



Overcoming EB-5 Denials and Delays through Litigation

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H. Ronald Klasko
Managing Partner

Ron is the Managing Partner of Klasko Immigration Law Partners. Ron has extensive experience with business immigration federal court litigation and chairs ALLA's Administrative Litigation Task Force. He is co-counsel on the Guilford College case, which has produced a nationwide preliminary injunction preventing implementation of USCIS' F and J unlawful presence memo. He was the lead attorney on the famous Matters of Walsh and Pollard case, which established the key precedent for treaty investor visas. Ron is a former National President and 3-term General Counsel of AILA. He is the only lawyer ever to be honored twice with AILA's highest honor, the Founders Award. Ron has been selected for Best Lawyers in America annually since 1991. *Who's Who Legal* in Corporate Immigration named him as the most well-respected immigration lawyer in the world. A graduate of Lehigh University (B.A. 1971), Ron received his law degree from the University of Pennsylvania School of Law (J.D. 1974).



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Mr. Lundy manages his firm's EB-5 Developer & Regional Center practice

and has successfully represented numerous immigrant investors in their EB-5 petitions and applications. He is involved in some of the most complex EB-5 cases in the industry and is routinely involved in complex appeals and litigation related to the EB-5 program. Mr. Lundy is uniquely adept at addressing the impact of SEC complaints on investors' immigration processes and dealing with projects where there have been allegations of fraud or misappropriation. Mr. Lundy has extensive experience litigating all types of immigration cases for clients and challenging adverse actions by USCIS or other immigration agencies in federal court, having litigated over 70 immigration cases to date. Most recently, he has been deeply involved in litigating USCIS denials of EB-5 petitions based on material change and redemption agreements. He has also advised clients on the immigration aspects of EB-5 projects that have been involved in civil litigation.



Daniel B. Lundy
Partner

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Anu Nair
Partner

Anusree (Anu) Nair is a partner and the EB-5 Investor Team's managing partner.



She leads a team of dedicated attorneys who assist investors in securing their green cards through regional center investments and individual investment opportunities. Recognized within the field for her command of investor-related issues, she is frequently called on to review EB-5 cases prepared by other law firms to ensure compliance with USCIS' extremely rigorous standards. Anu is routinely retained to respond to difficult Notices of Intent to Deny (NOIDs) and to file appeals for denials received by other firms.

As an immigrant herself, Anu knows firsthand how difficult and daunting the immigration process is. With this background, she is acutely aware that her ability to solve immigration issues not only impacts the lives of individual clients, but also their entire families and future generations.

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Litigation to Address EB-5 Delays



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Poll Question #1

What role do you have in the EB-5 industry?



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Poll Question #2

Do you have a pending I-924/I-526/AOS or DS260/I-829?

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Background on EB-5 Processing Times

- Unprecedented delays
- Changes in published processing times

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What options exist to get action on a delayed petition?

- 800#
- Email
- Ombudsman
- Congressional office
- Mandamus

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What is mandamus?

- Complaint in federal court seeking an adjudication as a delayed petition
- Also include "APA unreasonable delay" in complaint

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When is the earliest time to file a mandamus complaint?

- Normally filed if beyond published processing time
- What is the effect of USCIS doubling of “normal” processing time?
- Klasko advice on right time to file

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What happens after the mandamus complaint is filed?

- What are the possible results?
- What is the likely timing?

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Can mandamus be filed for:

- I-526?
- I-924?
- I-829?
- I-485?
- DS-260 (consular administrative review)?

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FAQs for EB-5 Delays

- Is it possible to have multiple investors in the same project as plaintiffs on the complaint?
- What has been our firm's history with EB-5 mandamus cases?
- What are the advantages and disadvantages of filing a mandamus complaint?
- Does USCIS retaliate against investors who file mandamus?

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FAQs for EB-5 Delays

- How do legal fees work?
- Is there any possibility that the government will have to pay legal fees if we're successful?
- Will filing a mandamus cause any conflicts with the regional center?
- Can we find copies of filings/decisions online?

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Litigation to Address EB-5 Denials

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Poll Question #3

Has your petition been denied?

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What are the options if an EB-5 petition is denied?

- File a new petition
- Motion to Reopen
- Appeal to AAO
- Declaratory judgment complaint in federal court

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What is a declaratory judgment case?

- What is included in the complaint?
- Examples of successful cases

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How do we assess whether a case is appropriate for filing a declaratory judgment complaint?

- How good is the record?
- Factual errors in denial
- Clear error of law
- Deviation from previous decisions

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What happens after filing the declaratory judgment complaint?

- USCIS reopens and approves/issues RFE; or
- Cross motions for summary judgment

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FAQs for EB-5 Denials

- What is the timing in both of those possibilities?
- What types of EB-5 issues have we (or others) litigated?
- What EB-5 issues do we expect will be litigated?
- How is the strategy different with a denied I-829 petition?
- How do legal fees work?

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Questions?



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For Further Information



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