

CITATIONS

Statutes

- INA 101(F), 8 U.S.C. 1101(F) [statutory definition of lack of good moral character]
- INA 310(c), 8 U.S.C. 1421(c) [judicial review of denial of naturalization is de novo]
- INA 316(a), 8 U.S.C. 1427(a) [good moral character required for naturalization]
- INA 336(a), 8 U.S.C. 1447(a) [administrative appeal of initial decision to deny]
- INA 336(b), 8 U.S.C. 1447(b) [failure to make decision within 120 days after interview, federal court has jurisdiction to decide the matter]

Regulations

- 8 C.F.R. 310.5 [judicial review after failure to make decision within 120 days of interview; judicial review after denial of administrative appeal]
- 8 C.F.R. 316.10 [requirement of good moral character]
- 8 C.F.R. 316.10(b)(1), (2) & (3) [aggravated felonies/lack of good moral character]
- 8 C.F.R. 316.10(c)(1) [no naturalization if applicant still on parole or probation]
- 8 C.F.R. 336.2 [administrative appeal of denial of naturalization application]
- 8 C.F.R. 336.9(b) [judicial review of final denial to be filed within 120 days of decision]
- 8 C.F.R. 336.9(c) [judicial review: standard of review is de novo]

Treatises

- Gordon, Mailman & Yale-Loehr, 7 Immigration Law and Procedure, 95-34 ff [good moral character], (LexisNexus, Matthew Bender, May 2003 ed.)
- Levy, U.S. Citizenship and Naturalization Handbook, 264-304 [good moral character], (West Group, 1999)

Articles

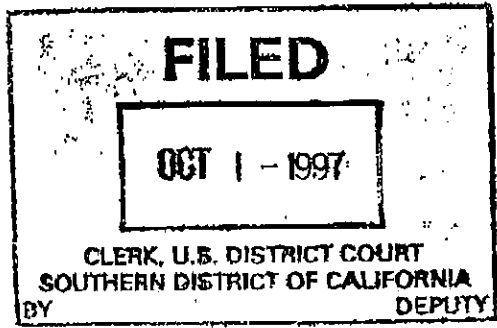
- Mautino, "How to Move Cases in the New World of Naturalization," 1998-99 Immigration Nationality Law Handbook, vol. 2, pp. 433-446, AILA 1998

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San Diego, California 92101

(619) 235-9177

Attorney for Plaintiff



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

~~_____~~)
)
Plaintiff,)
)
-vs-)
)
Mark K. Reed, District Director)
U.S. Immigration and)
Naturalization Service)
)
Defendant.)
_____)

Civil No. '97 CV 1785 K (AJB)

COMPLAINT FOR DECLARATORY
JUDGMENT OF NATURALIZATION
UNDER 8 U.S.C. 1447(b) and 1421(c)

INS No.: A26-~~_____~~

Plaintiff, by his attorney, complaining of Defendant, alleges as follows:

1. Plaintiff is an individual and resident of the United States who resides within the jurisdiction of this court. Plaintiff's claim to naturalization arises under 8 U.S.C. 1147(b) and 8 U.S.C. 1421(c).

2. Mark K. Reed, the Defendant herein, is the district Director of the United States Immigration and Naturalization Service (INS) and is sued herein in his official capacity. Defendant is responsible for the grant or denial of naturalization applications filed within the San Diego INS district pursuant 8 U.S.C. 1421, 8 U.S.C. 1427, 8 C.F.R. 103 (g)(2)(ii), 8 C.F.R. 310.2 and 8 C.F.R. 316.3.

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3. The Court has jurisdiction of this action pursuant to 8 U.S.C. 1447(b), 8 U.S.C. 1421(c) and 28 U.S.C. 2201.

4. On or about September 1992 the Plaintiff filed his application for naturalization with the INS office in Los Angeles, California.

5. Thereafter, the matter was transferred to the INS office in Washington, D.C. because the Plaintiff had changed his residence to that location.

6. Thereafter, the matter was transferred to Defendant's office in San Diego, California because the Plaintiff had changed his residence to that location.

7. On or about May 12, 1996, Defendant's agent told Plaintiff that his file was in Defendant's San Diego office. Thereafter, Plaintiff has made numerous inquiries about the status of his application and the reasons for delay in the adjudication thereof. The Defendant's agents told him on each occasion on that he had to wait.

8. Plaintiff has a right to have Defendant adjudicate his application, and Defendant's failure to take any action at all has denied Plaintiff his rights under 8 U.S.C. 1421 and 8 U.S.C. 1447.

9. Defendant's inaction represents a denial of Plaintiff's application, and this Court may review the matter de novo under 8 U.S.C. 1421(c) and 1447(b).

10. Plaintiff has exhausted his administrative remedies.

11. Plaintiff desires a judicial determination of his naturalization application and a declaration that he is entitled to be naturalized as a citizen of the United States.

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WHEREFORE, Plaintiff prays that:

1. The Court will hear Plaintiff's case and render a declaratory judgment that he is entitled to be naturalized; and

2. The Court grant such further relief as may be just, lawful and equitable in the premises.

Dated: October 1, 1997

RD Mautino
Robert A. Mautino
Attorney for Plaintiff

(Rev. 9/2/97)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

[Redacted Name]

DEFENDANTS

Mark K. Reed, District Director
U.S. Immigration and Naturalization Service

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Robert A. Mautino
Mautino and Mautino
444 West "C" Street Suite 320
San Diego, California 92101
(619) 235-9177

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- U.S. Government Plaintiff
- Federal Question (U.S. Government Not a Party)
- U.S. Government Defendant
- Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (For Diversity Cases Only)

- | | | | | | |
|---|--------------------------|--------------------------|---|--------------------------|--------------------------|
| | PT | DEF | | PT | DEF |
| Citizen of This State | <input type="checkbox"/> | <input type="checkbox"/> | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> | <input type="checkbox"/> |
| Citizen of Another State | <input type="checkbox"/> | <input type="checkbox"/> | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> | <input type="checkbox"/> |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> | <input type="checkbox"/> | Foreign Nation | <input type="checkbox"/> | <input type="checkbox"/> |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

8 U.S.C. 1421(c) and 1447(b) - claim to naturalization as a citizen of the United States

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 130 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defunded Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employer's Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Torts in Landing <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 841 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Alcoholic Bevs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 699 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Act. Inv. <input type="checkbox"/> Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 420 Copyrights <input type="checkbox"/> 430 Patent <input type="checkbox"/> 440 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 RIA (1995) <input type="checkbox"/> 862 Black Lung (92) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(a)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Airlines <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Kick-ester Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 830 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination (Under Equal Access to Justice) <input type="checkbox"/> 950 Constitutionality of State <input checked="" type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 533 Death Penalty <input type="checkbox"/> 540 Mandamus & Order <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 531 Prisoner Conditions		

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removal from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER (r.c.p. 23)

DEMAND \$

Check YES only if demanded in complaint:
JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE

October 1, 1997

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

440 (Rev 5/85) Summons in a Civil Action

United States District Court

SOUTHERN DISTRICT OF CALIFORNIA

[REDACTED]

vs

Mark K. Reed, District Director
U.S. Immigration and
Naturalization Service

SUMMONS IN A CIVIL ACTION

Case No. '97 CV 1785 K (AJB)

TO: (Name and Address of Defendant)

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon PLAINTIFF'S ATTORNEY

Robert A. Mautino
444 West "C" Street, Suite 320
San Diego, California 92101

An answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Roberta Westdal

CLERK

PATRICIA L. ALBERDA



DATE

By Deputy Clerk