

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LIEN LE POLIZZI,

Plaintiff,

v.

U.S. DEPT. OF HOMELAND
SECURITY U.S. CITIZENSHIP
AND IMMIGRATION SERVICES,
Milwaukee, WI,

Defendant.

ORDER

06-C-038-C

In this civil action, plaintiff Lien Le Polizzi petitions pursuant to 8 U.S.C. § 1421(c) for review of an October 5, 2005 decision of the District Director of the United States Department of Homeland Security denying her application for naturalization. Defendant has filed a “Motion to Dismiss and/or Motion for Summary Judgment. . . .” and has submitted exhibits on which it relies in arguing that plaintiff’s complaint fails under Fed. R. Civ. P. 12(b)(6) to state a claim upon which relief may be granted.

According to Fed. R. Civ. P. 12(b),

[i]f, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule

56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

I do not intend to exclude defendant's exhibits in support of the motion. Therefore, I will convert defendant's motion to dismiss to a motion for summary judgment as required when matters outside the pleadings are to be considered. Apparently, defendant did not anticipate that this matter would be treated as one for summary judgment. Therefore, I will give it additional time in which to prepare proposed findings of fact as required by this court's Procedures to be followed on Motions for Summary Judgment, a copy of which is attached to this order.

ORDER

IT IS ORDERED that defendant's motion to dismiss is to be treated as a motion for summary judgment. Defendant may have until May 3, 2006, in which to serve and file proposed findings of fact in support of its motion.

Plaintiff may have until May 31, 2006, in which to serve and file a brief, a response to defendant's proposed findings of fact, and evidence in opposition to the motion.

Defendant may have June 14, 2006, in which to serve and file a reply.

All submissions relating to the motion for summary judgment must conform to this

court's summary judgment procedures, a copy of which is attached.

Entered this 13th day of April, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge