

How To Address Delays in Processing of Immigrant and Non-Immigrant Visas

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Presenter:

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Today's Webinar

- Overview of visa and immigration delays
- Remedies for delays
- We want your questions! Send them in the chat or email to mo.syed@offitkurman.com
- Recording will be emailed along with slides

Today's Webinar

- Why do delays happen?
- Special considerations due to COVID-19.
- What do you do if a case for you or your family member is delayed at U.S. Citizenship and Immigration Services (USCIS) and it has been there beyond the normal processing time?
- What are your options if a case is delayed at a U.S. consulate in your home country?
- Can a U.S. Senator or Congressman help?
- When to file a federal lawsuit (writ of mandamus) and what to expect.

What are the numbers?

- Processing times in 2019 increased 46% over the past two years and 91% since FY 2019
- Even though applications declined 17% in FY 2018, processing times continued to rise
- H-1B petitions can take up to a year
- I-140 immigrant visa petition processing up to 8 months from 3 months
- Naturalization cases up to 10 months from 5 months

What is the big deal?

- Injury to U.S. businesses when that cannot get visas to keep key employees in a timely manner
- Foreign national employees become disenchanting due to their inability to obtain LPR (green card) status and may leave U.S. for better prospects
- Families suffer economically when dependents cannot obtain work authorization
- Vulnerable populations suffer when they cannot obtain protection under the U.S. immigration laws

Why do delays happen?

- Type of benefit – family vs. employment, business or investment
- Location of adjudication – USCIS (within US) vs. Consulates (overseas)
- Strength of case
- Prior immigration and criminal record
- Intent to immigrate
- Administrative processing
- Country of Origin – some area more prone to fraud
- Priority Dates – **You cannot do anything about these!! Don't even try!**

Changes in Policy and Executive Orders?

- Trump Administration push to restricting legal immigration
- Several Travel Bans, restricting certain countries
- Buy American Hire American Executive Order
- No deference memo – full re-adjudications
- Interviews for all employment based green card cases
- Agency policy giving rise to dramatic rise in RFEs
- Resources diverted to enforcement rather than adjudication
- Suspension of premium processing – for certain cases

Prepare for Request for Evidence

- MUST MUST MUST expect an RFE
- Prepare for RFE from the very get go
- Collect all relevant data
- Start preparing to gather other data for later stages of case
- Country specific documents that have long lead time start gathering yesterday
- Work with experienced attorney

Executive Order 4.22.2020

Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak

Entry into the US is suspended for aliens who:

1. Are outside of the United States on 4/23/2020;
2. Don't already have an immigrant visa as of 4/23/2020; and
3. Don't have an official travel document (i.e., transportation letter, boarding foil, or advance parole) (in other words, aren't already permanent residents)

Impact of Covid-19

- USCIS offices closed to any public service
 - Fingerprinting
 - Interviews
- Consulates shut
 - No-visas or green cards

Checking normal processing times for USCIS

<https://egov.uscis.gov/processing-times/>



USCIS Offices Temporarily Closed to the Public.
[USCIS Response to Coronavirus 2019 \(COVID-19\)](#).

Check Case Processing Times

Select your form number and the office that is processing your case

For more information about case processing times and reading your receipt notice, [click here](#).

Form

I-130 | Petition for Alien Relative

Field Office or Service Center

Texas Service Center

Get processing time



Other case processing times resources



Case management tools

[Inquire about a case outside normal](#)

Checking normal processing times for USCIS (cont.)

Estimated time range	Form type	Receipt date for a case inquiry
5 Months to 7 Months	Permanent resident filing for a spouse or child under 21	October 10, 2019
7.5 Months to 9.5 Months	U.S. citizen filing for a spouse, parent, or child under 21	August 04, 2019
7.5 Months to 9.5 Months	U.S. citizen filing for an unmarried son or daughter over 21	August 04, 2019
5 Months to 7 Months	Permanent resident filing for an unmarried son or daughter over 21	October 10, 2019
7.5 Months to 9.5 Months	U.S. citizen filing for a married son or daughter over 21	August 04, 2019

[+ Read more](#)

Other case processing times resources

[When to expect to receive your Green Card](#)

[Processing information for the I-765](#)

[Affirmative Asylum Interview Scheduling](#)

[Administrative Appeals Office](#)

[International Offices](#)

[Historical Average Processing Times](#)

Case management tools

[Inquire about a case outside normal processing time](#)

[Check your case status](#)

[Update your mailing address](#)

[Ask about missing mail](#)

[Correct a typographical error](#)

[Request appointment accommodations](#)

Checking normal processing times for USCIS (cont.)



