

WRIT OF MANDAMUS COMPELS CIS TO GRANT DELAYED OATH CEREMONIES.

Recently our office filed a Naturalization Application for our client in February 2005, as usual we received a Notice for an Interview scheduled for October 2005. Interview went smoothly, everything looked fine EXCEPT the fact that 12 months go by and nothing was happening. We sent several status inquiries but still nothing. Client was nervous and that made us frustrated.....So what to do when the Government fails to act???

In this particular case where the interview had already taken place, the best option is to file the *Petition for Hearing on Naturalization Application* in the U.S. District Court.

INA §336(b), 8 USC §1447(b) specifically provides that if more than 120 days have passed since the naturalization interview, the applicant can seek judicial relief in form of a remand to the USCIS for immediate adjudication or adjudication of the naturalization application in court and by the court.

Before filing the actual Petition, as a strategic matter, it is wise to send a copy of the draft petition to the USCIS and to the U.S. Attorney's Office to indicate the intended date of filing the Petition. If no action is taken within 30 days, the Petition can be filed in the district court for the district in which the client resides. The Federal Rules of Civil Procedure (FRCP) govern the filing procedures. However, every district court has local rules, and therefore it is important to check the local rules regarding filing the petition. In general, the Petition is taken to the clerk of court where it is registered as filed. After the summons and complaints have been served on all defendants, proof of service needs to be filed with the court.

As in any federal case, the first step is a conference with the judge, the plaintiff's attorney, and the U.S. Attorney representing the USCIS. The judge makes an effort to help the parties resolve the dispute. However, if this fails, the case proceeds to trial.

In our case, after we filed and served the Petition on all defendants, we were contacted by the U.S. Attorney's Office to inform us that the USCIS had just issued the Notice of Naturalization Oath Ceremony for our client. In most cases, the U.S. Attorney pressures the USCIS to act because he does not want to spend time in court defending the USCIS's failure to act as prescribed by law.