintiff Doe is in removal proceedings. If the I-130 petition had been adjudicated in the ordinary course of CIS business, then the I-130 petition already would have been approved and Mr. Doe would have been able to seek adjustment of status. Because CIS has not adjudicated the I-130 petition, Mr. Doe has been unable to seek to adjust his status to lawful permanent resident.

23. Plaintiffs have exhausted all administrative remedies and there are no further administrative acts Plaintiffs can take to obtain the benefits to which they are entitled.

FIRST CAUSE OF ACTION

24. Plaintiffs re-allege and incorporate by reference, as if fully set forth herein, the allegations in paragraphs 1-23 above.

25. Defendants' failure to adjudicate and approve Plaintiffs' I-130 petition constitutes an unreasonable failure to act in violation of the Administrative

Procedures Act and denies Plaintiffs due process and equal protection of the laws guaranteed by the Fifth Amendment of the United States Constitution.

SECOND CAUSE OF ACTION

26. Plaintiffs re-allege and incorporate by reference, as if fully set forth herein, the allegations in paragraphs 1-23 above.

27. Defendants' refusal to adjudicate the application for adjustment of status before a final administrative decision is made in removal proceedings violates the Immigration and Nationality Act, the Administrative Procedures Act, and the Constitution. Plaintiffs have a clear right to the relief requested; Defendants have a clear duty pursuant to the Immigration and Nationality Act to adjudicate Plaintiffs' I-130 petition; and there is no other adequate remedy available.

PRAYER FOR RELIEF

The Plaintiffs request the Court to grant the following relief:

A. Order Defendants to adjudicate Plaintiffs' I-130 petition on or before 60 days from the filing of this complaint, 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 the Court's orders.

C. Award reasonable costs and attorneys' fees; and

D. Grant such other relief as the Court may deem just and proper.

DATED: January ___, 2009.

Robert Lawyer