



Practice Advisory¹

Challenging Delays in Refugee Relative Petition Processing in Federal Court May 8, 2023

Introduction

Refugee organizations and attorneys report lengthy delays in the immigration process through which refugees inside the United States petition for their qualifying spouses and children to join them in this country. The U.S.-based refugee initiates this process by filing a Refugee Relative Petition (Form I-730), also known as a refugee follow-to-join petition, with U.S. Citizenship and Immigration Services (USCIS), which then undertakes initial processing of the petition. Following this review, USCIS transfers the petition to either a USCIS International office or the U.S. Department of State (DOS), which completes the process by, inter alia, interviewing the beneficiary and issuing the beneficiary a visa, referred to as a Visa 93. Delays in either the U.S.-based processing or the further processing abroad prolong the separation of refugee families and often force family members abroad to live in dangerous conditions or face perilous situations while they wait for the agencies to complete processing.

Where such delay is egregious or the beneficiary is at great risk, seeking federal court intervention may be necessary. This advisory addresses lawsuits in federal district court seeking to compel USCIS and/or DOS to complete processing of delayed adjudications of Form I-730 refugee follow-to-join petitions. It does not address how to file I-730 petitions with USCIS.

IMPORTANT NOTE: Both refugees and asylees use Form I-730 to petition for qualifying relatives. The general difference between a refugee and an asylee is that a refugee applies for, and is granted, protection while overseas and enters the United States as a refugee; in contrast, an asylee applies for protection while inside the United States or at a port of entry. **This advisory addresses only challenging delayed I-730 *refugee* follow-to-join petitions in federal court, not I-730 *asylee* petitions.** While some aspects may overlap, attorneys are advised to independently research the feasibility and mechanics of challenging delayed I-730 asylee petitions in federal court.

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1. What is an I-730 Refugee Relative Petition?

A Refugee Relative Petition (Form I-730) is the application refugees inside the United States file on behalf of their spouses and/or unmarried children who were 21 years old at the time the parent/petitioner received refugee status to petition for their admission to the United States. This petition is intended to reunite families based on straightforward assessments of family relationships. The individual who has been admitted as a refugee is the petitioner and their spouse or child is the beneficiary.

In general, USCIS adjudicates I-730 Refugee Relative Petitions inside the United States and then transfers the petition overseas to a USCIS International Office or U.S. embassy or consulate for further processing—which includes interviewing the beneficiaries—and/or issuance of a Visa 93 (V-93 visa). In some cases, when USCIS transfers the petition to a USCIS International Office, that office will both adjudicate the petition abroad and conduct the overseas processing, including the I-730 interview.

The U.S. Department of State through a U.S. embassy or consulate having jurisdiction over the area where the beneficiary is located, is tasked with scheduling appointments for the beneficiaries of approved I-730 Refugee Relative petitions. “A . . . consular officer . . . interviews the beneficiary to determine eligibility to travel to the United States.” 9 FAM 203.5-1(b)(2). The purpose of the interview is to verify the beneficiary’s identity, confirm the existence of a qualifying relationship to the petitioner, and assess whether the beneficiary is subject to the persecutor bar and/or ineligibility. 9 FAM 203.6-5(a)(1). If the beneficiary is approved to travel, the consular officer will issue the V-93 visa to enable the beneficiary to travel to the United States. Refugee agencies and attorneys regularly report delays related to overseas processing, including delays in scheduling interviews and issuing the V-93 visa(s).

2. How long does it take for USCIS to adjudicate an I-730 Refugee Relative Petition?

In March 2022, USCIS established new internal timeframe goals to reduce its processing backlog, including its backlog of I-730 petitions.² The “new internal cycle time goal” for adjudication of I-730 petitions is six months. This is consistent with Congress’ “sense . . . that the processing of an immigration benefit application should be completed not later than 180 days after the initial filing of the application” 8 U.S.C. § 1571(b).

In reality, the processing time I-730 Relative Petitions is significantly longer. Refugee agencies and advocates report that processing routinely takes at least a year and often take more than two years. Unfortunately, USCIS’ website does not provide any information about the processing time for I-730 follow-to-join *Refugee* Relative Petitions, instead only providing processing times for a petition for “accompanying family members of an *asylee*.”³ Note, however, that USCIS

² USCIS, Reducing Processing Backlogs, <https://egov.uscis.gov/processing-times/reducing-processing-backlogs> (last visited Apr. 26, 2023).

