

I Want to Vote Now!

Litigating Naturalization Delays in Federal Court

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Topics

- The discussion will cover a variety of topics, including the following:
- Jurisdiction: Mandamus or §336(b)?
- Petitions for hearing in U.S. District Court
- Logistics: Where and when to file; Who to serve and how
- Responding to the government's non-meritorious Motion to Dismiss
- The evidentiary hearing: Do I have to argue with the judge?
- Who really pays? EAJA fees - the when, what and how



2

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Know Your Actions

Jurisdiction

I.N.A.

Section 336 (b); 8 U.S.C. 1447(b)

Mandamus

28 U.S.C. § 1361, Action to compel an officer of the United States to perform his duty

Federal Question

28 U.S.C. § 1331, Federal Question Jurisdiction

APA

5 U.S.C. § 702, the Administrative Procedures Act

Declaratory Judgment

28 U.S.C. § 2201, the Declaratory Judgment Act



3

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Know Your Actions

- INA 242(g) (After REAL ID)
 - (g) Exclusive jurisdiction.— Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act.



4

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Know Your Actions

- Impact of 242(g) on the actions we are going to talk about?
 - Title II vs. Title III
 - Not a challenge to removal



5

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INA section 336(b); 8 U.S.C. section 1447(b)

- “If there is a failure to make a determination under section 335 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.”
- Be aware of the waiver of the 120 day rule by CIS!!



6

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INA section 336(b); 8 U.S.C. section 1447(b)

- Be aware of *Danilov*, *Danilov v. Aguirre*, 2005 U.S. Dist. LEXIS 10128 (E.D. Va. 2005)(finding that examination continues and includes the initial examination and investigation). Rejected by *Daour v. Chertoff*, 2005 U.S. Dist. LEXIS 18325 (W.D. Pa. 2005).
- *Angel v. Ridge*, 2005 U.S. Dist. LEXIS 10667 (S.D. Ill. 2005)(120 days runs from 1st IV).
- Be aware of the waiver of the 120 day rule by CIS!!



7

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INA section 336(b); 8 U.S.C. section 1447(b)

- *United States v. Hovsepian*, 359 F.3d 1144 (9th Cir. 2004) (*Hovsepian II*) *en banc*.



8

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Mandamus

- Plaintiff must show that the agency's delay is so unreasonable as to warrant the mandamus. *Kay v. FCC*, 396 F.3d 1184 (D.C. Cir. 2005)



9

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Mandamus

- What is unreasonable delay?
 - Affirmative Adjustments
 - *Abdel Razik v. Perryman*, 2003 U.S. Dist. LEXIS 13818 , (N.D. Ill. 2003) (adjustment applications pending for 2 years)
 - *Agbemape v. INS*, 1998 U.S. Dist. LEXIS 7953 (N.D., Ill. 1998)(I-130 and I-1485 pending 20 months)
 - *Paunescu v. INS*, 76 F. Supp. 2d 896 (N.D. Ill. 1999)(diversity visa, no visa numbers available)



10

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Mandamus

- What you cannot do
 - Challenge a result
 - Force a discretionary action a specific way
- Mootness—How you win (or lose).



11

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Nuts and Bolts

Venue

- Plaintiff
- Defendant
- CIS and FBI

Relief



12

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Nuts and Bolts

- Notice to the government
- Draft complaint
- Give a deadline



13

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Nuts and Bolts

- Where to sue
- Whom to sue



14

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Understanding the Rules and Calendaring the Deadlines

Federal Rules of Civil Procedure

Local Rules

Judge's Rules

Clerk's Rules

AUSA's Rules



15

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Know Your Actions

- Winning the Motion To Dismiss
- How to argue around the U.S. Attorneys Position
- Arguing with the Judge
- Choosing your Fights



16

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Evidentiary Hearing

- Will you have one?
 - Perhaps
 - Who caves first
 - Cost/Benefit analysis
- What will happen?
 - Adjudication by the District Court Judge
 - Federal Court Trial
 - Witnesses



17

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How Much to Charge

- Charging your clients?
 - Can charge a flat fee
 - Repetitive actions reduce time commitment
 - Sometimes you need to prove or make a point—Then do the case pro bono.
- What is your hourly rate?
- You MUST keep track of your time to get EAJA Fees



18

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EAJA Fees

- Equal Access to Justice Act
28 U.S.C. § 2412(d)

- REQUIREMENTS

- Filing deadline: within 30 days of entry of Filing deadline;
- Prevailing Party;
- Party net worth;
- Government was not substantially justified;
- No special circumstances that make an award unjust;
- Reasonable fees and costs



19

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EAJA FEES

- Prevailing Party Settlement (be aware of the Buckhannon decision--
***Buckhannon Board & Care Home v. West Virginia*, 532 U.S. 598 (2001)**
 - Remand
 - Mootness



20

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EAJA FEES

- Substantial Justification/Special Circumstances
 - GOVERNMENT MUST DEMONSTRATE THAT PRE AND POST LITIGATION POSITION WAS SUBSTANTIALLY JUSTIFIED IN ORDER TO AVOID FEES ORDER TO AVOID FEES
 - Plaintiff established new law?
 - Government was following a regulation promulgated by the agency?



21

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EAJA FEES

- Reasonable Fees and Costs Reasonable Fees and Costs
 - Duplication of labor
 - Administrative fees
 - Paralegals and law students Paralegals and law students
- EAJA statutory rate adjusted for:
 - inflation: Ramon-Sepulveda v. INS, 863 F. 2d 1458 (9th Cir. 1988)
 - Year work performed
- Region work performed



22

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Ethical Considerations

- Best Efforts
 - Where does this stop?
- Zealous Representation
 - Fear of Future “reprisal”?
 - Establishing a “reputation”?
- Competent Representation
 - If you have not done this, don’t do it alone!
- Dual Representation
 - Confusing the Courts!



23

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Mantra—Repeat This Often

- Remember this above else, the Government is not your client, you owe your client your best efforts. Sometimes you just have to sue the bastards.

Sam Williamson, Esq.



24

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Thanks for Attending!

Thank you for attending. Now, do us a favor and go out there and hold these unaccountable government agencies' feet to the fire.



25

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Questions & Answers

To ask a question,
select *1 now on your touch-tone phone.

Additional questions may be sent to
the following email address:
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Thank you for your time.



26

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