

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

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In the Matter of Application of
BADA GUEYE

Petitioner,

-against-

VERIFIED PETITION

CITY OF NEW YORK; JONATHAN
MINTZ, in his official capacity as
Commissioner of the New York City
Department of Consumer Affairs,

Respondents.
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Bada Gueye is a Senegalese-American immigrant and a New York City (“NYC”) resident. In 1993, he applied for a street vendor license and was placed on the NYC Department of Consumer Affairs’ (“DCA”) waiting list. In February 2009, after sixteen long years, the DCA sent Mr. Gueye a letter stating that his number was finally up, and that he should report to the DCA within two months to claim his license. Unfortunately for Mr. Gueye, he was visiting his family in Senegal at the time and did not receive the letter until he returned to the U.S., one month after the DCA’s arbitrarily short deadline had expired.

Back in New York, Mr. Gueye immediately tried to rectify the matter. He submitted to DCA a statement detailing his trip dates, a copy of his stamped passport, and a copy of his airline tickets. He was told that someone would review his application and call him with a determination. No one did. He persistently followed up, in person, more than eight times over fifteen months, but DCA gave no response. Nor have they responded to Mr. Gueye’s lawyers at the Urban Justice Center, who sent two letters on his behalf requesting relief. Mr. Gueye’s only

option is to file this proceeding in hopes he will finally be granted his street vendor license so that he may pursue his chosen livelihood.

As such, Petitioner Bada Gueye, by his attorney, the Urban Justice Center, for his Verified Petition to this Court, respectfully alleges as follows:

1. Petitioner is a 50 year-old legal permanent resident and a NYC resident, who has been waiting for a general vendor license for over seventeen years.

2. Respondent, the City of New York, is an incorporated municipality in the State of New York.

3. Respondent, Jonathan Mintz, is the Commissioner of the New York City Department of Consumer Affairs.

4. In 1993, Petitioner applied for a general vendor license. He was placed on the 1993 General Vendor Waiting List. Mr. Gueye's waiting list number was #2694.

5. Around February 03, 2009, Petitioner received a letter from the Respondent advising him of his opportunity to apply for a general vendor license, at his permanent home address in NYC. A copy of the letter is attached hereto as Exhibit A.

6. Petitioner was in Senegal visiting his family from January 18, 2009 through May 06, 2009.

7. Upon his return to NYC, Petitioner reviewed the letter informing him his number was off the waiting list and that he could now apply for a general vendor license. He immediately filed his application in person at the DCA Licensing Center on May 07, 2009. Respondent informed Petitioner that he had failed to meet the April 02, 2009 deadline. Petitioner explained he was out of the country visiting Senegal. DCA Community Associate Luis Duprey,

informed Petitioner that he should bring a copy of his passport, airline tickets and a statement for “the Director’s review.”

8. The next day, on May 08, 2009, Petitioner submitted a copy of his passport, airline tickets and a written letter summarizing his travel, along with his general vendor license application, to Respondent’s officers. Respondent informed him that “the Director” would call Petitioner with a resolution. A copy of Petitioner’s travel itinerary and passport with date of entry stamps are attached hereto as Exhibit B.

9. Around the end of May 2009, Petitioner went in person to the DCA Licensing Center for a determination on his general vendor license application, but was told the Director had not yet reviewed his application.

10. One month later, around July 2009, Petitioner again went in person to the Licensing Center to follow up on his application. Respondent then told him that the agency was facing a “hard time” and was “very busy.” Petitioner was told to follow up again in February 2010.

11. In February 2010, Petitioner again followed up in person at the DCA Licensing Center. He was told that there was no determination yet, but that the Director will review his case. Petitioner inquired if he should hire a lawyer. Respondent replied that no lawyer was necessary, but that the DCA would call him with a determination.

12. Petitioner repeatedly sought review and resolution on the status of his general vendor license application and travel verification several more times, but did not receive any responses from the Respondent.

13. In May 2010, Petitioner again sought a determination on his general vendor license application. Respondent then asked him to provide another copy of his passport, airline

ticket, and statement for review. Ms. Gotay, the Deputy Director of Special Applications at the DCA assured Petitioner that the agency would review his application and call him with a resolution.

14. Around June 03, 2010, Petitioner's attorney sent a letter to the Respondent, but did not receive any response. A copy of the letter is attached hereto as Exhibit C.

15. In September 2010, Petitioner again followed up in person at the DCA Licensing Center, and did not receive any response.

16. Around September 08, 2010, Petitioner's attorney sent a second letter to Respondent, seeking a response regarding the status of Petitioner's general vendor license application by October 1, 2010 and threatening legal action, but did not receive any response. A copy of the letter is attached hereto as Exhibit D.

17. Petitioner waited sixteen years to get off the general vendor license waiting list. Petitioner has waited an additional year and one half from the time his number came off the waiting list continuing to the present time. Petitioner's waiting period of over seventeen years amounts to an egregious interference bearing a significant burden on Petitioner's livelihood and right to freely work.

18. Respondent is equitably estopped from preventing Petitioner from receiving his general vending permit because of the DCA's own continuing delay in providing Petitioner with a determination on his general vendor license application and travel verification. Respondent never informed Petitioner that any travels extending beyond two months could potentially jeopardize his ability to submit a general vendor license. Petitioner's permanent address has not changed since 1993, so he did not fail any obligation he had to change his address with the DCA.

19. Respondent's failure to issue Petitioner a general vendor license, when he has a valid reason for his one-month delay in submitting his application, and when the DCA has not been prejudiced by the delay, is arbitrary, capricious, and without rational or legal basis.

20. Respondent's policy of requiring general vendor applications to be submitted within the short time period of two months from the date of notification is also arbitrary, capricious, without rational or legal basis, and bears a discriminatory effect against immigrants with ties to their countries of origin. Such a policy is unduly burdensome for American legal permanent residents who have family remaining in their home countries, and serves to restrict Petitioner's fundamental constitutional right to travel freely.

WHEREFORE, Petitioner respectfully requests that this Court:

1. Issue an order pursuant to Article 78 of the Civil Practice Law and Rules, directing the New York City Department of Consumer Affairs to expeditiously allow Petitioner to obtain his general vending license;
2. Grant him such other and further relief as this court deems proper.

Dated: New York, New York
October 26, 2010

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