



MELTZER HELLRUNG
IMMIGRATION SOLUTIONS

CHALLENGING IMMIGRATION PROBLEMS IN FEDERAL COURT

When and how to pursue litigation
July 26, 2023



INTRODUCTION



MELTZER HELLRUNG
IMMIGRATION SOLUTIONS

 **INTRODUCTION**

- **Founded in 2014, Meltzer Hellrung leverages technology, a service-oriented mindset, and a compassionate approach to assist high-growth corporations in scaling their immigration programs, increasing their access to talent, and expanding operations into new markets.**
- **200+ corporate clients w/3000+ matters handled per year – venture-backed, high-growth unicorns in EdTech, FinTech, SaaS, and Logistics and Fortune 500 companies in insurance, transportation, and manufacturing.**
- **Recognized in 2020 and 2021 Inc. 5000 Fastest-Growing U.S. Companies.**

VOYAGER®



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- **Voyager is an immigration program management software platform that is designed to provide a seamless immigration experience for employers and employees.**
- **The Voyager proprietary platform was created for our clients and their employees and is used by our exceptionally skilled attorneys, paralegals, and legal assistants to fulfill our mission of improving the immigration experience.**
- **Voyager was created to drive efficiency, transparency, and information accessibility throughout the immigration process.**






VOYAGER® (continued)


- **Our all-inclusive platform provides:**
 - Transparency throughout all immigration processes
 - Efficient workflows that will save the user time
 - Lifetime information and data storage
 - Intuitive user experience for employers and employees
 - Comprehensive Knowledge Center

Learn more about Voyager at meltzerhellrung.com/voyager



Home



KYLE



 Welcome back, **Kyle**
 Here is today's snapshot
Today's date is:
May 19, 2022

16

OPEN CASES >

1


TASK >

7

PROCESS REQUESTS >

My Tasks

[VIEW ALL TASKS](#)


ACTION	NAME	PROCESS	DEADLINE
Review E-3 Forms and LOS	Ferdinand Magellan	E-3 USCIS	 Overdue

Recent Cases


[VIEW ALL CASES](#)


COMPANY	NAME	CREATED	CASE NUMBER	PROCESS	STATUS	PHASE
	Ferdinand Magellan	5/16/22	0033-0004-3	E-3D USCIS	Open	Data Collection
World Explorer Inc.	Amerigo Vespucci	3/8/22	0033-0002-1	PERM: Green Card	Open	Data Collection
World Explorer Inc.	Neil Armstrong	5/4/22	0033-0006-1	H-1B	Open	Data Collection
Meow Meow Worldwide	Murphy Roby	5/6/22	0030-0004-4	TN Mexico	Open	Data Collection
	Murphy Roby	5/6/22	0030-0004-5	TD Canada	Open	Data Collection


Upcoming Status Expirations


Ferdinand Magellan
kyl3r3155+fn1@gmail.com
 World Explorer Inc.
H-1B Exp: 4/1/22

Susan Magellan
H-4 USCIS Exp: 4/1/22

Lulu Cat
 Meow Meow Worldwide
H-1B Exp: 6/1/22

Murphy Roby
 Meow Meow Worldwide
PERM: Green Card Exp: 6/28/22

Foreign Vokal
shankhri.balaji+fn@vokal.io
 Vokal LLC
H-1B Exp: 8/31/22

Neil Armstrong
kyl3r3155+fn4@gmail.com
 World Explorer Inc.
H-1B Exp: 9/30/22

PRESENTERS



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 **PRESENTERS**



MATTHEW HELLRUNG

Co-Founder and Managing Partner

Specializes in scaling immigration programs for high-growth clients via immigration policy creation and stakeholder training.



MATTHEW MELTZER

Co-Founder and Managing Partner

Specializes in assisting foreign companies to enter the U.S. market and building custom solutions for entrepreneurial and high net-worth clients.

