

Writs of Mandamus in U.S. Immigration Law: What They Are, When to Use Them



Immigration Blog

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In general, a writ of mandamus ("mandamus") is a formal court order that requires a government official, an agency or a lower court to take a specific action. The action must be within the duties of the office, agency or court, and there must be a legal requirement that the action be performed. Mandamus is extraordinary relief and is effectively utilized when there is a clear legal duty to be performed, a clear right to relief on the part of the petitioner, and the petitioner appears to have no alternative to obtain the relief they deserve.

Mandamus requires action to be taken, but not necessarily a specific outcome. In an immigration law context, it can compel a relevant agency such as the U.S. Department of State or U.S. Citizenship and Immigration Services (USCIS) to adjudicate a pending application, although it does not require the result the petitioner desires.

In U.S. immigration law, mandamus is often effectively utilized to compel processing of long-pending applications or petitions. A few examples of uses of mandamus include: forcing USCIS to make a decision on an application for naturalization if more than 120 days have elapsed since the applicant was interviewed; compelling USCIS to reopen

a petition that was closed with no action, despite the petitioner filing a petition with full fees paid; or, when an application or petition has been denied against agency guidance.

Once all administrative remedies have been exhausted, or if there are extremely long delays in adjudication, it may be worthwhile to consider mandamus. Prior to filing, it may be worth reaching out to the government attorney who would otherwise be required to uphold the government's position to let him or her know that mandamus is being considered. If the matter is clear-cut or the delay or decision is egregious, that attorney may influence the government agency to take an action that would prevent the filing of the mandamus case. That way, the applicant or petitioner may obtain what they want, and the government attorney does not have to waste time preparing and arguing a case that is not very good and might not really belong in court.

If the mandamus case ends up in court, it may be difficult for the private party to be successful, but not impossible. The private party would have to be prepared for litigation that may drag on and become expensive if the government refuses to give in by adjudicating or overturning a decision the private party does not like.

Mandamus is a tool that can be effective, maybe most so when it is not actually filed. If an applicant or petitioner can convince a government attorney to make a strong request for an agency to take action in lieu of the filing of mandamus, and the agency does so, there are savings of time and money on the part of the private party and the government. If the government attorney will not take up the case for the private party before the government, or the agency will not be moved to adjudicate or to change its mind, then the private party has the option to move forward with the filing of mandamus, to try to convince the court to order the relief sought.

When an adjudication takes too long, is not made or is made in a way that does not match the law, mandamus is an option to try to fix the problem. If you need to discuss a problem like this, you can reach out to the attorneys at Lippes Mathias LLP at 716-853-5100. Eileen Martin (emartin@lippes.com) and Elizabeth Klarin (eklarin@lippes.com) would be happy to discuss your situation and advise if mandamus might work in your situation.

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