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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ESMAEIL FARSHI,

Petitioner,

vs.

JANET NAPOLITANO, Secretary of the
Department of Homeland Security, et al.,

Respondents.

CASE NO. 11cv1474-LAB (NLS)
**ORDER DENYING MOTION FOR
LEAVE TO PROCEED *IN FORMA
PAUPERIS*;**
**ORDER DENYING PETITION FOR
HEARING ON NATURALIZATION
PETITION;**
**ORDER RE: *EX PARTE*
COMMUNICATIONS; AND**
ORDER OF DISMISSAL

On July 5, 2011, Petitioner filed a petition for a hearing on a naturalization application pursuant to 8 U.S.C. § 1447(b), along with a motion for leave to proceed *in forma pauperis* (IFP).

The IFP motion is a completed form, with Dr. Farshi’s answers to questions typed in. The motion says Dr. Farshi has been unemployed since November 15, 2008, and has no assets of any kind. It states his bank accounts are overdrawn: the checking account has a balance of negative \$1900 and the savings account has a balance of negative \$98. It states the amount owed on Dr. Farshi’s car is negative \$4,500. Among the debts are a substantial amount of credit card debt, a large “Mortgage debt because of foreclosure to bank,” and a

1 substantial “loan to people.” It says Dr. Farshi lives with his parents and they are paying his
2 expenses.

3 The answers provided in the form motion are inconsistent and somewhat confusing,
4 possibly due to misplaced minus signs and ambiguity about whether money is owed or
5 owing. Obviously, Dr. Farshi does not owe a negative amount of money on his car loan, so
6 apparently he is using the minus sign either to indicate a debt or to mark the space between
7 the end of the question and his answer. While some banks will allow customers to overdraw
8 their checking accounts, it is unclear how Dr. Farshi came to overdraw his savings account,
9 unless, as with the car loan, he has used the minus sign for some other purpose. In that
10 case, he would have a positive balance in his savings account of \$98 and probably also a
11 positive balance in his checking account of \$1900.

12 The remark about the mortgage is likewise unclear. If the bank took Dr. Farshi’s
13 home in foreclosure, it is unclear why he still owes a large amount of money on it.

14 Finally, the motion’s statement that Dr. Farshi’s debts include a substantial “loan to
15 people” is unclear, and affects the merits of the motion. If as the motion states he has made
16 a loan or loans in such a large amount to various people, that is an asset, not a debt. And
17 because it is such a substantial asset, it would lead the Court to deny IFP status unless
18 some further explanation is given explaining why the loan is uncollectible or otherwise
19 worthless. On the other hand, it may be that Dr. Farshi means he has taken loans from
20 various people, in which case this would be true debt.

21 The result is that, as the IFP motion stands, the Court lacks sufficient information to
22 conclude that the standard set forth in 28 U.S.C. § 1915(a) is met. Ordinarily, the Court
23 would deny the motion without prejudice and give the Petitioner an opportunity to amend his
24 IFP motion. But here, it is clear his petition lacks merit.

25 The Petition is brought under 8 U.S.C. § 1447(b). Petitioner alleges that he is entitled
26 to have his naturalization application adjudicated because the examination provided for
27 under 8 U.S.C. § 1446 has been held, and the 120-day period has passed. The Petition,
28 however, establishes conclusively that the examination was scheduled, but then was

1 canceled and has not been conducted. (See Pet., ¶ 2.) The Petition also attaches copies
2 of notices from USCIS, including an official cancellation notice. The allegations say the
3 scheduled examination was canceled because Dr. Farshi's background check had not been
4 completed. Under § 1447(b), the 120-day period begins to run on the date the examination
5 is conducted, not the date it is originally scheduled. See *United States v. Hovsepian*, 307
6 F.3d 922, 932 (9th Cir. 2002) (discussing application of § 1447(b)). The normal practice of
7 the USCIS is to wait until background checks are completed before conducting the
8 examination. *Roshandel v. Chertoff*, 554 F. Supp. 2d 1194, 1199 and n.1 (W.D.Wash., 2008)
9 (noting regulation requiring that applicants be interviewed only after the FBI has completed
10 its full background check, and the USCIS' current practice consistent with this regulation).
11 It is therefore clear the Petition must be denied.

12 It has come to the Court's attention that Dr. Farshi attempted to contact the Court by
13 using the Court's e-file address to send an email. The email message expresses
14 impatience, upbraids the Court, and urges the Court to act quickly. Aside from Dr. Farshi's
15 incorrect beliefs about the speed with which cases are adjudicated, the email is improper for
16 two reasons. First, it is a misuse of the email address. The document in which the email
17 address is published, this District's Electronic Case Filing Administrative Policies and
18 Procedures Manual, § 2(h), explains that the e-file addresses are to be used only to submit
19 proposed orders, and specifically says "**These e-mail addresses are not to be utilized to**
20 **communicate with the Court unless otherwise permitted or when communications are**
21 **solicited by the Court.**" (boldface in original).

22 Second, Civil Local Rule 83.9 and paragraph 14 of the chambers standing order both
23 forbid sending unauthorized *ex parte* communications to the Court. Implicit in the email's
24 urgency is the understanding that any further delay is unreasonable, *i.e.*, that Petitioner has
25 been waiting long enough and it is time his application was processed. Obviously, these are
26 disputed matters. The proper way to seek relief in such a situation is to file a motion in the
27 docket, where it will be known to all parties.

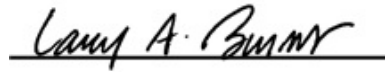
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The IFP motion is **DENIED**, and the Petition is **DENIED**. This action is **DISMISSED**
WITHOUT LEAVE TO AMEND.

IT IS SO ORDERED.

DATED: August 9, 2011



HONORABLE LARRY ALAN BURNS
United States District Judge