AGENDA



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AGENDA

- **When to sue the Federal Government**
- **How a lawsuit works**
- **Deep dive on denials and your options**
- **Deep dive on slow/stuck cases**
- **How we help**



WHEN TO CONSIDER A FEDERAL LAWSUIT



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WHEN TO CONSIDER A FEDERAL LAWSUIT

- Unreasonable denials at USCIS
- Unreasonably long processing times, even if the case is not outside normal processing time
- USCIS petitions that are outside normal processing times but nothing seems to move the agency to action
- Long processing with Department of State for visas

M | H

FREQUENTLY ASKED QUESTIONS ON RISKS



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 **FREQUENTLY ASKED QUESTIONS ON RISKS**

- **Will the agency retaliate against my company or employee?**
 - No. Our experience is that once the government knows you are willing to litigate that you are more likely to be treated deferentially. Retaliation is also something a federal judge would see and not look kindly on. Remember we are no longer working with the agency out of sight of others.
- **Will my lawsuit be visible to the public?**
 - Yes, the name of the parties on the lawsuit are public. The information in the lawsuit, including the filed complaint, is shielded from public view.

HOW A FEDERAL LAWSUIT WORKS



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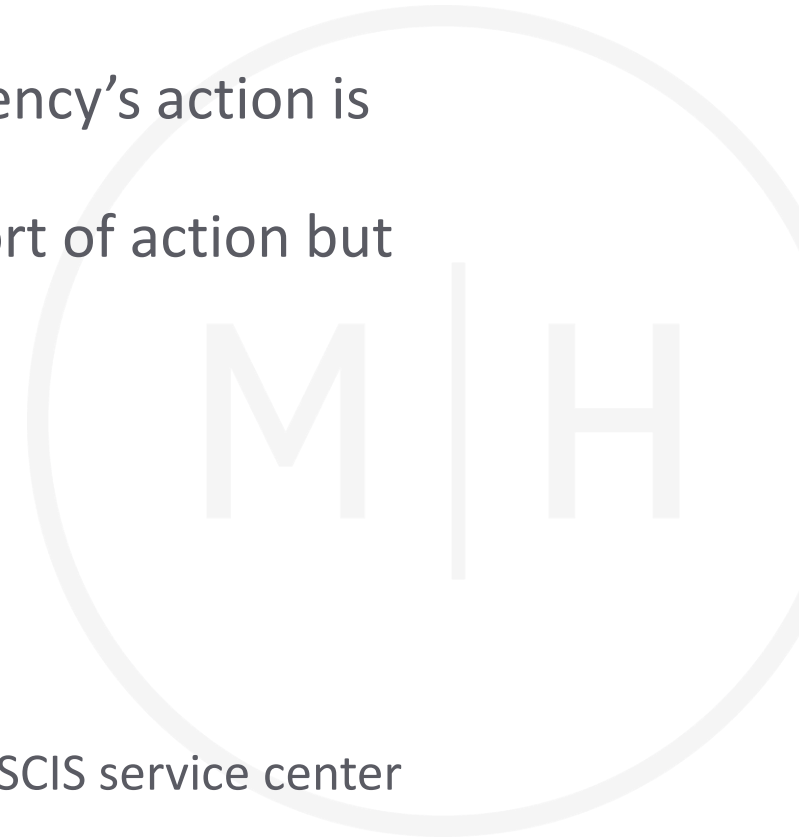
HOW A FEDERAL LAWSUIT WORKS

- **Two major kinds of lawsuits**

- Administrative Procedure Act – claiming that the agency’s action is arbitrary and capricious
- Mandamus – claiming the agency owes you some sort of action but has not delivered

- **Where to sue**

- Federal court only, never in state court
- Venue options
 - Where the company / individual is located
 - Where the agency is headquartered
 - Where the action of the agency is actually occurring, e.g. USCIS service center





HOW A FEDERAL LAWSUIT WORKS, CONTINUED

- **Who can bring the lawsuit?**

- Generally, it is the person or entity that applied for the immigration benefit.
 - An affected person who did not file the application may be able to file in some limited circumstances
- The fees can be paid by anyone

- **Who is involved from the government?**

- Shift from direct engagement with an agency to interaction with the local US Attorney's office where lawsuit is filed
- US Attorney's offices are primarily the prosecutors who handle federal crimes. They also handle civil matters as they arise

WHY IT IS BENEFICIAL TO WORK WITH A US ATTORNEY



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WHY IT IS BENEFICIAL TO WORK WITH A US ATTORNEY

- **Larger offices may have an attorney(s) dedicated to immigration matters, smaller offices may not**
- **US attorneys have a busy docket and want to clear anything they can**
- **The agencies are extremely reluctant to create bad precedents for themselves and also want to clear cases they are fearful may create bad precedents for them**
 - There are shockingly few immigration decisions on business immigration issues
- **The US attorney has a personal reputation and does not want to defend cases he/she thinks are poorly handled. The US attorney can advocate to the agency for action**
- **The US attorney is a third party to the agency and does not have any emotional investment in believing in the agency is correct. The US attorney can call a spade a spade and work within the government on behalf of a sympathetic plaintiff**

