



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: Office: NEWARK, NJ

FILE:

AUG 23 2013

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 District Director (the director), Newark, New Jersey, and the director's decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On March 19, 2013, 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 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 director erred in cancelling her naturalization certificate. *See* Appeal Brief. The respondent argues that her citizenship must be revoked following a judicial denaturalization procedure pursuant to section 340 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1451, before her certificate of naturalization can be cancelled. *Id.* (citing *Gorbach v. Reno*, 219 F.3d 1087 (9th Cir. 2000).

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.

The respondent's immigration record contains only the first page of a Form N-400, Application for Naturalization. USCIS records do not indicate that a Form N-400 was ever filed, adjudicated or approved. The record in fact establishes that the respondent's certificate of naturalization (number [REDACTED]) is not assigned to the respondent or any other individual, and was unlawfully issued by Mr. Schofield, without regard to the respondent's eligibility for U.S. citizenship.

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

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 regardless of the respondent's eligibility for U.S. citizenship. The certificate of naturalization was unlawfully issued and not provided to the respondent after the completion of a lawful naturalization process. It was therefore properly cancelled by the director.

Counsel cites *Gorbach v. Reno, supra*, and other cases concerning judicial denaturalization or revocation of naturalization under section 340 of the Act. Those cases, however, are inapplicable to these administrative proceedings regarding the cancellation of the respondent's certificate of naturalization under section 342 of the Act. As noted above, under section 342 of the Act, USCIS "is authorized to cancel any certificate of . . . naturalization . . . if it shall appear . . . that such document or record was illegally or fraudulently obtained . . ." The Act does not require that denaturalization proceedings be instituted prior to the cancellation of a certificate of citizenship. Moreover, section 342 of the Act specifically instructs that "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 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 director has met his 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.