



Naturalization, Denaturalization and Federal Litigation

Olsa Alikaj-Cano, Cano Immigration, PLLC

Magali Suarez Candler, Suarez Candler, PLLC

Lance Curtright, Partner DMCA

Good Moral Character (GMC)

Must be a person of good moral character for the requisite statutory period prior to applying for naturalization and up to the time of naturalization.

No statutory definition of good moral character, but INA 101(f) provides a list of those who are statutorily ineligible

- Habitual drunkards;
- polygamists; prostitutes; smugglers; or those who have been convicted of a CIMT; multiple crimes (regardless of whether or not they are CIMTs); or a drug-related crime (exception for single offense of simple possession of marijuana of 30 g. or less);

Issues with GMC

- Unlawful voting and false claims to USC.
- Exception available if: (1) each natural parent is or was a USC; (2) the applicant permanently resided in the U.S. prior to 16; and (3) he or she reasonably believed at the time he or she was a USC.
- Misrepresentation

Issues with GMC

- 2 or more DWIs
- Review USCIS Policy Guidance of Dec. 10, 2019 and Dec. 13, 2019 on GMC and how post-sentencing changes to criminal sentences affect convictions
- Review Matter of Thomas and Thompson and Matter of Castillo-Perez.
See 27 I&N Dec. 674 (A.G. 2019) ; See 27 I&N Dec. 664 (A.G. 2019)
- When 2 or more DWI convictions obtain written sworn affidavits in support of GMC



Permanent Bars to Good Moral Character

An applicant is ineligible for naturalization if the applicant at **any time** has:

- Been convicted of an aggravated felony, as defined at INA 101(a)(43) (Note the conviction must be entered on or after November 29, 1990); or
- Engaged in conduct: relating to assistance in Nazi persecution; participation in genocide; commission of acts of torture or extrajudicial killings; or acts relating to severe violations of religious freedom.

Client found lacking GMC for arrests and convictions

- Refile N-400 or file N-336 and why.
- Permanent bar to GMC and conduct outside the statutory period.
- Lacking GMC for “unlawful acts.”
- What evidence to you provide at interview and at the hearing?

Unlawful Permanent Residents

- Unlawful because of 237(a)(1)(A)
- Unlawful because of policy changes
- Removal Proceedings as a remedy.
- Readjust and start over?

Requesting a Hearing

- Should You File an N-336 and When? What Evidence and Argument Do You Include?
- How to Prepare Yourself and Your Client for the N-336 Hearing and What to Bring?
- Your N-336 Was Denied, What Do You Do Now? Federal Court, Refile or Leave It Alone?
- USCIS Issues Your Client a Notice to Appear, Game Over?

USCIS Issues a Notice to Appear, Options?

- Who has jurisdiction once NTA issued.
- What if the NTA was issued but not filed with the Immigration Court?
- What if you filed your complaint before NTA issued or filed with the Court?
- USCIS denied the N-336 but will not issue the NTA, what next?

Hypo--

- In a naturalization proceeding, USCIS claims that your client's LPR status is invalid because she did not work for the company who petitioned for her. They administratively close your and issue an NTA, but they do not issue a warrant for her arrest under INA 236. The matter is pending before the immigration court. After 120 days from the date of the interview, your client asks you to seek de novo review in federal court over her naturalization proceeding?
- Will the court have jurisdiction over the federal case?

NTA issued? Can client naturalize?

- INA Sect. 318:

“[N]o application for naturalization shall be considered by the Attorney General if there is pending against the applicant a removal proceeding **pursuant to a warrant of arrest issued under the provisions of this chapter or any other Act.**”

- What is a warrant under section 318?

What's a warrant?

- 8 C.F.R. Sect. 318.1—says that a notice to appear is a warrant.
 - Followed by *Klene v. Napolitano*, 697 F.3d 666, 667 (7th Cir. 2012)
- *Yith v. Nielsen*, 881 F.3d 1155 (9th Cir. 2018) –NTA is not a warrant.
 - Warrant means an order to arrest. INA provides that power under section 236.
 - Notice to appear is akin to a summons.
- *Calvo v Garcia*, 2021 WL 2324176 (N.D. Tex May 7, 2021)
 - Follows *Yith*!

