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Zaranska v. U.S. Department of Homeland Security

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With the Immigration and Nationality Act of 1990, Congress made an important change to the U.S. naturalization process by giving the Attorney General the exclusive authority to grant naturalization applications.[1] This change in the law was adopted to help shorten application processing times because district courts took up to two years to issue a final decision.[2] Congress left only two statutory provisions under which naturalization applicants could appeal to a district court for adjudication of their cases: section 1447(b) if Citizenship and Immigration Services ("CIS") does not issue a decision within one hundred and twenty days after the final naturalization examination,[3] and section 1421(c) if CIS denies the naturalization application.[4] Thus, when CIS denies a naturalization application, the applicant may appeal to a district court after exhausting his administrative remedies, and section 1421(c) expressly says that the court will have *de novo* review of the application.[5] But, what happens when an applicant files a petition under section 1447(b) and CIS makes a final decision while the petition is still pending in district court? Courts have split on the issue of whether section 1447(b) grants exclusive or concurrent jurisdiction to the district courts.[6] Section 1447(b) is silent as to whether it grants district courts exclusive

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1. Immigration and Nationality Act § 310(a), 8 U.S.C. § 1421 (2000). The Attorney General's adjudicatory powers are carried out by the Department of Homeland Security's Bureau of Citizenship and Immigration Services ("CIS"). These duties were previously carried out by the Immigration and Naturalization Service ("INS"), which was abolished by the Homeland Security Act of 2002. *See* Homeland Security Act § 402(3), 6 U.S.C. § 202(3) (Supp. 2004). Before 1990, this power had been the exclusive jurisdiction of the federal district courts. *See* Immigration and Nationality Act of 1952, ch. 876, § 310(a), 54 Stat. 1137, 1140 (1940) (current version at 8 U.S.C. § 1421 (2000). *See generally* IRA J. KURZBAN, KURZBAN'S IMMIGRATION LAW SOURCEBOOK (10th ed. 2006) (providing a comprehensive overview of immigration laws and immigration reference material).

2. *See* S. REP. NO. 101–55, at 3 (1989). *See generally* HELEN A. SKLAR & STUART I. FOLINSKY, IMMIGRATION ACT OF 1990 TODAY: CURRENT STATE OF THE 1990 CHANGES IN IMMIGRATION AND NATURALIZATION LAW (Cora D. Tekach ed., 2006–07 ed.).

3. Under the Immigration and Nationality Act:

> If there is a failure to make a determination under . . . 8 U.S.C. § 1446 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.

8 U.S.C. § 1447(b) (2000).

4. Under the Immigration and Nationality Act:

> A person whose application for naturalization under this titles is denied, after a hearing before an immigration officer under . . . 8 U.S.C. § 1447(a), may seek review of such denial before the United States district court for the district in which such person resides in accordance with chapter 7 of Title 5. . .. Such review shall be de novo, and the court shall make its own finding of fact and conclusions of law and shall, at the request of the petition, conduct a hearing de novo on the application.

8 U.S.C. § 1421(c) (2000) (citation omitted).

5. 8 U.S.C. § 1421 (2000).

6. *See* cases cited *infra* notes 7–8.

jurisdiction and strips CIS of jurisdiction,[7] or whether CIS maintains concurrent jurisdiction with the courts.[8] If section 1447(b) is interpreted as granting concurrent jurisdiction, a decision by CIS would moot the issue, and district courts would no longer have jurisdiction to decide the case.[9] As a result of the split in authority, Congress's constitutional duty to "establish an uniform Rule of Naturalization,"[10] has been compromised.

In *Zaranska v. U.S. Dep't of Homeland Security*, the District Court for the Eastern District of New York addressed whether section 1447(b) granted the court exclusive or concurrent jurisdiction to decide the respondent's naturalization application.[11] The court held that the statute granted it exclusive jurisdiction, and denied CIS's motion to dismiss.[12] Because the issue was one of first impression, the district court looked to other jurisdictions and agreed with the Ninth Circuit's *en banc* interpretation in *United States v. Hovsepian*[13] ("*Hovsepian II*"), which held that the statute's plain meaning and legislative intent granted district courts exclusive jurisdiction.[14] This case comment contends that the *Zaranska* court misinterpreted its jurisdictional authority under section 1447(b). The court's statutory interpretation is inconsistent with the plain language of the statute and undermines the purpose of section 1447(b).

