

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IMMIGRANT INVESTORS ASSOCIATION,)
INC., d/b/a INVEST IN THE USA (“IIUSA”))
1440 G. St. NW,)
Washington, D.C. 20005)

Plaintiff,)

v.)

Case No.: 1:23-cv-51

UNITED STATES CITIZENSHIP AND)
IMMIGRATION SERVICES (“USCIS”),)
5900 Capital Gateway Drive,)
Camp Springs, MD 20746,)

Defendant.)

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF UNDER THE
FREEDOM OF INFORMATION ACT**

INTRODUCTION

1. This action is brought under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to compel United States Citizenship and Immigration Services (“USCIS”) to comply with a FOIA request filed by Plaintiff Immigrant Investors Association, Inc., d/b/a Invest in the USA (“IIUSA”).

2. IIUSA is a national membership-based not-for-profit 501(c)(6) trade association whose members include regional centers designated by USCIS to participate in the EB-5 Immigrant Investor Program. Among other things, IIUSA monitors changes in USCIS policy on its implementation of the EB-5 Program and educates its members on industry best practices.

3. In furtherance of those objectives, IIUSA filed a FOIA request with USCIS on or about November 29, 2022, seeking records relating to USCIS’s policies on the assignment, chain of custody, transmission and movement of I-526 and I-829 petitions. *See Exhibit A.*

4. USCIS acknowledged receipt of the FOIA request on November 29, 2022 and assigned the request **control number COW2022006031**. *See Exhibit B*. But to date, USCIS has neither produced any records in response to the FOIA request nor informed Plaintiff of any “unusual circumstances” that warrant additional time.

5. The statutory 20-day response deadline passed on December 28, 2022, pursuant to 5 U.S.C. § 552(a)(6)(A)(i).

6. As of December 29, 2022, the FOIA request remains pending according to the FOIA status report. *See Exhibit C*.

7. Through this lawsuit, IIUSA seeks to compel USCIS’s response to its November 29, 2022 FOIA request.

JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to FOIA, 5 U.S.C. § 552(a)(4)(B). The Court also has jurisdiction under 28 U.S.C. § 1331.

9. The Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

10. Venue is proper under 5 U.S.C. § 552(a)(4)(B).

PARTIES

11. Plaintiff IIUSA is a national membership-based 501(c)(6) not-for-profit trade association. IIUSA is primarily engaged in disseminating information to its members and has a compelling need for, and a vital interest in, the information sought in the FOIA request.

12. Defendant USCIS is a component of the Department of Homeland Security. It is also an “agency” within the meaning of 5 U.S.C. § 552(f)(1). USCIS has possession, custody, and control over records responsive to IIUSA’s FOIA request.

STATEMENT OF FACTS

A. Statutory Framework

13. FOIA promotes open government by providing every person with a right to request and receive federal agency records. 5 U.S.C. § 552(a)(3)(A).

14. In furtherance of its purpose to encourage open government, FOIA imposes strict deadlines on agencies to provide responsive documents to FOIA requests. 5 U.S.C. § 552(a)(6)(A).

15. An agency must comply with a FOIA request by issuing a determination within 20 business days of receipt of the request. 5 U.S.C. § 552(a)(6)(A)(i).

16. The determination “must at least inform the request of the scope of the documents that the agency will produce, as well as the scope of the documents that the agency plans to withhold under any FOIA exemptions.” *Citizens for Responsibility & Ethics in Wash. v. FEC*, 771 F.3d 180, 186 (D.C. Cir. 2013).

17. An agency may be entitled to one ten-day extension of time to respond to a request if it provides written notice to the requester explaining that “unusual circumstances” exist that warrant additional time. 5 U.S.C. § 552(a)(6)(B).

18. An agency must immediately notify the requester of its determination whether to comply with a request, and the reasons for it, and of the right of such person to appeal an adverse determination. 5 U.S.C. § 552(a)(6)(B)(ii).