LAWSUIT TIMELINE



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LAWSUIT TIMELINE

Step 1: File complaint with Federal court

Step 2: Serve the complaint on the responsible attorneys and parties to the lawsuit. This is typically done 1-2 business days after filing the complaint

Step 3: US Attorney has 60 days to respond in some fashion to the lawsuit

- Ideally the US attorney takes some action to make the lawsuit go away before that timeline
- The US attorney may ask for an extension
- The US attorney may file a motion to dismiss
- The agency may take action to pause the litigation, like issuing a new RFE

DENIALS – OPTIONS TO CONSIDER



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DENIALS – OPTIONS TO CONSIDER

- **After an unreasonable denial with USCIS a company / individual may have several options to consider:**
 1. Refiling the petition
 - Beneficial if a change can be made and premium processing is available
 2. File at Motion to Reopen or Motion to Reconsider
 - Asking the USCIS officer to review the decision based on new evidence or additional legal arguments
 - No set timeline
 3. File an appeal with Administrative Appeals Office
 - Asking the USCIS internal administrative court to review the decision
 - Six-month timeline
 - Low likelihood of success
 4. Federal lawsuit
 - Ideally you have an outcome in 60 days

WHAT KINDS OF PETITIONS MAY BE SUBJECT TO A LAWSUIT



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WHAT KINDS OF PETITIONS MAY BE SUBJECT TO A LAWSUIT

- **Most application denials can be challenged in federal court**
- **The following kinds of applications may not be able to be challenged in court:**
 - USCIS denials of adjustment of status applications
 - USCIS denials of citizenship applications
 - Department of State visa denials
 - USCIS denial to change or extension of status where the underlying category was approved

APPROACHING CASES WITH LITIGATION IN MIND



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APPROACHING CASES WITH LITIGATION IN MIND

- **We cannot add new evidence at the time of filing a lawsuit**
- **All desired evidence need to be in the petition**
- **Any weaknesses regarding soc codes, job duties, etc. need to be ironed out prior to submitting an application**
- **Understanding timelines when cases start, especially with delay cases**
 - Factoring litigation costs into initial assessments and timelines
 - Filing as soon as possible when particular benchmarks are hit

EXAMPLE OF CHALLENGING A DENIED PETITION



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EXAMPLE OF CHALLENGING A DENIED PETITION

- Client with hardware business submitted an H-1B cap petition for a hardware engineer
- The employee had a degree in electrical engineering
- The petition was denied on the basis of specialty occupation
- Could not refile the petition based on H-1B cap timeline
- We filed a lawsuit challenging the denial as arbitrary and capricious
- The agency did not fight us and approved the petition about 50 days later. We agreed to close the matter

REASONS TO LITIGATE BASED ON PROCESSING TIME



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REASONS TO LITIGATE BASED ON PROCESSING TIME

- **The processing times themselves are unreasonable and the client needs an outcome sooner**
 - AOS processing times for EAD's are currently in excess of 11 months at several service centers
- **The case is outside normal processing times and USCIS shows no indication of taking actions**
- **Processing time at consulate/embassy is unreasonable**

OUTSIDE THE BOX SITUATIONS



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 **OUTSIDE THE BOX SITUATIONS**

- **H-4 Denial – Nunc pro tunc**

- H-4 spouse who failed to check I-94 expiration when entering the US and was inadvertently out of status. USCIS denied H-4 extension and she would have been subject to 10-year bar.
- We filed a lawsuit saying USCIS did not explain basis for nunc pro tunc denial just hoping for sympathy, which did indeed happen. H-4 was approved.

- **H-1B cap case error**

- Client filed H-1B cap case and made an error by not signing a form. Petition arrived on April 1st at USCIS, but was not returned by USCIS until July 15th, after cap period closed. We litigated saying the failure to return the case in a timely fashion was unreasonable and the petition should still be considered. It was.