³ USCIS, Check Case Processing Times, <https://egov.uscis.gov/processing-times/> (last visited Apr. 26, 2023).

provides historical data on the median processing times for I-730 Relative Petitions over the last five fiscal years.⁴

Accordingly, to ascertain how long USCIS is taking to adjudicate I-730 *Refugee* Relative Petitions, refugee agencies and attorneys also rely on their experience in other cases and/or communications with colleagues to estimate current processing times.

3. How long does overseas processing of I-730 Refugee Relative Petitions take?

USCIS previously posted the average overseas processing times for I-730 Refugee Relative Petitions abroad on its website.⁵ Curiously, however, at some point between April 14, 2023 and April 26, 2023, USCIS removed this data from the webpage. Thus, there is no publicly available information regarding overseas processing times.

Notably, the now-removed webpage had indicated that the processing time begins when the case “arrives at an international field office and ends when [USCIS] provides the applicant with a notification of a decision” and “does not include the service center processing time” nor does it include “post-decision activities, such as the issuance of travel documents.” The page also showed that processing times varied by office.

4. Is it possible to challenge a delay in I-730 Refugee Relative processing?

Yes. If the delayed adjudication is unreasonable, it is possible to challenge in federal court USCIS’ failure to adjudicate Form I-730 or USCIS/DOS’ failure to complete processing abroad. As discussed below, a lawsuit can assert delay claims under the Administrative Procedure Act and the Mandamus Act. The only relief a court can grant in such a suit is an order compelling adjudication of the petition and/or overseas processing (such as scheduling the visa interview). The court cannot and will not order the government to approve a petition or issue a visa.

As with all lawsuits of this nature, attorneys are advised to make inquiries with USCIS and/or the appropriate U.S. embassy or consulate abroad prior to filing a federal court lawsuit in order to document their efforts to prompt the USCIS/DOS to act.

Finally, a lawsuit challenging delayed refugee petition processing is more likely to be successful where the delay is beyond USCIS’ six month “new time goal” for adjudicating I-730 petitions and Congress’ aspirational processing times or there are compelling humanitarian reasons for the court to order the agency to act. *See* Q.2; Q. 10. However, prior to filing a lawsuit challenging

⁴ *See* USCIS, Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms by Fiscal Year, <https://egov.uscis.gov/processing-times/historic-pt> (last visited April 26, 2023). According to this data, the median processing time for Form I-730 for FY23 up to March 31, 2023 was 13 months, but this information pertains to petitions for accompanying family members of refugees and asylees.

⁵ *See* USCIS, USCIS Processing Time Information for International Operations Offices, <https://egov.uscis.gov/processing-times/international-operations-office> (last visited Apr. 14, 2023).

USCIS' delayed adjudication based on compelling humanitarian reasons, it is advisable to first make a request to the agency to expedite adjudication.⁶

5. Who is the plaintiff in such a lawsuit and what should counsel emphasize when discussing the possibility of a lawsuit?

The plaintiff is the person who filed the I-730 Refugee Relative Petition. Attorneys should clearly explain that, if the lawsuit is successful, the court can only order USCIS to adjudicate the I-730 petition and/or USCIS or DOS to complete overseas processing, sometimes including a deadline for it to do so. Following such a court order, USCIS can either grant or deny the petition and DOS can either grant or deny the visa. Thus, attorneys cannot guarantee that the lawsuit will result in an approved I-730 petition or issuance of a V-93 visa.

Moreover, there may be further delays that will not be resolved by the federal court litigation. For example, there may be a further delay after the I-730 petition is approved, including the issuance of travel documents such as an exit visa from the country in which the beneficiary resides—a requirement in some countries.

Prior to filing suit, attorneys should discuss potential risks to the beneficiaries of the petition and/or other relatives or friends abroad. *See* Q.6.

6. Is there a potential risk to beneficiaries or family members abroad?

Maybe. Because the complaint should address the specific harms caused by delayed adjudication, the public will have access to potentially highly sensitive information. This may include the beneficiary's current location and their safety concerns. Likewise, any press coverage of the case may subject the beneficiaries or other relatives/friends abroad to danger. Attorneys are also advised to counsel clients regarding use of social media, including whether publicity would be helpful or harmful given the circumstances of the case.

