

Naturalization applicants may have their case decided by federal court.

Bustamante v. Napolitano (2nd Cir. 2009)

By Max Nuyen

Applying for naturalization is one of the last steps an immigrant to the United States may take before he completes his journey of becoming a U.S. citizen. After he becomes a naturalized U.S. citizen, he is free from the jurisdiction of USCIS. No more applying for green card extensions every few years. No more reporting to USCIS every time he moves to a different address. No more worrying about losing his green card if he stays out of the country for too long.

For most folks, the naturalization process is short and uneventful. For others, however, applying for citizenship becomes an interminable bureaucratic nightmare. Fortunately, there is a little known mechanism for speeding up the process if USCIS takes too long to make a decision. The naturalization statutes provide that if USCIS does not make a decision on an applicant's case 120 days after he has been interviewed, the applicant apply to have a U.S. federal court determine his case. The statute states: "If there is a failure to make a determination under section 1446 of this title before the end of the 120-day period after the date on which the examination is conducted under such section, the applicant may apply to the United States district court for the district in which the applicant resides for a hearing on the matter. Such court has jurisdiction over the matter and may either determine the matter or remand the matter, with appropriate instructions, to the Service to determine the matter."

The text of the law makes it clear that a naturalization applicant may request that a district court determine his case. However, the question remains: May USCIS make a decision on the case after the applicant has applied for a district court to make the decision? That is, does both the district court and USCIS have jurisdiction to decide a case, or only one of two has that right? The federal appellate court for the Second District found that once the applicant has applied to a federal court for relief, USCIS loses jurisdiction over the case and may no longer issue a decision. The Second District's holding is consistent with what other appellate districts have concluded.

The applicant in this case became a lawful permanent resident in 1972. In 2006, thirty-four years after receiving his green card, the applicant filed for naturalization. In February of 2007, an adjudicator from USCIS interviewed him for citizenship. In July 2007, after more than 120 days had passed since he was interviewed and USCIS had not made a decision, the man applied for relief in federal court. The applicant requested that the district court decide his case or remand it to USCIS with appropriate instructions. After the applicant filed his application with the federal court, USCIS delivered its decision. It denied his application on account of his conviction of involuntary manslaughter in 1982.

The applicant argued that USCIS' decision was ineffective because it no longer had jurisdiction over the case because he had sought relief in federal court. His application must now be decided by the court exclusively. USCIS argued that it retained jurisdiction even though the

applicant had petitioned the court. It contended that both bodies had concurrent jurisdiction over the matter and since it made a decision, the court case was now moot.

The Second Circuit agreed with the applicant. It determined that, pursuant to the naturalization statutes, USCIS has jurisdiction over a naturalization application during the period up to 120 days after the applicant has been interviewed. USCIS retains jurisdiction beyond the 120 day period following the interview as long so the applicant does not request relief in federal court. However, if USCIS fails to act within 120 days after interviewing a naturalization applicant, the applicant may elect to request judicial intervention. Once he has done so, the district court has the sole authority to decide the matter and USCIS is stripped of its jurisdiction. Whatever decision it makes once the district court acquires jurisdiction has no consequence.

The Second Circuit's opinion gives hope to those naturalization applicants who have suffered interminable delays at the hands of USCIS.