In *Zaranska*, Genowefa Zaranska filed a naturalization application with CIS on February 23, 1998.[15] Zaranska appeared for her naturalization examination on April 18, 2000, at which time CIS did not make a final decision on her case.[16] On July 7, 2004, Zaranska filed a petition with the district court pursuant to section 1447(b), requesting that the court accept jurisdiction over her application and decide the case or remand it to CIS to decide.[17] Zaranska argued

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7. *See* United States v. Hovsepian, 359 F.3d 1144 (9th Cir. 2004) [hereinafter *Hovsepian II*] (interpreting section 1447(b) as granting exclusive jurisdiction); Meyersiek v. U.S. Citizenship & Immigration Serv., No. CA 05-398 ML, 2006 WL 1582397, (D.R.I. June 6, 2006); Meraz v. Comfort, No. 05 C 1094, 2006 WL 861859, (N.D. Ill. March 9, 2006); Zaranska v. U.S. Dep't of Homeland Sec., 400 F. Supp. 2d 500 (E.D.N.Y. 2005); Castracani v. Chertoff, 377 F. Supp. 2d 71 (D.D.C. 2005).

8. *See* United States v. Hovsepian, 307 F.3d 922 (9th Cir. 2002), *rev'd en banc,* 359 F.3d 1144 (9th Cir. 2004) [hereinafter *Hovespian I*] (interpreting section 1447(b) as granting concurrent jurisdiction); Kia v. U.S. Immigration & Naturalization Serv., 175 F.3d 1014, No. 98-2399, *1999 U.S. App. LEXIS 5808,* (4th Cir. March 30, 1999); Etape v. Chertoff, 446 F. Supp. 2d 408 (D. Md. 2006); Farah v. Gonzales, No. Civ. 05-1944 DWFAJB, 2006 WL 1116526 (D. Minn. Apr. 26, 2006).

9. *See* cases cited *supra* note 8.

10. U.S. CONST. art. I, § 8, cl. 4.

11. *Zaranska,* 400 F. Supp. 2d 500.

12. *Id.* at 505.

13. 359 F.3d 1144 (9th Cir. 2004).

14. *Zaranska,* 400 F. Supp. 2d at 503 (relying on *Hovsepian II*, 359 F.3d at 1161).

15. *Id.* at 505.

16. *Id.*

17. *Id.* at 506.

that section 1447(b) gives the district court exclusive jurisdiction and strips CIS of its jurisdiction because CIS did not decide her case within one hundred and twenty days after the examination.[18] While Zaranska's petition was pending with the district court, CIS denied her naturalization application, and then filed a motion to dismiss on the ground that the denial of Zaranska's application mooted the petition.[19]

The district court submitted the case to a magistrate judge for a report and recommendation.[20] The magistrate judge concluded that section 1447(b) granted exclusive jurisdiction to the district court to decide naturalization petitions filed pursuant to that section, and thus recommended that CIS's motion to dismiss be denied.[21] The judge relied on the Ninth Circuit's decision in *Hovsepian II* in holding that a statute that both requires an agency to act within a specific time and provides a consequence for failure to act within that time limit demonstrates that Congress intended to strip the agency of jurisdiction.[22]

CIS objected to the magistrate's holding, arguing that the Ninth Circuit in *Hovsepian II* misinterpreted the U.S. Supreme Court decision in *Brock v. Pierce County*,[23] on which it based its statutory analysis.[24] To support its argument, CIS relied in part on *Kia v. U.S. Immigration & Naturalization Service*,[25] in which the Fourth Circuit held that the plain language of section 1447(b) suggested that the court could not adjudicate an application already reviewed by CIS, and thus the decision made by CIS while the petition was pending with the court mooted the issue and divested the court of jurisdiction.[26] Despite CIS's argument, the court concluded that *Hovsepian II* was more persuasive than the cases CIS relied on because *Hovsepian II* analyzed the plain language of the law by looking at its legislative history and policy.[27] The court adopted the magistrate judge's recommendation and denied CIS's motion to dismiss.[28] The court's decision that section 1447(b) grants exclusive jurisdiction to

18. *Id.*

19. *Id.* at 501. CIS also moved to dismiss on the ground that Zaranska had not exhausted her administrative remedies as required by 8 U.S.C. § 1421(c), in addition to moving for summary judgment on other grounds in the alternative. *Zaranska,* 400 F. Supp. 2d at 501. The discussion of both of these issues is beyond the scope of this case comment.

