

Washington, DC 20528-0485)
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Defendants.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Marina Seraji (“Plaintiff” or “Ms. Seraji”), by and through counsel, seeks Declaratory and Injunctive Relief and states the following in support thereof:

INTRODUCTION

1. This is a civil action brought by Plaintiff to compel defendant USCIS, an agency of the United States to respond to Plaintiff’s FOIA request. Plaintiff’s application has been pending with U.S. Citizenship and Immigration Services (“USCIS”) since November 11, 2019. Defendant USCIS has not responded at all to the request. Response to the request is a nondiscretionary ministerial duty owed to Plaintiff. Having no other adequate remedy to obtain that right, Plaintiff brings this action to compel USCIS to perform its duties as required by law. Plaintiff also brings this action for declaratory and injunctive relief asking this Court to declare her an asylee and to order a Refugee Travel Document to be issued to her to board a plane to the United States.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. §552(a)(4)(B) (Freedom of Information Act), 5 U.S.C. § 551 et seq., 5 U.S.C. § 555(b), §702, §704 and §706 (Administrative Procedure Act), and 28 U.S.C. §1331 (federal question) as this action arises under the Freedom of Information Act. 5 U.S.C. §552 et seq.

3. The aid of the Court is invoked under 28 USC §§ 2201 and 2202, authorizing a declaratory judgment.

4. Venue is proper in this Court under 5 U.S.C. 552(a)(4)(B).

PARTIES

5. Plaintiff was born in Iran, is stateless and resides in Tirana, Albania under a temporary permit pursuant to an agreement brokered with the Albanian government after the invasion of Iraq, forcing Plaintiff and others in her organization to flee from Iraq. Plaintiff's alien number is A28-290-330.

6. Defendant United States Citizenship and Immigration Services ("USCIS") is an agency within the Department of Homeland Security which has the custody and control of original INS legacy files. USCIS is also charged by law with the duty of adjudicating asylum applications, refugee applications, refugee travel document applications and/or humanitarian parole applications. USCIS is an agency within the meaning of 5 U.S.C. § 552(f).

7. Defendant U.S. Customs and Border Protection ("CBP") is an agency within the Department of Homeland Security which has control over authorization to admit foreign nationals to the United States and to authorize air carriers to board foreign nationals abroad to be admitted or paroled into the United.

8. Defendant Troy A. Miller is the Senior Official Performing the Duties of the Commissioner of CBP, in his official capacity, who can authorize the boarding of individuals on airplanes bound for the United States at points of entry.

9. Defendant Department of Homeland Security is a federal agency headquartered in Washington, DC, at 2707 Martin Luther King, Jr. Avenue, SE, Washington, DC 20528 and oversees USCIS and CBP.

FOIA REQUEST & RELIEF SOUGHT

10. Plaintiff has made a FOIA request for her original INS legacy file. With no response having been received from USCIS, Plaintiff seeks to have this Court compel production of a copy her file. Plaintiff also seeks a declaration from this Court that she holds the status of an asylee; and

for this Court to direct USCIS and CBP to provide the necessary authorization for Plaintiff to board a plane from Albania to the United States and to direct USCIS to adjudicate Plaintiff's I-131, refugee travel document, which is an application for renewal of a previously issued travel document by Defendant USCIS (legacy INS).

STATEMENT OF FACTS

11. Ms. Seraji was born on November 6, 1961 in Iran and was formerly a citizen of Iran. She lived in Iran until she was a high school student in the 1970s. During the late 1970s, Ms. Seraji came to the United States and completed high school in Des Moines, Iowa.

12. For approximately two years, Ms. Seraji attended the University of Iowa, from the fall of 1980 to the spring of 1982.

13. While in college, she met and fell in love with a fellow Iranian student, Mohammad Reza Shayan. Mr. Shayan was born on May 10, 1959 in Hamedan, Iran.

14. Mr. Shayan and Ms. Seraji had one son, Mosa who was born on January 1, 1985 in Bronx, New York, who currently resides in Des Moines, Iowa. He is an American citizen.

15. After her marriage, Ms. Seraji sought political asylum at the New York INS office and, upon information and belief, was granted political asylum in the early 1980s.

16. On or about July 18, 1986, the New York legacy INS office issued Ms. Seraji a Refugee Travel Document, valid for re-entry into the United States as an asylee until July 17, 1988.

