

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

WAFAA ALWAN, Alien # 212 166 955,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY, et al.

Defendants.

Case No. 16-CV-00692-JAR

**MEMORANDUM IN OPPOSITION TO  
DEFENDANT'S MOTION TO DISMISS**

The Defendants' Motion to Dismiss should be denied. This issue involves whether or not the language of 8 U.S.C. § 1447(b) grants full jurisdictional powers to the district court when an applicant for naturalization seeks remedial measures against the USCIS in federal district court for its unreasonable delay in processing its decision. Because the district court *did* retain full jurisdictional power, USCIS did not have jurisdiction to rule on the status of plaintiff's application while the case was pending in this court.

Several courts have ruled in favor of a plain language reading of 8 U.S.C. § 1447(b). The language clearly indicates that if USCIS fails to reach a decision within 120 days from an applicant's "examination" that the applicant can bring suit in district court for a ruling on the matter. The district court then has the prerogative to either rule on the matter or remand the matter back to USCIS. Allowing USCIS to make a ruling while the case is pending in district court creates confusing, overlapping jurisdiction,

strips § 1447(b) of its central purpose, and makes the court's statutorily stated right to remand the case back to USCIS obsolete.

### STATEMENT OF FACTS

Plaintiff Emad Haroun has been a lawful permanent resident of the United States for many years. First Amended Complaint, p. 20. She filed an N-400 application for naturalization with Defendant U.S. Citizenship and Immigration Services (USCIS) on December 17, 2014. *Id.* at 4. USCIS, through its local field office in St. Louis, conducted an N-400 interview on August 31, 2015.

USCIS then refused to adjudicate Plaintiff's N-400 application. Plaintiff made repeated requests and InfoPass appointments with USCIS to find out why her case was being delayed. USCIS refused to provide her any information regarding if or when her case would be decided.

After waiting for more than eighteen months for USCIS to decide the case, Plaintiff filed the present action along with the previously dismissed Defendants. The Complaint sought relief in mandamus under the Administrative Procedures Act and 8 U.S.C. § 1447(b). In the lawsuit, Plaintiff further alleged that her case was being delayed due to the illegal Controlled Application Review and Resolution Program (CARRP), a secret program designed by the Defendants to delay the immigration cases of Muslims and to develop pretextual reasons for denying said applications. The lawsuit seeks a declaratory judgment that the CARRP program is illegal.

The lawsuit was filed on May 18, 2016. On October 20, 2016, five months and two days after Plaintiff filed this action, the Defendants finally issued their purported denial of Plaintiff's application. The denial cited a single arrest by Illinois State Police

for allegedly transporting too many cigarettes to Chicago. The denial contains no information regarding the outcome of the arrest or any judicial disposition. In addition, the USCIS never asked Plaintiff to submit evidence regarding the alleged arrest as is the agency's custom. They simply denied the case in response to this lawsuit. This purported denial is the precise type of denial challenged by the Plaintiff in his lawsuit to have the illegal CARRP program declared illegal.

On December 19, 2016, Defendants filed the present motion to dismiss. Cleverly, the Defendants seek to have this Court reward them for their delay, for denying Plaintiff's application only after she filed suit and argue that Plaintiff lacks standing and that her case is moot because they have now finally adjudicated the matter.

For the reasons stated below, once the Plaintiff filed suit on September 23, 2016, this Court had exclusive jurisdiction over Plaintiff's naturalization application. The purported denial by USCIS is null and should be disregarded by the Court. The Court should set this matter for an initial status conference and the case should proceed to litigation.

