UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. EMMANUEL TAYO AKINKUNMI, a/k/a EZEKIEL AREMU ADETAYO, Defendant.	)	No.

COMPLAINT

Plaintiff, the United States of America, by Andrew S. Boutros, United States Attorney for the Northern District of Illinois, brings this action and alleges as follows:

Jurisdiction and Venue

1. This is a civil action brought by the United States against the named defendant to revoke his naturalized United States citizenship under 8 U.S.C. § 1451(a). The court has jurisdiction over this action pursuant to 28 U.S.C. § 1345.

2. Venue is proper in this district pursuant to 8 U.S.C. § 1451(a) and 28 U.S.C. § 1391(b) because Defendant resides in Chicago, Illinois, within the jurisdiction and venue of this court.

Parties

3. Plaintiff United States is suing on behalf of the United States Citizenship and Immigration Services ("USCIS"). This complaint is accompanied by an affidavit of good cause.

4. Defendant Emmanuel Tayo Akinkunmi ("Akinkunmi"), at all times relevant to this complaint, was a domiciliary of the State of Illinois residing at [redacted].

Governing Law

Congressionally Imposed Prerequisites to the Acquisition of Citizenship

5. No alien has a right to naturalization "unless all statutory requirements are complied with." *United States v. Ginsberg,* 243 U.S. 472, 474-75 (1917). Indeed, the Supreme Court has underscored that "[t]here 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); *see also id.* ("An alien who seeks political rights as a member of this Nation can rightfully obtain them only upon the terms and conditions specified by Congress[.]") (quoting *Ginsberg,* 243 U.S. at 474)).

6. Congress has mandated that an individual may not naturalize unless that person "during all periods referred to in this subsection has been and still is a person of good moral character." 8 U.S.C. § 1427(a)(3). The required statutory period for good moral character begins five years before the date the applicant files the application for naturalization, and it continues until the applicant takes the oath of allegiance and becomes a U.S. citizen. *Id.*

7. Congress has defined the term "lawfully admitted for permanent residence" to mean "the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws." 8 U.S.C. § 1101(a)(20).

8. The term "lawfully" requires compliance with substantive legal requirements for admission, and not mere procedural regularity. 8 U.S.C. § 1101(a)(20); *Monet v. INS,* 791 F.2d 752, 753 (9th Cir. 1978).

9. An individual who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided for in the Immigration and Nationality Act ("INA") is inadmissible. 8 U.S.C. § 1182(a)(6)(C)(i).

The Denaturalization Statute

10. Recognizing that there are situations where an individual has naturalized despite failing to comply with all congressionally imposed prerequisites to the acquisition of citizenship or by concealing or misrepresenting facts that are material to the decision on whether to grant his or her naturalization application, Congress enacted 8 U.S.C. § 1451.

11. Under 8 U.S.C. § 1451(a), this Court must revoke a U.S. citizen's naturalization and cancel his Certificate of Naturalization if naturalization was either:

(a) illegally procured, or

(b) procured by concealment of a material fact or by willful misrepresentation.

12. Failure to comply with any of the congressionally imposed prerequisites to the acquisition of citizenship renders the citizenship "illegally procured." *Fedorenko,* 449 U.S. at 506.

13. Naturalization was procured by concealment of a material fact or by willful misrepresentation, where: (i) the naturalized citizen misrepresented or concealed some fact during the naturalization process; (ii) the misrepresentation or concealment was willful; (iii) the fact was material; and (iv) the naturalized citizen procured citizenship as a result of the misrepresentation or concealment. *Kungys v. United States,* 485 U.S. 759, 767 (1988). Where the government establishes that a defendant's citizenship was procured illegally or by concealment of a material

fact or by willful misrepresentation, "district courts lack equitable discretion to refrain from entering a judgment of denaturalization." *Fedorenko,* 449 U.S. at 517.

Background

14. The United States alleges that Defendant Akinkunmi procured his naturalization unlawfully and that he willfully misrepresented and concealed material facts in applying to naturalize. Defendant illegally procured his naturalization because he could not have established the requisite good moral character to naturalize. Specifically, the Defendant illegally procured his naturalization because he had been ordered excluded and deported under a prior identity.

Factual Allegations

15. On October 26, 1982, Akinkunmi filed a Form I-485, Application for Status as Permanent Resident ("I-485"), and was assigned alien registration number [redacted]. The Form I-485 was based on a simultaneously filed Form I-130, Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa, filed on his behalf by his wife, Jessie May Jones. On that application, the Defendant represented that his name was Ezekiel Aremu Adetayo, born [redacted], in Nigeria. Defendant represented that he entered the United States on September 26, 1980, under that name as a nonimmigrant visitor. He appeared for an interview at an INS office on February 1, 1983. At that interview he signed and affirmed before an officer of the Immigration and Naturalization Service under penalty of perjury that the contents of his application were true. On February 1, 1983, INS approved the Form I-485, and Akinkunmi was accorded lawful permanent residency.

16. On October 7, 1993, he arrived at the Detroit Metropolitan Airport and sought entry into the United States. Following questioning by immigration officers, he completed Form I-407, Abandonment of Lawful Permanent Status.