7. How can counsel minimize the risk to beneficiaries or family members abroad?

As noted in Q.6, family members overseas may be placed at risk if private information that is necessary to include in the pleadings is made public. In general, counsel can prevent public viewing of sensitive information in the court file either by employing pseudonyms in place of the plaintiff's or beneficiary's names or filing pleadings under seal. For the first, the complaint can be filed using only the plaintiff's and beneficiaries' initials or other pseudonyms, but counsel must simultaneously (or very soon thereafter) file a motion seeking the court's permission to proceed under pseudonyms. Such a motion should make clear that the plaintiff will reveal the identities of all who are proceeding pseudonymously to both the court and opposing counsel.⁷

⁶ Information on requesting expedited adjudication is available on USCIS' website. *See* USCIS, How to Make an Expedite Request, <https://www.uscis.gov/forms/filing-guidance/how-to-make-an-expedite-request> (last visited Apr. 26, 2023).

⁷ NILA can provide redacted motions to proceed under a pseudonym to its members.

Proceeding under a pseudonym will shield from public view only the names of the plaintiff and family members. To shield other sensitive information, it may be necessary to move for permission to file pleadings under seal, either in whole or in part. This too will require a motion.

Before undertaking either procedure, be sure to check whether the local court and/or the judge assigned to the case have rules governing these procedures.

8. What is filed in federal court to commence the lawsuit?

Like many other types of federal district court cases, the initial filing in a lawsuit challenging a delayed I-730 Refugee Relative Petition must include: a civil cover sheet (JS 44),⁸ complaint (with exhibits), a proposed summons for each named defendant, and a \$402 filing fee. In addition, as discussed above in Q.6, a motion to proceed under a pseudonym or under seal likely is also needed.

The following is an overview of the basic elements in a complaint challenging a delayed I-730 Refugee Relative Petition adjudication:

Caption – The caption should include the name of the document, e.g., Complaint for Declaratory, Injunctive, and Mandamus Relief. The caption should note that any defendant who is a person (not any agency) is sued “in his/her/their official capacity.”

Introduction – A brief introduction is optional, but helpful. It should provide a quick overview of the compelling facts, the basis of the claim(s), and the relief sought.

Jurisdiction – The court has jurisdiction under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1361 (Mandamus Act). It may grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-2202, 5 U.S.C. § 702, and 28 U.S.C. § 1361. Also state that the government has waived sovereign immunity pursuant to 5 U.S.C. § 702.

Venue – Venue is determined pursuant to 28 U.S.C. § 1391(e). *See* Q.11. In cases where the defendant(s) is/are a U.S. officer, employee and/or agency, venue lies in any district court where a defendant resides, where a substantial part of the relevant events/omissions occurred, or where the petitioner resides if no real property is involved.

Exhaustion of Administrative Remedies – Because it is not required, there is usually no reason to include a separate section on exhaustion of administrative remedies. However, it is advisable to include efforts to prompt agency adjudication in the factual allegations.

Parties – This section sets forth the name of each plaintiff and defendant. With respect to agency defendants, state the entities responsibility for the adjudication and processing of I-730 petitions and note that they are an agency within the meaning of the Administrative

⁸ The Form is available at: <https://www.uscourts.gov/forms/civil-forms/civil-cover-sheet>; however, some courts use customized civil cover sheets, available on the court’s website.

Procedure Act, 5 U.S.C. § 551(1). For individual defendants, state their role in adjudication and processing I-730 petitions and that each is sued in their official capacity.

Legal Background/Framework – This section is optional. However, since federal court judges and their clerks usually are unfamiliar with immigration benefits, it is advisable to include information about the nondiscretionary nature of I-730 petition adjudication, plaintiff’s right to adjudication, USCIS’ duty to adjudicate, and the process of adjudication. This section generally goes before or after the statement of facts. *See* Template Complaint (available on the practice advisory page of NILA’s website).

Factual Allegations – Set forth the factual allegations that form the basis of the unlawful conduct challenged in this section. Be sure to include any requests for expedited processing made to USCIS and/or any requests for Congressional intervention in this section. *See* Template Complaint and Q.11 for more details.

Claims for Relief – This type of complaint generally has two claims. One count alleges a violation of the APA, 5 U.S.C. § 706(1), for “agency action unlawfully withheld or unreasonably delayed.” The other count alleges a violation of the Mandamus Act, 28 U.S.C. § 1361, for failure to perform a nondiscretionary duty for which plaintiff has a clear right, and there is no other remedy available.

Prayer for Relief – This section sets forth the relief sought. It requests that the court: (a) assume jurisdiction over the matter; (b) declare that defendants’ delay is unreasonable under 5 U.S.C. § 706(1), (c) order defendants to immediately adjudicate the I-730 petitions; (d) issue a writ of mandamus directing adjudication of the I-730 petitions (e) award attorneys’ fees; and (f) grant any other relief that it deems just and proper.

