UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 07-10851-GAO

ELIZABETH ESCOBAR,
Plaintiff,

v.

MICHAEL CHERTOFF, EMILIO T. GONZALES, and DENIS RIORDAN,
Defendants.

OPINION AND ORDER
May 14, 2008

O'TOOLE, D.J.

By this suit, the plaintiff, Elizabeth Escobar, seeks to have her application for naturalization granted. Her action is brought pursuant to 8 U.S.C. § 1447(b) against Michael Chertoff, Secretary of the Department of Homeland Security; Emilio T. Gonzales, Director of the United States Citizenship and Immigration Services ("CIS"); and Denis Riordan, Director of the CIS for the Boston District Office. Escobar alleges that CIS failed to make a determination on her application for naturalization within 120 days of her examination. Section 1447(b) provides that in such a situation "the applicant may apply to the United States district court … 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."

After her suit was commenced, CIS denied the plaintiff's application, and the defendants have now moved to dismiss the complaint as moot. Escobar opposes the motion, arguing that once she availed herself of § 1447(b) by bringing this action, this Court has exclusive jurisdiction over her application and CIS no longer had authority to act on the application. Its post-suit denial of her

application, she asserts, is a nullity. The defendants contend that after an action is brought under § 1447(b), CIS retains *concurrent* jurisdiction with the district court, enabling it to adjudicate the application despite the pendency of the action here.

The First Circuit has not considered this issue. The Fourth and Ninth Circuits have held that a district court's jurisdiction under § 1447(b) is exclusive. See Etape v. Chertoff, 497 F.3d 379, 384 (4th Cir. 2007); United States v. Hovsepian, 359 F.3d 1144, 1160 (9th Cir. 2004). The majority of district courts that have considered the issue have come to the same resolution, including two in this district. See Sallam v. Mukasey, No. 07-11380-RWZ, 2008 WL 687409, at *1 (D. Mass. Mar. 5, 2008); Yuping Li v. Chertoff, 490 F. Supp. 2d 130, 134 (D. Mass. 2007); see e.g., Haring v. Att'y Gen. of United States, No. 6:07-cv-1764-Orl-19DAB, 2008 WL 822003, at *3 (M.D. Fla. Mar. 26, 2008); Elaaser v. Mueller, 522 F. Supp. 2d 932, 935–36 (N.D. Ohio 2007); Frenkel v. United States Dep't of Homeland Sec., No. 3:07-cv-1145 (VLB), 2007 WL 3090656, at *2–5 (D. Conn. Oct. 19, 2007). A minority of district courts have held that jurisdiction is concurrent, as contended by CIS. See Bustamante v. Chertoff, 533 F. Supp. 2d 373, 376 (S.D.N.Y. 2008); Al-Saleh v. Gonzales, No. 2:06-CV000604 TC, 2007 WL 990145, at *2 (D. Utah Mar. 29, 2007); Perry v. Gonzales, 472 F. Supp. 2d 623, 630 (D.N.J. 2007).

The statutory text supports plaintiff's argument that this Court has exclusive jurisdiction. Once an applicant has elected under § 1447(b) to request a hearing before a district court, the statute provides the court with two options. The court may either decide the matter or remand it to CIS with appropriate instructions. 8 U.S.C. § 1447(b). While it is possible that a district court could do nothing and await further action by CIS, that would seem to undercut the evident purpose of the statute, which is to promote reasonably prompt action on the naturalization application, either by CIS in the

first instance or, in default of prompt action by CIS, by the court. Moreover, the option to "remand the matter" suggests that the district court may send back to CIS a matter that is not still pending there. See Etape, 497 F.3d at 383–84; Hovsepian, 359 F.3d at 1160–61. This phrase would be superfluous if CIS had concurrent jurisdiction. See Etape, 497 F.3d at 384; Hovsepian, 359 F.3d at 1160.

I conclude that § 1447(b) vests this Court with exclusive jurisdiction. CIS lacked authority to deny the plaintiff's application once this action had been commenced. This action is not moot. The defendants' motion to dismiss (dkt. no. 14) is DENIED.

It is SO ORDERED.

/s/ George A. O'Toole, Jr.
United States District Judge