

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

[REDACTED],)	
)	
Plaintiff,)	Case No.
)	
v.)	Judge:
)	
Alejandro Mayorkas, as Director of U.S.)	
Citizenship and Immigration Services,)	
in his official capacity;)	
Tony Bryson, as District Director of U.S.)	
Citizenship and Immigration Services for)	
Pennsylvania, Delaware, and West Virginia;)	
in his official capacity;)	
Angela Klapakis, Philadelphia Field Office Director)	
for U.S. Citizenship and Immigration Services;)	
in her official capacity;)	
Robert Mueller, as Director of the Federal Bureau)	
of Investigation, in his official capacity;)	
John J. Brosnan, as Acting Special Agent in Charge)	
of the Federal Bureau of Investigation)	
Philadelphia Division, in his official capacity;)	
Eric Holder, as Attorney General of the U.S.)	
Janet Napolitano, as Secretary of the Department)	
of Homeland Security, in her official capacity;)	
)	
Defendants.)	

PLAINTIFF’S COMPLAINT FOR INJUNCTIVE AND MANDAMUS RELIEF

Plaintiff [REDACTED] (“[REDACTED]”), by and through undersigned counsel, respectfully requests that this court issue an order -- pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. 555(b), 706(1), 706(2)(A), 706(2)(C), and 706(2)(D) and the Mandamus and Venue Act (“Mandamus Act”), 28 U.S.C. 1361 -- directing Defendants to adjudicate [REDACTED]’s “Form I-751, Petition to Remove the Conditions of Residence” (“Form I-751 Petition”) which [REDACTED] timely filed on [REDACTED], 2006.

INTRODUCTION

[REDACTED] was first issued a green card as a “Conditional Permanent Resident” (“CPR”) in 2004, based upon his valid marriage to a United States citizen. Under these circumstances, CPR status is granted to

allow immigration officials to investigate the validity of the marriage, and CPR status is intended to continue for no longer than two (2) years to allow sufficient time for that investigation. By design, if an immigrant is granted CPR status based upon marriage to a U.S. citizen and files a timely Form I-751 Petition before the expiration of that two-year time period, the United States Customs and Immigration Services (“USCIS”) is required to complete its investigation into the validity of that marriage and grant the immigrant “Lawful Permanent Resident” (“LPR”) status.

██████████ first obtained CPR status on ██████████, 2004, and timely filed his Form I-751 Petition to become a LPR of the United States on ██████████, 2006. That Form I-751 Petition remains within the jurisdiction of the Defendants who, collectively, have refused to adjudicate that petition as required by federal immigration law. Since 2006, the USCIS has failed to investigate the validity of ██████████’s marriage or otherwise adjudicate his Form I-751 Petition. To adjudicate ██████████’s Form I-751 Petition, the sole issue before the USCIS is the validity of ██████████’s 2003 marriage to a United States citizen. Since entering into the marriage in 2003, ██████████ has resided continuously with his wife, has financially supported his wife, has filed joint tax returns with his wife, and has co-parented the four (4) biological children he shares with his wife, all of whom are United States citizens. Additionally, upon information and belief, the Federal Bureau of Investigation (“FBI”) has affirmatively directed USCIS not to adjudicate ██████████’s Form I-751 Petition, even though the FBI acknowledges that ██████████ is not the subject of any lawful FBI investigation, and even though the USCIS needs no additional information, or other approval, from the FBI in order to adjudicate ██████████’s Form I-751 Petition.

Because of Defendants’ collective refusal to adjudicate ██████████’s Form I-751 Petition, ██████████ has been deprived of the opportunity to apply for, and attain, all of the rights and privileges accorded to United States citizens, including, but not limited to, the following: the right to vote and fully participate in our democracy, the right to receive a United States passport, the right to travel freely into and out of the United States, the right to run for public office, and the right to hold a job that is restricted to United States citizens.

