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RECENT DEVELOPMENT

ETAPE V. CHERTOFF: FEDERAL COURTS RETAIN EXCLUSIVE JURISDICTION WHEN A NATURALIZATION APPLICANT FILES A TIMELY PETITION FOR REVIEW OF A NATURALIZATION APPLICATION PURSUANT TO 8 U.S.C. § 1447(B).

By: Michael Gillman

In a matter of first impression, the United States Court of Appeals for the Fourth Circuit held that a federal court is vested with exclusive jurisdiction when a naturalization applicant timely files a petition in federal court pursuant to 8 U.S.C. § 1447(b) (2000). *Etape v. Chertoff*, 497 F.3d 379 (4th Cir. 2007). More specifically, a federal court will not be divested of its power when the United States Bureau of Citizenship and Immigration Services (“CIS”) fails to make a timely ruling on a naturalization application. *Id.* at 379.

Max Alobwede Etape (“Etape”) and Sawsan Abdul Rahim (“Rahim”) both filed naturalization requests with the CIS and appeared for their examinations. Etape filed his application on April 2, 2003 and appeared for his initial examination on September 9, 2003. Upon arrival, Etape was issued a continuance letter requesting additional documentation. Thereafter, he filed the documentation and requested that CIS resume adjudication of his application. After twenty months had elapsed since his application, Etape exercised his right to petition in the district court pursuant to 8 U.S.C. § 1447(b) (“section 1447(b)"). On October 18, 2005, CIS denied Etape’s application before the district court acted upon the motion. Rahim filed her application on January 18, 2005 and appeared for her examination on June 14, 2005. When more than 120 days had elapsed, Rahim filed a petition under section 1447(b). On February 28, 2006, before the district court could act upon her petition, CIS denied her application.

In both cases, the United States District Court for the District of Maryland dismissed the pending petitions as moot. The district court reasoned that its ability to consider the petitions depended on the applications that were undecided by CIS. When CIS denied the

applications, the petitions were rendered moot. The district court also concluded that section 1447(b) did not deprive the CIS of jurisdiction over Etape's and Rahim's applications after they had filed petitions in federal court. The United States Court of Appeals for the Fourth Circuit consolidated the two cases and reviewed *de novo* the district court's grant of dismissal under Federal Rule of Civil Procedure 12(b)(1).

The Fourth Circuit utilized *United States v. Hovsepien* in its analysis. *Etape*, 497 F.3d at 382. In *United States v. Hovsepien*, the Ninth Circuit held that section 1447(b) vested exclusive jurisdiction in the federal district court and prevented CIS from further action on an application until the court remands the matter back to CIS. *Etape*, 497 F.3d at 382 (citing *United States v. Hovsepien*, 359 F.3d 1144, 1159 (9th Cir. 2004) (en banc)). The Fourth Circuit agreed with *Hovsepien* and held that section 1447(b) established exclusive jurisdiction in the federal courts. *Etape*, 497 F.3d at 381. The Court examined the language of the statute, determined the proper interpretation of that language, and investigated the language of section 1447(b) in the larger statutory context. *Etape*, 497 F.3d at 382.

The Court began by examining the plain language of the statute. *Id.* at 383. The language of section 1447(b) provides the district courts with two options once it has obtained jurisdiction. *Etape*, 497 F.3d at 383. The district courts can either "determine the matter," or it may "remand the matter, with appropriate instructions, to the [CIS] to determine the matter." *Id.* (alteration in original) (quoting section 1447(b)). Based on the plain meaning of the statute, the Court concluded that a district court is vested with exclusive jurisdiction until the circuit court remands the matter back to CIS if it should choose to do so. *Etape*, 497 F.3d at 383. Any other reading of the statute would inappropriately result in the administrative agency's action divesting the district court of its congressionally authorized jurisdiction. *Etape*, 497 F.3d at 383-84.

