

When Your Immigration Case Takes Too Long (Part II)

This is the second 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:

Last week, I discussed the general steps to be taken when you bring a federal civil court action, to compel U.S. Citizenship and Immigration Services (USCIS) to make a decision on pending immigration petitions or applications. This type of lawsuit is typically called a “mandamus” or “writ of mandamus” action. This week, I will discuss specific examples of mandamus actions, so that you may better understand, whether your case is ready for such action.

Mandamus actions are appropriate in many different situations. For example, you may have prepared and filed an immigrant visa petition for the benefit of a relative. But the case is still pending before USCIS, even though it is now well beyond the processing time stated by USCIS in its notice to you. Or, you may have filed an adjustment of status (a/k/a “greencard”) application based upon your employment with your current employer. But though you have been fingerprinted, and maybe even interviewed, you still have not received a decision from USCIS. Or, you may have filed a U.S. naturalization application, and been interviewed by USCIS for citizenship. But you still have not received a formal decision notice, or been scheduled for an oath-taking ceremony.

USCIS delays in cases such as the ones described above, and many other cases as well, may have a profound negative effect upon a person’s life and her family. For example, a delay in receiving one’s U.S. citizenship, can also further delay that person’s opportunity to file an immigrant visa petition, for the benefit of her minor children under the age of 21, still living in the Philippines. If such a USCIS delay lasts too long, then the child may reach the age of 21 before his mother applies for his immigrant visa. Thus, he may be barred from immediately receiving an immigrant visa, and coming to the U.S. to reunite with his mother and family.

Often, in employment-based adjustment of status cases that are unreasonably delayed by USCIS, the foreign worker’s inability to secure his “greencard” significantly impacts his ability to find a better job. A foreign worker whose case remains in “limbo” with USCIS, cannot even apply for a different job, because the new potential employer will not entertain his job application, unless he has his “greencard.”

Here is an illustrative example: A woman applied for her “greencard” in August 2005, with the support of her employer. One year and two months after the filing date, USCIS still had not made a decision on her case. But she wished to find a new job. She felt that her current employer did not acknowledge her value to the company, and she wanted to seek a better working situation.

However, each time she applied for a new job, the new potential employer would not consider her, unless she obtained a “greencard.” She made telephone calls to USCIS,

to find out why her case was delayed. But those efforts were useless. She even contacted a local Congressperson. But the politician's office was of no help.

Later, after she realized that her case was one month beyond the expected processing time, she contacted a qualified immigration attorney, known to specialize in mandamus actions. That attorney took the necessary steps to "exhaust her administrative remedies." Specifically, the attorney made all the necessary telephone calls, wrote letters with legal arguments to the correct government authorities, and threatened litigation against the responsible government agencies.

Then, after the attorney actually brought the mandamus action, and involved the U.S. attorney's office, the woman received the result she had long sought. She went on to find a better paying job, with an employer that valued her professional worth. Even more importantly, she was finally able to file immigrant visa petitions, for the benefit of her relatives still living in the Philippines.

I described just a few examples of appropriate mandamus cases. If your case is beyond the reasonably expected processing time, it may be ready for such action. You may want to inquire about a potential mandamus action, with a qualified immigration attorney specializing in such matters. You do not have to resign yourself to becoming a "victim" of unreasonable USCIS processing time delays. You should be pro-active and demand the rights that you are entitled to.

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