

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION**

JILL and ADAM TROWER,

Plaintiffs,

v.

ANTHONY BLINKEN,
Secretary of the
U.S. Department of State,

and

ALEJANDRO MAYORKAS,
Secretary of the
U.S. Department of Homeland Security,

and

UR MENDOZA JADDOU,
Director of U.S. Citizenship and
Immigration Services,

and

CAROL COX,
Consular Section Chief of the
U.S. Embassy – Kinshasa, DRC,

and

UNITED STATES OF AMERICA,

Defendants.

Case No.:

COMPLAINT

This case involves a sad and potentially tragic beginning, and, miraculously, a potentially fortunate ending for a baby boy who by ALL accounts was abandoned by a trash heap in the Democratic Republic of Congo (“DRC”), but who now has loving, adoptive U.S. parents fighting

tooth and nail to finally bring him to the United States and give the boy a chance at a great family and life. They deserve this chance. Defendants have engaged in blatantly arbitrary, capricious and unreasonable conduct in the handling of this adoption case, and the decision at issue before the Court is manifestly contrary to, and not supported by, competent or substantial evidence; nor is it in accordance with applicable law. Plaintiffs Jill and Adam Trower (the “Trowers” or “Plaintiffs”), by and through their undersigned counsel, thus complain of Defendants Anthony Blinken, Alejandro Mayorkas, Ur Mendoza Jaddou, Carol Cox, and the United States of America as follows:

PARTIES

1. The Trowers are United States citizens and the Petitioners for an I-600 Petition to Classify Orphan as an Immediate Relative filed on behalf of their adopted son Munongo Fataki Strong (“Luke”). They currently reside in Curryville, Pike County, Missouri.

2. Luke is a three-year-old child who was adopted by the Trowers in May 2019. He is a citizen of the Democratic Republic of the Congo and the Beneficiary of the Trowers’ I-600 Petition. He currently resides in the Ma Famille Orphanage in Kinshasa, DRC.

3. Defendant Anthony Blinken is Secretary of the U.S. Department of State. This suit is brought against Secretary Blinken in his official capacity, as the Secretary of the Department of State is ultimately responsible for overseeing the I-604 investigation for international adoptions, as delegated by USCIS. *See* 8 U.S.C. § 1104(a) and 8 C.F.R. § 204.3.

4. Defendant Alejandro Mayorkas is Secretary of the U.S. Department of Homeland Security. This suit is brought against Secretary Mayorkas in his official capacity, as the Secretary of Homeland Security is responsible for the administration and enforcement of laws related to the

immigration of foreign nationals. *See* 8 U.S.C. § 1103(a)(1). Defendant Mayorkas has the ultimate decision-making authority over Plaintiffs' I-600 Petition.

5. Defendant Ur Mendoza Jaddou is Director of U.S. Citizenship and Immigration Services (USCIS). This suit is brought against Director Jaddou in her official capacity, as the USCIS Director is responsible for the overall administration of USCIS and the implementation and enforcement of the immigration laws of the United States. As such, Defendant Jaddou has decision-making authority over Plaintiffs' I-600 Petition.

6. Defendant Carol Cox is the Consular Section Chief of the U.S. Embassy – Kinshasa, DRC. This suit is brought against Defendant Cox in her official capacity, as the Consular Section Chief is responsible for conducting the I-604 investigation for Plaintiff's pending I-600 Petition. *See* 8 C.F.R. § 204.3(k).

JURISDICTION AND VENUE

7. This is a civil action brought pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.* Jurisdiction is therefore proper under 28 U.S.C. § 1331.

8. Jurisdiction is also proper under 28 U.S.C. § 1346 as the United States is a defendant and this action is founded upon an Act of Congress.