Effect of Removal Proceedings

- No application for naturalization shall be considered while removal proceedings are pending. INA 318
- IJ has authority to terminate removal proceedings if the Respondent is prima facie eligible for naturalization based upon humanitarian or “exceptionally appealing” factors. 8 CFR 1239.2(f), but *see Matter of Acosta Hidalgo*, 24 I&N Dec. 103 (BIA 2007) (requiring DHS to affirmatively communicate prima facie eligibility for naturalization).
- Note that an IJ’s termination of removal proceedings or grant of relief for a LPR, such as EOIR 42A Cancellation of Removal or a Waiver of Deportability under INA 237(a)(1)(H) does not necessarily cure any potential defect in good moral character.

Claiming CITIZENSHIP in removal proceedings

- Detained cases
 - If you think your detained client is a U.S.C., then file a bond application.
- INA 236 only applies to “aliens.” If your client is a USC, then the client is not subject to the immigration court’s jurisdiction and is not subject to mandatory detention.
- If denied, you can appeal to the BIA or file a petition for writ of habeas corpus.

Claiming Citizenship issues in removal proceedings (Con't)

8 U.S.C. § 1252(b)(5)(A)-Court Determination

- If the Court of Appeals finds no genuine issue of material fact about petitioner's nationality, the Court shall decide the nationality claim

8 U.S.C. § 1252(b)(5)(B)- Transfer

- If the Court of Appeals finds that a genuine issue of material fact about the petitioner's nationality is presented, the Court shall transfer the case to the District Court of the United States for the judicial district in which the petitioner resides for a new hearing on the nationality claim

Litigating Denied Natz in Federal Court

- GMC Client (crimes).
- GMC Client (unlawful acts).
- Residence and Presence Client.
- Unlawful Permanent Resident Client.

Delayed Naturalization Application? When to sue?

Delay before the interview?

- Sue under the Mandamus Act or the Administrative Appeals Act.
- Issue on the merits will be is the delay in processing the application reasonable?

Delay after the interview

- USCIS has 120 days to decide.
- If no decision, then federal court has jurisdiction under INA Sect. 336(b)
- Federal Court will review the application de novo.

Naturalization denied? Sue!

- First, the applicant must file a request for a hearing before an immigration officer under INA Sect. 336(a).
- Review is de novo before the federal court.
- The Court is not restricted to only those grounds relied upon by USCIS in its denial. Counsel should thoroughly prepare client.
- Applicant must prove all elements necessary for naturalization. Requests for Admissions is useful tool to narrow the issues.