20. *Id.* at 502, 505. *See generally* Federal Magistrates Act 28 U.S.C. §§ 631, 636 (2000).

21. *Zaranska*, 400 F. Supp. 2d at 502.

22. *Id.* at 503.

23. 476 U.S. 253 (1986).

24. *Zaranska,* 400 F. Supp. 2d at 503.

25. 175 F.3d 1014, No. 98-2399, *1999 U.S. App. LEXIS 5808, at *3* (4th Cir. Mar. 30, 1999).

26. *Zaranska*, 400 F. Supp. 2d at 503 (relying on *Kia*, 1999 U.S. App. LEXIS 5808, at *3).

27. *Id.* at 503.

28. *Id.* at 505.

the federal courts, however, is a misinterpretation of the plain language of the statute and undermines congressional intent.

The United States District Court for the District of Maryland recently addressed this issue in *Etape v. Chertoff*, holding that a CIS decision on a naturalization case moots a pending section 1447(b) petition because CIS maintains concurrent jurisdiction with the court.[29] In *Etape*, plaintiff appeared for his naturalization examination on September 9, 2003, at which time his case was continued so that CIS could obtain further information.[30] On May 23, 2005, plaintiff filed a petition with the district court pursuant to section 1447(b), arguing that more than one hundred and twenty days had passed since his examination, and requesting that the court either approve his application or remand it to CIS with instructions that it approve the application.[31] Thereafter on October 18, 2005, CIS denied plaintiff's application and moved to dismiss the complaint pending with the district court.[32] The court noted that it was under an obligation to examine whether it had subject matter jurisdiction, and subsequently determined that plaintiff's claim could be properly dismissed.[33]

The court in *Etape* held that the language of section 1447(b) indicated that the district court's jurisdiction was premised on the review of a case that had not yet been decided by CIS.[34] In support of this determination, the court analyzed the Ninth Circuit's panel decision in *United States v. Hovsepian*[35] ("*Hovsepian I*") and concluded that it was the more logical of the two *Hovsepian* decisions.[36] In *Hovsepian I*, the Ninth Circuit held that the district court had abused its discretion by continuing to consider the applicant's naturalization application after CIS had denied it.[37] The Ninth Circuit noted that section 1421(c) indicated Congress's preference for an applicant to exhaust administrative remedies after an application is denied and before appealing to the district court.[38] The court also noted that while there is a need for judicial review if CIS has not acted within one hundred and twenty days of the naturalization examination,

29. Etape v. Chertoff, 446 F. Supp. 2d 408, 418 (D. Md. 2006).

30. *Id.* at 411.

31. *Id.*

32. *Id.*

33. *Id.* at 412, 418.

34. *Id.* at 416.

35. United States v. Hovsepian, 307 F.3d 922 (9th Cir. 2002), *rev'd en banc,* 359 F.3d 1144 (9th Cir. 2004) [hereinafter *Hovespian I*].

36. *Id.*

37. *Hovsepian I*, 307 F.3d at 933; *accord Etape*, 446 F. Supp. 2d at 414.

