

EXHIBIT 1

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14 *Attorneys for Plaintiffs*

15 UNITED STATES DISTRICT COURT
16 FOR THE EASTERN DISTRICT OF WASHINGTON

17 SULEIMAN ABDULLAH SALIM,
18 MOHAMED AHMED BEN SOUD, OBAID
19 ULLAH (AS PERSONAL
20 REPRESENTATIVE OF GUL RAHMAN),

2:15-CV-286-JLQ

21 Plaintiffs,

22 v.

23 DECLARATION OF
24 JAN PEDERSON

24 JAMES ELMER MITCHELL and JOHN
25 "BRUCE" JESSEN

26 Defendants.

1 I, Jan Pederson, a member of the Bar of the District of Columbia and the
2 Supreme Court of the United States, declare under penalty of perjury as follows:
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4 1. I am a Senior Attorney and Shareholder with Maggio-Kattar, P.C.
5 with offices in the District of Columbia and San Diego, California. Maggio-
6 Kattar has been retained to represent the American Civil Liberties Union and the
7 Plaintiffs in this matter in their efforts to obtain nonimmigrant visas to enter the
8 United States. I submit this declaration in support of Plaintiffs' Opposition to
9 Defendants' Motion to Compel IMEs and Depositions.
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12 2. Since 1978, I have practiced exclusively immigration and
13 nationality law and represented thousands of individuals, universities and
14 corporations in immigration matters.
15

16 3. I have served as the President of the Washington, D.C. Chapter of
17 the American Immigration Lawyers Association ("AILA") and as an elected
18 member of the national Board of Governors of AILA for eighteen years. I was
19 awarded the prestigious national Edith Lowenstein Award for excellence in the
20 advancement of the practice of immigration law. I have served on the AILA
21 Access to Counsel Committee for several years. The goal of this Committee is
22 to secure the right for visa applicants to have an attorney present to represent
23 them at visa interviews.
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1 4. My immigration practice has focused on the subspecialty of
2 representation of clients in applying for visas at American consular posts abroad
3 for several decades during which I have personally appeared at twenty-four
4 consular posts abroad and represented hundreds of clients at consular posts. I
5 am considered to be a national expert in this specialized area of practice.
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8 5. I served as a senior editor and author for the AILA Visa Processing
9 Guide for many years and regularly publish an article, called “Strategic
10 Lawyering at American Embassies and Consulates,” which is a guide for
11 attorneys to maximize the chance of success in representing clients in the visa
12 process at consular posts.
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14 6. The process of applying for a nonimmigrant visa requires the
15 applicant to complete a Department of State online visa application, known as
16 Form DS-160. Once this application is completed, it is submitted online and
17 stored in a Department of State database. Once the application is submitted, the
18 applicant or counsel is required to make an appointment for an in-person
19 interview at a consular post. Personal interview waivers are granted to some
20 categories of visa applicants, but Plaintiffs in this matter are not eligible for such
21 waivers. The visa fee is then paid either online or at a local bank. Once the visa
22 fee is paid, the applicant can then make a visa appointment either online or by
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1 phone.

2 7. At the visa interview for most non-immigrant categories, the
3 applicant must be found eligible for a visa under Section 214(b) of the
4 Immigration and Nationality Act of 1952, as amended, which provides in
5 pertinent part:
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8 (b) Every alien (other than a nonimmigrant described in
9 subparagraph (L) or (V) of section 101(a)(15), and other than a
10 nonimmigrant described in any provision of section
11 101(a)(15)(H)(i) except subclause (b1) of such section) shall be
12 presumed to be an immigrant until he establishes to the satisfaction
13 of the consular officer, at the time of application for a visa, and the
14 immigration officers, at the time of application for admission, that
15 he is entitled to a nonimmigrant status under section 101(a)(15)....

16 8. The overwhelming majority of B-1 visas, such as those sought by
17 the Plaintiffs, that are refused are denied under this section of law. There is no
18 appeal from the denial of a visa under this section nor is there an opportunity to
19 seek visa reconsideration. The only remedy is to reapply for a visa, undertaking
20 the tedious and costly process of submitting a new Form DS-160 Nonimmigrant
21 Visa Application, paying the fees again, making a new appointment and
22 submitting to another visa interview.

23 9. No government official can require a consular officer to issue a
24 visa. If a supervisory consular official disagrees with the decision of a consular
25 officer to refuse a visa, the remedy is for the supervisory consular officer to
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1 assume jurisdiction over the application, re-interview the applicant and issue the
2 visa.¹ In practice, this rarely occurs and is discouraged. The statutes, rules and
3 regulations giving virtually absolute power to consular officers in adjudicating
4 visas is known as consular absolutism.
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6 10. Thus, the Plaintiffs are required to overcome the presumption that
7 they are “guilty” of immigrant intent (to remain in the United States) before
8 being issued most categories of visas, including those sought by the Plaintiffs.
9 After a typical one or two minute interview, the fate of the visa applicant is
10 decided. The consular officers are directed to note in the Consolidated Consular
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13 _____
14 ¹ The Department of State Foreign Affairs Manual contains the operational
15 guidance for visa issues and other matters. 9 FAM Section 403.10-3(D)(2)(U)
16 provides, in pertinent part:
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18 If a reviewing officer with a consular commission and title does not concur
19 with the refusal, he or she may assume responsibility and re-adjudicate the
20 case. The reviewing officer must discuss the case fully with the original
21 adjudicating officer before taking any action. The reviewing officer must not
22 reverse a 214(b) refusal without re-interviewing the applicant, as information
23 gained during the interview is an essential component of any 214(b)
24 decision. If the disagreement involves a matter of law, the reviewing officer
25 may assume personal responsibility for the case and reverse the decision,
26 after discussing with the original adjudicating officer. The reviewing officer
should enter a note in the NIV Adjudication Review in the CCD that explains
the reason for overturning the refusal.

1 Database the reason underlying the refusal. However, they are not required to
2 provide the factual basis for finding the applicant “guilty.”
3

4 11. The personal satisfaction of the consular officer before whom an
5 applicant appears is the murky, unreviewable standard which must be met. One
6 of the Plaintiffs was found to overcome the 214(b) hurdle by the American
7 Consul in Kabul, Afghanistan; the second was found not to overcome the hurdle
8 by the American Consul in Dar es Salaam, Tanzania and the third was found not
9 to overcome the hurdle by the American Consul in Istanbul, Turkey. It is not
10 known whether the extensive documentation of home country ties and the
11 national interest in issuing the visas were considered. Counsel was not
12 permitted in the visa interview in Dar es Salaam. The Supreme Court has
13 recently reinforced consular absolutism in holding that a visa applicant has no
14 right to know the basis for a visa refusal in most circumstances.
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19 12. In my opinion, the applicants and their attorneys have provided
20 outstanding and extraordinary documentation of Plaintiffs’ *bona fides* as
21 nonimmigrants and have in my opinion overcome the intending immigrant
22 presumption. Indeed, it is rather counterintuitive for a consular officer to
23 assume that the Plaintiffs who were tortured as part of a U.S. program would
24 have any desire to put down roots in America.
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1 13. In my opinion, Plaintiffs and their attorneys could have done
2 nothing more to ensure that the Plaintiffs in this matter were issued
3 nonimmigrant visas to enter the United States. Consular officers have the right
4 to determine whether a visa applicant can be represented by an attorney and the
5 parameters of representation.
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9 I declare under penalty of perjury that the foregoing is true and correct.
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14 Dated: November 30, 2016

15 Washington, D.C.
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Jan Pedersen