

The ABC's of Immigration: Bringing Mandamus Suits Against the USCIS

by Greg Siskind

Nearly every person who has ever dealt with the USCIS knows that in some cases, the agency simply fails to move forward with a case despite taking every conventional effort possible. In these cases, there is ultimately only one action that the aggrieved party can take to force the agency to act — filing a lawsuit. This type of lawsuit is commonly known as a "writ mandamus." A writ of mandamus is a form of civil action designed to compel a government actor to perform a duty owed to the plaintiff. It is important to note that mandamus is not used to force the USCIS to reach a favorable result, but only to take action that it is legally obligated to take. It can result in a denial of the application.

Before filing the lawsuit, there are a number of steps that should be taken. This is so that when the suit is filed, the plaintiff has clearly done everything they can, short of filing a lawsuit, to resolve the problem. A plaintiff who appears in court without having attempted to resolve the situation in other ways will not be particularly sympathetic, whereas one who has will be.

The first step to take when processing on a case that has gone beyond the stated time is to make inquiries with the USCIS. Members of the American Immigration Lawyers Association have access to fax numbers that can be used to make these inquiries at the USCIS Service Centers, as well as numbers for local USCIS offices that are not always publicly available. AILA also has a liaison system that can be used to make inquiries. Under AILA's rules, several fax inquiries need to be made over a specific time period before a liaison inquiry will be submitted to USCIS. While there are no requirements for inquiries at local offices, faxing in an inquiry at least two times over a one to two month period is advisable.

If no resolution is reached, the next step is to draw up the legal complaint that will be filed in court. The suit will be filed in the federal court with jurisdiction over the petitioner or applicant. There are a number of formal requirements for the complaint such as including a statement that jurisdiction and venue are properly with the court. The lawsuit must also lay out the facts of the case, including efforts that have been taken to resolve it. It is a good idea to initially send copy of the complaint to the USCIS office handling the case, along with a letter explaining the situation and noting that if the case is not resolved within a certain period, generally 30 days, further action will be taken. This step will often have the desired effect, if not producing a decision, of at least prompting the USCIS to begin working on the matter. If the USCIS asks for additional evidence (which can sometimes function as a delaying tactic) and still will not action after the requested documentation is supplied, the mandamus process should be resumed.

If sending the complaint does not produce results, it should be rewritten to include the latest efforts to resolve the case and sent to the USCIS again as well as to the appropriate US Attorney. This is the stage at which most cases are resolved. The US Attorney, understandably, does not want to spend time in court defending USCIS' failure to take action. The US Attorney often contacts the USCIS office and pressures them to act.

If, after a month, there is still no action on the case, the complaint should be updated again and prepared for actual filing. Procedures vary from jurisdiction to jurisdiction, but the general process is the same. The complaint is taken to the clerk of court where it is registered as filed. When filing a suit against the government, a copy of the complaint must be sent to the government actor who has failed to act (the head of the USCIS office involved), the proper US Attorney, and the US Attorney General.

Again, this action often has the effect of prompting the USCIS to take action. If not, the parties proceed with the case. As in any federal case, the first step is a conference with the judge assigned to the case, the plaintiff's attorney, and the US Attorney representing the government. At the conference, the judge makes efforts to help the parties resolve the dispute. If this effort fails, the case proceeds to trial. Given the large caseload of federal courts, this process can take many months. A few months after the trial, the judge issues a decision. If the decision is favorable to the plaintiff, the decision will also include an order compelling the USCIS to take action on the application. If the USCIS fails to act, officers of the agency are subject to being held in contempt of court.

It is the rare case where there has been an excessive delay that does not result in a favorable resolution at least at the trial stage of a mandamus case. But the good news is that most of these cases can be resolved favorably without having to go to court at all.

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