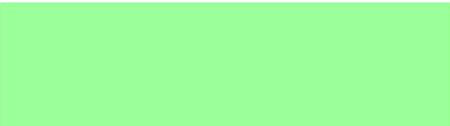


(b)(6)

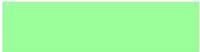
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

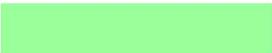


U.S. Citizenship
and Immigration
Services



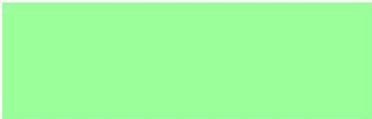
Date: **AUG 15 2013** Office: NEW YORK, NY

FILE: 

IN RE: Respondent: 

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

ON BEHALF OF RESPONDENT:

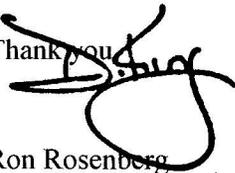


INSTRUCTIONS:

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 respondent's certificate of naturalization was cancelled by the Acting District Director (the 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 December 5, 2012, the 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 [REDACTED] a former U.S. Citizenship and Immigration Services (USCIS) employee. In 2006 [REDACTED] 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 government should be estopped from cancelling her certificate of naturalization because of [REDACTED] and his co-conspirator's affirmative misconduct and given the passage of time. *See* Appeal Brief at 5, 8.

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 acting district director properly notified the respondent of his intent to cancel the certificate of naturalization and afforded her an opportunity to respond as required by the Act and the regulations.

The respondent's immigration file does not contain a naturalization application. There is no evidence that the applicant ever properly applied for naturalization, or that an application was adjudicated or approved, or that the respondent ever passed the naturalization tests or took the oath of allegiance. The record in fact indicates that the respondent's certificate of naturalization (number 29077978) was unlawfully issued by [REDACTED]

Although the respondent obtained a certificate of naturalization, that certificate does not correspond to her alien registration number in USCIS records. The evidence in the record

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

establishes that the respondent's certificate of naturalization was obtained through the unlawful acts of [REDACTED]. Regardless of the respondent's culpability or lack thereof, the evidence of record clearly establishes that the respondent's certificate of naturalization was obtained through fraud and despite the respondent's ineligibility for naturalization. The certificate of naturalization was unlawfully procured by [REDACTED] and not provided to the respondent after the completion of a lawful naturalization process.

The respondent maintains that she properly applied for naturalization, and that her certificate of naturalization was obtained after a proper naturalization procedure in accordance with instructions given to her by government officials under color of law. The respondent states that she relied on the representations made by government officials, and that her certificate of citizenship therefore cannot be cancelled on estoppel grounds.

Counsel cites *Socop-Gonzalez v. INS*, 272 F.3d 1181 (9th Cir. 2001), in support of the respondent's estoppel claim. Counsel's reliance is misplaced. First, the respondent's case arises within the jurisdiction of the Second Circuit Court of Appeals, not the Ninth. Moreover, the holding in *Socop-Gonzalez* related to equitable tolling and not equitable estoppel. There was no finding of affirmative misconduct in that case. Finally, *Socop-Gonzalez* concerned equitable tolling of the filing period for motions to reopen, and not administrative cancellation proceedings of an unlawfully procured certificate of 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.