

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF CALIFORNIA

3 SAMIR ABDALLAH BEN HASSINE,)
4) Case No.: 1:13-cv-1152 SKO
5 Plaintiff,)
6 v.) **Joint Stipulation and Order re: Remand**
7) **Pursuant to 8 U.S.C. § 1447(b)**
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9 JANET NAPOLITANO, *et al.*,)
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11 The parties stipulate that the matter be remanded to United States Citizenship and
12 Immigration Services (USCIS) pursuant to 8 U.S.C. § 1447(b), with instructions to reinterview
13 Plaintiff within 30 days from the date of remand, at a date and time mutually agreeable to
14 Plaintiff and his attorney of record. The parties stipulate that USCIS’s prior determination that
15 Plaintiff passed the English and civics test portions of the naturalization examination remains
16 valid and, accordingly, USCIS will not readminister those tests at the reinterview. Further,
17 USCIS stipulates that reinterview is sought for the sole purpose of updating the information in
18 Plaintiff’s previously filed naturalization application, including following-up on or clarifying
19 any such responses, in order to make a prompt determination on the merits of that application.

22 United States Citizenship and Immigration Services is further instructed to complete
23 adjudication of the naturalization application and notify Plaintiff’s counsel of record of its
24 determination within 45 days from the interview date.

25 In the event United States Citizenship and Immigration Services does not complete
26 adjudication within this timeframe, the parties agree that this Court will retain jurisdiction over
27 this matter, and the parties will immediately file a joint status report.
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1 In the event the adjudication results in a denial of the application, the parties further
2 stipulate that, after exhaustion of administrative remedies under 8 C.F.R. § 336, this Court will
3 retain jurisdiction to review the denial under 8 U.S.C. § 1421(c).

4 The parties will file a joint status report once the application has been adjudicated.

5 Finally, the parties stipulate that the filing deadline for any request for attorneys' fees
6 and costs under the Equal Access to Justice Act (EAJA) is controlled by 28 U.S.C. §
7 2412(d)(1)(B), not Local Rule 54-10. *See Al-Harbi v. I.N.S.*, 284 F.3d 1080, 1082 (9th Cir.
8 2002) ("Thus, to the extent that Ninth Circuit Rule 39-1.6 is inconsistent with the EAJA, the
9 Circuit Rule is inapplicable, and the EAJA controls."). The parties further agree that the
10 Court's remand order constitutes the final judgment for purposes of calculating the deadline
11 under the EAJA. *See Li v. Keisler*, 505 F.3d 913, 917-18 (9th Cir. 2007) (acknowledging that
12 remand order to the agency may constitute a final judgment for purposes of calculating EAJA
13 deadline).

14 Dated: April 11, 2014

15 Respectfully submitted,

16 BENJAMIN B. WAGNER
17 United States Attorney

18 /s/ Audrey B. Hemesath
19 AUDREY B. HEMESATH
20 Assistant U.S. Attorney

21 DATED: April 11, 2014

22 Respectfully submitted,

23 /s/ Trina Realmuto
24 TRINA REALMUTO

25 /s/ Stacy Tolchin
26 STACY TOLCHIN

27 Attorneys for the Plaintiff
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ORDER

Pursuant to the terms of the parties' stipulation for remand, IT IS HEREBY ORDERED

that:

1. This matter is remanded to the USCIS according to the terms of the parties' stipulation;
2. In the event adjudication results in denial of Plaintiff's application, after exhaustion of administrative remedies under 8 C.F.R. § 336, this Court shall retain jurisdiction to review the denial under 8 U.S.C. § 1421(c);
3. The deadline for any application for an award of Equal Access to Justice Act ("EAJA") attorney's fees requested is governed by 28 U.S.C. § 2412(d); and
4. This order shall constitute a final judgment for purposes of calculating the deadline to file a request for attorney's fees under the EAJA.

IT IS SO ORDERED.

Dated: April 14, 2014

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE