

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WISCONSIN

**Tu Minh Phan v. United States Citizenship and Immigration Services
(USCIS); Markwayne Mullin; Todd Blanche; Joseph B. Edlow;
Carrie M. Selby; Terri Robinson; Andrea Quarantillo; Lori
Pietropaoli; and Kay Leopold**

Phan · No. 3:25-cv-00568-jdp · Decided April 15, 2026

SUMMARY

The United States District Court for the Western District of Wisconsin granted the defendants’ motion to dismiss Tu Minh Phan’s claims concerning the handling of his request to adjust his wife’s immigration status. The court dismissed the administrative-delay claims as moot, the Immigration and Nationality Act procedural-error claims for failure to exhaust administrative remedies, the Administrative Procedure Act claims as premature, and the due-process and estoppel claims with prejudice for failure to state a claim.

CASE DETAILS

COURT	United States District Court for the Western District of Wisconsin
WRITING FOR THE COURT	James D. Peterson
JURISDICTION	United States District Court for the Western District of Wisconsin
DECIDED	April 15, 2026
DOCKET	3:25-cv-00568-jdp
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff brought claims against federal immigration officials concerning the handling of a request to adjust his wife's immigration status. Defendants moved to dismiss under Federal Rule of Civil Procedure 12(b)(6), arguing that the undue-delay claim was moot and that the remaining claims were unripe, unexhausted, or failed to state a claim.
STANDARD OF REVIEW	The court applied the pleading standard governing a motion to dismiss, accepting plausible reasons for dismissal and declining to conduct the plaintiff's research in the absence of an opposition.

TOPICS

adjustment of status

immigration

administrative procedure act

exhaustion of remedies

due process

PRACTICE AREAS

immigration law

administrative law

civil procedure

constitutional law

QUESTIONS PRESENTED

1. Whether claims based on the alleged delay in forwarding Phan's administrative appeal were moot after the appeal was forwarded to the BIA.
2. Whether Phan's claims under the Immigration and Nationality Act based on alleged procedural errors were barred by failure to exhaust administrative remedies.
3. Whether Phan's Administrative Procedure Act claims based on alleged procedural errors were premature because there had been no final agency action.
4. Whether Phan stated a due-process claim or could estop defendants from asserting procedural bars.

HOLDINGS

1. Claims under the Immigration and Nationality Act and Administrative Procedure Act alleging undue delay in forwarding the administrative appeal were moot because the appeal had been forwarded to the Board of Immigration Appeals.
2. Claims that defendants violated the Immigration and Nationality Act by committing procedural errors were dismissed without prejudice for failure to exhaust administrative remedies.
3. Claims that defendants violated the Administrative Procedure Act by committing procedural errors were dismissed without prejudice because defendants had not issued a final agency action.
4. Phan's claims that defendants violated the Due Process Clause and should be estopped from asserting certain arguments failed to state a claim upon which relief could be granted.

KEY QUOTATIONS

"If [courts] are given plausible reasons for dismissing a complaint, they are not going to do the plaintiff's research and try to discover whether there might be something to say against the defendants' reasoning."

FACTUAL BACKGROUND

Phan sought adjustment of his wife's immigration status. He alleged that federal officials unduly delayed forwarding his administrative appeal to the Board of Immigration Appeals, failed to provide adequate reasons for the initial denial, applied an incorrect legal standard, and improperly objected to his evidence. By the time defendants moved to dismiss, Phan conceded that the administrative appeal had been forwarded to the BIA.

PROCEDURAL HISTORY

Phan alleged that defendants mishandled his request to adjust his wife's immigration status, including delaying transmission of his administrative appeal to the Board of Immigration Appeals and committing procedural and constitutional violations. The appeal was transmitted to the BIA while the action was pending. Phan did not oppose the motion to dismiss by the court-ordered deadline. The court granted the motion, dismissed some claims without prejudice and the due-process and estoppel claims with prejudice, directed entry of judgment, and closed the case.

DISPOSITION

dismissed

CASES CITED

- Kirksey v. R.J. Reynolds Tobacco Co., 168 F.3d 1039, 1041 (7th Cir. 1999)

OPINION

Tu Minh Phan v. USCIS; Mullin; Blanche; Edlow; Selby; Robinson; Quarantillo; Pietropaoli; Leopold

PER CURIAM.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN
TU MINH PHAN,
Plaintiff, v.

UNITED STATES CITIZENSHIP AND

IMMIGRATION SERVICES (USCIS); MARKWAYNE MULLIN, Secretary of the U.S. Department of Homeland Security; TODD BLANCHE; Acting Attorney General of the United States; JOSEPH B. EDLOW, Director of United ORDER States Citizenship and Immigration Services; CARRIE M. SELBY, Acting Associate Director for the 25-cv-568-jdp Service Center Operations Directorate at USCIS; TERRI ROBINSON, Director of the National Benefits Center at USCIS; ANDREA QUARANTILLO, Central Regional Director for the North East Region at USCIS; LORI PIETROPAOLI, District Director District 14 at USCIS; and KAY LEOPOLD, Milwaukee Field Office Director at USCIS, Defendants.¹ Plaintiff Tu Minh Phan is suing the federal government for its alleged mishandling of his request to adjust his wife's immigration status. His primary contention is that officials unduly delayed in forwarding his administrative appeal to the Board of Immigration Appeals (BIA), but he also contends that officials violated his rights by failing to give adequate reasons for their initial decision denying his request, failing to apply the correct legal standard, and 1 The court has amended the caption to reflect recent changes of federal officers being sued in their official capacity. See Fed. R. Civ. P. 25(d). making improper objections to his evidence. He also asks that the government be estopped from "invoking procedural bars." Dkt. 17, at 9. The government moves to dismiss the case, contending that the

claim about undue delay is moot because plaintiff concedes that the appeal has now been forwarded to the BIA, and his remaining claims fail either because they are not ripe or they are barred by Seventh Circuit precedent. Dkt. 18. Phan's deadline for opposing the motion was March 20, but Phan has not filed a response. "If [courts] are given plausible reasons for dismissing a complaint, they are not going to do the plaintiff's research and try to discover whether there might be something to say against the defendants' reasoning." *Kirksey v. R.J. Reynolds Tobacco Co.*, 168 F.3d 1039, 1041 (7th Cir. 1999). The government has given plausible reasons for dismissing the complaint and has cited binding authority that supports its arguments. So the government's motion to dismiss, Dkt. 18, is GRANTED. Phan's claims that defendants violated the Immigration and Nationality Act and Administrative Procedure Act by unduly delaying his administrative appeal are DISMISSED without prejudice as moot. Phan's claims that defendants violated the Immigration and Nationality Act by making procedural errors are DISMISSED without prejudice for failure to exhaust administrative remedies. Phan's claims that defendants violated the Administrative Procedure Act by making procedural errors are DISMISSED without prejudice because defendants have not issued a final agency action. Phan's claims that defendants violated his rights under the Due Process Clause and are estopped from asserting certain arguments are DISMISSED with prejudice for failure to state a claim upon which relief may be granted. The clerk of court is directed to enter judgment accordingly and close this case. The preliminary pretrial conference scheduled for April 20 is CANCELED. Entered April 15, 2026. BY THE COURT: /s/ _____

JAMES D. PETERSON

District Judge