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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

Wadesisi F. Saidi,)
)
 Plaintiff,)
 v.)
)
 UNITED STATES CITIZENSHIP AND)
 IMMIGRATION SERVICES,)
)
 DEPARTMENT OF STATE,)
)
 JILL A. EGGLESTON, Director of)
 FOIA Operations at the USCIS National)
 Records Center,)
)
 JEH JOHNSON, Secretary of)
 The United States Department of)
 Homeland Security,)
)
 LORETTA E. LYNCH, Attorney General)
 of the United States, Department of Justice,)
)
 Defendants.)

Case No.: 16 CV 1241

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

I. INTRODUCTION

This is an action under the Freedom of Information act, 5 U.S.C. § 552, (“FOIA”) for injunctive and other appropriate relief seeking disclosure and release of agency records improperly withheld from Plaintiff by Defendants.

II. PARTIES

1. Plaintiff, Wadesisi Saidi, is a lawful permanent resident and resides in Cleveland, Ohio. His alien registration number is 094691588.
2. Defendant United States Citizenship and Immigration Services (“USCIS”) is an agency within the Department of Homeland Security which has the custody and control of alien registration files. USCIS is also charged by law with the duty of adjudicating I-485 applications for adjustment of status under 8 U.S.C. § 1255. USCIS is an agency within the meaning of 5 U.S.C. § 522(f).
3. Defendant Department of State is a federal agency to which Defendant USCIS claims to have referred 54 pages of documents responsive to Plaintiff’s FOIA request. Defendant Department of State is an agency within the meaning of 5 U.S.C. § 522(f).
4. Defendant Jill A. Eggleston is sued in her official capacity as the Director of FOIA Operations at the USCIS National Records Center in Lee’s Summit, Missouri. The National Records Center (“NRC”) is the central repository of the agency’s alien files and responds to FOIA requests for copies of these records. The NRC is also the office which has possession of the records Plaintiff seeks.
5. Defendant Jeh Johnson is sued in his official capacity as the Secretary of the Department of Homeland Security.¹ In this capacity he has responsibility for the administration and enforcement of the immigration laws pursuant to 8 U.S.C. § 1103(a) including the accurate, efficient and secure processing of immigration benefits.

¹ Since March 1, 2003, the Department of Homeland Security is the agency responsible for implementing the Immigration and Nationality Act. See 6 U.S.C. § 271(b)(5) and 6 U.S.C. § 557.

6. Defendant Loretta E. Lynch is sued in her official capacity as the Attorney General of the United States and is charged with the authority and duty to direct, manage, and supervise all employees and all files and records of the Department of Justice.

III. JURISDICTION

7. The 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 Procedures 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.*

8. The aid of the Court is invoked under 28 U.S.C. § 2201 and 2202, authorizing a declaratory judgment.

IV. VENUE

9. Venue is proper in the Western District of Missouri since the records Defendant has improperly withheld are located at the National Records Center in Lee's Summit, Missouri, and the FOIA request and appeal were adjudicated at the National Records Center in Lee's Summit, Missouri.

V. REMEDY SOUGHT

10. Plaintiff seeks to have the Court compel Defendants to provide him with a copy of his alien registration file forthwith.

VI. STATEMENT OF THE FACTS

11. Plaintiff applied for adjustment of status on January 16, 2007 by filing Form I-485 with Defendant USCIS.

12. After waiting for an adjudication of his Form I-485 for a number of years, Plaintiff inquired with the USCIS about the status of his application in September, 2015.

13. Plaintiff also submitted a Freedom of Information Act request on September 29, 2015 asking for a copy of his Alien Registration File (“FOIA request”). It was assigned control number NRC2015122795.

14. On January 30, 2016 Defendant USCIS responded to the FOIA request by sending a written letter from Defendant Jill A. Eggleston of the NRC indicating it had identified 107 pages of responsive documents (“FOIA response”).

15. In the FOIA response Defendant USCIS claimed to have provided 44 pages in their entirety and 7 pages with redactions.

16. In the FOIA response Defendant USCIS said it was withholding two pages in full. These pages were marked with FOIA exemption code “(b)(7)(e).”

17. In the FOIA response Defendant USCIS said it had “referred 54 pages in their entirety to the U.S. Department of State for their direct response to [Plaintiff].” These pages were not marked with any FOIA exemption code.

18. Defendant Department of State has never provided Plaintiff with any notification that it has received the 54 pages Defendant USCIS claims to have referred.

19. On February 5, 2016 Plaintiff filed an administrative appeal with the USCIS FOIA Appeals Office in Lee’s Summit Missouri (“FOIA appeal”). It was assigned control number APP2016000275.

20. In the FOIA appeal Plaintiff objected to the withholding of 2 pages in full, the redaction of 7 pages, and the referral of 54 pages to the Department of State without invoking any particular FOIA exemption.

21. On February 8, 2016 Plaintiff submitted a Case Assistance Request on Form DHS-7001 with the USCIS Ombudsman, asking why his Form I-485 had been delayed for nearly nine years.

22. On February 16, 2016 Defendant USCIS informed Plaintiff by letter that it had received his administrative appeal of the FOIA response.