9. Venue is proper in this Court under 28 U.S.C. § 1391(e)(1)(C) because this is an action in which Defendants are either the United States or officers or employees of the United States, no real property is involved in this action, and this action is brought in the district where the Trowers reside.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

10. No exhaustion requirements apply to Plaintiffs' Complaint. There is no statute or regulation that mandates an administrative appeal of the denial of Plaintiffs' I-600 Petition. *See* 8

C.F.R. § 103.3(a)(1)(ii) (“Certain unfavorable decisions on applications, petitions, and other types of cases *may* be appealed.”) (emphasis added); 8 C.F.R. § 204.3 (explaining that “the applicable provisions of 8 CFR part 103 regarding . . . appeal rights shall govern”); *see also Darby v. Cisneros*, 509 U.S. 137, 147 (1993) (“[I]t would be inconsistent with the plain language of [5 U.S.C. § 704] for courts to require litigants to exhaust optional appeals[.]”). Further, the adverse agency decision challenged is final under the Administrative Procedure Act (“APA”).

FACTS AND PROCEDURAL HISTORY

11. On April 10, 2018, two-month-old Luke Trower was discovered abandoned clothed in only a dirty diaper, crying, near a pile of garbage in Kinshasa, DRC around sunrise. He was severely malnourished and sick with malaria. After being found by a Good Samaritan, Luke was brought to the police station and subsequently placed in the Ma Famille Orphanage in Kinshasa, where he still resides today.

12. The Trowers learned about Luke through their international adoption agency. They were in awe at how much he had overcome at such a young age and fell in love with him instantly. They began the adoption process in the summer of 2018, when Luke was approximately six months old.

13. The Trowers submitted their I-600A Application for Advance Processing of an Orphan Petition to USCIS on October 5, 2018, and USCIS approved the same on or about November 15, 2018. (*See* I-600A Approval Notice, Exhibit 1 hereto.)

14. In their I-600A Application, the Trowers identified their intent to adopt from the DRC, and the Approval Notice from USCIS specifically noted that they were approved to adopt from the DRC. (*See id.* (“You are approved to adopt 2 child/ren from Democratic Republic of Congo...”).)

15. Around this same time, and relying on this USCIS decision, the Trowers began the adoption process in the DRC courts. On May 21, 2019, the adoption was finalized by the Juvenile Court of Kinshasa and the Trowers became Luke's legal parents.

16. Eight days after the adoption was finalized, the Trowers submitted their I-600 Petition to Classify Orphan as an Immediate Relative to USCIS on May 29, 2019.

17. The case was forwarded by USCIS to the Kinshasa Embassy on July 22, 2019 for the I-604 investigation, which the Kinshasa Embassy, acting under the Department of State, was required by law to perform. *See* 8 C.F.R. § 204.3(k).

18. Although the Department of State warns petitioners that the I-604 investigation “can take several weeks or, in some cases, months to complete,”¹ the Kinshasa Embassy did not supposedly complete its so-called investigation until over *one year* after it received the case.

19. Even with the extra time, the so-called “investigation” was woefully inadequate and deviated from the Department of State's own policies concerning the same.

20. While awaiting the Kinshasa Embassy's completion of the I-604 investigation, the Trowers repeatedly attempted to contact USCIS and the Department of State for updates. In February 2020, the Trowers emailed Scott Renner, Director of the Office of Children's Issues for the U.S. Department of State. Director Renner thanked the Trowers for bringing their case to his attention and informed the Trowers that he had recently reminded all of the embassies that all I-604 investigations should be completed within six (6) months. (*See* February 26, 2020 email correspondence, Exhibit 2 hereto.)

¹ *See* Non-Convention Adoption Cases: Form I-604 Determination and Immigrant Visa Appointment Scheduling (*available at* <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/immigrant-visa-process/Non-Convention-Adoption-Cases-Form-I-604-Determination-and-Immigrant-Visa-Appointment-Scheduling.html>).

21. Indeed, six months is the desired standard by Department of State for I-604 investigations.

22. On or about July 30, 2020, over one year after it initially received the case, the Kinshasa Embassy finally (and initially) returned the Trowers' case to USCIS.

23. Despite having taken over one year to complete its "investigation," the Kinshasa Embassy failed to interview any of the relevant individuals involved in Luke's adoption, including the woman who found Luke abandoned in the garbage heap, the orphanage personnel, or local authorities or court personnel involved in the handling the child since his finding or as part of the adoption process.