Suing over denied passports

8 U.S.C. § 1503 Denial of Rights and Privileges as National

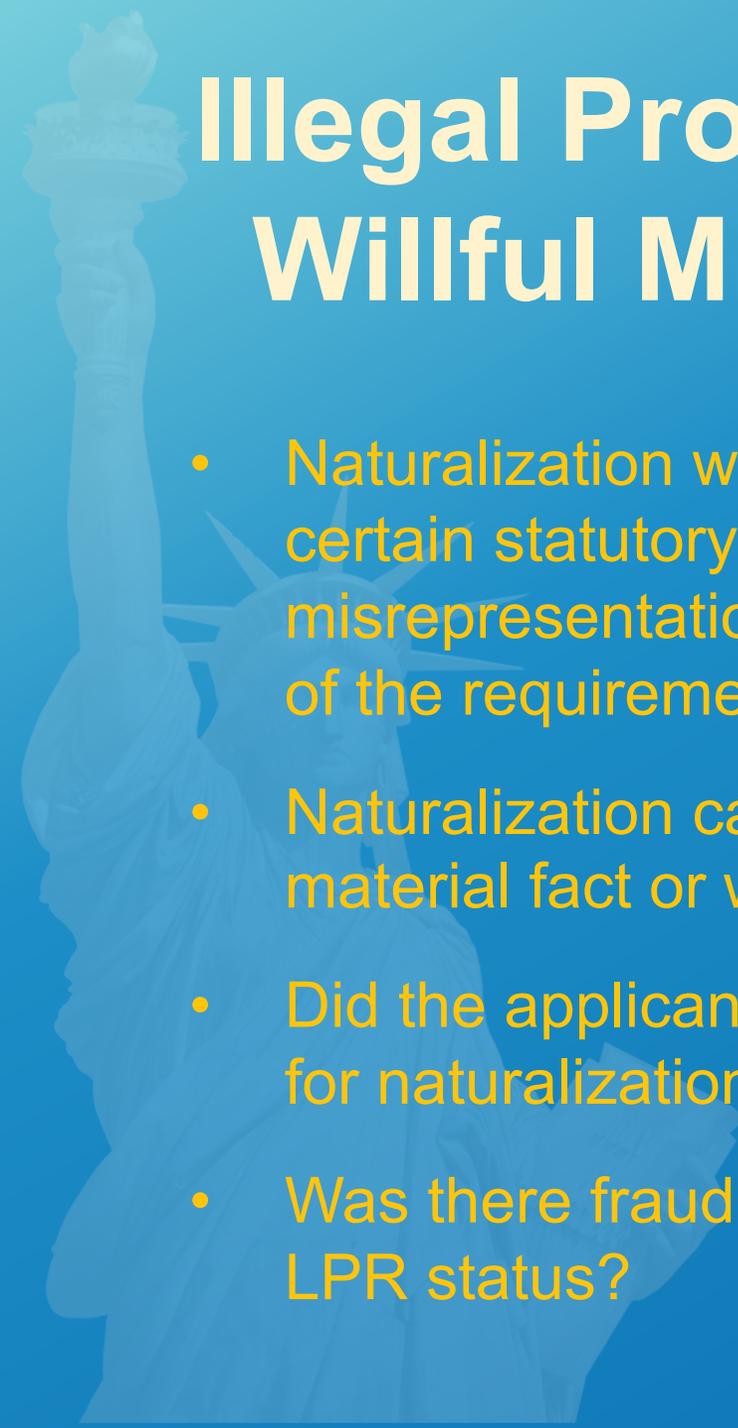
- If any person within United States claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency or official thereof, upon the ground that he is not a national of the United States, such person may institute action under provisions of § 2201 of Title 28, against the head of such department for a judgment declaring him to be a national of the United States.

The Administrative Procedure Act (APA)

Use if there is an “unreasonable delay” in adjudicating the application for passport

Denaturalization

- INA §340(a); 8 USC §1451(a) Judicial denaturalization proceedings
- quasi-civil proceedings for the purpose of revoking naturalization obtained in derogation of
 - the statutory requirements ,and/or through deceit during the application process
 - Government must prove by clear, convincing and unequivocal evidence in a civil federal court proceeding, or
 - Satisfies the beyond a reasonable doubt in a comparable criminal court proceeding that the citizen was not qualified for naturalization at the time it was mistakenly granted.

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Illegal Procurement, or Concealment or Willful Misrepresentation (INA 340(a))

- Naturalization when the applicant is not eligible by failing to satisfy certain statutory requirements. Does not require concealment or willful misrepresentation. The real issue is whether the applicant satisfied all of the requirements under INA 316(a).
- Naturalization can also be revoked if procured by concealment of a material fact or willful misrepresentation.
- Did the applicant "illegally procure" their LPR status that qualified them for naturalization?
- Was there fraud or willful misrepresentation when they received their LPR status?

Concealment and Willful Misrepresentation

- Must be **willful** concealment or misrepresentation of a material fact to procure naturalization.
- Concealment arises out of incomplete or false answers (something the applicant does not want the adjudicating party to know)
- If the question is ambiguous and the response was not to be to conceal or misrepresent, then there is an argument it was not to procure naturalization.



Questions?