

Can you sue the US government if your immigration process is delayed?

Synopsis

Fundamentally, is litigation against delays in the immigration process a viable option in your case? The answer is perhaps it is, but be mindful of the relevant factors, including the uncertainty of the outcome and expenses involved.



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Lawsuits against the government for [immigration](#) delays and other immigration issues became prolific during the [Trump](#) administration. We had to seek the intervention of the courts repeatedly and overwhelmingly, quite effectively. But, delays litigations have a unique set of parameters that must be understood.

Fundamentally, is [litigation](#) against delays in the immigration process a viable option in your case? The answer is perhaps it is, but be mindful of the relevant factors, including the uncertainty of the outcome and expenses involved.

To put matters in context, as lawyers, for decades, we already have been writing briefs for US immigration agencies but actually planning for the courts. Good lawyering requires that. In delay litigation, when we write for the courts, we go a step further. We are actually drawing the attention of the government lawyers to the weaknesses in the government's position. These lawyers realize that it is best for their client, the government, and our legal system to settle meritorious lawsuits quickly rather than engaging in unnecessary litigation.

Lawsuit Settlement

The primary reason and hope to file a lawsuit are to impel a settlement with the government for a favorable outcome. But if we do not settle the case, a lawsuit could drag on for a year or two, nullifying our goal of haste.

Paradoxically, a settlement can be reached only if a litigant is committed to fighting tenaciously and furiously till the final decision. Therefore, though we hope to settle, we must be committed to contesting.

Impediments

The biggest hurdle in winning a lawsuit against the government is the Constitutional law theory of separation of powers. Courts do not like to interfere with the processes of a co-equal component of the system, the government. US courts will further defer especially to the discretionary decisions made by the government, unless there is a clear violation of law, policy, or logic.

Once litigation is filed and contested, the government predictably argues that their processing delays are not unreasonable because of their existing workload and the particular facts of each case. An adjunct argument routinely advanced is that a successful litigant is unfairly advantaged ahead of other applicants who have been waiting just as long or even longer.

Further, a practical impediment is the uncertainty of the courts' adjudicative approach. This approach is different in different US regions and varies from judge to judge within the same region. Fortunately, it is not difficult to proactively research these matters with online legal resources.

Once you decide to litigate, it usually is advantageous to retain lawyers willing to represent you on a flat fee basis. Hourly charges are highly unpredictable. The budget could be \$10,000 or more even for a settled lawsuit.

Outcomes

In a perfect world, a meritorious lawsuit should be settled within a few days and without contest. But, that is not always so in the real world. The government may choose to fight back because they believe in the strength of their legal position. At other times, the government opposition is disproportionately vigorous to prevent the creation of a flood of litigation or due to other similar systemic policies that may not have to do much with a specific case.

Note also that a delays-related lawsuit, even if won, does not guarantee approval of your case. All we can seek is a quicker decision - approval or denial. We cannot usually insist upon a favorable decision, an approval.

One positive factor in the litigation is that if you win, your lawyers may be able to recover some of their legal fees and your expenses from the government under the Equal Access to Justice Act. EAJA provides for compensation if the government's position in the delay is not substantially justified. The entire amount of your expenditure may not be recovered. Legal fees under EAJA are calculated according to factors that may not be equal to the actual legal fees. Nevertheless, you could recover substantial amounts under EAJA.

What should you do?

As a practical matter, you should ask these questions of yourself and seek input from your lawyers:

- Is your case delayed beyond the standard processing time published by the government?
- Have you tried all intra-agency and non-litigation avenues:
- Contacting the relevant agency?
- Opening a case with the USCIS ombudsman's office?

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- Approaching a local member of Congress?
- Are you willing to expend the funds required for the litigation?
- Are you ready to take the chance that the litigation could be wholly ineffective?
- Are there any compelling equitable considerations that could influence the courts in your favor?
- What is the attitude towards administrative delays of the courts where you intend to bring the lawsuit?

Once you have explored these questions, you may conclude that you want to file a lawsuit. All considerations of doom and gloom aside, many of these cases are successful.

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