



Suing for a Solution: Litigation Options for Immigrants

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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 AILA'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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Daniel B. Lundy
Partner

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.



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Litigation to Address Delays

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Background on 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 of 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-129?
- I-140?
- N-400?
- I-485?
- DS-260 (consular administrative review)?



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FAQs for Delayed Cases

- What has been our firm's history with mandamus cases?
- What are the advantages and disadvantages of filing a mandamus complaint?
- Does USCIS retaliate against foreign nationals who file mandamus?

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FAQs for 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 my employer?
- Can we find copies of filings/decisions online?

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Litigation to Address Denials

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What are the options if 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 Denied Cases

- What is the timing if government reopens and if contests?
- What types of issues have we litigated?
- What issues do we expect will be litigated?
- How do legal fees work?

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Questions?



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For Further Information



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