17. After issuance of the Refugee Travel Document, Mr. Shayan, Ms. Seraji, and their son left the United States to join the Mujaheddin-e-Khalq (MEK) in Iraq to fight against the Islamic Regime in Iran sometime between 1986 and 1988.

18. Ms. Seraji was moved, along with other MEK members, from Iraq to Albania between 2014 and 2016 where she is permitted to remain temporarily.

19. Upon information and belief, sometime in early 2016, Ms. Seraji, in the company of two of her American sisters, was interviewed by an official at the United Nations in Tirana, Albania. The specific immigration benefit she was seeking is unknown, but the sisters recall the U.N. official requested financial documentation from Plaintiff's family members in the United States. This documentation was provided promptly.

20. Upon information and belief, in approximately October 2016, Ms. Seraji was interviewed by two American officials at the United States Embassy in Tirana, Albania. One of Ms. Seraji's American sisters flew to Albania to accompany her to the interview at the American Embassy, but she was not permitted to be present at the interview at the Embassy. Ms. Seraji was told by the US official at the Embassy that she would receive word on her application in about six months from the date of the meeting. She heard nothing further. Plaintiff is not aware whether the officers who interviewed her were from the USCIS, who have jurisdiction over refugee and humanitarian parole applications intelligence agencies or the Department of State. She does not recall if her legacy INS file was present at the interview and does not recall being asked whether she had been granted political asylum in the United States. At the conclusion of the interview, she was advised that she would hear something within six months. To date she has had no response from any government official.

21. In 2019, Ms. Seraji retained undersigned counsel, and a Freedom of Information Act request was filed with the United States Customs and Immigration Service (USCIS) on November 11, 2019 under Control Number NRC 2019698666 REQ.

22. In 2021, undersigned counsel contacted United States Customs and Border Protection (CBP) to determine whether it possessed any records for Ms. Seraji. A CBP official informed undersigned counsel that, according to information available to him, Ms. Seraji filed an

I-590 application for status as a refugee, which applications are filed by refugees who are outside of the United States and processed by legacy INS offices abroad. No disposition was indicated.

23. Upon information and belief, Ms. Seraji may have filed an I-590 Refugee Application with the USCIS delagatee in Albania in 2016. Neither Ms. Seraji nor any relatives have any records related to the filing. USCIS records would reflect that she had already been granted asylum status and did not need to file an I-590 refugee application abroad had the officials performed a record check.

24. Additionally, in 2021, undersigned counsel contacted the USCIS Headquarters Refugee, Asylum and International Operations Directorate for assistance in locating any records related to Ms. Seraji or for any further information.

25. Upon information and belief, any asylum application, refugee application, and/or humanitarian parole application would have been under the jurisdiction of the Refugee, Asylum and International Operations Directorate of USCIS.

26. While the office agreed to reach out to the FOIA unit to facilitate a response to the request, no request has been forthcoming.

27. Additionally, the USCIS Headquarters Refugee, Asylum and International Operations Directorate advised undersigned counsel that their records indicated that Ms. Seraji filed a humanitarian parole application, but the application was denied. Upon information and belief, a special unit was set up at the United States Embassy in Albania during, at least, 2016 to process MEK members defecting from the MEK to assist with resettlement in the United States. Upon information and belief, the unit is now inoperative.

28. According to USCIS policies and procedures, in processing refugee applications and requests, USCIS would be required to review Ms. Seraji's original INS legacy file before finally adjudicating the application and/or request. Protocols also suggest that her original INS

legacy file be reviewed before processing the request for humanitarian parole. Moreover, had the INS legacy officers in Albania performed record checks and reviewed her U.S. Refugee Travel Document, they would have discovered that she was an asylee and did not require duplicate processing as a refugee or humanitarian parolee. Ms. Seraji was in possession of a copy of the Refugee Travel Document at the time of the interviews in Albania and continues to be in possession of a copy of the document. The document clearly indicates she was granted political asylum in the United States and was issued the Refugee Travel Document by the legacy INS office in New York City.

29. Ms. Seraji must be given access to her original INS legacy file.

30. Undersigned counsel has taken more steps to locate this file in the last couple of months than USCIS has done for over eighteen (18) months.