JURISDICTION AND VENUE

1. This action is brought pursuant to federal statutory law; therefore, jurisdiction is proper pursuant to 28 U.S.C. § 1331, which provides that “[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”
2. Venue is proper under 28 U.S.C. § 1391(e)(C), because Defendants are acting in their official capacity as agents of the United States, and [REDACTED] resides in Philadelphia, Pennsylvania, which is located within the Eastern District of Pennsylvania.

PARTIES

3. [REDACTED] (Alien Registration Number is # [REDACTED]) is a citizen of [REDACTED] and lawful resident of the United States who resides at [REDACTED], Philadelphia, Pennsylvania [REDACTED]. Since entering the United States in 1999, [REDACTED] has resided exclusively in the United States, and he has married and supported a family consisting entirely of United States citizens (i.e., his wife and children are United States citizens). He currently operates a business which financially supports his family, as well as the families of the individuals he employs.
4. Defendant Alejandro Mayorkas is being sued in his official capacity as Director of USCIS and is the official generally charged with supervisory authority over all operations of the USCIS with certain specific exceptions not relevant under the facts asserted herein. 8 CFR § 103.1(g)(2)(ii)(B). The USCIS is the agency charged with the duty to adjudicate petitions to adjust immigration status, such as the “Form I-751, Petition to Remove the Conditions of Residence” which was filed by Plaintiff in 2006 and which is the subject of this Complaint.
5. Defendant Tony Bryson is being sued in his official capacity as District Director of the USCIS offices in Pennsylvania, Delaware, and West Virginia. Defendant Angela Klapakis is being sued in her official capacity as Philadelphia Field Office Director of USCIS. Pursuant to 8 C.F.R. §310.2, Mr. Bryson and Ms. Klapakis have been delegated authority to control all USCIS activities within the Philadelphia District,

including the authority to adjudicate the “Form I-751, Petition to Remove the Conditions of Residence” which was filed by ██████████ in 2006 and which is the subject of this Complaint.

6. Defendant Janet Napolitano is being sued in her official capacity as the Secretary of the United States Department of Homeland Security under which USCIS operates. In this role, Ms. Napolitano is generally charged with enforcement of the Immigration and Naturalization Act, including adjudications of petitions to adjust immigration status such as adjudicate the “Form I-751, Petition to Remove the Conditions of Residence” which was filed by ██████████ in 2006. She is further authorized to delegate such powers and authority to subordinate employees of DHS pursuant to 8 USC § 1103(a) and has, specifically, delegated her authority to adjudicate Form I-751 petitions to USCIS.
7. Defendant Robert Mueller is being sued in his official capacity as Director of the FBI, the law enforcement agency that conducts the necessary background checks required for USCIS adjudication of certain petitions seeking to adjust immigration status. Defendant John J. Brosnan is being sued in his official capacity as Acting Special Agent in Charge of the FBI Philadelphia Division.
8. Defendant Eric Holder is being sued in his official capacity as United States Attorney General and, in this capacity, he is responsible for the activities of the FBI. In addition, pursuant to 8 § USC 1103, he is charged with determining all issues of law pertaining to immigration and representing the United States of America in various legal matters.

FACTUAL BACKGROUND

Overview of ██████████’s Immigration History

9. ██████████ entered the United States lawfully on ██████████, 1999 from his country of national origin, ██████████. His port of entry was John F. Kennedy airport in New York and was granted entry on a student visa.
10. ██████████’s student visa expired in 2001, and he was placed in immigration detention in York, Pennsylvania upon expiration of that student visa.