Next, the Court interpreted the significance of the word "remand" in section 1447(b). *Etape*, 497 F.3d at 383-84. The power of "remand" is given to a court so that it may send the matter back to its origin for some further action, which clearly defines a hierarchal structure between the courts and agencies. *Etape*, 497 F.3d at 384. The Court stated that Congress would not have granted district courts the power to remand if applications remained with CIS after the matter was filed in federal court. *Id.* The Court observed that otherwise there would be no need for the district court to remand the case because CIS

would retain jurisdiction. *Id.* In addition, the Court determined that such a situation would severely limit the district court's power to remand. *Id.* Congress gave the power to the district court to remand a case to CIS "with appropriate instructions." *Id.* The Court refused to interpret a statute in a manner which would render some of its language meaningless. *Id.*

The Court then examined the statutory context of section 1447(b), which was enacted as part of the Immigration Act of 1990 (the "Act"). *Etape*, 497 F.3d at 385. The Fourth Circuit held that the Act, as a whole, vests a district court with exclusive jurisdiction over a naturalization application. *Id.* at 385. Section 1447(b) was enacted as part of an effort to streamline the naturalization process by giving authority to the Attorney General to naturalize citizens without permission from a district court. *Id.* at 385-86. However, Congress also recognized the district courts' long-standing power over naturalization applications. *Id.* at 386. Therefore, the Fourth Circuit determined that district courts retained their power to review applications under the Act. *Id.* The Court reasoned that the Legislature intended to ensure that district courts have the final say regarding naturalization applicants. *Id.*

The Court next examined 8 U.S.C. § 1421(c), which states that an applicant for naturalization has a choice of either having the oath of the allegiance given by the Attorney General or by an eligible court. *Etape*, 497 F.3d at 386. Congress enacted section 1447(b) for the same reason that it enacted section 1421(c). *Etape*, 497 F.3d at 386. Congress' intention in enacting section 1421(c) was to assure that any judicial review rights given to applicants in previous legislation were not taken away. *Etape*, 497 F.3d at 386. The Court determined that it was the applicant and not the government who decides the place, setting, and timeframe in which the application is processed. *Id.* Judicial review affords the applicant this power. *Id.*

The Court concluded that the "twin congressional goals of streamlining" the naturalization process while retaining an applicant's judicial rights, as well as the applicant's ability to choose the forum that will adjudicate his or her application, are consistent with its holding that section 1447(b) vests the district court with exclusive jurisdiction. *Etape*, 497 F.3d at 386. The dissent argued that this holding severely diminishes the importance of CIS's expertise and purpose in the naturalization application process. *Id.* The majority responded that CIS's investigatory functions occur before or during the initial naturalization exam, and those exams always occur before

the district court obtains jurisdiction. *Id.* Congress set up this system so that CIS can, and must, employ its expertise before a district court can act, and only when it fails to act can a court obtain jurisdiction. *Id.* at 386-87. This holding merely furthers congressional intent to allow an applicant to choose where and when his or her application will be heard. *Id.* at 386. Because these cases presented a matter of first impression, the Court decided to apply this decision retroactively only to those cases still open on direct review. *Id.* at 388.

By holding that a district court retains exclusive jurisdiction over a properly filed section 1447(b) motion, the United States Court of Appeals for the Fourth Circuit is asserting that it will use a strict statutory interpretation to deduce Congress' intent when enacting a statute. The Court shows its willingness to aid those applicants who have been kept waiting for an unreasonable amount of time by allowing them to retain control over when and where their application is adjudicated. In addition, the holding also shows the reluctance with which the Court will cede absolute power to an administrative agency. While the Court recognizes the importance of efficiency by delegating some authority to CIS, it still desires to maintain the power to review some types of applications. By retaining a power of review over some of the applications, the Court was able to preserve Congress' intention that the judiciary should maintain some control over naturalization applications. This holding will also affect many currently pending naturalization applications on direct review. It will encourage CIS to process naturalization applicants in a more timely and efficient manner, as CIS knows for certain that there is the possibility it will lose the authority to render a decision on an application which is not acted upon expeditiously.