USCIS Offices Temporarily Closed to the Public.
[USCIS Response to Coronavirus 2019 \(COVID-19\)](#).

Case Inquiry

 Case outside normal processing time <i>Think a case is taking longer than expected?</i>	 Did not receive notice by mail <i>Think a notice is lost or missing?</i>	 Did not receive card by mail <i>Think a card is lost or missing?</i>	 Did not receive document by mail <i>Think a document is lost or missing?</i>
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Service Request

Embassies and Consulates

- Online application
- Interview
- Approval, Denial, or Administrative Review
- No clear published time frames

Expedite Criteria

<https://www.uscis.gov/forms/forms-information/how-make-expedite-request>

- USCIS may consider an expedite request if it meets one or more of the following criteria:
- Severe financial loss to a company or person, provided that the need for urgent action is not the result of the petitioner's or applicant's failure to:
 - File the benefit request or the expedite request in a reasonable time frame, or
 - Respond to any requests for additional evidence in a reasonably timely manner;
- Urgent humanitarian reasons;
- Compelling U.S. government interests (such as urgent cases for the Department of Defense or DHS, or other public safety or national security interests); or
- Clear USCIS error.

Making the Expedite Request

- Include the expedite request, citing legal authority, and copies of all supporting materials in the initial packet (e.g., spouse living in war zone, critical employee needed on emergency basis)
- Call USCIS number 1-800-375-5283 – must have receipt number

USCIS Ombudsman

- <https://www.dhs.gov/topic/cis-ombudsman>
- Ombudsman Case Assistance
 - After exhausting all avenues with USCSIS
 - Make request Online or via e-mail

Getting Assistance from Rep. or Senator

- Congressional Inquiry
 - Senator
 - Congressman
- Each Congressman's or Senator's office has a case assistance page on website
 - Provide release to talk to state or USCIS
 - Provide full summary of issue with pertinent documents
 - Submit by email, fax or mail.
- These can be used for embassies/consulates and USCIS offices

Congressional Inquiry (cont)

<https://www.kaine.senate.gov/services/help>

- Intervene with state issues. My office cannot overturn or influence matters under the jurisdiction of local or state government. If your issue involves state or municipal agencies, please contact your state legislators or contact the state agency directly. The Governor of Virginia's office may also be able to help you with state issues.
- Intervene with judicial issues. My office cannot legally get involved with pending litigation, including questions about criminal or imprisonment, child custody issues, deportation proceedings and civil lawsuits. My office cannot overturn or in any way influence a court's decision.

Which agency are you seeking help with?

Immigration, State Department &
Visas

Veterans Services

Social Security & Medicare

Housing

When to file a Writ of Mandamus

- Federal Lawsuit compelling agencies to act on case
- USCIS
- State Department
- Delayed Citizenship, delayed visas, delayed green cards.
- Examples of cases, green cards, citizenships, J1 visas for doctors, etc.

When to file a Writ of Mandamus

- A Writ of Mandamus is a lawsuit filed against a government agency that asks the court to force the agency to fulfill its mandated duties. Basically, that means you sue the government to make sure that it does its duty of deciding your immigration case.
- The law requires USCIS to make a final decision on all immigration applications within a reasonable time. Under a Writ of Mandamus, a judge can order USCIS to make a decision. However, a judge cannot order USCIS to specifically approve or deny your application..

When to file a Writ of Mandamus

For a Delayed N-400 or I-485. Consider suing the govt. if:

- Your case status says “background check pending.”
- You’ve done many InfoPasses or online requests, and USCIS can’t do anything to help you.
- You’ve contacted your congressional representatives.
- You need to quickly sponsor your parent or spouse for a green card due to health issues or humanitarian concerns.

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Questions? Comments?

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Slides and recording available for this and past webinars

Stay tuned!

Next Webinar

The Current Immigration and Visa System: Challenges For
Small Business Owners During the COVID-19 Crisis

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