11. Also in 2001, [REDACTED] was released from immigration detention after posting a monetary bail, and he applied for asylum, and withholding of removal proceedings, within that calendar year. [REDACTED] cited religious persecution in his native [REDACTED] as the basis of his request for asylum.
12. In 2003, with his application for asylum still pending (and not yet scheduled for review by immigration officials), [REDACTED] entered into a valid marriage with United States citizen [REDACTED] on [REDACTED], 2003. Since 2003, [REDACTED] has remained in this marriage, has resided continuously with his wife, has financially supported his wife, has filed joint tax returns with his wife, and has co-parented four (4) biological children which he shares with his wife, all of whom are United States citizens. A copy of [REDACTED]'s Marriage Certificate is attached as "Exhibit A."
13. After entering into this valid marriage, [REDACTED] vacated his application for asylum and submitted a USCIS Form I-485 application seeking adjust status to a lawful permanent resident on the basis of his valid marriage to a United States citizen.
14. On [REDACTED], 2004, an "Order of the Immigration Judge" was issued which reflected that [REDACTED]'s application for asylum had been withdrawn and which granted [REDACTED]'s Form I-485 application. A copy of this "Order of the Immigration Judge" granting [REDACTED]'s Form I-485 Application is attached as "Exhibit B."
15. Pursuant to the order referenced in Paragraph 14, above, [REDACTED] was granted CPR status valid for a period of two (2) years and issued a green card which reflected his status as a lawful resident of the United States. A copy of [REDACTED]'s green card, dated [REDACTED], 2004, is attached as "Exhibit C."
16. The issuance of this [REDACTED], 2004, order presumes, as a matter of law, that all legal prerequisites required for the adjudication of a Form I-485 petition had been completed prior to that date. As a matter of federal immigration law, FBI background checks must be completed and released to USCIS prior to the adjudication of a Form I-485 petition. Therefore, this order granting [REDACTED]'s Form I-485 petition presumes, as a matter of law, that the FBI had completed its background check of [REDACTED] and released the results of that background check to USCIS prior to the issuance of this order.

17. On [REDACTED], 2006, before the expiration of his “conditional permanent resident” status, [REDACTED] made timely application to remove the condition on his green card by completing and filing a USCIS Form I-751 “Petition to Remove the Conditions of Residence” seeking to become a LPR of the United States and with the ultimate goal of eventually becoming a United States citizen. A copy of [REDACTED]’s Form I-751 Petition is attached as “Exhibit D.”
18. Since 2006, Defendants have failed to adjudicate [REDACTED]’s Form I-751 “Petition to Remove the Conditions of Residence.” This petition, and Defendants’ failure to adjudicate this petition, is the subject of this Complaint for Injunctive and Mandamus Relief.
19. Because of Defendants’ collective refusal to adjudicate [REDACTED]’s Form I-751 Petition, [REDACTED] has been deprived of the opportunity to apply for, and attain, all of the rights and privileges accorded to United States citizens including, but not limited to, the following: the right to vote and fully participate in our democracy, the right to receive a United States passport, the right to travel freely into and out of the United States, the right to run for public office, and the right to hold a job that is restricted to United States citizens. Of particular importance to [REDACTED] is the right to travel freely, as [REDACTED] has been unable to travel internationally to visit his aging parents since leaving [REDACTED] in 1999.

USCIS’s Refusal to Perform Legally Required Duties

20. As referenced in Paragraph 14, the USCIS issued [REDACTED] CPR status in 2004 based upon [REDACTED]’s valid 2003 marriage to a United States citizen.
21. Conditional status is traditionally conferred upon immigrants who receive their initial green card due to their marriage to a United States citizen, if that marriage was entered less than two years before receipt of the green card. The ostensible purpose of conditional status designation is to allow USCIS sufficient time to investigate the validity of the marriage.
22. As a matter of law, USCIS is in possession of all information needed to adjudicate [REDACTED]’s petition. As described in Paragraph 16, above, USCIS is presumably received results of [REDACTED]’s FBI background checks prior to 2004 when [REDACTED] first became obtained CPR status. Therefore, as a

matter of law, USCIS needs no additional information, or other approval or permission, from the FBI in order to adjudicate [REDACTED]'s Form I-751 Petition.

