WHEN THE GOVERNMENT SAYS YOU ARE NOT A CITIZEN OR FAILS TO GRANT AN APPLICATION FOR CITIZENSHIP

By John Wheat Gibson

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TABLE OF AUTHORITIES

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When government denies citizen's rights

1. United States citizenship supposedly confers certain rights on citizens, such as the right to petition for immediate relatives. When the government denies a right, alleging that the person asserting it is not a citizen, the remedy is a declaratory judgment action under 8 U.S.C. §1503, for a declaration that the plaintiffs are citizens of the United States.

2. Denial of citizenship rights most commonly occurs when the State Department claims it has discovered a petitioner's foreign birth certificate, or the petitioner was delivered at birth by a midwife, who the State Department claims has registered births fraudulently, whether the midwife was prosecuted or not. The plaintiff has the burden to prove citizenship by a preponderance of the evidence. The judge assigned to the case may grant a jury trial, and the plaintiff always should ask for one, but there is no right to a trial by jury, and the U.S. Attorney's office probably will oppose it.

3. Evidence of citizenship usually will include testimony of people with contemporaneous knowledge of the birth, such as the mother, a birth certificate issued by a state of the United States, and baptismal records. The closer to the time of the birth that the documents were created, the greater will be their weight in evidence. The issue also arises when the government denies or revokes the legal resident status of the beneficiary of an immediate relative petition, alleging that the petitioner parent was not a citizen. If the parent petitioner is dead or otherwise cannot be the plaintiff and the legal resident must bring suit for a declaration

that the parent was a citizen, then jurisdiction of the suit lies under 28 U.S.C. §2201 and 5 U.S.C. §§702-706.

4. Often Mexican parents of children born in the United States register the births in Mexico, as well as in the United States, so that the children will enjoy the rights of Mexican citizens, such as the right to attend public school in Mexico. Mexicans whose children are born in the United States are particularly likely to register their births in Mexico if they anticipate returning to Mexico to live. The State Department has not disclosed how it discovers the Mexican birth certificates, but the U.S. consulate in Mexico provides them to Department of Homeland Security offices in the United States. If the government produces a foreign birth certificate, the plaintiff's attorney should make sure it is properly authenticated.

5. A U.S. citizen has no right to a passport, however. The State Department can refuse to issue one and if it pleases send agents to confiscate one already issued. So there appears to be no legal recourse when the government denies or confiscates a passport. *Ullman v. United States*, 350 U.S. 422, 1956. (Providing a passport is discretionary with the Secretary of State.)

Inordinate delay or denial

6. Mandamus may lie when the Bureau of Citizenship and Immigration Services unreasonably delays scheduling a naturalization oath ceremony after an applicant has passed the required examination or scheduling the examination, itself, but the statute provides relief only for delays of more than 120 days in making a decision on the examination. 8 U.S.C. §1447(b). Likewise, if the Bureau denies a naturalization application the applicant may request a hearing in the district court, 8 U.S.C. §1447(a), although the best the applicant can hope for is that the court will order the Bureau (formerly Attorney General) to approve it. 8 U.S.C. §1421(a) ("The sole authority to naturalize persons as citizens of the United States is conferred upon the Attorney General") despite 8 U.S.C. §1447(b) which says the court "has jurisdiction over the matter and may either determine the matter or remand the matter."

7. Whether the suit arises from delay in processing or denial of the naturalization application, the Bureau may strip the district court of jurisdiction to decide by issuing a "warrant of arrest," which generally means commencing removal proceedings. 8 U.S.C. §1429. Courts are divided on whether they retain jurisdiction to decide after the immigration court grants relief or terminates proceedings. The other exception to the right to a reasonably prompt decision on a naturalization is the "Controlled Application Review and Resolution Program," CARRP, a blacklist created in 2008 to prevent Muslims from becoming legal residents or citizens.

8. A search of Lexis finds only two suits related to the CAARP blacklist created in 2008, one for mandamus, *Alkassab v. Rodriguez*, 2017 U.S. Dist Lexis 50110, Civ. No. 2:16-cv-1267-RMG, (US Dist S. Carolina, Charleston Div. 2017), and one under the Freedom of Information Act, *ACLU of S. Cal. v. USCIS*, 133 F. Supp. 3d 234 (Dist. Columbia 2015), and in neither case was the plaintiff allowed to know the reasons for the blacklist. The CARRP is policy, not law, under which the Department of Homeland Security indefinitely delays processing applications by Muslims for legal resident status or naturalization.

9. After denial of a naturalization application, the applicant may request an administrative hearing on the denial, 8 U.S.C. 1447(a), or file suit in the district court. The language of the statute suggests it is not necessary to request an administrative hearing before suing in district court. "When an applicant seeks 'judicial intervention pursuant to 8 U.S.C.

1447(b) . . . there are no administrative remedies to exhaust." *Alkenani v. Barrows,* 356 F.Supp.2d 652, 655 (N.D. Tex. 2005). The government normally will respond to a suit based on delay by processing the application or issuing a Notice to Appear with arrest warrant, so that the district court cannot issue an order.

10. After suit is filed in the district court, the Bureau loses authority either to grant or deny the naturalization application. *Dimopoulos v. Blakeway*, Civil Action C-07-127 (S.D. Tex. Corpus Christi 23 March 2007). Therefore, the Bureau cannot moot the case by purporting to approve or deny the application. After the Bureau has commenced removal proceeding, some district courts have dismissed the suit, but others have stayed proceedings pending the outcome of the removal proceeding. *Trujillo v. Barrows*, 6:06-CV-203 (E.D. Texas, Tyler 8 Nov. 2006). The plaintiff's attorney, the irrepressible Richard Fischer, pointed out that "Importantly, §1429 does not reference the district courts or their jurisdiction in any way." *Trujillo*, at 5. That the district court retains jurisdiction of the application, but cannot order the Attorney General to decide a naturalization application, while removal proceedings are underway, is the only logical reconciliation of 8 U.S.C. §1447(b) and 8 U.S.C. §1429.

11. In sum, suit in the district court is the remedy when the State Department attempts to deny that your client born in Texas is a citizen, or when the Bureau of Citizenship and Immigration Services refuses to decide a naturalization application timely or denies it.