38. *Hovsepian I*, 307 F.3d at 933; *accord Etape*, 446 F. Supp. 2d at 414–15; *see also* Aparicio v. Blakeway, 302 F.3d 437, 447–48 (5th Cir. 2002) (holding that the class action was not ripe for all class members because some members' naturalization applications were not yet denied; thus the court lacked jurisdiction if there was a denial because § 1421(c) provides the exclusive mechanism for review).

once CIS makes a decision, "the need for immediate review evaporates."[39] Furthermore, the Ninth Circuit noted that it would be "entirely contrary to section 1447(b)'s purpose of ensuring prompt determinations to suspend [CIS] authority while the district court decides whether to exercise jurisdiction."[40]

The *Hovsepian I* decision adheres to the Supreme Court's directive that when analyzing a specific statutory provision, a court must "follow the cardinal rule that a statute is to be read as a whole . . . since the meaning of statutory language, plain or not, depends on context."[41] As previously noted, the Immigration and Nationality Act provides two distinct opportunities for a naturalization applicant to seek judicial review: sections 1421(c) and 1447(b).[42] If an applicant's naturalization case is denied by CIS, he may seek *de novo* review from the federal court after exhausting his administrative remedies under section 1421(c).[43] Because the court's review "shall be de novo,"[44] it is not limited by CIS's determination. Thus, under this section, the district court has the final word on a naturalization application.[45] In contrast, section 1447(b) allows a naturalization applicant to petition the district court for a hearing if CIS delays issuing a final decision on the application.[46] The court may decide the case *or* remand the case to CIS and thus not hear the case at all.[47] Significantly, section 1447(b) does not grant the court *de novo* review.[48]

The magistrate judge in *Zaranska* looked at the two provisions together and stated that it "makes sense" that the court has the same review in either instance, and thus the court has the "final word on naturalization applications regardless of whether CIS has made a determination."[49] However, this analysis does not follow the standard rule of statutory construction: "[Where] Congress includes

39. *Hovsepian I*, 307 F.3d at 932; *accord Etape,* 446 F. Supp. 2d at 415.

40. *Hovsepian I*, 307 F.3d at 933; *accord Etape*, 446 F. Supp. 2d at 415.

41. Conroy v. Aniskoff, 507 U.S. 511, 515 (1993) (citation omitted) (quoting King v. St. Vincent's Hosp., 502 U.S. 215, 221 (1991)); *see also* Zaranska v. U.S. Dep't of Homeland Sec., 400 F. Supp. 2d 500, 508 (E.D.N.Y. 2005) ("The words of a statute must be read in their context and in consideration of their place in the overall statutory scheme" (quoting FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 132–33 (2000))).

42. *See supra* notes 3–4.

43. *See supra* note 4; *see also Aparicio,* 302 F.3d at 446 ("[C]ongress intended naturalization applicants to be thus restricted, not out of any desire to vex them but rather to guarantee that the only people who challenged the [CIS's] interpretation of the Act would be those whose applications had been denied and who then worked within the administrative review system before resorting to the federal courts, with such resort being only pursuant to section 1421(c).").

44. 8 U.S.C. § 1421(c) (2000).

45. *Zaranska*, 400 F. Supp. 2d at 509.

46. 8 U.S.C. § 1447(b) (2000).

47. *Id*.

48. *Id.*

49. *Zaranska*, 400 F. Supp. 2d at 509.

particular language in one section of a statute but omits it in another provision of the same Act, it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion."[50] Besides providing *de novo* review only in section 1421(c), Congress further allows remand to CIS only under section 1447(b).[51] Thus each of these provisions of the Immigration and Nationality Act supply distinct procedures and should not be read together to conclude that the court's decision is final under both provisions.

As the Supreme Court has held, "[t]he plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of that statute as a whole."[52] In *Etape*, the District Court of Maryland first looked at the plain language of section 1447(b) and noted that it gave the court two distinct options: the court may use its discretion either to determine the naturalization application or to remand it to CIS.[53] As section 1447(b) specifies, "[s]uch 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."[54] Relying on *Kia*, the *Etape* court concluded that this "suggests the district court requires an unreviewed application in order to make a determination, and that the [CIS's] denial of naturalization shortly after [plaintiff] filed suit mooted the case and deprived the court of jurisdiction."[55]

The court in *Zaranska* arrived at the opposite conclusion when it held that the plain language of section 1447(b) "wrests jurisdiction from a delinquent federal agency and places it instead in the federal courts."[56] The court further reasoned that it would be illogical to allow CIS to make a determination on the case while allowing the court to simultaneously adjudicate the case or remand it with instructions to CIS.[57] The court cited to the Ninth Circuit's *en banc* decision in *Hovsepian II*, in which the court held that this "proposed scheme would, in

50. Immigration & Naturalization Serv. v. Cardoza-Fonseca, 480 U.S. 421, 432 (1987) (alteration to the original in the quoted text) (quoting Russello v. United States, 464 U.S. 16, 23 (1983)); *accord Etape*, 446 F. Supp. 2d at 417 (quoting Soliman v. Gonzales, 419 F.3d 276, 283 (4th Cir. 2005)).