23. In order to adjudicate [REDACTED]'s Form I-751 Petition, the sole question before the USCIS is whether [REDACTED]'s 2003 marriage to a United States citizen is a valid marriage.
24. [REDACTED] has resided continuously in the United States for more than thirteen (13) years, has had CPR status for more than eight (8) years, and made timely application for a removal of conditions more than six (6) years ago. During this time, USCIS has made no effort to investigate the validity of [REDACTED]'s marriage.
25. Had USCIS taken any steps to investigate the validity of [REDACTED]'s marriage, they would have found that, since his marriage in 2003, [REDACTED] has been living with his wife continuously, has filed joint tax returns with his wife, has been financially interdependent with his wife, and has co-parented four (4) biological children which he shares with his wife, all of whom are United States citizens.
26. Because the USCIS has refused to investigate the validity of [REDACTED]'s marriage to a United States citizen, and has refused to adjudicate [REDACTED]'s Form I-751 Petition, [REDACTED] has been deprived of the opportunity to apply for, and attain, all of the rights and privileges accorded to United States citizens including, but not limited to, the following: the right to vote and fully participate in our democracy, the right to receive a United States passport, the right to travel freely into and out of the United States, the right to run for public office, and the right to hold a job that is restricted to United States citizens.

FBI's Unlawful Interference With the Duties of USCIS

27. As indicated in Paragraph 23, in order to adjudicate [REDACTED]'s Form I-751 Petition, the sole inquiry for the USCIS is whether [REDACTED]'s 2003 marriage to a United States citizen is a valid marriage. The FBI has no authority to interfere with the USCIS's investigation of the validity of [REDACTED]'s marriage or the USCIS's adjudication of [REDACTED]'s Form I-751 Petition.
28. As referenced in Paragraph 16, as a matter of law, the FBI presumably completed all relevant background checks of [REDACTED] prior to 2004 when [REDACTED] was initially granted CPR status and issued a

green card. Therefore, the FBI has no additional information or legal authority to interfere with the USCIS's investigation of ██████████'s marriage or adjudication of ██████████'s Form I-751 Petition.

29. The FBI has advised ██████████, through counsel, that ██████████ is not the subject of any currently active FBI investigation. Furthermore, upon information and belief, the FBI has no reason to contact ██████████ ██████████ in connection with any lawful investigation.
30. Upon information and belief, ██████████ asserts that the FBI has interfered with the USCIS's adjudication of ██████████'s immigration petition. More specifically, upon information and belief, the FBI contacted USCIS and directed USCIS not to adjudicate ██████████'s Form I-751 Petition, even though the FBI has no lawful reason to investigate ██████████ and has no lawful authority to interfere with USCIS's adjudication of ██████████'s Form I-751 Petition.
31. The FBI has had contact with ██████████ in the past, in relation to a past investigation concerning ██████████ nationals. However, that investigation concluded when a federal court determined that the ██████████ government (which, incidentally, did not have an extradition treaty with the United States during the relevant time period) had no credible concerns regarding the subjects of the investigation and, instead, was engaging in the persecution of religiously observant ██████████ nationals.
32. Because the FBI affirmatively interfered with the USCIS's adjudication of ██████████'s Form I-751 Petition, ██████████ has been deprived of the opportunity to apply for, and attain, all of the rights and privileges accorded to United States citizens including, but not limited to, the following: the right to vote and fully participate in our democracy, the right to receive a United States passport, the right to travel freely into and out of the United States, the right to run for public office, and the right to hold a job that is restricted to United States citizens.

Exhaustion of Remedies

33. Neither the APA, nor the Mandamus Act, require ██████████ to exhaust any administrative remedies prior to bringing a civil action.

34. Nonetheless, [REDACTED] has attempted to resolve this matter without the need for court involvement. On at least two occasions, he has contacted the USCIS to inquire about the status of that agency's adjudication of his Form I-751 Petition. Attached as "Exhibit E" and "Exhibit F" are copies of USCIS's responses to [REDACTED]'s inquiries as to the status of his case.
35. Most recently, [REDACTED] attended a scheduled InfoPass appointment on [REDACTED], 2013, for the purpose of inquiring as to the status of his Form I-751 Petition. Attached as "Exhibit G" is a copy of [REDACTED]'s InfoPass appointment letter for [REDACTED], 2013. Unfortunately, [REDACTED] received no information at the InfoPass appointment on that date.

