

POST-INTERVIEW ADJUSTMENT OF STATUS DELAY LITIGATION

USCIS Denver Field Office / APA Unreasonable Delay / Frequently Asked Questions
Joseph & Hall P.C.

1. Why are we suing? What is this case about?

We are preparing a lawsuit on behalf of individuals whose applications for adjustment of status (Form I-485) have remained undecided for an extended period after their interview at the USCIS Denver Field Office. We have seen many applicants whose cases have sat without a decision for roughly three to twelve months following the interview, often with no explanation of what is holding the case up. Many of these applicants have been without employment authorization or unable to travel, leaving them stuck in limbo. USCIS has been opaque about whether internal litigation holds, bans, or other administrative reasons are delaying these adjudications. USCIS has a legal obligation to decide applications and to do so within a reasonable time. This lawsuit asks a federal court to compel USCIS to make a decision on these pending I-485 applications.

2. Who is filing this case?

This case is being filed by Joseph & Hall P.C., a Colorado-based immigration law firm. Our practice includes federal court litigation against immigration agencies, including delay and habeas matters in the U.S. District Court for the District of Colorado.

3. Is this case being handled as a class action?

No. This is not a class action. Instead, we are bringing a group suit that joins a number of similarly situated plaintiffs together in a single lawsuit. By grouping plaintiffs in this way, we hope to make federal litigation more accessible and affordable to more affected individuals than would be possible if each person had to file separately.

4. What is the legal basis for the suit?

The case is brought under the Administrative Procedure Act (APA), 5 U.S.C. § 706(1), which authorizes a federal court to compel agency action that has been *unlawfully withheld or unreasonably delayed*. We will assert that USCIS has both unreasonably delayed and unlawfully withheld adjudication of the pending I-485 applications. We may also rely on the Mandamus Act, 28 U.S.C. § 1361, which empowers a court to compel a federal officer to perform a duty owed to the plaintiff, and on the Declaratory Judgment Act. USCIS has a clear, non-discretionary duty to decide a properly filed adjustment of status application within a reasonable time.

5. Who is eligible to participate?

This lawsuit is limited to applicants for adjustment of status (Form I-485). To be eligible, you must meet all of the following requirements. You must already have attended your adjustment of status interview at the USCIS Denver Field Office. At least two months must have passed since that initial interview without USCIS issuing a decision. Your case must not involve any known ground of inadmissibility, and you must not be seeking to adjust with a waiver of inadmissibility. In short, this is not the right lawsuit for applicants who have a known inadmissibility issue or a pending or anticipated waiver.

If you have been issued a post-interview request for evidence (RFE), you may still be eligible to participate in this lawsuit *if* you have already responded to the RFE and two months have passed since you submitted your response.

6. What is the fee to participate, and does it cover my family?

The fee to participate is \$1,100. This single fee covers you as the principal applicant and any derivative adjustment of status applicants included on your application, such as a spouse or children adjusting as your dependents. Derivative applicants on the same application do not pay a separate fee.

7. What is your refund policy?

We reserve the right not to file this lawsuit if not enough plaintiffs sign up to make the case viable from the firm's perspective. If we decide not to file for that reason, everyone who paid will receive a full refund. If we have begun work on the complaint but your individual application is decided by USCIS before the complaint is filed with the court, a partial refund may be available. Once the complaint is filed with the court, all fees are considered fully earned and no refunds will be issued. This is true even if USCIS later adjudicates your I-485, and even if the adjudication appears to be unconnected to the litigation.

8. Where will the case be filed?

We will file this case in the U.S. District Court for the District of Colorado.

9. What remedy is the lawsuit seeking? What does a win look like?

We are asking the court to order USCIS to adjudicate (that is, to actually decide) the pending I-485 applications of our plaintiffs by a specific deadline set by the court. It is important to understand that we are *not* asking the court to order USCIS to *approve* any application. The court will not be asked to dictate the outcome of your case. The sole purpose of this litigation is to force a decision, whatever that decision may be. A favorable result means USCIS is required by court order to decide your case by a date certain.

10. Is a particular result guaranteed?

No. No result is guaranteed. Litigation is inherently unpredictable, and we cannot promise any specific outcome or timeline. What we can tell you is that we have extensive experience in

unreasonable delay claims of this type and we believe the arguments will be strong. But you should sign up understanding that success is never assured.

11. What happens if USCIS decides my application before the case is over?

If USCIS adjudicates your I-485 after the complaint is filed, you will already have received the relief this lawsuit seeks, namely a decision, and your individual claim would generally become moot. As explained in the refund question above, fees are fully earned once the complaint is filed and are not refundable in that situation, even if the decision appears to be unrelated to the lawsuit. If your application is decided before the complaint is filed but after we have started work on it, a partial refund may be available. Please notify us right away if USCIS takes any action on your case.

12. Does signing up mean Joseph & Hall represents me in my application before USCIS?

No. Joining this lawsuit as a plaintiff does *not* make Joseph & Hall your attorney of record for your adjustment of status application before USCIS. If you already have an attorney of record on your I-485, that attorney remains your attorney of record before the agency. We will not communicate directly with USCIS on your behalf about your underlying application, and we will not be able to answer questions about your case except those directly related to this litigation.

13. What if I already have a lawyer on my case?

That is not a problem. If you have an attorney of record before USCIS on your adjustment application, that attorney remains your attorney of record for the application. We recommend that you discuss with that attorney whether joining this lawsuit fits with your overall strategy. Our representation is limited to this federal court litigation and does not replace your relationship with your existing counsel.

14. How will communications work?

We will communicate updates to plaintiffs in writing as the case progresses, and we may arrange group calls with plaintiffs to discuss the status of the case as necessary. Because we are representing the group in this litigation only, we are not able to provide individualized advice about your specific immigration situation through this case. If you need individualized advice about your adjustment application or any other immigration matter, you should consult your own immigration attorney if you have one. Or, if you do not have one, you are welcome to schedule a separate consultation with a Joseph & Hall attorney.