51. *See* 8 U.S.C. §§ 1421(c), 1447(b) (2000); *see also* Epie v. Caterisano, 402 F. Supp. 2d 589, 591 (D. Md. 2005) (holding that the district court lacked jurisdiction to remand the case to CIS and that it was required to decide the case *de novo*).

52. Robinson v. Shell Oil Co., 519 U.S. 337, 341 (1997).

53. Etape v. Chertoff, 446 F. Supp. 2d 408, 413 (D. Md. 2006).

54. 8 U.S.C. § 1447(b) (2000).

55. *Etape*, 446 F. Supp. 2d at 414 (quoting Kia v. U.S. Immigration & Naturalization Serv., 175 F.3d 1014, No. 98-2399, *1999 U.S. App. LEXIS 5808, at *3* (4th Cir. Mar. 30, 1999)).

56. Zaranska v. U.S. Dep't of Homeland Sec., 400 F. Supp. 2d 500, 507 (E.D.N.Y. 2005); s*ee also* United States v. Hovsepian, 359 F.3d 1144, 1160 (9th Cir. 2004) ("This wording shows that Congress intended to vest power to decide languishing naturalization applications in the district court *alone, unless* the court chooses to "remand the matter" to the [CIS], with *the court's* instructions.").

57. *Zaranska*, 400 F. Supp. 2d at 507.

essence, reverse the hierarchy by allowing the [CIS] to dictate, or at least severely limit, the conditions of remand."[58] However, section 1447(b) clearly specifies that a naturalization applicant may file a petition only when "there is a failure to make a determination . . . before the end of the 120-day period after the date on which the examination is conducted. . .."[59]

In *Zaranska*, the magistrate judge relied on the Ninth Circuit's decision in *Hovsepian II*, yet she failed to address how the Ninth Circuit used *Brock v. Pierce County* to support its decision.[60] In *Hovsepian II*, plaintiffs attended naturalization interviews, and then had to attend second naturalization interviews which were held more than one hundred and twenty days after the first interview because of scheduling conflicts.[61] Plaintiffs then filed section 1447(b) petitions with the district court, arguing that one hundred and twenty days had elapsed after the first interviews and CIS had not yet issued decisions on their cases.[62] Soon thereafter CIS denied the naturalization applications; however, the district court disregarded the CIS decision and, after holding a hearing, approved plaintiff's applications.[63] The Ninth Circuit held that the district court properly exercised exclusive jurisdiction over the naturalization applications "[b]ased on the text of § 1447(b), the context of related statutory provisions, and Congress' policy objectives."[64]

The Ninth Circuit looked at the text of section 1447(b) and noted that it gives the district court the option to either determine the case or remand the case to CIS.[65] The Ninth Circuit opined, "[h]ow can the court 'determine the matter' if the [CIS] has the option to 'determine the matter,' too, and essentially force the court to accept its view?"[66] The court then went on to conclude that Congress had used the word "determine" in order to vest the power to determine naturalization applications in the district courts alone.[67] Furthermore, the court looked to the grant of *de novo* review in section 1421(c) and concluded that "[b]ecause § 1421(c) requires the district court to undertake the *same* analysis that it must make under § 1447(b), it makes sense to interpret the latter statutory provision as giving district courts the last word, too."[68] The court based its statutory analy-

58. *Id.* at 507 (quoting *Hovsepian II,* 359 F.3d at 1160).

59. 8 U.S.C. 1447(b) (2000); *see also Zaranska*, 400 F. Supp. 2d at 508.

60. *Zaranska*, 400 F. Supp. 2d 500.