31. Currently, Ms. Seraji is a prisoner in her own apartment in Albania, fearful that MEK members will discover her whereabouts, kidnap her, return her to the MEK, or worse. Her mental health has deteriorated as she is unable to have any direct human contact, and she is undergoing mental health therapy in Albania.

32. Ms. Seraji believes her life to be in danger. Thinking she had finally escaped the MEK in 2016, she now lives in constant trepidation as she awaits more information and assistance in returning to the United States, her adopted country, for the last five years or so.

CAUSES OF ACTION

I.

Violation of Freedom of Information Act

33. Plaintiff incorporates paragraph 1 through 32 as if fully set forth herein.

34. Plaintiff's FOIA request seeks "agency" records within the custody and control of USCIS.

35. To date, USCIS has failed to produce any responsive records to Plaintiff's FOIA request. Plaintiff has a legal right under FOIA to obtain the agency documents, and there is no legal basis for USCIS' failure to respond to Plaintiff's request and/or provide access to the documents.

36. USCIS' failure to respond to Plaintiff's FOIA request and promptly make the requested documents available violates FOIA, 5 U.S.C. § 552(a)(3)(A) and (a)(6)(A)(i), and all applicable regulations promulgated thereunder.

37. As a result, Plaintiff is entitled to declaratory and/or injunctive relief finding that USCIS has violated FOIA, and that Plaintiff is immediately entitled to receive all records in response to her request and ordering USCIS to immediately produce copies of all records in response to her request without any further delay.

II.

Violation of Administrative Procedures Act, 5 U.S.C. §§ 702 and 706

38. Plaintiff incorporates paragraph 1 through 37 as if set forth in full herein.

39. Defendants' practices, policies, conducts, and failure to act as alleged herein violate, inter alia, the Administrative Procedure Act, 5 U.S.C. §§ 702 and 706, because agency action is unlawfully withheld or unreasonably delayed under § 706 (1).

40. Defendants willfully and unreasonably delayed and refused to provide Plaintiff with the information requested under FOIA in a timely manner and has acted arbitrarily and capriciously.

41. Defendants' have willfully and unreasonably failed to provide Plaintiff with the necessary authorization to the air carriers to board Plaintiff and return her to the United States as an asylee. Defendants have been on notice since at least 2016 that she was a returning asylee and failed to process her as a returning asylee.

**III.
Declaratory Judgment and/or Injunctive Relief**

42. Plaintiff incorporates paragraph 1 through 41 as if set forth in full herein.

43. Plaintiff is an asylee. She has filed an I-131 – Application for a Refugee Travel Document with USCIS to renew her Refugee Travel Document to facilitate her return to America.

44. Plaintiff’s mental health has deteriorated as she is unable to have any direct human contact, and she is undergoing mental health therapy in Albania. She remains fearful for her personal safety.

45. Plaintiff is and remains irreparably harmed and is without an adequate remedy at law.

46. Plaintiff asks the Court to declare her an asylee and order that she be authorized to board a plane to the United States.

47. Defendants have been on notice since at least 2016 that she was a returning asylee and failed to process her as a returning asylee.

48. Plaintiff asks the Court to order USCIS to adjudicate her application for a Refugee Travel Document and issue such document within ten (10) days of the Court’s Order.

PRAYER FOR RELIEF

WHEREFORE, and in light of the foregoing, Plaintiff prays that the Court:

A. Find that Defendant exceeded the legal response time of twenty days in 5 U.S.C. §552(a)(6)(A)(i) and failed to give written notice if a ten-day extension was needed in the “unusual circumstances” set forth in 5 U.S.C. §552(a)(6)(B);

B. Find that the agency action in this case was “arbitrary and capricious” thus violating the Administrative Procedure Act;

- C. Order Defendant to process Plaintiff's FOIA request forthwith;
- D. Order Defendant to immediately produce a copy of Plaintiff's original INS legacy file;
- E. Retain jurisdiction of this action for purpose of enforcing the orders issued by the Court;
- F. Declare that Plaintiff remains an asylee and order Defendants to issue a Refugee Travel Document and other necessary paperwork to board a plane from Albania to the United States.
- G. Award Plaintiff attorneys' fees and costs pursuant to 28 U.S.C. § 2412 and any other applicable statutory, common law, or Constitutional provision; and
- H. Grant Plaintiff any such other relief as this Court deems just and proper at law and in equity.

Respectfully submitted on the 27th day of July, 2021.

/s/ Jan Pederson
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