HOW WE CHARGE FOR LITIGATION

TAX



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TAX HOW WE CHARGE FOR LITIGATION


- **As with our other matters we charge on a flat fee for filing a complaint**
 - This can be cheaper than refiling a petition with premium processing at USCIS
- **Our fee includes all efforts to bring the case to a resolution within the 60-day period (or longer if the US Attorney asks for an extension)**
- **We will charge additional fees if we need to continue the litigation, such as responding to a motion to dismiss or responding to a new RFE**


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 HOME










Home

 MY PROCESS REQUESTS



+

MARK 



Welcome back, **Mark**
Here is today's snapshot

Today's date is:

January 18, 2023

2

OPEN CASES

>

1

TASK


>

1

PROCESS REQUEST

>


My Tasks VIEW ALL TASKS

ACTION	COMPANY	NAME	PROCESS	DEADLINE
Upload Documents (Employer)	Atom LLC	Chris Neutron	H-1B	<div style="display: flex; align-items: center;">  Overdue </div>

Recent Cases VIEW ALL CASES


COMPANY	NAME	CREATED	CASE NUMBER	PROCESS	STATUS	PHASE
Atom LLC	Chris Neutron	1/12/23	0074-0001-1	H-1B	Open	Data Collection
Atom LLC	Stephanie Proton	1/12/23	0074-0002-1	PERM: Green Card	Open	Recruitment

Upcoming Status Expirations



Chris Neutron

wevibin+ion@shankhri.com



Atom LLC

H-1B

Exp: 2/17/23

Immigration Preferences

Ship Original Approval Notices

- Company

Provide Permission to Release Copies of ETA 9089's (PERM) to Employees

- Yes

Provide Permission to Release Copies of Petitions and RFE Responses to Employees

- No

Meltzer Hellrung Email Communications With Employees

- A company representative will only be copied on information impacting the company, but will be left off on communication that does not impact the company.

Payment Preferences

Email Address Invoices Should Be Addressed To

- finance@atom.com

Payment Preference

- ACH

Preference for Employees to Pay for Any Part of the Green Card Process

- No

Company Covers the Expense of Dependent EAD Cards

- No

Name Invoices Should Be Addressed To

- Chris Charge

Utilize Premium Processing Service, When Available

- Only on a case-by-case basis

Company Covers the Expense of Dependent Petitions

- Yes

Education Evaluation

- Meltzer Hellrung should reach out to the company to secure permission before requesting an evaluation from vendor

Job Description

EDIT

- Job Title**
Android Software Engineer - Design Systems
- Job Duties**
 - Leverage and elevate our reusable Android component library, to improve the speed and consistency of our designers and engineers, raising the quality of our products
 - Iterating and contributing to the design process, by collaborating with other engineers, designers, product managers, and UX researchers
 - Understand and support the work of other engineers and designers by providing education and mentorship to other teams.
 - Enhance tools and establish patterns to improve developer experience
 - Help us achieve its mission by making sure it's accessible and usable by everyone
- Requirements for Position**
 - Experience with Kotlin and knowledge of Android design patterns
 - Preferable experience in developing Custom View components.
 - Portfolio of published applications on GitHub and/or Play Store
 - Experience with integrating back-end services esp. GraphQL feed integration.
 - Familiarity with push notifications, APIs and cloud messaging
 - Experience with continuous integration
 - Experience working with other Android developers as part of a team
 - Experience with entire product lifecycle duties in an Agile environment
 - Excellent critical thinking, problem solving and communication skills
 - Knowledge of Accessibility (a11y) best practices
 - Excellent written and verbal communication skills
- Degrees Required**
Bachelors, Masters
- Majors Required**
Computer Science or Related Field

SHOW ADVANCED OPTIONS





Start a New Process Request ×

Start Request Select Process Add Details Complete Request

What are the details of this employee's job position?

Job Details

EXISTING JOB CREATE NEW JOB

Offered Salary *
\$145,000

Job Title, Description *
Android Software Engineer - Design Systems

Individual's Start Date *
03/30/2023


Employee's Physical Working Address *
Where is this person physically working from?


1 E Wacker Dr
Suite 3700
Chicago, IL
60601
United States of America


Working Remotely


← NEXT →















Cases

CASE COMMENTS

We need to look into dependent petition costs.