24. In sum, the Department of State failed to interview anyone with first-hand knowledge of the child's finding and abandonment, or adoption in DRC. Such failures are contrary to the standards set by applicable law. *See, e.g.*, 8 C.F.R. § 204.3(k)(1).

25. Six months after the Kinshasa Embassy purportedly finished its so-called investigation, USCIS issued a Notice of Intent to Deny (NOID), which was replete with improper speculation and misstatements of law and fact. (*See* Petitioners' Response to Notice of Intent to Deny, Exhibit 3 hereto.)

26. The Trowers' submitted a comprehensive response to the NOID on March 22, 2021, addressing all concerns listed in the NOID. (*See id.*) The response included declarations by the child finder and orphanage personnel, a legal opinion by a DRC attorney, and even another DRC court judgment affirming the adoption and expressly addressing and dismissing USCIS's stated concerns in the NOID about 2016 DRC laws that USCIS believed prevented adoptions from the DRC, among other evidence.

27. Plaintiffs also included evidence of USCIS *approvals* of other I-600 Petitions filed for DRC adoptions completed after 2016, when the DRC laws (which USCIS cited in the NOID as possibly preventing adoptions from the DRC) went into effect.

28. Further, as Plaintiffs pointed out in the NOID response, USCIS had previously approved Plaintiffs' I-600A application in November 2018, more than a year after the supposedly applicable DRC laws (which USCIS relied on in questioning whether adoptions could proceed in the NOID), went into effect. (*See Exhibit 1.*)

29. The I-600A application clearly explained the adoption would be from DRC, the I-600A USCIS approval expressly approved Plaintiffs to adopt from the DRC, and Plaintiffs reasonably relied on that approval in continuing the adoption process since 2018, at significant expense and emotional toll, all of which has been compounded by Defendants' shoddy case processing. (*Id.*)

30. Upon information and belief, the case was returned to the Kinshasa Embassy for further I-604 "investigation" in March 2021 following Plaintiffs' NOID Response.

31. On December 22, 2021, over two-and-a-half years after Plaintiffs filed their I-600 Petition (and over three years after Plaintiffs' I-600A was approved authorizing Plaintiffs to adopt from the DRC), USCIS issued a Notice of Decision, denying Plaintiffs' I-600 Petition on the grounds that the DRC courts lacked the power under DRC laws (the 2016 laws) to grant Plaintiffs' adoption petition and that Plaintiffs failed to establish that Luke is an orphan. (*See Notice of Denial, Exhibit 4 hereto.*)

32. In the Denial, nowhere did USCIS make a finding of fraud or misrepresentation by anyone associated with Luke's adoption in the DRC. In the absence of such, USCIS's own

procedures indicate that the foreign adoption decree should be considered as valid. USCIS again did not follow its own rules.

33. With respect to DRC laws, USCIS relied on supposed consultations (not produced or shared with Plaintiffs, or even quoted) with certain DRC *executive* agencies, which, according to USCIS, relayed their interpretation of DRC law as preventing the adoption based on the same 2016 DRC laws cited by USCIS in the NOID. However, USCIS failed to explain how such informal opinions by executive agencies are relevant under DRC law (where the judiciary is charged with interpreting the law), or appropriately account for a judicial ruling by the DRC Children's Court explaining that, under DRC law, the Constitution is supreme, gives higher standing to the Convention on the Rights of the Child in determining the best interest of the child, and which again affirmed Luke's adoption by the Trowers.

34. Also, in the Denial, USCIS nowhere addressed why it had, despite the ruling in this case on the impact of the DRC laws, approved prior adoptions via the I-600 process after 2016 (or even after Plaintiffs' I-600A approval in 2018). In their response to the NOID, Plaintiffs presented evidence of several such I-600 approvals, which alone is sufficient to demonstrate the arbitrary and capricious nature of USCIS's conduct in Plaintiffs' case, and Plaintiffs are aware that there are many more such I-600 approvals after 2016, thus revealing that even USCIS is not convinced that DRC law prevents such adoptions.

35. Notably, there also was no new investigatory evidence cited by USCIS in the Denial. Incredibly, to date, there has been absolutely no mention of any interviews of relevant personnel whatsoever, whether by telephone or in person (or even email).

