

## **Suing the INS for Processing Delays**

**By Reuben S. Seguritan**

For the past several years, aliens have been experiencing considerable delays in the processing of their green card applications. A simple case of adjustment of status filed by the spouse of an American citizen now takes two years to process. If the bona fides of the marriage is questioned, the delay could be twice as long.

Employment-based cases are even worse. The required labor certification now takes three years to obtain in big cities like New York. Add the two-year processing time by the Immigration Service and the total green card wait could reach five years.

In some cases, when the FBI clearance is not ready at the time of interview or if there are missing documents the delay could be unbearably long. If the beneficiary is abroad and the INS failed to promptly forward documents that are needed by the consulate abroad, the processing could be prolonged indefinitely.

Does the action have a remedy if the processing delay is caused by the INS or another government agency like the Department of Labor? Fortunately, the law provides for a judicial remedy. This remedy called mandamus action is filed in the Federal District Court to compel an office or employee of the US government to perform a duty owed to the alien plaintiff.

In one case, a mother had filed a preference immigrant visa petition with the INS on behalf of her 16-year-old daughter. The visa petition was approved and the approval was sent to the American Consulate of the country where the daughter was living.

The Consulate needed a verification of the child's status as daughter of the petitioner so it requested the INS to forward the A-file. The Consulate made 10 requests to the INS over a period of 3 ½ years but the file was never sent. So the mother filed a complaint with the court alleging that the INS unduly delayed her petition for an immigrant visa for her daughter by failing to send her INS A-file to the Consulate. Ultimately, the A-file was sent after the judge wrote a letter to the INS officer handling the case, requesting him to send the A-file. The judge also awarded attorney's fees and court cost reimbursement to the alien, noting that three years was an unusual amount of time to process an A-file request.

Mandamus actions may also be filed to compel the INS to adjudicate citizenship applications or to compel the Labor Department to act on a Labor Certification application.

In a recent case, a mandamus action was filed to compel the INS and the Department of Health and Human Services to promulgate rules to implement the health applications of nurses and other health workers that had been frozen for as long as four years and this was causing hardship on them. Shortly after the mandamus action was filed, the INS issued the rules for nurses and occupational therapists.