



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: FEB 11 2014 Office: WASHINGTON, DC

[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 (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 Administrative Appeals Office (AAO) dismissed the respondent's appeal of the decision of the District Director (the director), Washington, D.C., cancelling his certificate of naturalization. The respondent has filed a motion to reopen and reconsider. The respondent's motion to reconsider will be granted. The AAO's August 15, 2013, decision will be affirmed and the appeal will remain dismissed.

According to the regulation at 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by documentary evidence. The regulations, at 8 C.F.R. § 103.5(a)(3), provide further that a "motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy."

The respondent's motion is accompanied by a brief and an affidavit. In his brief, the respondent, through counsel, raises constitutional claims, and again argues that he and his parents were not at fault and committed no illegality with respect to their naturalization application. The respondent's motion meets the requirements of a motion to reconsider and will therefore be granted.

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. As noted in the AAO's decision, the 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 record clearly establishes that the respondent's parents' certificates of naturalization were properly cancelled. The record further indicates that the respondent's parents' certificates of naturalization were obtained illegally by [REDACTED]. The respondent's parents did not obtain U.S. citizenship such that the respondent could derive U.S. citizenship through them.

With respect to the respondent's constitutional claims, the AAO notes that its jurisdiction is limited to the authority specifically granted through the regulations at Volume 8 of the Code of

Federal Regulations (8 C.F.R.) section 103.1(f)(3)(iii) (as in effect on Feb. 28, 2003) and subsequent amendments. Constitutional due process and equal protection claims go beyond the purview of this administrative appeal and are outside the jurisdiction of this office.

With respect to the respondent's claim that he and his parents were not involved in Mr. [REDACTED] fraudulent scheme, the AAO again notes that the respondent does not claim that his parents are U.S. citizens, nor does he suggest that the director erred in finding that, despite the cancellation of his parents' certificates, he was eligible to derive U.S. citizenship through his parents.

Regardless of the respondent's parents' culpability or lack thereof, the evidence of record clearly establishes that their certificates of naturalization were obtained through fraud. The certificates were unlawfully procured by [REDACTED], and not provided after the completion of a lawful naturalization process. The respondent did not derive U.S. citizenship upon his parents' unlawful naturalization. "There must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981).

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 citizenship was illegally obtained and properly cancelled. The respondent's motion to reconsider is granted, but his appeal must remain dismissed.

ORDER: The motion is granted. The AAO's August 15, 2013 decision is affirmed. The appeal remains dismissed.