

When Your Immigration Case Takes Too Long (Part I)

This is the first article of a two part series explaining the process typically used to compel the U.S. Citizenship and Immigration Services to make a decision on a case that has been pending beyond its expected processing time:

Too many times, the U.S. Citizenship and Immigration Services (USCIS) simply fails to make decisions on pending cases in a timely manner. This problem is obvious in many different types of immigration petitions and applications – from non-immigrant visa petitions to U.S. citizenship applications, and everything in between. But, USCIS delays are particularly egregious in many applications for U.S. lawful permanent residency (also known as “greencard” applications), and for U.S. citizenship (also known as naturalization applications).

Often in such cases, the applicant’s only option is to bring a civil lawsuit against USCIS, demanding a decision in the case. This type of lawsuit is commonly known as a “mandamus” or “writ of mandamus” action. In immigration matters, a mandamus action is a lawsuit wherein the applicant seeks to compel USCIS to perform its duty, and make a decision on the pending immigration case.

Before bringing a mandamus action, there are some steps that should be taken. Performing these steps is necessary, so when the mandamus action is filed, the applicant may establish she has done everything she can to resolve the problem. The court may find a person, who has not attempted to resolve the situation in other ways, to be a less than sympathetic figure.

First, you must determine whether the processing of your case is beyond the stated and expected processing time for such cases. Attorneys who are members of the American Immigration Lawyers Association (AILA) have access to email addresses and fax numbers that can be used to make these inquiries at USCIS Service Centers, as well as contact information for local USCIS offices, that are not always publicly available.

If USCIS has not made a decision on a case within the proper processing time, and other inquiries have been made to the applicable USCIS offices, your attorney may draft a legal complaint that may be used to begin the mandamus action in federal court. The legal complaint will allege the facts of your case, set forth legal arguments establishing your right to a USCIS decision, and demand that USCIS issue its decision.

But, before your attorney actually begins the mandamus action in federal court, she should use other litigation strategies to compel USCIS to make a decision in your case. An experienced attorney will know which techniques must be used without jeopardizing your case. If USCIS is still not persuaded to make a decision in your case, then your attorney should file the legal complaint, and formally begin the mandamus action.

After the mandamus action is actually filed, your case will most likely be resolved by USCIS making a decision on your application. The U.S. Attorney, understandably, does not want to waste time and resources in federal court, defending USCIS's failure to take action. Typically, the U.S. Attorney will contact USCIS and pressure it to act – resulting in a USCIS decision on your immigration application.

But if after all of these steps, USCIS still fails to act, the mandamus action should proceed. Similar to other federal lawsuits, a conference with the judge assigned to the case, your attorney, and the U.S. Attorney representing USCIS, will take place. Once the judge is actively involved in the mandamus action, the parties should be persuaded to resolve the dispute.

But if these efforts also fail, the case will proceed to trial. As a practical matter, most mandamus actions do not go this far. Nearly all mandamus actions are resolved well before the parties even consider moving to the trial stage.

Next week, I will discuss specific examples of mandamus actions, so that you may better understand, whether your case is ready for such action.

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