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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

Date: NOV 2 5 2013 Office: WASHINGTON, DC FILE:

IN RE: RESPONDENT:

APPLICATION: Cancellation of Certificate of Naturalization Pursuant to Section 342 of the Immigration and Nationality Act, 8 U.S.C. § 1453

ON BEHALF OF RESPONDENT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The District Director, Washington, D.C., cancelled the respondent's certificate of naturalization pursuant to section 342 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1453. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On May 22, 2013, the district director issued a decision cancelling the respondent's certificate of naturalization. The district director's decision was based on a finding that the respondent's naturalization was unlawfully obtained from Robert Schofield, a former U.S. Citizenship and Immigration Services (USCIS) employee. In 2006 Mr. Schofield pled guilty to, and in 2007 was convicted of, among other crimes, unlawfully procuring naturalization by providing certificates of naturalization to individuals who were not entitled to U.S. citizenship.[1] In his plea, Mr. Schofield identified the respondent as one of nearly 200 individuals to whom he illegally issued certificates of naturalization.

On appeal, the respondent asserts that he did not procure his certificate of naturalization through fraud or illegality. *See* Statement of the Respondent on Form I-290B, Notice of Appeal to the AAO. The respondent claims that cancellation of his certificate cannot be based on the failure to locate documents due to mishandling of records and the irregularities in adjudications within USCIS. *See* Appeal Brief. The respondent further states that it is a violation of due process to cancel his certificate of citizenship. *Id.*

Section 342 of the Act, 8 U.S.C. § 1453, provides, in relevant part, that:

> The [Secretary of the Department of Homeland Security] is authorized to cancel any certificate of . . . naturalization . . . if it shall appear to [his] satisfaction that such document or record was illegally or fraudulently obtained from, or was created through illegality or by fraud practiced upon, him or the Commissioner or a Deputy Commissioner; but the person for or to whom such document or record has been issued or made shall be given at such person's last-known place of address written notice of the intention to cancel such document or record with the reasons therefore and shall be given at least sixty days in which to show cause why such document or record should not be canceled. The cancellation under this section of any document purporting to show the citizenship status of the person to whom it was issued shall affect only the document and not the citizenship status of the person in whose name the document was issued.

The regulations at 8 C.F.R. § 342 outline the process for cancellation of a certificate of naturalization under the Act. The AAO notes that the district director properly notified the respondent of her intent to cancel the certificate of naturalization and afforded him an opportunity to respond as required by the Act and the regulations.

The respondent's immigration records indicate that he filed a Form N-400, Application for Naturalization in the 1990s, but that the application was administratively closed. There is no evidence in the respondent's immigration record that a naturalization application was adjudicated or

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[1] *United States v. Schofield*, No. 06 CR 00427 (E.D. Va. Apr. 20, 2007).

approved, or that he took the Oath of Allegiance and became a U.S. citizen. The certificate issued to the respondent, number does not correspond to any alien registration number, including the respondent's. The evidence in the record establishes that the respondent's certificate of naturalization number was obtained through the unlawful acts of Mr. Schofield.

Regardless of the respondent's culpability or lack thereof, the evidence of record clearly establishes that the respondent's certificate of naturalization was obtained from Mr. Schofield, through fraud, and not after a proper adjudication of a naturalization application. The certificate of naturalization was unlawfully procured by Mr. Schofield, and not provided to the respondent after the completion of a lawful naturalization process where his eligibility for U.S. citizenship was established.

The respondent asserts that cancellation of his certificate is a due process violation. The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003), constitutional due process claims are not within the jurisdiction of the AAO. As noted above, the district director proceeded to cancel the respondent's certificate in accordance with the regulations at 8 C.F.R. § 342, properly notifying him of her intent to cancel the certificate and affording him an opportunity to respond.

The burden of proof in cancellation proceedings is on the government, and cancellation of a certificate of naturalization is authorized "if it shall appear to [the] satisfaction" of the Secretary of the Department Homeland Security" that the certificate was illegally or fraudulently obtained. Here, the district director has met her burden of proof and shown that the respondent's certificate of naturalization was illegally obtained and properly cancelled. The respondent's appeal will therefore be dismissed.

ORDER: The appeal is dismissed.