#### ARGUMENT

- I. TO AVOID PROBLEMS WITH CONCURRENT JURISDICTIONS BETWEEN FEDERAL COURTS AND USCIS, 8 U.S.C. §1447 (b) IS TO BE INTERPRETED BY ITS PLAIN LANGUAGE MEANING GRANTING JURISDICTION SOLELY TO THE DISTRICT COURT TO EITHER RULE ON THE MATTER OR REMAND THE MATTER TO DHS
  - A. This district court and several other circuit courts have found that the language of § 1447(b) is clear and should be interpreted by its plain language meaning which grants sole jurisdiction over the matter to the district court

8 U.S.C. § 1447(b) provides applicants for naturalization a method by which they can appeal to Federal District Court when USCIS fails “to make a determination under section 1446 . . . before the end of the 120-day period after the date on which the examination is conducted under such section.” 8 U.S.C. § 1447(b). This statute gives the applicant the power to bring its complaint to the United States district court and also emphasizes that the “court has jurisdiction over the matter and may either determine the matter or remand the matter . . . to [USCIS] to determine the matter.” *Id.*

Several years ago, this district court interpreted § 1447(b) by its plain language and explained that § 1447(b) gives an applicant the right to an invocation “asking a district court to *independently* consider the naturalization application . . . and any other information in the record to determine the naturalization application.” *Obanigba v. Chertoff*, No. 4:07CV1192 RWS, 2008 WL 294332, at \*2 (E.D. Mo. Jan. 31, 2008) (emphasis added) (The court ended up remanding that case because the USCIS had taken a shortcut as to the actual examination procedure by doing the applicant’s examination before FBI background checks had been completed. Without the completion of the FBI checks, the court could not rule on the matter. However, our case does not involve this misstep by the USCIS.).

Other decisions by this district court also upheld the plain language meaning of § 1447(b), granting jurisdiction to the district court. See *Hamzehzadeh v. Chertoff*, No. 406CV1462 RWS, 2007 WL 1629895, at 1 (E.D. Mo. June 4, 2007) (finding that “Congress has expressly limited the jurisdiction of district courts in the naturalization process” but that the language of §1447(b) grants jurisdiction to the district court); *Shalabi v. Gonzales*, No. 4:06CV866 RWS, 2006 WL 3032413, at 1 (E.D. Mo. Oct. 23,

2006) (“The statute grants the district court jurisdiction 120-days after “the date on which the examination is conducted.”).

The Second, Fourth, Seventh, and Ninth Circuits have also analyzed § 1447(b) by its plain language and have upheld the district court’s sole jurisdictional power. See *Bustamante v. Napolitano*, 582 F.3d 403, 406 (2d Cir. 2009) (stating that “‘statutory analysis necessarily begins with the plain meaning of a law’s text and, absent ambiguity, will generally end there’ and reasoning that §1447(b)’s “language clearly grants the district court jurisdiction over the naturalization application.”); *Etape v. Chertoff*, 497 F.3d 379 (4th Cir. 2007) (“Giving these words their ‘ordinary meaning,’ as we must . . . we can only conclude that a proper § 1447(b) petition vests the district court with exclusive jurisdiction, unless and until the court “remand[s] the matter” to the CIS.”); *Aljabri v. Holder*, 745 F.3d 816, 820 (7th Cir. 2014) (“Like [the Second, Fourth, and Ninth] circuits, we start with the plain language of § 1447(b), and as they did, we find it incompatible with a system of concurrent jurisdiction.”); *United States v. Hovsepian*, 359 F.3d 1144, 1161 (9th Cir. 2004) (holding that a plain language reading of the statute trumped “the INS’s proposed interpretation of § 1447(b)” because it could not “be squared with the text of the statute and, accordingly must be rejected,” and finding sole jurisdiction for the district court.).

B. Interpreting the language of § 1447(b) by anything other than its plain language leads to confusing, overlapping jurisdictions, strips the statute of its purpose, and makes meaningless the court’s statutorily divested right to “remand” the matter back to USCIS

Departing from the plain language of § 1447(b) would lead to confusing, overlapping jurisdictions. Such a framework would lead to uncertainty as to whose decision ruled. The Seventh Circuit argued that it would be unreasonable to take away

from the district court's "unqualified grant of power" by adding an "unwritten 'if...,' or to give the USCIS the prerogative to nullify the court's statutory power." *Aljabri*, 745 F.3d at 820. Similarly, the Fourth Circuit rejected the government's argument that USCIS held concurrent jurisdiction with the district court. *Etape*, 497 F.3d at 383. The court found absurd the notion that an administrative agency could "divest a federal district court of its congressionally authorized jurisdiction." *Id.* Such an overlapping of jurisdictional authority would also lead to waste, according to the Ninth Circuit, "because district courts and the INS would often engage in unnecessary duplication of factual investigations and legal analyses." *Hovsepien*, 359 F.3d at 1163.

