



Published on *US Immigration Lawyer, Law Offices of Rajiv S. Khanna, PC, Rajiv S. Khanna* (<https://immigration.com>)

Writ of Mandamus against delay

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Submitted by Chief Editor on Nov 16th 2015

I am currently pending I-485 (EB3, skilled worker employment based, priority date Oct 2008) since April 2014. I submitted inquiries through congressman, they received a letter that my case is on hold indefinitely. Do you recommend filing Writ of Mandamus or would that cause a denial? What other actions can I take, I've submitted a case through the Ombudsman and met with a USCIS officer through Infopass appointment (who told me nothing). No RFEs have been issued for this case, I-140 was approved and fingerprinting done (twice, since first set expired).

ANSWER:

See clip from Attorney Rajiv S. Khanna's conference call video that addresses this question.

<https://youtu.be/F0YZD8zWm88?t=333>^[2]

FAQ Transcript:

Writ is simply order of the court or a formal order.

Mandamus is to ask the government to do something, which it is legally obliged to do. It is important to understand what the court can and cannot do. First of all the court has to decide whether your case has taken too long unreasonably long to the extent where the delay itself becomes unreasonable. So very difficult thing to prove, depends upon the court. There is a ruling I remember litigating this issue very vigorously in Washington D.C. and one of the cases that was against us was a case from Board of Indian Appeal that's what they called BIA not to be confused with Board of Immigration Appeal but Board of Indian Appeal .

Usually if a group of people want to be declared Indian Tribe because if you are an Indian Tribe one of the things you can do is have unique rights within your own area such as opening a Casino. They had a determination pending for over ten years and court said that is not unreasonable.

So first hurdle is to actually be able to prove, of course before that there is hurdle of legal fees, it can be quite expensive to litigate an issue. Second hurdle is proving that delays are unreasonable, unreasonable according to what. The government processing times are merely

guesses; they don't give us a right. The third thing which is also important, court cannot ask the government to decide I-485 in your favor, they can only make government act, whether the action is Yes, No or RFE.

And my final point is something I find very odd, I never believed to be possible until I saw it happened to myself. The government behaves like a spoilt child because they have lost the case they can send you 30 page RFE requesting information that you would not believe could even be asked.

So because the court cannot tell the government to decide the case in your favor, they can only order the case to be decided Yes or No. You could end up creating more issues. The Freedom of Information Act usually does not help in these cases much.

So keeping in view all these things personally my approach is very simple I tell people, are you at the point where you are so sick and tired that you either want a yes so you can get your Green card and stay in this country or get Naturalization whatever the benefit is or get a No and just leave, one way or the other. Once you come to that point that's when I want to litigate. Again it also depends upon the circuit, you know that in USA there are different Judicial circuits on the Federal level. So some circuits are more open to certain issues, some circuits are not open. We have to look at the law of the circuit also.

Green Card:

[Extraordinary Ability](#) ^[3]

[EB3 Green Card](#) ^[4]

[Form I-140](#) ^[5]

[Form I-485](#) ^[6]

Immigration Law :

[Litigation](#) ^[7]

[Mandamus](#) ^[8]

Unless the context shows otherwise, all answers here were provided by [Rajiv](#) ^[9] and were compiled and reported by our editorial team from comments and blog on [immigration.com](#) ^[10]

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