61. United States v. Hovsepian, 359 F.3d 1144, 1151 (9th Cir. 2004).

62. *Id.*

63. *Id.* at 1152.

64. *Id.* at 1159.

65. *Id.* at 1160.

66. *Id.* (quoting 8 U.S.C. 1447(b) (2000)).

67. *Id.*

68. *Id.* at 1162.

sis on *Brock*, which it interpreted as supporting its conclusion that section 1447(b) is a jurisdiction-stripping statute.[69] *Brock*, however, does not support this conclusion.

In *Brock*, the Supreme Court analyzed a section of the Comprehensive Employment and Training Act ("CETA") to decide whether the Secretary of Labor lost the power to recover misused CETA funds after the expiration of a one hundred and twenty day period.[70] Justice Marshall noted that section 106(b) of CETA states that the Secretary "'shall' issue a final determination as to the misuse of CETA funds by a grant recipient within one hundred and twenty days after receiving a complaint alleging such misuse."[71] The Court looked at the language and legislative history of the statute and held that the requirement that the Secretary "shall" act within one hundred and twenty days, "standing alone, is not enough to remove the Secretary's power to act after 120 days."[72] The court elaborated further:

> We would be most reluctant to conclude that every failure of an agency to observe a procedural requirement voids subsequent agency action, especially when important public rights are at stake. When, as here, there are less drastic remedies available for failure to meet a statutory deadline, courts should not assume that Congress intended the agency to lose its power to act.[73]

In a footnote, the Court clarified that any person who was adversely affected by agency action was entitled to judicial review under the Administrative Procedures Act.[74] Thus, "[b]ringing an action in a district court was . . . a 'less drastic' remedy for failure to meet a statutory deadline than stripping the agency of its power, as a consequence of its failure to act within the statutory time frame."[75]

Nevertheless, the Ninth Circuit in *Hovsepian II* decided that *Brock* held that an administrative agency will lose its jurisdiction if "the statute at issue requires that the agency act within a particular time period *and* the statute specifies a consequence for failure to comply with the time limit."[76] But this conclu-

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69. *Id.* at 1161, 1164.

70. Brock v. Pierce County, 476 U.S. 253, 255 (1986); *accord* Etape v. Chertoff, 446 F. Supp. 2d 408, 416 (D. Md. 2006).

71. *Brock*, 476 U.S. at 254–55 (quoting Comprehensive Employment and Training Act § 106(b), 29 U.S.C. § 816(b) (Supp. V 1976)) (repealed 1982); *accord Etape*, 446 F. Supp. 2d at 416.

72. *Brock*, 476 U.S. at 262, 266; *accord Etape*, 446 F. Supp. 2d at 416.

73. *Brock*, 476 U.S. at 260.

74. *Brock*, 476 U.S. at 260 n.7 (1986) (discussing remedies under the Administrative Procedures Act, 5 U.S.C. § 702 (2000) ("A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.")).

75. *Etape*, 446 F. Supp. 2d at 417, (citing *Brock*, 476 U.S. at 260).

76. United States v. Hovsepian, 359 F.3d 1144, 1161 (9th Cir. 2004).

sion comes from the defendant's argument in *Brock,* and the Supreme Court specified that it had never "expressly adopted the [Fifth] Circuit precedent" upon which the defendant relied.[77]

The Supreme Court also noted that the Secretary of Labor had to determine the whole dispute within one hundred and twenty days, a substantial task "subject to factors beyond his control. There is less reason, therefore, to believe that Congress intended such drastic consequences to follow from the Secretary's failure to meet the one hundred and twenty day deadline."[78] Similarly, CIS's decision of a naturalization case may be subject to factors beyond its control, such as obtaining additional information about the applicant that may not be readily available, thus delaying the final decision.[79] A district court that accepts jurisdiction over a pending naturalization case pursuant to section 1447(b) would presumably have to wait for the same additional information in order to make a final decision.