9. Who is sued?

The officer(s) and agency/agencies responsible for the delay are the defendants. More specifically, the APA provides “that any action seeking mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance.” 5 U.S.C. § 702. The Mandamus Act authorizes actions “to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.” 8 U.S.C. § 1362.

Where USCIS has not completed adjudication of the I-730 Refugee Relative Petition, it is advisable to name, at a minimum, the Director of USCIS and the Director of the USCIS office that adjudicates such motions—which is, as of April 2023, the USCIS Humanitarian, Adjustment, Removing Conditions and Travel Documents (HART) Service Center.⁹

⁹ *See, e.g.*, USCIS, USCIS Opens the Humanitarian, Adjustment, Removing Conditions and Travel Documents (HART) Service Center (Mar. 30, 2023), <https://www.uscis.gov/sites/default/files/document/notices/USCISOpenstheHumanitarianAdjustmentRemovingConditionsandTravelDocumentsHARTServiceCenter.pdf>.

Where the action challenges delays in overseas processing of the I-730 Refugee Relative Petition, attorneys may also wish to name the DHS Secretary, the Secretary of State, and the individual in charge of the Bureau of Consular Affairs.

As long as the court has personal jurisdiction over at least one defendant, the court may proceed to the merits of the case. *See Employers Reinsurance Corp. v. Bryant*, 299 U.S. 374, 382 (1937) (without personal jurisdiction a district court is “powerless to proceed to an adjudication”).

10. Why does the complaint need to include compelling equities?

As in all delay cases, absent a mandatory statutory or regulatory adjudication deadline, a refugee plaintiff must demonstrate that the agency is taking an *unreasonably* long time to adjudicate or process the I-730 petition. Courts in all circuits evaluate the reasonableness of any delay using a six-factor test first set out in *Telecommunications Research & Action Center v. FCC (TRAC)*, 750 F.2d 70 (D.C. Cir. 1984).¹⁰ Applying this test, courts will consider—and often weigh heavily—the consequences of the delay on the health and welfare of the plaintiff, which in I-730 refugee cases, also should include the beneficiaries. For this reason, it is important to detail the hardships faced by family members abroad, including any threats to their safety and wellbeing.¹¹

11. Where would the lawsuit be filed?

Venue for actions in which a defendant is an officer or employee of the United States is governed by 28 U.S.C. § 1391(e). That statute provides that venue lies in any district court where a defendant resides, where a substantial part of the relevant events/omissions occurred, or where the plaintiff resides if no real property is involved.¹²

For cases involving adjudication delays by USCIS in the United States, as of April 2023, the

¹⁰ These factors are: (1) the time agencies take to make decisions must be governed by a “rule of reason”; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason; (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake; (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority; (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and (6) the court need not find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed.

¹¹ For a thorough discussion of the *TRAC* factors, see the practice advisory [Mandamus and APA Delay Cases: Avoiding Dismissal and Proving the Case](#).

¹² Note that some courts have found venue improper in the district where a noncitizen plaintiff resides on the theory that noncitizens do not “reside” in the United States for purposes of venue. *See, e.g., Ou v. Chertoff*, No. C-07-3676 MMC, 2008 U.S. Dist. LEXIS 108848, *3-4 (N.D. Cal. Mar. 12, 2008). However, even in these districts, courts have found venue proper in the district of plaintiff’s residence if “events or omissions giving rise to the claim occurred” there. *See, e.g., Ibrahim v. Chertoff*, No. 06-2071, 2007 U.S. Dist. LEXIS 38352, *13 (S.D. Cal. May 24, 2007); *Taing v. Chertoff*, 526 F. Supp. 2d 177, 180 (D. Mass. 2007).

office that adjudicates I-730 petitions is the Humanitarian, Adjustment, Removing Conditions and Travel Documents (HART) Service Center.¹³ However, in public engagements, USCIS officials have stated that the HART Service Center is a “virtual” service center with no physical location that is, at least temporarily, operating in conjunction with existing physical service centers for services, including customer service. For I-730 Petitions, the HART Service Center operates in conjunction with the Texas Service Center, which is located in Irving, Texas.¹⁴ Therefore, venue based on defendant’s location may lie in the U.S. District Court for the Northern District of Texas.

When naming USCIS as a defendant, that agency is headquartered in Camp Springs, Maryland and therefore “resides” in the U.S. District Court for the District of Maryland. Cases filed in the District of Maryland may face motions to transfer under 28 U.S.C. § 1404(a), which permits courts, “for the convenience of parties and witnesses,” to “transfer any civil action to any other district or division where it might have been brought . . .”¹⁵

For cases involving adjudication delays by DOS abroad, venue lies in the district where the petitioner resides or the U.S. District Court for the District of Columbia where the Bureau of Consular Affairs is located.

