

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

TONY PAUL WILKEY,
18525 Peninsula Club Dr.
Cornelius, NC 28031,

Civ. No. 1:22-cv-455

Plaintiff,

v.

UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES,
5900 Capital Gateway Dr. #2040
Camp Springs, MD 20746

Defendant.

COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff Tony Paul Wilkey brings this Complaint against Defendant and alleges as follows:

NATURE OF THE ACTION

1. Mr. Wilkey seeks to compel Defendant United States Citizenship and Immigration Services (“USCIS”) to produce records as required by the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

2. Mr. Wilkey submitted an Application to Adjust Status on April 15, 2020. In connection with this Application, he was interviewed by a USCIS officer on November 3, 2021 via videoconference. During that interview, the officer asked Mr. Wilkey about various comments he allegedly made in 2012 to a State Department consular officer when he renounced his United States citizenship. Mr. Wilkey did not recall any of the statements referenced by the USCIS officer. When asking Mr. Wilkey about these purported statements, the USCIS officer read from a file,

indicating that she was reading from notes or other documentation. Indeed, renunciation interviews are typically documented in some form.

3. On November 5, 2021, immediately following that interview, Mr. Wilkey submitted a FOIA request to USCIS, requesting his entire individual immigration case file, known as an Alien Registration File (“A-file”). An A-file contains information critical to determining noncitizens’ eligibility to apply for an immigration benefit or status, including lawful permanent resident status. Without access to his full A-file, Mr. Wilkey is hindered in his ability to fully support his application for lawful permanent resident status. In particular, Mr. Wilkey requires access to the notes or documentation from his 2012 renunciation interview to adequately respond to any concerns held by or position taken by USCIS.

4. USCIS provided some, but not all, of Mr. Wilkey’s A-file in response to his FOIA request. USCIS withheld 11 pages in full and 79 in part. None of the pages USCIS provided contained information pertaining to his renunciation interview in 2012. But, because of the USCIS officer’s questions to Mr. Wilkey, information relating to his renunciation interview must appear in Mr. Wilkey’s A-file. In fact, USCIS redacted two pages of materials in the place in Mr. Wilkey’s A-file where the 2012 documentation would typically appear.

5. USCIS cited 5 U.S.C. §§ 552(b)(3) and (b)(7)(e) to justify withholding these pages. Section 552(b)(3) exempts USCIS from disclosing information statutorily prohibited from disclosure. Here, USCIS referenced 8 U.S.C. § 1202(f), which exempts State Department records “pertaining to the issuance or refusal of visas or permits to enter the United States.” That provision is flatly inapplicable here. Section 552(b)(7)(e) permits withholding of law enforcement records that would disclose techniques or procedures for law enforcement investigations. That exemption is likewise irrelevant.

6. Mr. Wilkey appealed, again requesting his entire A-file. More specifically, he explained USCIS was unlawfully withholding the notes or documentation from his renunciation interview, as those notes did not relate to the issuance or refusal of a visa or permit to enter the United States. Further, personal privacy was not a concern as the notes pertained to Mr. Wilkey's own interview.

7. In response to Mr. Wilkey's appeal, USCIS released 63 additional pages in their entirety and 3 additional pages in part. But none of the additional disclosed information contained the relevant documentation from Mr. Wilkey's renunciation interview. This time, USCIS cited only one basis to justify continued withholding of the balance of material in the file—Section 552(b)(6), which permits withholding information when disclosure “would constitute a clearly unwarranted invasion of personal privacy.” That provision cannot justify the withholding of the 2012 interview notes or documentation, which relate solely to Mr. Wilkey himself.

PARTIES

8. Plaintiff Tony Paul Wilkey is British citizen residing in Cornelius, North Carolina. He has an Adjustment of Status application pending before USCIS.

9. Defendant United States Citizenship and Immigration Services (“USCIS”) is an agency of the United States government within the Department of Homeland Security, with its principal office at 5900 Capital Gateway Dr. #2040, Camp Springs, MD 20746. Among other duties, USCIS is responsible for adjudicating applications for certain immigration benefits. To assist in these determinations, USCIS maintains A-files in its possession, custody, and control.

JURISDICTION AND VENUE

10. This action seeks injunctive relief under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

11. This Court has subject matter jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B). Subject matter jurisdiction is also proper under 28 U.S.C. § 1331 because the cause of action asserted arises under the laws of the United States.

12. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B).

13. Mr. Wilkey has exhausted his administrative remedies, as USCIS continues to withhold portions of his A-file even after an administrative appeal.

REGULATORY BACKGROUND

A. Adjustment of Status and A-files

14. Adjustment of status is the process for noncitizens to apply for lawful permanent resident status while present in the United States. The requirements to obtain lawful permanent resident status are complex and highly dependent on the relevant facts. *See generally* 8 U.S.C. §§ 1255-1257. Additionally, to adjust status, a noncitizen must be admissible, which carries its own set of complicated requirements. *See* 8 U.S.C. § 1182.

15. Applicants seeking an immigration benefit, such as lawful permanent resident status, routinely ask for A-files through FOIA requests. The information and documentation in the A-file typically includes past applications or petitions, past interactions with federal enforcement agencies, and other documentation relating to changes in immigration status. This information is critical to assessing a noncitizen's immigration options and developing complete and responsive applications for an immigration benefit. Delays in providing an A-file to a noncitizen causes unnecessary emotional and financial hardship, leaving a noncitizen in legal limbo while they wait to obtain these crucial records to assess and develop complete applications. More, untimely adjudication of a FOIA application can lead to USCIS wrongfully denying benefits, because a noncitizen lacks access to the essential factual record needed to demonstrate entitlement to an immigration status or benefit.