Furthermore, when construing a statute, the courts must defer to the intent of Congress when Congress has made that intent clear.[80] By enacting section 1447(b), Congress intended to speed up the naturalization process, reduce burdens on the district courts and CIS, and guarantee consistency and fairness for naturalization applicants.[81] The House Judiciary Committee explained that because there was no national uniformity in the naturalization decision making process, the decision to vest the authority to grant citizenship in the Attorney General was designed to create such uniformity and streamline the naturalization process.[82]

Congress included sections 1447(b) and 1421(c) in the Immigration and Nationality Act in order to ensure that more difficult naturalization applications would be processed in a reasonable timeframe.[83] It seems that interpreting section 1447(b) as granting the courts exclusive jurisdiction puts an extra burden on naturalization applicants with more complicated cases, because CIS is more likely to take extra time on complicated cases that require review of additional information. Therefore, there would be little incentive to complete these further re-

77. *Brock,* 476 U.S. at 259.

78. *Id.* at 261; a*ccord* Etape v. Chertoff, 446 F. Supp. 2d 408, 416 (D. Md. 2006).

79. *Etape*, 466 F. Supp. 2d at 417; *see also* Danilov v. Aguirre, *370 F. Supp. 2d 441, 444 (D. Va. 2005) (holding that the one hundred and twenty day period did not begin to run until after the FBI completed the naturalization applicant's background check).*

80. Zaranska v. U.S. Dep't of Homeland Sec., 400 F. Supp. 2d 500, 510 (E.D.N.Y. 2005) (citing Zadvydas v. Davis, 533 U.S. 678, 696 (2001)).

81. *See Zaranska*, 400 F. Supp. 2d at 510; *Hovsepian II*, 359 F.3d at 1163 (citing H.R. REP. NO. 101-187, at 8, 12, 13 (1989); 135 CONG. REC. H4539-02, H4542 (statements of Rep. Morrison and Rep. Smith)).

82. H.R. REP. NO. 101-187, at 8 (1989); *see Zaranska,* 400 F. Supp. 2d at 510.

83. *See* legislative history cited *supra* note 83.

views if CIS essentially loses jurisdiction on the one hundred and twenty-first day.[84]

For example, in *Castracani v. Chertoff,* the Court of Appeals for the D.C. Circuit held that waiting for FBI security clearances was not a valid basis for CIS to fail to adjudicate a naturalization application within one hundred and twenty days of the interview, and that CIS lost its jurisdiction once the applicant filed a petition with the federal court.[85] Thus, CIS's subsequent approval of the application did not moot the action pending in court.[86] In *Castacani*, the naturalization application was approved, but the applicant was unable to take advantage of that approval.[87] Thus, if a district court determines that CIS loses its jurisdiction after one hundred and twenty days, there will be less incentive for CIS to expedite FBI security clearances and determine more difficult cases if applicants can file petitions in district court beginning on the 121st day.

However, the Ninth Circuit's *en banc* opinion in *Hovsepian II* arrived at the opposite conclusion, holding that CIS would have little incentive to adjudicate the case within one hundred and twenty days because it would retain jurisdiction while the applicant was requesting that the district court also take jurisdiction over the case.[88] The Ninth Circuit noted that CIS would then have additional time to determine the matter because the district court's decision-making process "takes significant additional time even in the most current of jurisdictions."[89] However, this conclusion means that the only remedy for applicants with more complicated cases is to file a petition in district court, which involves a significant extra amount of time, in addition to a financial burden that the applicant may not be able to meet.[90] This does not seem to be the result that Congress intended because it specifically meant for the statute to reduce naturalization applicants' processing times.[91]

With regard to Congress's concern that naturalization decisions be decided consistently and fairly,[92] the Ninth Circuit speculated in its *en banc Hovsepian II* opinion that if CIS and district courts maintained concurrent jurisdiction,

84. *But see Hovsepian II*, 359 F.3d. at 1163 ("The [CIS] will no longer have much incentive to act on a naturalization application within the 120-day period . . . because the [CIS] will retain jurisdiction even when an applicant requests a hearing from the district court. . ..").

85. Castracani v. Chertoff, 377 F. Supp. 2d 71, 74–75 (D.D.C. 2005).

86. *Id*. at 75. *But see* Danilov v. Aguirre, *370 F. Supp. 2d 441, 444 (D. Va. 2005) (holding that the one hundred and twenty day period did not begin to run until after the FBI completed the naturalization applicant's background check).*

87. *Castracani*, 377 F. Supp. 2d 71.

