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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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10 Ricardo Macias-Ruiz,

No. CV08-0840-PHX-DGC

11 Plaintiff,

ORDER

12 vs.

13 Michael Chertoff, Emilio Gonzalez,
14 Robert S. Mueller, Robert J. Okin, Does 1-10,

15 Defendants.

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17 Plaintiff has filed a complaint for hearing on his application for naturalization
18 pursuant to 8 U.S.C. § 1447(b). Dkt. #1. Defendants have moved to remand the case to
19 Citizenship and Immigration Services (“CIS”) for further proceedings. Dkt. #7. The Court
20 will grant the motion.

21 **I. Background**

22 Plaintiff filed an application for naturalization with CIS on or about August 26, 2005.
23 Dkt. #1 at 1. Plaintiff appeared for an interview and examination on March 14, 2006. *Id.*
24 After the interview, Plaintiff submitted additional information requested by CIS, including
25 a copy of his driver’s license. Dkt. ##1 at 3; 1-2 at 3-5. On or about April 28, 2008, CIS sent
26 Plaintiff a request for interview and re-examination in written English. Dkt. ##7-3, 11-2.
27 Plaintiff filed his complaint in this Court on May 2, 2008, requesting a hearing to determine
28 his application for naturalization. Dkt. #1 at 1-5.

1 **II. Discussion**

2 Section 1447(b) permits an applicant for naturalization to apply for a hearing in
3 district court when, after expiration of 120 days following the applicant’s examination
4 pursuant to § 1446, CIS fails to approve or deny the application for naturalization. 8 U.S.C.
5 § 1447(b). The district court then has jurisdiction over the matter “and may *either* determine
6 the matter or remand the matter [to CIS], with appropriate instructions.” *Id.* (emphasis
7 added). For the reasons stated below, the Court will remand this matter to CIS for further
8 proceedings.¹

9 Although this Court has discretion to decide Plaintiff’s application for naturalization,
10 district courts typically “should remand a case to an agency for decision of a matter that
11 statutes place primarily in agency hands.” *Immigration & Naturalization Serv. v. Ventura*,
12 537 U.S. 12, 16 (2002). “[J]udicial deference to the Executive Branch is especially
13 appropriate in the immigration context.” *Immigration & Naturalization Serv. v. Aguirre-*
14 *Aguirre*, 526 U.S. 415, 425 (1999); *see also Ventura*, 537 U.S. at 16 (noting that the policy
15 favoring remand to executive agencies “has obvious importance in the immigration context”).

16 As a general matter, district courts are not equipped to conduct the investigation
17 required to determine whether an applicant meets the requirements for naturalization. *See*,
18 *e.g., Mohammad v. Keisler*, 558 F.Supp.2d 730, 733 (W.D. Ky. 2008); *Ahmed v. Gonzales*,
19 509 F.Supp.2d 556, 560 (E.D. Va. 2007); *Imran v. Keisler*, 516 F.Supp.2d 967, 970 (S.D.
20 Iowa 2007). In the context of this case, and assuming without deciding that a second written

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22 ¹The Government does not appear to dispute jurisdiction, and this Court is in
23 agreement with the majority of district courts, including a case from this District, which hold
24 that the 120-day period set forth in section 1447(b) begins to run from the date of the
25 applicant’s initial interview, an interview that took place in this case on March 14, 2006,
26 nearly three years ago. *See Khan v. Chertoff*, No. CV05-0560-PHX-SRB, 2006 WL 2009055
27 (D. Ariz. July 14, 2006) (finding that “the 120-day period begins to run after the *initial*
28 examination rather than after the conclusion of the entire examination process” (emphasis
in original)); *Mostovoi v. Sec’y of the Dep’t of Homeland Sec.*, No. CV06-6388-GEL, 2007
WL 1610209 (S.D.N.Y. June 4, 2007) (collecting cases holding that the initial interview date
triggers the 120-day period in section 1447(b)).

1 English examination is necessary to determine Plaintiff's eligibility for naturalization, this
2 Court is not in a position to conduct that examination, to establish criteria against which to
3 judge Plaintiff's performance, or to determine whether Plaintiff's performance on the exam
4 meets those criteria. These are tasks for which CIS is specially suited.

5 In its motion to remand, the Government suggests that it is prepared to adjudicate
6 Plaintiff's case as follows: "(a) within 16 business days of . . . remand, the government will
7 issue an interview notice setting the date and time for the re-interview and examination;
8 (b) within 30 days of the date of the notice, the government will conduct an interview of
9 plaintiff and re-examine his English proficiency The government will issue a decision
10 on the application within 16 business days of the date of the re-interview" Dkt. #7 at

11 2. The Court agrees in substance with the Government's proposed course of action and
12 therefore remands this matter to CIS for proceedings in conformance that course.

13 **IT IS ORDERED:**

- 14 1. The Government's motion to remand (Dkt #7) is **granted**, and this action is
15 hereby **remanded** to CIS for further proceedings consistent with paragraphs
16 2 through 4 below.
- 17 2. The Government is directed to issue an interview notice scheduling Plaintiff's
18 interview and re-examination in written English within 16 business days of the
19 date of this order.
- 20 3. The Government is directed to conduct Plaintiff's interview and re-
21 examination within 30 calendar days of the date of the interview notice, and
22 Plaintiff is directed to appear for the interview as scheduled.
- 23 4. The Government is further directed to issue a final decision on Plaintiff's
24 application for naturalization within 16 business days following the date of
25 Plaintiff's interview and re-examination.

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5. The Clerk is directed to terminate this action.

DATED this 23rd day of February, 2009.



David G. Campbell
United States District Judge