19. An agency’s failure to comply with any timing requirement is deemed a constructive denial and satisfies the requester’s requirement to exhaust administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

20. A FOIA requester who exhausts administrative remedies may petition the court for injunctive and declaratory relief from the agency’s continued withholding of public records. 5

U.S.C. § 552(a)(4)(B).

B. Factual Background

21. Under the EB-5 Program, 8 U.S.C. § 1153(b)(5), foreign investors can obtain lawful permanent residency in the United States if they invest substantial capital in a job-creating business.

22. Obtaining full permanent residency in the United States through the EB-5 Program involves several steps. First, the investor must file Form I-526 with USCIS's Immigrant Investor Program Office ("IPO"). *See* 8 C.F.R. § 204.6(a). If the I-526 petition is approved, the investor must then apply for adjustment of status with USCIS, or seek an immigrant visa from the State Department abroad. Upon a grant of adjustment of status or entry to the United States on an EB-5 visa, the investor and his or her dependents obtain lawful permanent residence on a conditional basis. Finally, within the 90-day period preceding the investor's two-year anniversary of obtaining conditional residency, the investor must file Form I-829 with the IPO to remove the conditions on the investor's permanent residency. *See generally* 8 C.F.R. § 216.6.

23. In a FOIA request dated November 29, 2022, IIUSA sought records relating to USCIS's guidance, policies, procedures, memoranda, training records, or training regarding the assignment processes, chain of custody processes, and movement/transport processes of incoming I-526 and I-829 petitions. *See Exhibit A* (FOIA request).

24. The statutory 20-business day response deadline passed on December 28, 2022, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). But to date, USCIS has neither produced any records in response to the FOIA request nor informed Plaintiff of any "unusual circumstances" that warrant additional time.

25. As of December 29, 2022, the FOIA request remains pending according to the FOIA status report. *See Exhibit C*.

26. Obtaining these records is critical to IIUSA's mission. One of IIUSA's most important goals is educating its members on USCIS policies and practices in its adjudication process of EB-5 visa petitions.

27. The records requested in IIUSA's November 29, 2022 FOIA request are critical to IIUSA's ability to properly educate its members on current USCIS policy and practice with respect to the adjudication processes of USCIS, as well as how (if at all) those policies have changed over time.

28. To date, USCIS has neither produced records in response to the November 29, 2022 FOIA request nor provided written notice of unusual circumstance.

CAUSES OF ACTION

Count I:

Failure to Respond to Request Within Statutory Timeframe

29. Plaintiff incorporates paragraphs 1 through 28, as if fully stated in this Count.

30. USCIS has failed to respond to Plaintiff's November 29, 2022 FOIA request within the statutorily mandated timeframe, in violation of FOIA, 5 U.S.C. § 552(a)(6).

Count II:

Failure to Produce Responsive Records

31. Plaintiff incorporates paragraphs 1 through 30, as if fully stated in this Count.

32. USCIS has failed to make reasonable efforts to search for records responsive to Plaintiff's November 29, 2022 FOIA request in violation of FOIA, 5 U.S.C. § 552(a)(3).

33. USCIS failed to disclose and produce any records responsive to Plaintiff's November 29, 2022 FOIA request in violation of 5 U.S.C. § 552(a)(3)(A).

ATTORNEYS' FEES

34. Plaintiff incorporates paragraphs 1 through 33 herein, as if fully stated in this Count.

35. Plaintiff is entitled to recover its reasonable attorneys' fees and litigation costs in

connection with this lawsuit. 5 U.S.C. § 552(a)(4)(E)(i).

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment on its behalf and:

- a. Declare USCIS's refusal to disclose the records request by Plaintiff to be unlawful and in violation of FOIA;
- b. Order USCIS to immediately release and deliver to Plaintiff all records responsive to Plaintiff's request;
- c. Enjoin USCIS from withholding records responsive to Plaintiff's request;
- d. Award Plaintiff costs and reasonable attorneys' fees incurring in bringing this action;
- e. Grant such other relief as the Court may deem just and proper.

Dated: January 6, 2023

Respectfully submitted,

/s/ Brandon Meyer
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