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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 KICHUL LEE, *et al.*,

10 Plaintiffs,

11 v.

12 ALBERTO R. GONZALES,
13 Attorney General *et al.*,

14 Defendants.

NO. C04-0449RSL

ORDER REGARDING MOTION
TO ENFORCE COMPLIANCE

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16 This matter comes before the Court on plaintiffs’ “Motion to Enforce
17 Compliance.” Dkt. # 199. Plaintiffs seek a declaration and corresponding order that
18 defendants are not in compliance with the terms of the Settlement Agreement insofar as
19 they (1) initially rejected applications for naturalization from persons who were on
20 probation and (2) have not processed these applications “in normal Seattle District
21 processing time.” Settlement Agreement at ¶ 4C.

22 The motion to enforce compliance is moot as to the first issue. The parties
23 apparently had a disagreement regarding whether persons on probation were class
24 members, but the issue was resolved in plaintiffs’ favor without Court intervention.
25 Regardless of whether defendants’ initial interpretation of the Settlement Agreement was
26 justified or not, U.S. Citizenship and Immigration Services (“CIS”) is now considering
27 applications for naturalization from all class members in compliance with the agreement:
28 an order compelling such action is therefore unnecessary.

1 The phrase “normal Seattle District processing time” in the Settlement
2 Agreement is purposely vague. Based on general principals of contract interpretation, the
3 Court finds that the parties intended to ensure that class members were treated the same
4 as other applicants for naturalization without unduly limiting CIS’ ability to investigate
5 and consider each application on its merits. The record¹ suggests that, as of October 15,
6 2007, the normal processing time for applications for naturalization was seven months.
7 The seven-month time frame is not a guarantee, however. The “normal” processing time
8 can be extended if additional information is needed or if the applicant does not cooperate
9 throughout the interview process.

10 Plaintiffs argue that defendants are not in compliance with the Settlement
11 Agreement because an application submitted by Abdisimad Ali in August 2006 is still
12 pending. The application was initially rejected because CIS believed he was not a class
13 member. By the time CIS agreed to accept Ali’s application on April 18, 2007, his
14 service file had already been shipped to the Refugee Affairs Division so that it could
15 adjudicate his mother’s application for refugee status. Despite repeated assurances that
16 the service file would be returned from the Refugee Affairs Division in the near future,
17 there has been no progress on Ali’s application.

18 The Court is not concerned with defendants’ failure to process Ali’s
19 application between August 2006 and April 2007: that delay was caused by a
20 misunderstanding regarding the scope of the settlement and, as far as CIS was concerned,
21 the application was not pending during that period. The delay after April 18, 2007,
22 however, while not yet enough to warrant sanctions, is of concern. When Ali resubmitted
23 his application for naturalization eight months ago, he was told that HQ would return his
24 service file and that an interview would be scheduled shortly. Plaintiffs waited five
25 months to seek to compel action on his application, at which point defendants said that

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27 ¹ Much, if not all, of the “evidence” submitted by the parties on this issue is inadmissible, but the
28 Court is willing to assume that the website information provided by plaintiffs could be authenticated and
that a signed version of Ms. Harrison’s declaration could be presented by defendants.

1 the file would be returned in a “few weeks.” Declaration of Julia L. Harrison at ¶ 7.

2 Apparently in reliance on defendants’ representation, plaintiffs continued their motion to
3 enforce compliance until October 19, 2007, and then again until November 16, 2007.

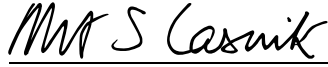
4 Despite plaintiffs’ patience, the service file is still with the Refugee Affairs Division and
5 Ali’s application remains in limbo.

6 This is not a case in which CIS has been compelled to wait for another
7 agency or foreign government to act. Defendants have, and have always had, Ali’s
8 service file – it just happens to be in an office other than the Seattle Field Office. Despite
9 the fact that defendants are under a contractual obligation to process Ali’s application for
10 naturalization “in normal Seattle District processing time,” they have made no effort to do
11 so. The normal processing time, barring an incomplete application or the recalcitrance of
12 the applicant (neither of which is alleged here), is seven months. Ali is fast approaching
13 the nine-month mark and CIS has not even begun reviewing his application on the merits.
14 There is no indication that the Seattle Field Office has impressed upon the Refugee
15 Affairs Division its contractual need to process Ali’s application, that the Refugee Affairs
16 Division has made any attempt to expedite its handling of Ali’s file, or that defendants
17 have even requested a copy of the service file if the original is truly unavailable. The
18 reasons for this continuing delay range from bureaucratic incompetence at best to a
19 blatant disregard of defendants’ settlement obligations at worst: whatever the cause, Ali
20 has waited long enough.

21 For all of the foregoing reasons, defendants are hereby ORDERED to
22 process Abdisimad Ali’s application for naturalization within thirty days from the date of
23 this Order. If the original service file cannot be overnighted from the Refugee Affairs
24 Division without unduly interfering with its operations, a copy should be obtained
25 forthwith. Failure to process Ali’s application within the thirty-day period will result in
26 monetary sanctions of \$25 per day unless defendants show good cause, prior to the
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1 expiration of the thirty-day period, why the period should be extended.²

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3 Dated this 2nd day of January, 2008.

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5 Robert S. Lasnik
6 United States District Judge
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25 ² In their reply memorandum, plaintiffs argue that Ali is simply an example of the many
26 probationers whose applications for naturalization have not been processed in “normal” time. They cite
27 Balwant Singh as another example, but provide no information regarding when CIS accepted his
28 application. The Court cannot, on such scant evidence, determine whether Singh’s application has been
pending longer than the “normal” seven months or whether the circumstances of Singh’s case, such as the
need for additional information or a failure to appear for an interview, explain any additional delay that
may exist.