B. Mr. Wilkey's FOIA Request

16. Mr. Wilkey seeks to obtain his entire A-file in USCIS's possession. In particular, he seeks all information in his A-file related to his citizenship renunciation, including any notes or documents pertaining to his interview with a consular officer in 2012. Because notes or other documentation of renunciation interviews are commonly kept, and because the USCIS officer read from those notes—attributing to Mr. Wilkey a statement he allegedly made during his 2012 renunciation interview—it is plain that notes from Mr. Wilkey's 2012 interview appear within his A-file.

17. To that end, on November 5, 2021, Mr. Wilkey submitted a FOIA request to USCIS seeking his entire A-file.

18. On December 16, 2021, past the statutory timeframe for a response (5 U.S.C. § 552(a)(6)(A)(i)), USCIS provided some, but not all, of Mr. Wilkey's A-file. *See* Ex. A. USCIS identified 467 pages in Mr. Wilkey's A-file, but only released 377 pages in full and 79 pages in part. USCIS withheld 11 pages in their entirety. None of the pages USCIS provided contained the relevant renunciation interview notes that were referenced in his November 3, 2021, Adjustment of Status interview.

19. Two of the pages USCIS withheld in their entirety (pages 277 and 278) were located where any notes or documentation of Mr. Wilkey's renunciation interview would logically have been placed: between his oath of citizenship (and other naturalization materials) and his renunciation oath and statement of understanding, which were signed by Officer Jones, the consular officer who conducted the renunciation interview. The pages were marked as withheld pursuant to 5 U.S.C. §§ 552(b)(3) and (b)(7)(E). Those provisions permit withholding if disclosure is statutorily prohibited (*id.* § 552(b)(3)) or would disclose law enforcement techniques or procedures (*id.* § 552(b)(7)(E)). In its response letter, USCIS cited 8 U.S.C. 1202(f) as the statute

prohibiting disclosure, which concerns only State Department records “pertaining to the issuance or refusal of visas or permits to enter the United States.”

20. Mr. Wilkey appealed on December 22, 2021, again requesting his entire A-file. And he specifically argued that the notes from his renunciation interview were being unlawfully withheld, as they did not relate to the issuance or refusal of a visa or permit to enter the United States. He also explained that personal privacy was irrelevant as the notes pertained to Mr. Wilkey’s own interview.

21. USCIS released 63 additional pages in their entirety and 3 additional pages in part on January 28, 2022. *See* Ex. B. None of these documents pertained to Mr. Wilkey’s renunciation interview in 2012. In support of the continued withholding of portions of Mr. Wilkey’s A-file, USCIS cited only 5 U.S.C. § 552(b)(6), which permits withholding information when disclosure “would constitute a clearly unwarranted invasion of personal privacy.”

LEGAL ARGUMENT

22. Under FOIA, this Court has jurisdiction to “enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B).

23. The documents referenced in Mr. Wilkey’s FOIA request are being “improperly withheld.” Mr. Wilkey’s FOIA request “reasonably describe[d] the records being sought and was made “in accordance with” USCIS’s FOIA procedures. *Id.* § 552(a)(3)(A). Thus, USCIS was required to make the documents “promptly available” to Mr. Wilkey, which USCIS has not done. *Id.*

24. USCIS’s assertion that Section 552(b)(6) permits withholding the 2012 interview notes or documentation in Mr. Wilkey’s own A-file lacks any plausible merit. That provision allows agencies to withhold documents when disclosure “would constitute a clearly unwarranted

invasion of personal privacy.” 5 U.S.C. § 552(b)(6). But Mr. Wilkey seeks only information from his *own* A-file, including notes from an interview *he participated in himself*. USCIS’s failure to provide the remainder of Mr. Wilkey’s A-file, including any notes or documentation pertaining to his renunciation interview, is accordingly “improper[]” and unlawful. 5 U.S.C. § 552(a)(4)(B).

CLAIMS

COUNT I

Freedom of Information Act, 5 U.S.C. § 552

25. Mr. Wilkey hereby incorporates and re-alleges the foregoing paragraphs as though fully set forth herein.

26. FOIA requires agencies, upon receipt of a request for agency records that reasonably describes the records sought and conforms to applicable procedural rules, to “make the records promptly available.” 5 U.S.C. § 552(a)(3)(A).

27. Mr. Wilkey’s FOIA request, dated November 5, 2021, reasonably describes the particular documents sought and conforms to applicable procedure. FOIA therefore requires USCIS to produce the documents without delay.

28. Mr. Wilkey seeks an injunction ordering USCIS to produce the requested documents immediately.

PRAYER FOR RELIEF

WHEREFORE, Mr. Wilkey respectfully requests that this Court enter judgment in its favor and that the Court:

1. Order that Defendant USCIS disclose the requested documents in their entirety and promptly make copies available to Mr. Wilkey.
2. Award Mr. Wilkey costs and reasonable attorney’s fees incurred in this action.

3. Award Mr. Wilkey such other and further relief as the Court may deem just and proper.

Dated: February 22, 2022

Respectfully submitted,

/s/ Paul W. Hughes

Paul W. Hughes (Bar No. 997235)

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