

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

E-FILED 2/9/07

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

MIN LUO,

Plaintiff,

v.

MICHAEL CHERTOFF et al.,

Defendants.

Case Number C 07-00733 RS

ORDER TO SHOW CAUSE

On February 5, 2007 plaintiff Min Luo, appearing through counsel, filed a "Petition For Hearing on Naturalization Application" against Michael Chertoff, Secretary of the Department of Homeland Security, and other government officials in their official capacities. Plaintiff alleges Defendants have failed to process his application for naturalization in a timely manner, apparently as a result of delays in obtaining a completed background check clearance from the Federal Bureau of Investigation. Plaintiff asserts that Defendants have violated 8 U.S.C. § 1447(b), which provides:

If there is a failure to make a determination under section 1446 of this title before the end of the 120-day period after the date on which the examination is

1 conducted under such section, the applicant may apply to the United States
2 district court for the district in which the applicant resides for a hearing on the
3 matter. Such court has jurisdiction over the matter and may either determine the
4 matter or remand the matter, with appropriate instructions, to the Service to
5 determine the matter.

6 Plaintiff requests that this Court adjudicate his naturalization application or compel
7 defendants to do so.

8 Good cause therefore appearing, IT IS HEREBY ORDERED as follows:

9 (1) The Clerk of the Court shall serve a copy of the complaint and a copy of this
10 Order upon counsel for Defendants, the Office of the United States Attorney. The Clerk of the
11 Court also shall serve a copy of this Order upon Plaintiff's counsel.

12 (2) Defendants shall, within sixty (60) days after receiving service of the complaint,
13 file and serve upon Plaintiff an answer, showing cause why the relief prayed for should not be
14 granted. At the time the answer is filed, Defendants shall lodge with the Court all records
15 relevant to a determination of the issues presented by the complaint. If Defendants contend that
16 Plaintiff has failed to exhaust administrative remedies as to any ground for relief asserted in the
17 complaint, Defendants shall specify what administrative remedy remains available to Plaintiff.
18 If Defendants waive or concede the issue of exhaustion, Defendants shall so state in their
19 answer.

20 (3) Plaintiff may file a response to the matters raised in the answer within twenty (20)
21 days after receiving the answer.

22 (4) Unless otherwise ordered by the Court, the matter will be deemed submitted upon
23 the filing of the response or upon the expiration of time to file a response.

24 (5) No later than the time their respective responses hereunder are due, the parties
25 shall make their determination regarding the issue of consent to the jurisdiction of the Magistrate
26 Judge and file the appropriate form. In the event any party declines to consent to the jurisdiction
27 of the Magistrate Judge, this action will be reassigned to a District Judge for further proceedings.
28

1 (6) The Order Setting Initial Case Management Conference and ADR deadlines entered
2 on February 5, 2007, in this action is hereby VACATED.

3 IT IS SO ORDERED.

4 Dated: February 9, 2007


RICHARD SEEBORG
United States Magistrate Judge

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **THIS IS TO CERTIFY THAT NOTICE OF THIS ORDER WAS ELECTRONICALLY**
2 **PROVIDED TO:**

3 Justin X. Wang justin@lawbw.com

4 Counsel are responsible for distributing copies of this document to co-counsel who have not
5 registered for e-filing under the court's CM/ECF program.

6 Dated: February 9, 2007

7
8 /s/ BAK
9 Chambers of Magistrate Judge Richard Seeborg