

Delays in U.S. Immigration Administrative Processing: What Can be Done



Immigration Blog

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As we emerge from the COVID-19 pandemic, many U.S. visa applicants are getting all the way to their interview for a visa, only to be tossed into “Administrative Processing” — a legal mechanism historically used infrequently by U.S. government agencies to buy them more time on decision making in order to do additional background or security checks on the visa applicant, or assess whether the individual is inadmissible for some reason. But in the wake of COVID-19 — which slowed or completely shut down services at most U.S. embassies and consulates worldwide for more than a year — there is certainly the appearance that the U.S. Department of State is using Administrative Processing to excessively delay the issuance of visas for no logical reason.

Why is this happening?

One of the most frustrating aspects of having one’s case put into Administrative Processing is trying to figure out what is holding up the timely processing of your visa request. There is very little if any information given to applicants at the time of interview. Many people leave their interviews having handed over their passports and under the impression (from the adjudicating officer) that their visas would be immediately processed and printed, only to find out later that their case has gone into the void of Administrative Processing. This can leave visa applicants with a few problems: (1) the visa they need to travel to the U.S. is held up for an indefinite period of time, which can stretch into a year or longer in extreme cases, and (2) if they have handed over their passport at the request of the adjudicating officer, they are left without a passport to use for international travel.

The reality is, there may be no good reason why your case is being held up. While there is no hard data to support this (because why would the government seek or release data showing it is doing a poor job), it is possible that U.S. diplomatic posts could be sending so many cases into Administrative Processing simply to buy more time for delayed background checks due to the overwhelming number of cases they are now facing, post-COVID (and more to the point, post-government shutdown of services). Truth be told, it very much appears that they created the problem by withholding services for an extended time, and now seem to be forcing visa applicants to cope with the sometimes unbearable consequences of having created an enormous bottleneck of cases during the pandemic.

There is no way to know or find out how long your case may sit in Administrative Processing, and often no transparency or communication from the Department of State indicating what needs to be done to get out of Administrative Processing. While one can always file a *Freedom of Information Act* (FOIA) request to try to get information pertaining to the holdup, these often take months or years to receive a response, and we have found that they rarely result in the issuance of any information useful to resolving the delay.

So, what can you do?

Travel while your case is pending — but what about your passport?

Applicants who have turned in their passports to the Department of State at their time of interview can e-mail the nonimmigrant or immigrant visa unit with which they interviewed to request the return of the passport while their case awaits resolution. Once the case is sorted, the U.S. diplomatic post at which you interviewed should reach out to let you know where you can mail your passport in for printing and processing of the visa. It may also be possible to obtain a “duplicate temporary” passport, as one of my clever Canadian clients recent did. You should check with your national passport agency as to whether this is possible, and what is required for it.

Applicants with other visa authorization or status to re-enter the U.S. may also use Trusted Traveler identification — such as NEXUS or Global Entry — to re-enter the U.S. by land while they await the return of their passport. However, Global Entry cards cannot be used to re-enter the U.S. by air through the Global Entry kiosks; those seeking entry must have either their passport or a U.S. Lawful Permanent Resident Card (“green card”) to enter. Alternately, if you’re fortunate enough to have dual citizenship with another country, you can of course use your alternate passport from that country for travel.

Seek professional help

Your immigration attorney may be able to reach out to the relevant U.S. consulate or embassy on your behalf to seek remedies or information. Nonimmigrant or immigrant visa units may be willing to interact with legal counsel to provide information that would otherwise get lost in the void. Legal counsel may also be able to work with U.S. Customs and Border Protection to help you temporarily enter the U.S. while you await the resolution of your case. For my clever Canadian client who obtained a duplicate passport (which can be done within days, normally), we worked with her and contacts in U.S. Customs and Border Protection to help her obtain entry as a visitor to attend a wedding, even though her immigrant visa case had been delayed while she obtained additional information requested by the U.S. Consulate in Montreal.

Immigration litigation — forcing a decision

In cases where Administrative Processing is taking many months or years, immigration litigation is also an option. Filing a *Writ of Mandamus* case with the Federal Court can compel the Department of State to issue a decision on a pending visa matter within two months (and often, much sooner). Other situations may also merit filing a Writ of

Mandamus to compel a decision, including where a 221(g) refusal has been issued, or a DS-5535 (asking for 15 years of work, travel, and address history) has been issued and responded to. Some visa applicants have reported waiting up to two years for a decision from the U.S. Department of State following response to a DS-5535 — even where the applicant previously held a visa and travelled unencumbered to the U.S.

It is important to remember that although filing a Writ of Mandamus will not, in and of itself, result in a denial, it will force the Department of State or other government agency to make a decision on your case within a reasonable time frame. While this sounds like a great idea on its face, remember that it could mean that if they cannot approve because they haven't, for example, received results of background checks or other information they have requested — or there are other unresolved issues pertaining to national security or inadmissibility — you could receive a denial in response to the filing of a Writ of Mandamus. For this reason, it is important to carefully consider when and whether to litigate an immigration-related case, and not a decision to be made lightly.

While patience is prudent, there are options if you've had enough and it makes sense to push. If you are not sure how to do this or whether doing so could negatively impact your case processing, contact your immigration counsel to help determine the best path forward.

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