88. *See Hovsepian II*, 359 F.3d at 1163 (9th Cir. 2004).

89. *Id.*

90. *See* Shelley Murphy, *Immigrants are Suing to Speed up Citizenship,* BOSTON GLOBE, Dec. 17, 2005 at A1.

91. *See* H.R. REP. NO. 101–187, at 8 (1989).

92. *See Id.* at 12–13.

"this would sometimes result in a race to decide a given case."[93] It noted that in situations where CIS and a district court disagreed on the merits of the application, the first to make a decision "would prevail."[94] Thus, if CIS does indeed delay in issuing a decision, the court will decide first. However, if CIS maintains concurrent jurisdiction and issues a decision before the court does, then the case is over, the naturalization applicant has a decision, and judicial resources can be saved by not proceeding with the action in court. But, there does not seem to be any incentive for CIS to "race to decide"[95] because the applicant still has the opportunity to appeal administratively and then file an action pursuant to section 1421(c).[96] Any potential mistakes made in a hasty decision would cost CIS more time and resources, which presumably it would wish to avoid.

In *Zaranska*, the magistrate judge did not look at the congressional record relating to reducing the burden on the federal court system or the importance of making the naturalization adjudication process consistent and fair for the applicants.[97] Instead, the judge based her argument on the Committee's report regarding judicial review, which stated that jurisdiction "lie[s] with the court" when a naturalization applicant petitions the court pursuant to section 1447(b) and CIS has not made a decision within a certain time frame.[98] The magistrate judge concluded that this statement revealed that Congress intended to streamline the process and provide remedies for naturalization applicants whose applications were still pending several months after the final examination.[99] The congressional record clearly demonstrates this intent; however, it does not clearly demonstrate that Congress intended the courts to have exclusive jurisdiction over these pending applications.[100]

The fact that courts have actually reached opposite conclusions on this issue has made the goals of uniformity and fairness difficult to achieve. As Congress has emphasized, uniformity is important so that naturalization applicants know their rights and are able to obtain their citizenship in a timely manner.[101] Congress's intent in enacting section 1447(b) of the Immigration and Nationality Act is hindered by district courts that interpret this section as granting exclusive jurisdiction to the courts.[102] The *Zaranska* court's holding and its misinterpreta-

93. *Hovsepian II*, 359 F.3d at 1164.

94. *Id*.

95. *Id.*

96. *See* 8 U.S.C. § 1421(c) (2000).

97. *See* Zaranska v. U.S. Dep't of Homeland Sec., 400 F. Supp. 2d 500, 510–11 (E.D.N.Y. 2005).

98. *Id.* at 511 (citing H.R. REP. NO. 101-187, at 14 (1989)).

99. *Id.*

100. *See* H.R. REP. NO. 101-187, at 8, 14 (1989).

101. *See id.* at 8 (explaining the goal to reduce the wait time for naturalization applicants).

102. *See* Etape v. Chertoff, 446 F. Supp. 2d 408, 418 (D. Md. 2006).

tion of section 1447(b) could make naturalization a more complicated and expensive process for applicants within New York's Eastern District by creating the need to file petitions with that court as CIS effectively loses its jurisdiction after one hundred and twenty days. The court in *Zaranska* should have concluded that the CIS decision mooted the pending action and dismissed the petition, thereby adhering to Congress's intent behind section 1447(b).

It is important to remember that citizenship is a constitutional right that confers both honor and responsibility.[103] As Chief Justice Burger noted, "The act of becoming a citizen is more than a ritual . . . . A new citizen has become a member of a Nation, part of a people distinct from others. The individual, at that point, belongs to the polity and is entitled to participate in the processes of democratic decision making."[104] Naturalization applicants must be able to obtain decisions on their cases in a timely manner so that they may fully participate in the democratic process as United States citizens.

103. *See* U.S. CONST. amend. XIV, § 1 ("All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.").

104. Foley v. Connelie, 435 U.S. 291, 295 (1978) (citation omitted).