

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 01-467(E)

SEGUNDO MARIANO,

APPELLANT,

v.

ANTHONY J. PRINCIPI,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

Before KRAMER, *Chief Judge*, and IVERS and STEINBERG, *Judges*.

ORDER

On October 22, 2003, the Court issued its opinion in the instant appeal. *Mariano v. Principi*, 17 Vet.App. 305 (2003). In accordance with its opinion, the Court entered its judgment and issued its mandate on November 4, 2003, which was 10 days after the date on which the opinion issued. *Id.* at 318; *see* U.S. VET. APP. R. 2 (suspension of rules), 35 (motion for reconsideration), 36 (entry of judgment), 41(a) (issuance of mandate). On January 22, 2004, the Court received the appellant's application for fees and expenses under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d). On January 29, 2004, the Clerk of the Court ordered the appellant to show cause why the application should not be dismissed as untimely. The appellant filed his response on February 6, 2004.

Upon review of the record of proceedings in this appeal, the Court finds that the appellant's EAJA application was timely submitted to the Court on January 22, 2004. The Court's November 4, 2003, judgment became final on January 5, 2004, that is, 60 days after the entry of judgment, *see* 38 U.S.C. § 7291(a); FED. R. APP. P. 4(a)(1)(B); and the deadline for filing an EAJA application was February 4, 2004, that is, 30 days after the Court's judgment became final, *see* 28 U.S.C. § 2412(d)(1)(B). *See Strouth v. Brown*, 8 Vet.App. 502, 504 (1996) (per curiam order) (noting that "[u]nless there is an order on consent remanding a case under U.S. VET. APP. R. 41(b), the 30-day period to file an EAJA application with the Court begins to run when the judgment becomes final and not when the Court issues its mandate").

Upon consideration of the foregoing, it is

ORDERED that the appellant's January 22, 2004, EAJA application is accepted for filing as of the date of its receipt by the Court. It is further

ORDERED that, not later than 30 days after the date of this order, the Secretary file a response to the appellant's EAJA application. *See* U.S. VET. APP. R. 39(b). The appellant may thereafter file a reply as provided for in the Court's Rules of Practice and Procedure. *See* U.S. VET. APP. R. 39(c). It is further

ORDERED that the EAJA application is returned to the single judge for disposition.

DATED: August 13, 2004

PER CURIAM.