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Legal Document

New York Southern District Court
Case No. 1:08-cv-00176-DAB
Hosseinzadeh v. Mukasey et al

Document 1



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08 CV 00176

JUDGE BATTS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHAIA HOSSEINZADEH,

Plaintiff,

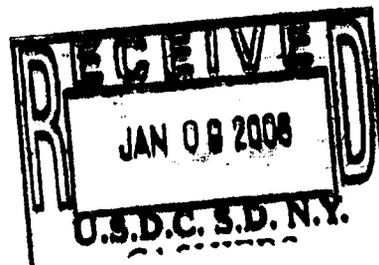
-against-

MICHAEL MUKASEY, Attorney General;
MICHAEL CHERTOFF, Secretary, Department
of Homeland Security; EMILIO GONZALEZ,
Director, United States Citizenship &
Immigration Services; PAUL NOVAK, Director,
Vermont Service Center; ROBERT MUELLER,
Director, Federal Bureau of Investigation;
General MICHAEL HAYDEN, Director, Central
Intelligence Agency; DEPARTMENT OF
HOMELAND SECURITY, UNITED STATES
CITIZENSHIP & IMMIGRATION SERVICES,
FEDERAL BUREAU OF INVESTIGATION,
and CENTRAL INTELLIGENCE AGENCY,

Defendants.

08 Civ.

COMPLAINT



Plaintiff Shaia Hosseinzadeh by his undersigned attorney, alleges as follows:

1. This is an action in the nature of mandamus and for declaratory and injunctive relief to compel final agency action that has been unlawfully withheld and unreasonably delayed for over three years on an application for adjustment of status to lawful permanent residence by a member of the professions with an advanced degree.

The action arises under the Immigration & Nationality Act of 1952, as amended (the

“Act”), 8 U.S.C. §§ 1101 et seq. and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 551 et seq. Subject matter jurisdiction is based upon 28 U.S.C. § 1331, 28 U.S.C. § 1337, and 28 U.S.C. § 1361. This Court may grant relief pursuant to the Act, the APA, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq., and 28 U.S.C. § 1361.

2. Plaintiff Shaia Hosseinzadeh resides within the Southern District of New York at 250 South End Avenue Apartment 2G, New York, New York 10280 and is a native and citizen of Iran.

3. Defendant Michael Mukasey is sued in his official capacity as the Attorney General of the United States. In this capacity he has responsibility for the administration of the immigration laws pursuant to 8 U.S.C. § 1103, and routinely does and transacts business in the Southern District of New York.

4. Defendant Michael Chertoff is sued in his official capacity as the Secretary of the Department of Homeland Security (“DHS”). In this capacity he has responsibility for the administration of the immigration laws pursuant to 8 U.S.C. § 1103 and routinely does and transacts business in the Southern District of New York.

5. Defendant Emilio Gonzalez is sued in his official capacity as the Director of the United States Citizenship & Immigration Services (“USCIS”) within DHS. In this capacity he has responsibility for the administration of the immigration laws pursuant to 8 U.S.C. § 1103 and routinely does and transacts business in the Southern District of New York.

6. Defendant Paul Novak is sued in his official capacity as the Director of the Vermont Service Center (“VSC”) of the USCIS. In that capacity, he has responsibility for

the adjudication of immigration applications filed with the VSC and routinely does or transacts business in the Southern District of New York by taking or failing to take action that has a substantial impact upon residents of the Southern District of New York.

7. Defendant Robert Mueller is sued in his official capacity as the Director of the Federal Bureau of Investigation (“FBI”) and defendant Michael Hayden is sued in his official capacity as the Director of the Central Intelligence Agency. In their respective capacities, defendants Mueller and Hayden have responsibility for the conduct and completion of background checks for the adjudication of applications before USCIS and routinely do or transact business in the Southern District of New York by taking or failing to take action that has a substantial impact upon residents of the District of New Jersey.

8. Defendants DHS, USCIS, FBI ad CIA are made party defendants for purposes of obtaining declaratory and injunctive relief pursuant to the APA and the Declaratory Judgment Act.

IMMIGRANT PREFERENCES

9. In general, the Act allocates immigrant visas based upon preferences grounded in family or employment relationships, as described in Section 203 of the Act, 8 U.S.C. §1153. Among those preferences is that in Section 203(b)(2) of the Act, 8 U.S.C. §1153(b)(2) for alien members of the professions with advanced degrees. To establish eligibility for this preference, a preference petition, form I-140, must be filed with the appropriate USCIS service center. The filing of the I-140 establishes the priority date for visa allocation with respect to this preference category.

10. Plaintiff Shaia Hosseinzadeh is the beneficiary of an approved I-140 petition as an alien member of the professions with an advanced degree, which was filed on or about March 26, 2003 and approved on November 14, 2003. A copy of the approval notice is attached as Exhibit A.

ADJUSTMENT TO PERMANENT RESIDENCE

11. In the event that the quota for the intended preference category is current, an alien may concurrently file a preference petition and an application to adjustment status to permanent residence based on the preference under Section 245 of the Act, 8 U.S.C. §1255 and may include his or her spouse in the adjustment application as a derivative beneficiary.

12. The adjustment application is filed by the alien on form I-485. In cases of adjustment based upon an employment preference category, the adjustment application is filed with the USCIS service center for the state in which the alien resides. The applicant will be fingerprinted as part of the application process so that a background check can be done by the FBI. On or about March 26, 2003, the plaintiff filed an application for adjustment of status with the VSC and his application was assigned a receipt number EAC 03-141-51992. . A copy of this receipt notice is attached as Exhibit B.