Allowing a jointly held jurisdiction would also strip the statute of its purpose. The Ninth Circuit Court argued that joint jurisdiction over the matter would frustrate the central purpose of § 1447(b), which was created "to reduce the waiting time for naturalization applicants." *Id.* In fact, the court argues that waiting times would be increased. Also, there would be an unnecessary increase in workload for both an overburdened court and administrative agency. *Id.* The court reasoned:

In cases in which the INS eventually denied an application, the district court would be required to dismiss or stay an applicant's § 1447(b) action, wait for the applicant to exhaust administrative remedies and, if the applicant requested it, engage in a de novo review of the INS's decision and hold another hearing under § 1421(c).

*Id.* In other words, a joint jurisdiction would just lengthen the entire process. Thus, a reading of the statute allowing for joint jurisdiction just leads to inefficiency, directly contradicting the statute's primary purpose of encouraging timeliness.

Lastly, the defendants proposed interpretation of § 1447 would make meaningless the wording of the statute. The Fourth District Court reasoned that the very

language of the statute, specifically the wording granting the court the ability to remand the case back to the agency, “indicates that Congress intended a hierarchy.” *Id.* It said that “[a]ccepting the Government’s view [in calling for joint jurisdiction] would ignore this hierarchy established by Congress. Congress would not have granted district courts the power of ‘remand’—the power to ‘send back’—if a naturalization application remained with the CIS after the filing of a § 1447(b) petition.” *Id.* at 384. The court further said that “[w]e cannot interpret a statute in a manner that would render some of its language *meaningless*; rather, we must give effect to each portion of the statute, including that providing district courts with the power to ‘remand ... with appropriate instructions.’” *Id.* (emphasis added).

The Seventh Circuit similarly reasoned that a departure from the plain language, as the government proposed, would “render meaningless the district court’s power to ‘remand the matter’ if the agency could act even without a remand.” *Id.* The Second Circuit also joined the Fourth and Seventh Districts by arguing that a departure from a plain meaning reading of the language of § 1447(b) would lead to absurd results “render[ing] the ‘remand’ language in the statute *meaningless*.” *Bustamante*, 582 F.3d at 406-07 (emphasis added).

### CONCLUSION

The plain language meaning of 8 U.S.C. § 1447(b) transfers jurisdiction to the district court to determine a naturalization matter when USCIS has taken more than 120 days in finalizing its decisions after an applicant’s examination. Once the district court has jurisdiction, the agency no longer has jurisdiction or else the language of the statute allowing the district court to remand the matter back to the agency becomes frustrated

and obsolete. To avoid confusing, overlapping jurisdictions, a stripping away of the statute's intent, and making parts of the statutory language meaningless, this district and several circuit courts have focused the interpretation of § 1447(b) on its plain language.

Since USCIS made a ruling on the plaintiff's naturalization only *after* she had already appealed to the district court, USCIS was already stripped of its jurisdiction and that jurisdiction was given to and continues to reside with this district court. Therefore, USCIS did not have authority to make a decision regarding plaintiff's naturalization application. This court should follow prior decisions and reasoning of this district court and other circuit courts by focusing on the plain language of § 1447(b), granting full jurisdiction solely to this district court, and by denying defendant's Motion to Dismiss.

Plaintiff should be allowed the opportunity to inquire as to the source of her nearly two year delay in waiting for his citizenship. The Defendants should not be allowed to avoid judicial review of their conduct in this case by trying to issue a denial after the lawsuit has been filed. Defendants have not shown that they are entitled to judgment in their favor as a matter of law and the motion should be denied.

**RESPECTFULLY SUBMITTED**  
this 3<sup>rd</sup> day of January, 2017

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 3, 2017, the foregoing was served via operation of the Court's CM/ECF system upon the following counsel of record for Respondents:

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