

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Monica BERMEO)
(A95 938 152))
)
Plaintiff,)
)
V.)
)
Mary Ann Gantner)
District Director, US BCIS)
New York , New York)
)
Defendant.)
)

GERSHON, J.
GOLD, M.J.

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U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

COMPLAINT FOR MANDAMUS

TO THE HONORABLE JUDGES OF SAID COURT:

Plaintiff, Monica Bermeo, by her attorneys Wilens & Baker, P.C., for Lawful Permanent Residence claim for relief states as follows:

INTRODUCTION

1. This is a civil action brought pursuant to 28 U.S.C. §1361 to redress the deprivation of rights, privileges and immunities secured to Plaintiff, by whom statutes jurisdiction is conferred, to compel Defendant to perform a duty Defendant owes to Plaintiff. Jurisdiction is also conferred by 5 U.S.C. §555 and 701 et seq, the Administrative Procedures Act, by unlawfully withholding or unreasonably delaying action on Plaintiff's application and has failed to carry out the adjudicative functions delegated to him by law with regard to Plaintiff's case.
2. This action is brought to compel Defendant and those acting under her to rule upon the application and petition filed by the Plaintiff.

PARTIES

3. PLAINTIFF Monica Bermeo is a citizen of Ecuador. She currently resides at 79-11 41st Avenue, Apt. A107, Elmhurst, NY 11373.

4. DEFENDANT, Mary Ann Gantner, is the District Director of the Citizenship and Immigration Services for the District of New York, and is charged by law with the statutory obligation to adjudicate Adjustment of Status applications.

FACTS

5. Plaintiff filed an application for adjustment of status on or about September, 2000.
6. Plaintiff's application has was ERRONEOUSLY DENIED by Defendant, pursuant to DEFENDANT'S OWN MOTION, the matter was re-opened, Plaintiff was then fingerprinted for security clearances on February 27, 2004 and is still pending.
7. Defendant erroneously denied the application because the defendant assigned a second "A#" to Plaintiff's file and referred to the erroneous "A#" [wrong A# 75 514 009] when communicating with Plaintiff. Documentation that was submitted was filed under the wrong A#. Defendant has sufficient information to determine Plaintiff's eligibility requirements and Plaintiff should not now be further delayed due to Defendant's error.
8. Defendant is admittedly inundated with adjustment applications such as Plaintiff's and has limited adjudication officers to adjudicate these applications.
9. This volume of cases is also why Defendant has established its own internal procedures to be able to adjudicate such applications at the time of the interview and not to unnecessarily delay adjudication of the application.
10. Defendant has a legal obligation to notify the Plaintiff of her decision and if the application is denied, the reasons for the denial See 8 C.F.R. 245.2a(5)(i).
11. The adjudication of the application, Defendant's decision, therefore is not discretionary and must be rendered for 8 C.F.R. 245.2a(5)(i) mandates that (1) a decision be rendered and (2) that Plaintiff be notified of same and if denied, the reasons for the denial. One cannot notify one of a decision without first rendering same. Plaintiff does concede that the decision to grant or deny the application is discretionary.

CLAIMS

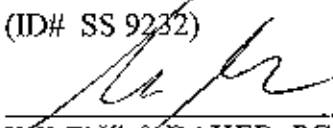
12. Defendant willfully, and unreasonably has delayed in and has refused to, adjudicate the adjustment application of Plaintiff, thereby depriving Plaintiff of her statutory right to lawful permanent residence.
13. Defendant owes Plaintiff the legal obligation to adjudicate her adjustment of status application within a reasonable time and has unreasonably failed to perform that duty.
14. Defendant's failure to adjudicate Plaintiff's application has the effect of placing plaintiff in a status where she may be subject to Removal (Deportation) Proceedings; where her current status restricts her employment opportunities because of the uncertainty of her application and therefore is a direct financial detriment; where Plaintiff's current status requires her to pay a yearly fee Defendant to renew her authorization to work in the United States and is another financial detriment; where this delay has the effect of also delaying when she is eligible to apply for Naturalization.
15. Individuals with pending adjustment applications such as plaintiff's may also be restricted in their ability to travel outside of the United States, even with Defendant's grant of advance parole, due to recent legislation which would bar them from receiving their legal resident status due to their unlawful presence in the United States.
16. Plaintiff has exhausted any administrative remedies that may exist.

WHEREFORE, Plaintiff prays that the Court:

- (1) Compel Defendant and those acting under her to perform their duty to rule upon the adjustment of status application of Plaintiff Monica Bernco;
- (2) Grant such other and further relief as to this Court seems proper under the circumstances; and
- (3) Grant attorney's fees and costs of court.

Respectfully submitted,
By: Spiro Serras, Esq.

(ID# SS 9232)



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Dated: August 17, 2004