

THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
CLERKS OFFICE

Camilo H. Acosta,

Plaintiff

2005 MAR 10 P 1:26

V.

U.S. DISTRICT COURT
CIVIL ACTION FILE NO. 05-10456

THOMAS RIDGE, as Secretary of the Department
of Homeland Security; EDUARDO AGUIRRE,
Director of the U.S. Citizenship & Immigration
Services; DENNIS RIORDAN, as District Director
of the U.S. Citizenship & Immigration Services for
Boston, Massachusetts,
Defendants

MAGISTRATE JUDGE Alexander

RECEIPT # 117/55
AMOUNT \$ 250
DATE 3/10/05
BY DPTY. CLK. FWA

PLAINTIFF'S ORIGINAL COMPLAINT
FOR WRIT IN THE NATURE OF
MANDAMUS & DECLARATORY JUDGEMENT

NOW come the Plaintiff, Camilo H. Acosta, in the above-captioned matter, and hereby states as follows:

1. This action is brought against the Defendants to compel action on the clearly delayed processing of an I-485 Application filed by the Plaintiff, Camilo H. Acosta. The application was filed and remains within the jurisdiction of the Defendants, who have improperly delayed processing the application to Plaintiff's detriment.

PARTIES

2. Plaintiff, Camilo H. Acosta, resides at 832 Dobres Street, # 3, San Francisco, CA 94110, is the beneficiary of an I-485, Application to Register Permanent Resident or Adjust Status, filed with the USCIS.
3. Defendant Thomas Ridge is the Secretary of the Department of Homeland Security, and this action is brought against him in his official capacity. He is generally charged with enforcement of the Immigration and Nationality Act, and is further authorized to delegate such powers and authority to subordinate employees of the Department of Homeland Security. 8 USC §1103(a). More specifically, the Secretary of the Department of Homeland Security is responsible for the adjudication of applications for nonimmigrant visas filed pursuant to the Immigration and Nationality Act (INA). The U.S. Citizenship & Immigration Services is an agency within the Department of Homeland Security to whom the Secretary of the Department of Homeland Security's authority has in part been delegated, and is subject to the Secretary of the Department of Homeland Security's

supervision.

4. Defendant Eduardo Aguirre is the Director of the U.S. Citizenship & Immigration Services (USCIS) and an official generally charged with supervisory authority over all operations of the USCIS with certain specific exceptions not relevant here. 8 CFR §103.1(g)(2)(ii)(B).
5. Defendant Dennis Riordan, District Director, is an official of the U.S. Citizenship & Immigration Services (USCIS) generally charged with authority over operations of the USCIS within his District with certain specific exceptions not relevant here. 8 CFR §103.1(g)(2)(ii)(B). As will be shown, Defendant Deputy District Director is an official with whom Plaintiff's application to Register Permanent Resident or Adjust Status was properly filed.

JURISDICTION

6. Jurisdiction in this case is proper under 28 USC §§1331 and 1361, 5 USC §701 *et seq.*, and 28 USC §2201 *et seq.* Relief is requested pursuant to said statutes.

VENUE

7. Venue is proper in this court, pursuant to 28 USC §1391(e), in that this is an action against officers and agencies of the United States in their official capacities, brought in the District where a Defendant is located and performs his official duties.

EXHAUSTION OF REMEDIES

8. The Plaintiff has exhausted his administrative remedies. The Plaintiff has supplied the USCIS documents that clearly establish his eligibility to Register Permanent Resident or Adjust Status.

CAUSE OF ACTION

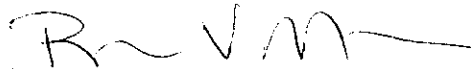
9. The Plaintiff properly filed an application I-485, Application to Register Permanent Resident or Adjust Status, pursuant to Section 245 of the Immigration & Naturalization Act.
10. This petition, along with an I-130 and supporting documentation, was filed in person at the Boston District Office on or about December 10, 2003. Fingerprints were submitted to the USCIS on or about January 2004. The Plaintiff was interviewed at the Boston District Office on May 24, 2004, and was informed that the USCIS had not completed his background check; and, therefore was unable to approve the petition.
11. On September 20, 2004, Plaintiff appeared before the USCIS Boston District Office in order to inquire information about the status of his case, and Plaintiff was told by a supervisor that the USCIS still had not completed his background check and it could be weeks or months until it was complete.

12. The defendants have failed to properly adjudicate this petition. They have failed to adhere to their own regulations and have improperly delayed the processing of the Plaintiff's I-485 Application after the Plaintiff had submitted a properly executed application. It has been 13 months since Plaintiff has filed his I-485.
11. Defendants have sufficient information to determine Plaintiff's eligibility pursuant to applicable requirements and complete the processing procedures.
12. Defendants' delay in this case is, as a matter of law, arbitrary and not in accordance with the law. Defendants willfully, and unreasonably, have inappropriately refused to adjudicate the petition, thereby depriving him of the rights to which the Plaintiff is entitled.
15. The Plaintiff has been greatly damaged by the failure of Defendants to act in accord with their duties under the law.
 - (a) Specifically, Plaintiff Camilo H. Acosta, has been unable to obtain legal permanent residence, travel and work without restriction and accrue time to be eligible for Naturalization as a citizen of the United States.
 - (b) Plaintiff Camilo H. Acosta and his wife, Anne R. McClure have moved to Cupertino, CA in June of 2004; therefore, making it more difficult to revisit the Boston District Office.
16. The Defendants, in violation of the Administrative Procedures Act, 5 USC §701 *et seq.*, are unlawfully withholding action on the Plaintiff's application and have failed to carry out the adjudicative functions delegated to them by law with regard to the Plaintiff's case.
17. The Plaintiff has provided sufficient evidence of his attempt to secure adjudication of these applications at issue, all to no avail. Accordingly, the Plaintiff has been forced to retain the services of his attorney to pursue the instant action.

PRAYER

18. WHEREFORE, in view of the arguments and authority noted herein, the Plaintiff respectfully prays that the Defendants be cited to appear herein and that, upon due consideration, the Court enter an order:
 - (a) requiring Defendants to properly adjudicate Plaintiff's application for action on an approved petition;
 - (b) requiring Defendants to provide the Plaintiff with a Notice of Approval;
 - (c) awarding Plaintiff reasonable attorney's fees pursuant to the Equal Access to Justice Act.
 - (d) granting such other relief at law and in equity as justice may require.

Respectfully submitted,

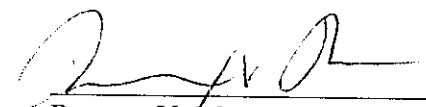
A handwritten signature in black ink, appearing to read 'R. V. Muro', with a horizontal line drawn underneath it.

Roxana V. Muro
FitzGerald & Company, LLC
18 Tremont Street, Suite 210
Boston, Massachusetts 02111
Telephone (617) 523-6320
Facsimile (617) 523-6324
rmuro@fitzgeraldlawcompany.com
Bar No. 653657

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of March 2005, I delivered a true and accurate copy of the foregoing documents, Civil Action Cover Sheet, Complaint, and Filing Fee, to the opposing parties or counsel, at the following addresses:

Mr. Dennis Riordan
U.S. Citizenship & Immigration Services
JFK Federal Building
Boston, MA 02213



Roxana V. Muro
FitzGerald & Company, LLC
18 Tremont Street, Suite 210
Boston, Massachusetts 02108
Telephone (617) 523-6320
Facsimile (617) 523-6324
rmuro@fitzgeraldlawcompany.com
BBO No. 653657