CLAIMS FOR RELIEF
COUNT ONE
ADMINISTRATIVE PROCEDURES ACT

36. The allegations contained in paragraphs 1 through 35 above are repeated and incorporated as though fully set forth herein.
37. The purpose of the Administrative Procedures Act ("APA") is to prevent abuse of discretion by federal agencies by granting the federal judiciary authority to review the actions of such agencies.
38. One mechanism the APA uses to prevent abuse of discretion is to place time constraints upon agencies so that agencies do not use prolonged delays for the sole purposes of harassment and intimidation, or as a method to disguise a refusal to act. For this reason, the APA requires administrative agencies to conclude matters presented to them "within a *reasonable* time." 5 U.S.C. § 555 (emphasis added).
39. The APA also empowers federal courts to review federal agencies to "compel agency action unlawfully withheld or *unreasonably* delayed." 5 U.S.C. § 706(1) (emphasis added).
40. The court also may hold unlawful and set aside agency action that, inter alia, is found to be: "arbitrary, capricious, an *abuse of discretion*, or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A) (emphasis added); "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," 5 U.S.C. § 706(2)(C); or "without observance of procedure required by law," 5 U.S.C. § 706(2)(D). "Agency

action” includes, in relevant part, “an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or *failure to act*.” 5 U.S.C. §551 (13) (emphasis added).

41. The failure of USCIS, which is under the supervision of Defendants Mayorkas, Bryson, Klapakis, and Napolitano, to adjudicate ██████████’s petition raises legal issues under the APA in two ways:
- a. Since ██████████ filed his Form I-751 Petition in 2006, the USCIS has refused to investigate the validity of ██████████’s marriage. Such refusal to investigate is “failure to act” within the scope of the APA, and such “failure to act” constitutes an “agency action” within the definition of the APA. The APA, therefore, grants this court authority to review that agency action (i.e., refusal to investigate the validity of marriage) to determine whether such agency action constitutes an “abuse of discretion” or has been an “unreasonably delayed” in violation of the APA.
 - b. Since ██████████ filed his Form I-751 Petition in 2006, the USCIS has refused to adjudicate ██████████’s petition, even though it has been in possession of all information needed to adjudicate the petition and needs no additional information, or approval, from the FBI. The USCIS’s refusal to adjudicate is a “failure to act” within the scope of the APA, and such “failure to act” constitutes “agency action” within the definition of the APA. The APA, therefore, grants this court authority to review that agency action (i.e., refusal to adjudicate) to determine whether such agency action constitutes an “abuse of discretion” or has been “unreasonably delayed” in violation of the APA.
42. The FBI, which is under the supervision of Defendants Mueller, Brosnan, and Holder, has affirmatively interfered with USCIS’s adjudication of ██████████’s petition, and this interference violates the APA. Upon information and belief, the FBI directly contacted USCIS and directed USCIS not to adjudicate ██████████’s petition. Such action by the FBI constitutes “agency action” within the meaning of the APA, and the APA grants this court authority to review that action to determine whether such act constitutes an “abuse of discretion” under the APA.