23. On February 23, 2016 Defendant USCIS issued a “Request for Evidence” asking Plaintiff to send documents to Defendant USCIS regarding his eligibility for adjustment of status.

24. Upon information and belief, documents necessary to respond to this request for evidence were included in those Defendant USCIS unlawfully withheld and/or transferred to the Department of State in violation of the Freedom of Information Act.

25. On March 10, 2016 Defendant USCIS responded to the FOIA appeal by releasing one of the two fully-withheld pages with redactions and declining to release the other fully-withheld page, declining to release any of the previously-redacted information, and declining to release any of the 54 pages Defendant USCIS had referred to the Department of State (“FOIA appeal response”).

26. In the FOIA appeal response Defendant USCIS cited 6 C.F.R. § 5.4(c) as its authority to refuse to release the 54 pages of documents it claims to have referred to Defendant Department of State.

27. On March 20, 2016, without any meaningful response to his FOIA appeal, Plaintiff was left to respond to the responded to the request for evidence with his own sworn declaration.

28. On June 9, 2016 Defendant USCIS denied the Form I-485 claiming it had not received Plaintiff’s response.

29. On July 5, 2016 Plaintiff filed a motion to reopen the denied I-485, providing proof he had replied to the request for evidence.

30. On September 13, 2016 Defendant USCIS granted Plaintiff's motion to reopen his I-485 but again denied the I-485 based on its claim that "the refugee officer's interview notes" contained in his Alien Registration File indicated he was not eligible for adjustment of status.

31. Upon information and belief, the refugee officer's notes referenced in the September 13, 2016 denial letter are among those documents withheld in full and/or transferred to the Department of State in the FOIA response.

32. The delay in responding to Plaintiff's FOIA request is not attributable to Plaintiff.

33. The records Plaintiff has requested are not otherwise available, because there is no discovery in immigration proceedings.

34. Plaintiff has been and will continue to be irreparably harmed because of the unreasonable delay of Defendants in providing the information requested under the Freedom of Information Act because without a copy of the file, Plaintiff's attorney cannot adequately represent Plaintiff in his request for permanent residence.

VII. COUNT I

35. Paragraphs 1 through 34 are incorporated as if fully stated herein.

36. Defendants 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).

VIII. COUNT II

37. Paragraphs 1 through 36 are incorporated as if fully stated herein.

38. Defendants' action in withholding the requested information was arbitrary and capricious under 5 U.S.C. § 551 *et seq.*, 5 U.S.C. § 555(b), § 702, § 704, and § 706, the Administrative Procedures Act.

IX. COUNT III

39. Paragraphs 1 through 38 are incorporated as if fully stated herein.

40. Defendant USCIS's referral of the 54 pages of documents to Defendant Department of State amounts to an improper withholding of documents under the FOIA.

41. All records in Plaintiff's Alien Registration File, which was in the possession of Defendant USCIS when Plaintiff made his FOIA request, whether created by the agency itself or by other bodies covered by the FOIA, constitute "agency records" under the FOIA.

42. Defendant USCIS's referral of responsive documents to Defendant Department of State amounts to a "withholding" of the documents, because its net effect has been to significantly impair Plaintiff's ability to obtain the records and to significantly increase the amount of time he must wait to obtain them.

43. The referral here was "improper" because it significantly impaired and delayed Plaintiff's ability to obtain the records and significantly increased the amount of time he must wait to obtain them.

44. By referring the documents to the Department of State, which still has not processed the request or released the referred documents, Plaintiff was unable to use the documents to respond to Defendant USCIS's request for evidence, which led to the denial of his Form I-485.

45. Defendants have offered no reasonable explanation for the referral procedure used here.

46. Defendant USCIS's referral of Plaintiff's documents to the Department of State rather than releasing them pursuant to the FOIA while simultaneously relying on those documents to deny Plaintiff's application for adjustment of status was unreasonable, arbitrary, and capricious.

47. The Court is authorized to order production of any agency records improperly withheld and should do so here.

X. COUNT IV

48. Paragraphs 1 through 47 are incorporated as if fully stated herein.

49. Defendant Department of State has failed to comply with the Open Government Act of 2007.

50. Generally an agency in receipt of a FOIA request must “assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request.” 5 U.S.C. § 552(a)(7)(A).

51. Defendant Department of State has never provided to Plaintiff a tracking number or communicated to him how long it will take to process his request.

XI. PRAYER

52. WHEREFORE, Plaintiff prays this Court:

(A) Find that Defendants 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 circumstance” set forth in 5 U.S.C. § 552(a)(6)(B).

(B) Find that Defendants improperly withheld responsive documents by referring 54 pages from Plaintiff’s Alien Registration File to the Department of State which has still never acknowledged to Plaintiff that it has received those records or adjudicated his FOIA request.

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

(D) Order Defendants to process Plaintiff’s FOIA request forthwith.

(E) Award Plaintiff reasonable attorneys’ fees and costs of court and

(F) Grant such other relief at law and in equity as the Court may deem just and proper.

Respectfully submitted,
Hoppock Law Firm, LLC

By: _____/s/_____
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