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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: APR 0 4 2013 Office: NEW YORK, NY FILE: [redacted]

IN RE: Respondent: [redacted]

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

ON BEHALF OF RESPONDENT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The respondent's certificate of naturalization was cancelled by the District Director, New York, New York, and the director's decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On July 10, 2012, 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]

On appeal, the respondent, through counsel, maintains that the cancellation of her naturalization certificate was procedurally defective. *See* Appeal Brief. Specifically, counsel claims that the applicant was required to admit or deny unwritten material allegations, that her certificate was cancelled based solely on her own testimony and lack of documentary evidence, and that a report and recommendation by a naturalization examiner was required by the regulations. *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 [her] satisfaction that such document or record was illegally or fraudulently obtained from, or was created through illegality or by fraud practiced upon, [her] 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 her an opportunity to respond as required by the Act and the regulations. Contrary to counsel's arguments, the cancellation proceedings followed every requirements of the regulations found in 8 C.F.R. § 342. The material allegations were laid out in a properly issued notice of intent to cancel, the applicant was afforded an opportunity to respond to the allegations, a report and recommendation was prepared and forwarded to the district director, and the respondent was informed of the district director's decision.

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

The respondent does not claim, nor does the record indicate, that she was or is now eligible for naturalization. The applicant's certificate of naturalization number [redacted] was fraudulently issued by Mr. Schofield.

The record clearly establishes that the respondent's certificate of naturalization was obtained through the unlawful acts of Mr. Schofield, regardless of the applicant's ineligibility for naturalization.

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.