**COUNT TWO
MANDAMUS ACT**

43. The allegations contained in paragraphs 1 through 43 above are repeated and incorporated as though fully set forth herein.
44. The purpose of the Mandamus Act is to prevent federal officials from acting outside the permissible scope of their discretion, and the Act seeks to prevent such abuse by giving federal courts the authority to compel federal officials to perform acts required of them or, conversely, to refrain from acts which it is not authorized to perform.
45. Because the USCIS, which is under the supervision of Defendants Mayorkas, Bryson, Klapakis, and Napolitano, has refused to take any action to adjudicate ██████████'s petition, USCIS's failure to adjudicate ██████████'s petition raises legal issues under the Mandamus Act in one of two possible ways:
- a. The USCIS has made no effort to investigate the validity of ██████████'s marriage since ██████████ filed his Form I-751 Petition in 2006. Therefore, the USCIS has failed to perform duties legally required of it under federal immigration law, and the Mandamus Act grants this court authority to compel USCIS to perform the duties legally required of it under federal law. The Mandamus Act, therefore, grants this court legal authority to compel USCIS to take all steps necessary to investigate the validity of ██████████'s marriage.
 - b. The USCIS has failed to adjudicate ██████████'s petition, even though it presumably, as a matter of law, has been in possession of all information needed to adjudicate ██████████'s petition since 2004. Therefore, the USCIS has refused to perform duties legally required of it under federal immigration law, and the Mandamus Act grants this court authority to compel USCIS to perform duties legally required of it under federal law. The Mandamus Act, therefore, grants this court legal authority to compel USCIS to adjudicate ██████████'s petition.
46. The FBI, which is under the supervision of Defendants Mueller, Brosnan, and Holder, has affirmatively interfered with USCIS's adjudication of ██████████'s petition, and this interference violates the Mandamus Act. Upon information and belief, the FBI directly contacted USCIS and directed USCIS not to

adjudicate [REDACTED]'s petition. Such action by the FBI is outside the scope of the FBI's authority, and the Mandamus Act grants this court authority to compel the FBI to refrain from acts which it is not authorized to perform.

PRAYER FOR RELIEF

WHEREFORE, for the reasons stated above, Plaintiff [REDACTED] respectfully requests that this Honorable Court:

A. Provide declaratory relief by declaring the following acts to be in direct violation of the Administrative Procedures Act and the Mandamus Act:

1. The FBI's affirmative actions to interfere with USCIS's adjudication of [REDACTED]'s Form I-751 Petition by directing USCIS to refrain from adjudicating such petition, notwithstanding the fact that the FBI has no authority to interfere with the USCIS's adjudication of [REDACTED]'s petition and the FBI no reason to contact [REDACTED] in connection with any lawful investigation;
2. The USCIS's failure to investigate the validity of [REDACTED]'s 2004 marriage to a United States citizen, despite the fact that the validity of this marriage is the sole factor to be considered by USCIS in the adjudication of [REDACTED]'s Form I-751 Petition which was filed in 2006; and
3. The USCIS's failure to adjudicate [REDACTED]'s Form I-751, "Petition to Remove the Conditions of Residence" which was filed in 2006.

B. Provide injunctive and mandamus relief as follows:

1. Prohibit the FBI from performing any act to interfere with the USCIS's adjudication of [REDACTED]'s Form I-751 Petition;
2. Compel the USCIS to take all necessary actions to investigate the validity of [REDACTED]'s marriage;

3. Compel the USCIS to adjudicate [REDACTED]'s Form I-751, "Petition to Remove the Conditions of Residence";

C. Grant attorney's fees and costs; and

D. Grant any other relief as this Honorable Court deems just and proper.

Respectfully submitted,

[REDACTED]

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List of Exhibits:

Exhibit A: “Original Marriage Certificate” – scanned carbon copy

Exhibit B: “Order of the Immigration Judge” – scanned carbon copy

Exhibit C: “Permanent Resident Card” (i.e., “green card”) – scanned carbon copy

Exhibit D: “Form I-751 Petition to Remove Conditions on Residence” – scanned carbon copy

Exhibit E: USCIS response to [REDACTED]’s inquiry regarding status of case – scanned carbon copy (date stamped “[REDACTED]” by USCIS)

Exhibit F: USCIS response to [REDACTED]’s inquiry regarding the status of his case – scanned carbon copy (date stamped “[REDACTED]” by USCIS)

Exhibit G: Copy of InfoPass e-Ticket for [REDACTED], 2013 InfoPass appointment