13. To date, despite repeated inquiries, no action has been taken to adjudicate plaintiffs' adjustment applications. Instead, the adjustment applications have simply been transferred from the VSC and confirmed by the case status research report from the USCIS website, a copy of which is attached as Exhibit C. The plaintiff has satisfied all requirements for adjustment of status to permanent residence. The continuing failure of

the defendants to adjudicate plaintiff's adjustment application is arbitrary, capricious, an abuse of discretion and contrary to law.

COUNT ONE

14. Paragraphs 1 through 13 above are repeated and realleged as though fully set forth herein.

15. The continuing failure of the defendants to adjudicate the plaintiff's adjustment application violates the Act and the APA, 5 U.S.C. § 555(b), which requires federal agencies to conclude matters with reasonable promptness. Under the APA, 5 U.S.C. § 706(1), this Court has the power to compel agency action unlawfully withheld or unreasonably delayed.

COUNT TWO

16. Paragraphs 1 through 13 above are repeated and realleged as though fully set forth herein.

17. The continuing failure of the defendants to take action required by law is subject to correction by mandamus under 28 U.S.C. § 1361.

WHEREFORE, plaintiff Shaia Hosseinzadeh demands judgment against the defendants:

- (a) Ordering defendants to adjudicate his adjustment application forthwith, and,
- (b) Granting plaintiff costs and attorneys fees, and,

(c) Granting plaintiff such other and further relief as this Court may deem just and proper.

Dated: New York, New York
January 8, 2008

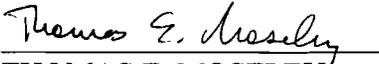

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EXHIBIT A

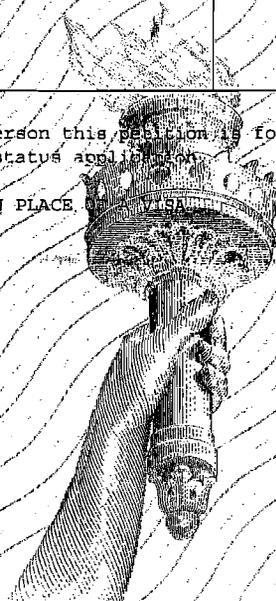
UNITED STATES OF AMERICA

RECEIPT NUMBER EAC-03-141-52056		CASE TYPE I140 IMMIGRANT PETITION FOR ALIEN WORKER
RECEIPT DATE April 7, 2003	PRIORITY DATE December 4, 2000	PETITIONER CREDIT SUISSE FIRST BOSTON LLC
NOTICE DATE November 14, 2003	PAGE 1 of 1	BENEFICIARY A97 143 939 HOSSEINZADEH, SHALIA

JANET L. HENNER ESQ FEAGOMEN DEL REY BERNSEN & LOEWY PC 515 MADISON AVE 15TH FLOOR NEW YORK NY 10022	Notice Type: Approval Notice Section: Mem of Profession w/Adv Deg, or of Exceptn'l Ability Sec. 203 (b) (2)
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The above petition has been approved. The person this petition is for will be notified separately when a decision is reached on his or her pending adjustment of status application.

THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.



Please see the additional information on the back. You will be notified separately about any other cases you filed.

IMMIGRATION & NATURALIZATION SERVICE
VERMONT SERVICE CENTER
75 LOWER WELDEN STREET
SAINT ALBANS VT 05479-0001
Customer Service Telephone: (800) 375-5283



EXHIBIT B

RECEIPT NUMBER EAC-03-141-51992		CASE TYPE 1485 APPLICATION TO ADJUST TO PERMANENT RESIDENT STATUS
RECEIVED DATE March 26, 2003	PRIORITY DATE	APPLICANT A97 143 939 HOSSEIN ZADEH, SHATA
NOTICE DATE April 7, 2003	PAGE 1 of 1	

JANET L. HENNER
FRAGOMEN DEL REY BERNSEN &
LOEWY PC
515 MADISON AVENUE
NEW YORK NY 10022

Notice Type: Receipt Notice

Amount received: \$ 305.00

Section: Other basis for adjustment

The above application or petition has been received. It usually takes 365 to 540 days from the date of this receipt for us to process this type of case. Please notify us immediately if any of the above information is incorrect.

We will send you a written notice as soon as we make a decision on this case. You can also use the phone number (802) 527-4913 to obtain case status information direct from our automated system 24 hours a day with a touch-tone phone and the receipt number for this case (at the top of this notice).

If you have other questions about possible immigration benefits and services, filing information, or Immigration and Naturalization Service forms, please call the INS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call our TDD at 1-800-767-1833.

You can also visit the INS on the internet at www.ins.gov. On our web site you can get up-to-date case status information on your case and find valuable information about immigration services and benefits.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

IMMIGRATION & NATURALIZATION SERVICE
VERMONT SERVICE CENTER
75 LOWER WELDEN STREET
SAINT ALBANS VT 05479-0001
Customer Service Telephone: (802) 527-4913



EXHIBIT C

Case Status Search

Receipt Number: eac0314151992

Application Type: I485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR TO ADJUST STATUS

Current Status:

This case is now pending at the office to which it was transferred.

The I485 APPLICATION TO REGISTER PERMANENT RESIDENCE OR TO ADJUST STATUS was transferred and is now pending standard processing at a USCIS office. You will be notified by mail when a decision is made, or if the office needs something from you. If you move while this case is pending, please use our Change of Address online tool to update your case with your new address. We process cases in the order we receive them. You can use our processing dates to estimate when this case will be done, counting from when USCIS received it. Follow the link below to check processing dates. You can also receive automatic e-mail updates as we process your case. To receive e-mail updates, follow the link below to register.

If you have a question about case status information provided via this site, or if you have not received a decision from USCIS within the current processing time listed, please contact the USCIS Customer Service at (800) 375 5283 or 1-800-767-1833 (TTY).