Jan 12 at 3:06 pm

PERM: Green Card 0074-0002-1 Atom LLC




Stephanie Proton ✉

H-1B Exp. 3/9/23


OPEN

OVERVIEW
TASKS
DOCUMENTS
FORMS
CASE DETAILS
ACTIVITY


Overview




Case Opening




Data Collection




File Prevailing Wage Request




Recruitment




PERM Submission




I-140 Preparation



File I-140



Next Steps



Final Decision

Key Dates

- ✓ Prevailing Wage Request Filing
1/12/23
- PERM Filing
Due 1/23/23
- I-140 Filing
Due 7/13/23




Prevailing Wage Case

PWR Case No.
G-100-12345-123456

CHECK


Open Tasks

You have no tasks to complete

 Shankhri Balaji	5
 Ruth Ginsburg	1
 Stephanie Proton	2

Receipt Numbers


USCIS Receipt No. ABC-12-123-12345	ETA Case No. A-12345-67890
---------------------------------------	-------------------------------



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H-1B Lottery Change of Status
Bachelor's Degree
0074-0001-2
Atom LLC



Chris Neutron ✉

H-1B Exp. 2/17/23

OPEN

OVERVIEW
TASKS
DOCUMENTS
FORMS
CASE DETAILS
ACTIVITY

Overview

Case Opening

Data Collection

Lottery Submission

Lottery Decision

LCA Filing

Forms Preparation

Application Submission

Awaiting Receipt

Final Decision

📅

Key Dates

✔

Lottery Registration

1/18/23

📄

Case Preparation

Lottery Submission Only

📋

Selection Status

Awaiting Selection Notice

🚚


Shipment Tracking

No shipments.

📋


Open Tasks

You have no tasks to complete
0




Cynthia Coulange

2



Ruth Ginsburg

5



Chris Neutron




















1

📋



Receipt Numbers

Selection Notice No.	USCIS Receipt No.
-	-





<input checked="" type="checkbox"/>	Enter Foreign National into USCIS Account	Lottery Process	 Cynthia Coulange	 Completed 1/18
<input checked="" type="checkbox"/>	Review Foreign National's Lottery Details in USCIS Account	Lottery Process	 Mark Nucleus	 Completed 1/18
<input checked="" type="checkbox"/>	Submit Lottery Registration via USCIS Account	Lottery Process	 Cynthia Coulange	 Completed 1/18
<input type="checkbox"/>	Confirm Foreign National Selection in USCIS Account	Lottery Process	 Cynthia Coulange	 1/18 - 2/8
<input type="checkbox"/>	Upload Foreign National Lottery Selection Notice from USCIS Account	Lottery Process	 Cynthia Coulange	 Today
	Notify Employer of Foreign National Lottery Selection Status Blocked by: Upload Foreign National Lottery Selection Notice from USCIS Account	Lottery Process	 Cynthia Coulange	 1/19 - 1/20
	Confirm Foreign National Notification Method Blocked by: Upload Foreign National Lottery Selection Notice from USCIS Account	Lottery Process	 Cynthia Coulange	 1/19 - 1/23
	Notify Foreign National Blocked by: Confirm Foreign National Notification Method	Lottery Process	 Ruth Ginsburg	 1/23 - 1/24

Education


 Diploma(s), Degree(s) Upload all documents with translations (if applicable). 


[Replica_University_Diploma.jpeg](#) – Uploaded on 1/12/2023

 Educational Evaluations Upload all educational evaluation documents. [UPLOAD](#) 


 [Dec 2022](#) – Uploaded on 1/18/2023

 [Jan 2023.pdf](#) – Uploaded on 1/12/2023

 School Marks and Transcripts Upload all school marks and transcripts. [UPLOAD](#) 



Resources

MY PROCESS REQUESTS
+
MARK


Quick Shortcuts

- [DOS visa appointment wait times](#) >
- [M-274](#) >
- [NACo County Explorer](#) >
- [O*NET](#) >
- [OOH](#) >
- [PERM](#) >
- [USCIS processing times](#) >
- [Visa bulletin](#) >

Knowledge Center

ADJUSTMENT OF STATUS INTERVIEW TIPS (EMPLOYMENT)


ADJUSTMENT OF STATUS INTERVIEW TIPS (FAMILY)

ADJUSTMENT OF STATUS OVERVIEW

B-1 OVERVIEW


CONSULAR PROCESSING TIPS

Recent Developments




Final Phase of I-140 Premium Processing Expansion to be Implemented by USCIS

JAN 13, 2023



Department of Homeland Security Proposes Fee Increase for Petitions

JAN 10, 2023



COVID Test Required if Traveling from China Effective January 5th

JAN 4, 2023

QUESTIONS?



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