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Mandamus

Mandamus ^[1]

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Litigation may not be a good remedy in adjustment of status delay or I-140 delay cases or other matters where USCIS is permitted to exercise discretion. For an assessment of your case, please feel free to consult us. However, generally an immigration applicant may be able to seek judicial remedy to expedite his or her long pending application/petition with the USCIS by way of filing a Writ of Mandamus. If the USCIS has failed to render a decision on a correctly filed immigration application after a reasonable period of time, the applicant may file a Writ of Mandamus in the US federal court with jurisdiction over the petitioner or applicant.

A Writ of Mandamus is a form of civil action intended to move a government actor to perform a duty owed to the plaintiff, such as adjudication of a long pending petition. Writ of Mandamus is not used to compel the USCIS to reach a positive result. Rather, Writ of Mandamus is used to compel USCIS to expedite the actions it already is legally required to do. Interested applicants should consider that a Writ of Mandamus can result in the denial of a case. There are certain steps that should be taken before filing the lawsuit. Plaintiff should attempt all recommended methods to resolve the problem before filing the Writ of Mandamus. Filing a Writ of Madamus is to be utilized as a last resort after all other options have been exhausted. Federal Courts have been quick to dismiss cases where it is evident applicants have failed to attempt resolution through other means. First, if your case has gone beyond the stated processing time, an applicant should make inquiries with the USCIS directly. The ?processing times? are published on USCIS?s website. Please see <https://egov.uscis.gov/cris/processTimesDisplay.do;jsessionid=bac585> ^[2] which can be used to check whether your case is within a ?reasonable? wait period.

Please note the American Immigration Lawyers Association (AILA) has a liaison system that permits members to make specific inquiries with USCIS on delayed cases through channels not available to the general public. This route should also be engaged where possible. If a resolution is not reached through the applicant?s attempts to contact the USCIS, the next recommended step is to notify USCIS or the consulate of the intention to file a lawsuit. This can be done by sending a copy of the complaint you intend to file along with a letter requesting action within thirty days. This letter should also include the details of the applicant?s previous efforts to contact the USCIS about the delay in processing. This step will often have the effect of prompting USCIS or the consulate to begin processing the application. The complaint can also be sent to the appropriate U.S Attorney. The U.S. Attorney oftentimes

may contact the USCIS requesting them to act.

However, as each case is different it is best to seek your attorney's advice on whether this is advisable based on your conditions. If thirty days elapse without any result, the lawsuit should be filed and served upon the USCIS, the appropriate US Attorney, and the US Attorney General. Please note filing requirements may vary from jurisdiction to jurisdiction. After the lawsuit is filed and properly served, the Federal Judge will hold a conference with the concerned parties in an attempt to resolve the dispute. The case proceeds to trial only if and when this effort fails. Trial will then be scheduled and may take several months as Federal courts have vast caseloads. The court will review the matter and may issue an order requiring USCIS to adjudicate this application within a specific period of time (i.e. 30 to 90 days). Please note the court may also dismiss or terminate the lawsuit if it appears the applicant does not meet the requirements for the petition/application or if it believes the USCIS's delay is reasonable, necessary or permissible. In the rare circumstance where USCIS fails to act upon a Federal court order, the agency is subject to being held in contempt of court. Therefore, while a Writ of Mandamus may yield to adjudication of your case, it does not guarantee a favorable result, and therefore should be carefully considered prior to filing.

Immigration Law :

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[1] <https://immigration.com/mandamus>

[2] <https://egov.uscis.gov/cris/processTimesDisplay.do;jsessionid=bac585>

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