36. In response to the significant evidence submitted by Plaintiffs in the NOID response, including actual sworn declarations by the child finder and orphanage personnel, USCIS

attempted to discredit such evidence by contending that such evidence “hold[s] little to no evidentiary value” (despite being the *only* testimony from such individuals, as USCIS and Department of State personnel never had conversations with them) because they were done in response to the NOID and “provide factual information that could not be verified.” (Exhibit 4, pp. 6-7).

37. Although 8 C.F.R. § 204.3(k) requires that an I-604 investigation be completed in *every* orphan case and further requires that every I-604 investigation “*shall include*, but shall not necessarily be limited to, document checks, telephonic checks, interview(s) with the natural parent(s), and/or a field investigation,” Defendants failed to perform an adequate investigation.

38. More appalling is the fact that USCIS, in its Denial, now tries to blame Plaintiffs for presenting the investigatory evidence it (the government) should have compiled in the first place (which would have provided factual information to verify what Plaintiffs’ evidence showed), even taking Plaintiffs to task for addressing the specific issues identified in the NOID through sworn, competent evidence.

39. In sum, the Denial is arbitrary, capricious, lacks substantial evidence and is contrary to and not in accordance with applicable law. Among other things, Defendants have relied on factors which Congress did not intend them to consider, failed to consider important aspects and evidence, offered explanations for decisions which run counter to the evidence before them, and are so implausible that they could not be ascribed to a difference in view or the product of agency expertise.

40. While the Trowers’ I-600 Petition sat in the hands of USCIS and the Kinshasa Embassy from May 2019 until December 2021 when it was wrongfully denied, Luke fell ill with malaria at least five times. The orphanage in which he continues to reside does its best to care for

him, but it lacks consistent electricity and clean drinking water. Furthermore, the neighborhoods surrounding the orphanage are rife with violence. Thus, even beyond the regular and substantial prejudice experienced by Plaintiffs in being separated from their son, prejudice continues for Luke as well given his circumstances. Plaintiffs thus turn to this Court for relief.

COUNT I: ADMINISTRATIVE PROCEDURE ACT (“APA”)

41. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 40 above as if fully set forth herein.

42. Plaintiffs have been adversely affected or aggrieved by USCIS’ denial of their I-600 Petition, including by being deprived of the ability to provide their lawfully adopted son a loving and safe home. 5 U.S.C. § 702.

43. Denial of Plaintiffs’ I-600 Petition is a final agency action by USCIS for which there is no other adequate remedy in a court. 5 U.S.C. § 704.

44. Defendants’ denial of Plaintiffs’ I-600 Petition is arbitrary and capricious, an abuse of discretion, lacks substantial evidence, and is otherwise not in accordance with law.

45. Defendants’ denial of Plaintiffs’ I-600 Petition is without observance of procedures required by law, to wit: 8 C.F.R. § 204.3(k) and USCIS’s and the Department of State’s own stated procedures.

46. Defendants’ pre-litigation and litigation positions, to the extent they attempt to defend the Denial, are not substantially justified. Thus, Plaintiffs are entitled to an award of attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d) & 5 U.S.C. § 504 *et seq.* Further, there are no special circumstances that would make an award unjust, and Plaintiffs are eligible to recover such fees.

WHEREFORE, Plaintiffs Jill and Adam Trower pray that this Court enter an Order setting aside or reversing Defendants' denial of Plaintiffs' I-600 Petition and compelling Defendants to approve the I-600 Petition, award Plaintiffs' attorneys' fees and costs as allowed under the Equal Access to Justice Act, and grant such other and further relief as this Court deems proper under the circumstances.

Respectfully submitted,

LEWIS RICE LLC

DATED: January 20, 2022

By: /s/ David W. Gearhart
David W. Gearhart, #50292MO
Lindsey M. Bruno, #73055MO
600 Washington Avenue, Suite 2500
St. Louis, Missouri 63101
Telephone: (314) 444-1352
Facsimile: (314) 612-1352
dgearhart@lewisrice.com
lbruno@lewisrice.com

Attorneys for Plaintiffs