12. What happens after the complaint is filed?

After the complaint is filed, counsel must properly serve the complaint, summonses, any motion for leave to file under a pseudonym/under seal and proposed order, and any other case initiating documents on the defendants and the U.S. Attorney’s Office for the judicial district in which the case was filed, all in accordance with Federal Rule of Civil Procedure 4(i).¹⁶

If an accompanying motion for leave to file under a pseudonym is filed, counsel may wish to reach out to the local U.S. Attorney’s Office and provide case identifying information to the government attorney assigned to the case. With this information, the Assistant U.S. Attorney assigned to the case can consult with the defendants regarding their position, including whether resolution without litigation may be possible.

The government has sixty days to file either an answer or a defensive motion. *See* Fed. R. Civ. P. 12(a)(3). If the agency is inclined to act on the petition and/or complete overseas processing, and thereby resolve the lawsuit, government counsel may ask for an extension of this deadline.

¹³ *See, e.g.*, USCIS, USCIS Opens the Humanitarian, Adjustment, Removing Conditions and Travel Documents (HART) Service Center (Mar. 30, 2023), <https://www.uscis.gov/sites/default/files/document/notices/USCISOpenstheHumanitarianAdjustmentRemovingConditionsandTravelDocumentsHARTServiceCenter.pdf>.

¹⁴ USCIS, I-730, Refugee/Asylee Relative Petition (updated Mar. 28, 2023), <https://www.uscis.gov/i-730> (providing for filing I-730s with the Texas Service Center).

¹⁵ *See, e.g.*, *Aishat v. U.S. Dep’t of Homeland Sec.*, 288 F. Supp. 3d 261, 272 (D.D.C. 2018).

¹⁶ For further information, see the practice advisory [Whom to Sue and Whom to Serve in Immigration-Related District Court Litigation](#).

In delay cases, the government more often files a motion to dismiss the complaint than an answer. The government may argue that the case should be dismissed for failure to state a claim, arguing that, under the *TRAC* factors, the delay is not unreasonable. *See* Q.10. In responding to the motion, counsel will have to argue that the *TRAC* factors weigh in plaintiff’s favor.

13. Will winning mean the refugees can enter?

No. A successful challenge to a delayed I-730 adjudication can only result in an order that the agency must act on the petition. Where the action challenges delays in adjudication by USCIS in the United States, the petition will still require overseas processing following adjudication. Even in actions challenging delays in overseas processing, action by USCIS or DOS may not fully resolve the beneficiaries’ ability to enter the United States. For example, in some countries, the beneficiary may be required to obtain an exit visa from the country in which they are residing—an action over which the U.S. government has no control and thus which cannot be addressed through litigation against USCIS or DOS.

14. Are attorneys’ fees and costs available for delay litigation?

Attorneys’ fees and costs may be available under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d) & 5 U.S.C. § 504 et seq. However, among other requirements, the prevailing party must have obtained a court order that demonstrates a “material alteration of the legal relationship of the parties” and a “judicial imprimatur on the change.” *Buckhannon Bd. Care & Home Inc. v. W. Va. Dep’t of Health & Human Res.*, 532 U.S. 598, 604-605 (2001).¹⁷ Notably, if the agency adjudicates the I-730 refugee petition or completes overseas processing after the case is filed but before the court issues a decision meeting the requirements set forth in *Buckhannon*, fees are not available.

15. Additional Resources

- Catholic Legal Immigration Network’s (CLINIC’s) *I-730 Refugee/Asylee Family Reunification Practice Manual* (2019), <https://cliniclegal.org/resources/asylum-and-refugee-law/i-730-refugeeasylee-family-reunification-practice-manual>.
- Immigrant Legal Resource Center’s Practice Advisory, *Application of the Child Status Protection Act to Asylees and Refugees* (2018), https://www.ilrc.org/sites/default/files/resources/applica_child_stat_asylees_refugees-20180521.pdf.
- International Refugee Assistance Project, *Refugee Family Reunification Delay Litigation*, <https://refugeerights.org/news-resources/refugee-family-reunification-delay-litigation> (last visited Apr. 26, 2023).

¹⁷ For a detailed discussion of EAJA fees, see the practice advisory [*Requesting Attorneys’ Fees Under the Equal Access to Justice Act*](#).