

Lawsuits Compel Immigration Action for Naturalization and for Green Cards

By Attorneys Bruce A. Coane and James P. McCollom, Jr.,

If you have filed your green card or naturalization application and the Immigration Service has not issued a decision on the case, you may decide to file a lawsuit to ask the Court to order the Immigration Service to take action.

Sometimes, the Immigration Service delays issuing a decision on a case because the FBI has not completed the name check security clearance. As a result, you may literally be left waiting for years for a decision.

The FBI says that they have limited personnel to complete its name checks. Since 9-11, the name check requests to the FBI have increased every year. The FBI has thus accumulated a backlog of name check requests that it says it cannot process rapidly.

When you file a “mandamus” lawsuit, you are asking the Court to order the Immigration Service to issue a decision on the case. The Court itself does not issue the decision. You may also be asking the Court to order the FBI to complete the name check.

Many immigrants are filing “mandamus” lawsuits all across the country because they have been waiting for the Immigration Service to process their applications sometimes for many years. By filing the lawsuit, you can frequently expect action on your case.

Sometimes the Immigration Service is able to provide a decision for the case when a lawsuit might be filed. Other times, the Immigration Service is not able to provide a resolution before going to Court as the name check process may be slow.

Apparently, a certain percentage of name checks are simply very slow. The FBI says that it manually checks files that may be located all over the country. The FBI says that the name check review system is slow because of limited resources.

By filing a mandamus lawsuit, an immigrant complains that the processing of the applications is unreasonably delayed. It is possible that merely by filing the lawsuit, an immigrant may contribute to an eventual improvement in the system.

Some Courts have ordered the Immigration Service to complete processing of an application within a certain number of days. Some Courts have been reluctant to compel the Immigration Service to issue a decision if the name checks are still not completed.

It is a very interesting issue in immigration law at the present moment. On the one hand, the immigrant's life is in limbo oftentimes while the application is pending. It is certainly not fair to the immigrant and his family to have an unresolved case for several years. On the other hand, some Courts have been reluctant to compel the Immigration Service to take action if the FBI name check is not complete.

Throughout the country, the offices of the U.S. Attorney in their respective districts and individual immigration lawyers are wrestling with these questions. By filing a lawsuit, the immigrant frequently compels action which results in a final decision on the case.

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