

UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF NORTH CAROLINA  
 CHARLOTTE DIVISION  
 DOCKET NO. 3:18-cv-00153-FDW-DCK

SALEH SHAIBAN; FATIMA )  
 MUTHANA; ASEEL SHAIBAN; TAHANI )  
 SHAIBAN; SAEED SHAIBAN; AMIN )  
 SHAIBAN; and AKRAM SHAIBAN, )

Plaintiffs, )

vs. )

KIRSTJEN NIELSEN, Secretary of )  
 DEPARTMENT OF HOMELAND )  
 SECURITY; DEPARTMENT OF )  
 HOMELAND SECURITY; LEE CISSNA, )  
 Director of, U.S. CITIZENSHIP AND )  
 IMMIGRATION SERVICES; )

Defendants. )

ORDER

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THIS MATTER is before the Court upon Defendants’ Motion to Dismiss or, in the Alternative, to Stay (Doc. No. 7). Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) Defendants request dismissal for lack of subject matter jurisdiction and failure to state a claim; in the alternative, Defendants request the Court stay this action pending United States Citizenship and Immigration Services’ (“USCIS”) final adjudication of Plaintiffs’ I-485 adjustment applications. Plaintiffs have responded in opposition (Doc. No. 11), and this matter is now ripe for disposition. Defendants’ motion to dismiss or, in the alternative, to stay (Doc. No. 7) is DEFERRED IN PART and GRANTED IN PART. For the reasons stated below, the Court hereby STAYS this matter pending the final adjudication of Plaintiffs’ adjustment applications.

**I. BACKGROUND**

This action arises out of Defendants' alleged failure to adjudicate Plaintiffs' I-485 adjustment applications within a reasonable time. See (Doc. No. 1).

According to the Complaint, Plaintiffs immigrated from Yemen to the United States seeking asylum and permanent residency. In December of 2006, Mr. Saleh Shaiban was granted asylum in the United States by Immigration Judge Patricia Rohan. Id. at 4. Nearly two years later, on or about November 26, 2008, Mr. Shaiban submitted a I-485 Application to Register Permanent Resident or Adjust Status to the USCIS. Id. In 2014, Mr. Shaiban's wife, Fatima Muthana, and children, Saeed Shaiban, Saleh Shaban, Akram Shaiban, Amin Shaiban, Tahani Shaiban, and Aseel Shaiban were granted derivative asylee status and admitted to the United States. Id. Between May and July of 2016, Mr. Shaiban's wife and children submitted their respective I-485 applications to the USCIS. Id. at 4-6. To date, Defendants have not completed a full adjudication of any plaintiff's application. Id.

After purportedly exhausting all administrative options for relief, Plaintiffs filed suit in this Court on March 26, 2018, seeking a writ of mandamus and declaratory and injunctive relief. On May 29, 2018, the USCIS issued Requests for Evidence ("RFEs") to all Plaintiffs regarding their I-485 applications. (Doc. No. 11, p. 10). Plaintiffs responded to the RFEs on June 25, 2018. Id. Defendants' filed their motion to dismiss or, in the alternative, to stay (Doc. No. 7) on June 28, 2018.

## **II. ANALYSIS**

While Plaintiffs oppose a stay, they provide no specific argument against staying the case nor do they provide authority indicating a stay is inappropriate. See (Doc. No. 11, p. 15). Defendants, on the other hand, convincingly argue a stay of this matter "serves the twin purposes

of protecting administrative agency authority and promoting judicial efficiency.” Dexter v. Huerta, No. 1:12CV1147, 2013 WL 5355748, at 2 (M.D.N.C. Sept. 24, 2013).

The Court recognizes that Mr. Saleh Shaiban submitted his adjustment application over eight years ago and that the remaining Plaintiffs have also waited over two years for adjudication of their applications. However, Defendants have recently issued RFEs to Plaintiffs, and it has now been only one month since Plaintiffs responded to those RFEs. Given these recent developments, the Court determines it would be more efficient to allow the USCIS to operate without judicial intervention at this time. Accordingly, the Court determines a stay of this matter pending final adjudication of Plaintiffs’ adjustment applications is appropriate.

### III. CONCLUSION

IT IS THEREFORE ORDERED that Defendants’ motion to dismiss or, in the alternative, to stay (Doc. No. 7) is DEFERRED IN PART and GRANTED IN PART. The Court hereby STAYS this matter pending the USCIS’s final adjudication of Plaintiffs’ I-485 adjustment applications.

IT IS SO ORDERED.

Signed: August 1, 2018



Frank D. Whitney  
Chief United States District Judge

