



Business Immigration Practice Tip: Mandamus May Get Results When Nothing Else Works

You should consider mandamus if your client has been waiting ... and waiting ... for a decision from USCIS (or any other agency). A mandamus action seeks to compel the government to comply with its obligation to make a decision in a particular case. What the decision will be is up to the agency. In essence, a writ of mandamus is an order to act that does not dictate the outcome.

Mandamus is a separate remedy that a district court can order if the following conditions are met:

- A federal agency or agency officer or employee has failed to perform a duty;
- The duty is not discretionary (also known as a “ministerial duty”);
- The duty is clearly owed to the plaintiff; and
- The plaintiff has no other adequate remedy.

How long should you wait before filing a mandamus action? The most straightforward—but unfortunately relatively rare—situation is when the relevant INA provision or an agency regulation contains a deadline by which USCIS must act. Even when such deadlines exist, we know that USCIS ignores some of them on a regular basis. But it’s not so easy for USCIS to ignore a deadline when confronted with a lawsuit.

When no statutory or regulatory deadline exists, you will have to establish that the agency’s delay is unreasonable. This standard comes from case law under the Administrative Procedure Act. But what period of time qualifies as unreasonable? If there is a processing time posted on USCIS’ website, your client should be beyond that date—unless you also intend to argue that the processing time USCIS has established is itself unreasonable. In other cases, courts frequently take into account the following factors: the nature and extent of the interests prejudiced by the delay, the impact of the delay on health and welfare or economic interests and the effect of expediting the case on higher or competing agency priorities.

A few courts have concluded that mandamus cannot be granted if there is no specified deadline by which the agency must act. Thus, before filing a mandamus action, you will need to confirm through research that the district court where you plan to file does not adhere to this restrictive interpretation. Keep in mind that you may be able to file suit in more than one jurisdiction.

Finally, you must establish that no other adequate remedy exists. For example, if your client’s only option to work legally in the United States is to obtain an Employment Authorization Document, then an order requiring

USCIS to adjudicate the client's pending EAD application may be the only means to that end. But, if your client was waiting for a decision from the Administrative Appeals Office (AAO) after deciding to seek administrative review of an H-1B petition denial, but then filed suit in federal court without withdrawing the AAO appeal, a court most likely will decide that your client has another available remedy.

For more details on filing mandamus actions, please see the following practice advisories on our website: [Mandamus Litigation Against DOL](#), [Mandamus Actions: Avoiding Dismissal and Proving the Case](#) and [Litigation for Business Immigration Practitioners](#).