17. On his Form I-407, he represented that his name was Ezekial A. Adetayo and that he was born on [redacted], in Nigeria. He further indicated that he "voluntarily, willingly, and affirmatively" abandoned his lawful permanent resident status because he had not lived in the United States since 1989, worked in Nigeria, and only wished to be in the United States for 10 days. On October 25, 1993, he was personally served with a Form I-122, Notice to Applicant for Admission Detained for Hearing before an Immigration Judge for, among other things, not being in possession of an un-expired immigrant visa, recent entry permit, or other document required by the Immigration and Nationality Act. Following a hearing on January 9, 1996, an immigration judge ordered him excluded from the United States. On or about January 18, 1996, he filed an appeal of the Immigration Judge's decision to the Board of Immigration Appeals (BIA)

18. On April 25, 1997, the BIA dismissed the appeal and reaffirmed the immigration judge's decision.

19. On January 27, 1998, Akinkunmi, using the name Emmanuel Tayo Akinkunmi, filed a Form I-485 based on a simultaneously filed Form I-130 petition filed by his then wife, May Catherine Hill. The I-130 represented that they were married on January 7, 1998. He was assigned alien registration number [redacted].

20. On his Form I-485, Akinkunmi represented that his name was Emmanuel T. Akinkunmi, born on [redacted] in Nigeria, and that he had entered the United States in 1997 without inspection. Akinkunmi also filed a Form G-325A, Biographic Information, where on the box requesting "all other names used," Akinkunmi entered "none."

18. On September 16, 1999, Akinkunmi appeared for an interview on his I-485. He denied ever being excluded from the United States or that he had ever been in exclusion proceedings.

19. On March 24, 2000, INS approved Akinkunmi's I-485 application, and he became a permanent resident.

20. On or about September 27, 2010, Akinkunmi filed a Form N-400, Application for Naturalization. On his form N-400, signed under penalty of perjury. Akinkunmi stated that:

- His legal name was Emmanuel Tayo Akinkunmi;
- He had never used any other names;
- He was born on [redacted];
- He had only been married once to Catherine May Hill;
- He had never given false or misleading information to any U.S. government official while applying for an immigration benefit or prevent deportation, exclusion or removal;
- He had never been ordered removed, excluded, or deported from the United States; and had never applied for relief from exclusion, deportation, or removal.

21. On January 12, 2011, Akinkunmi appeared for an interview on his Form N-400. At that interview, he testified in the affirmative regarding the information in paragraph 20 of this complaint.

22. On May 31, 2011, USCIS approved Akinkunmi's application for naturalization based on his N-400 application and testimony he provided during his naturalization interview.

23. On June 8, 2011, Akinkunmi took the Oath of Allegiance and was admitted as a citizen of the United States. Akinkunmi was issued Certificate of Naturalization No. [redacted].

Count I

ILLEGAL PROCUREMENT OF NATURALIZATION NOT LAWFULLY ADMITTED FOR PERMANENT RESIDENCE (Adjustment Procured by Fraud or Willful Misrepresentation)

24. The United States realleges and incorporates by reference the allegations set forth in paragraphs 1 through 23 of this complaint.

25. To qualify for naturalization, an applicant must have been "lawfully admitted" to the United States for permanent residence. *See* 8 U.S.C. §§ 1427(a)(l), 1429.

26. As noted above, the term "lawfully" denotes compliance with substantive legal requirements, not mere procedural regularity. *See* 8 U.S.C. § 1101(a)(20); *Monet v. INS,* 791 F.2d 752, 753 (9th Cir. 1978).

27. Among the applicable provisions in the INA at the time of Defendant's adjustment of status to permanent resident was the requirement that he be admissible to the United States. *See* 8 U.S.C. §§ 1159(b)(5), 1255(a).

28. Under the law in effect at the time that Defendant adjusted his status, an individual who by fraud or by willfully misrepresenting a material fact was seeking to procure (or had sought to procure or had procured) a visa, other documentation, admission into the United States, or other benefit provided under the INA, was inadmissible. *See* 8 U.S.C. § 1182(a)(6)(C)(i).

29. Defendant was never lawfully admitted to the United States as a permanent resident and cannot satisfy the requirements of 8 U.S.C. §§ 1427(a)(l) and 1429, because he was inadmissible at the time of his adjustment to permanent resident status.

30. Defendant sought to procure admission into the United States and other benefits provided for in the INA by fraud or willfully misrepresenting a material fact. Specifically, at

the time Defendant adjusted his status to permanent resident using the name Emmanuel Tayo Akinkunmi, he had previously procured an immigration benefit and had been ordered excluded using the name Ezekiel Aremu Adetayo. Indeed, at the time that Defendant adjusted to permanent resident status, he was the subject of an outstanding order of exclusion and deportation under the name Ezekiel Aremu Adetayo.

31. Because Defendant made sworn statements in immigration benefit applications that cannot be simultaneously true, he was inadmissible.

32. Defendant's false statements regarding his name, alien number, date of birth, date of entry into the United States, and his immigration history were material to determining his eligibility for the immigration benefits for which he applied. Defendant's false statements had the natural tendency to influence a decision by the immigration officer(s) to approve his application(s). Defendant thus sought to procure an immigration benefit by fraud or willfully misrepresenting a material fact.

33. Because Defendant was inadmissible at the time he adjusted to permanent resident status, he was not lawfully admitted for permanent residence in accordance with the substantive legal requirements to obtain that status.

34. Because Defendant was not lawfully admitted for permanent residence, he was and remains ineligible for naturalization under 8 U.S.C. §§ 1427(a)(l) and 1429.

35. Because he was ineligible to naturalize, Defendant illegally procured his citizenship, and this Court must revoke his citizenship as provided for in 8 U.S.C. § 145l(a).

Count II

ILLEGAL PROCUREMENT OF NATURALIZATION LACK OF GOOD MORAL CHARACTER (Unlawful Acts)

36. The United States realleges and incorporates by reference the allegations set forth in paragraphs 1 through 23 of this Complaint.

37. As outlined above, to be eligible for naturalization, Congress has mandated that an applicant must show that he or she has been a person of good moral character for the five-year statutory period before filing his or her naturalization application until the time the applicant becomes a naturalized U.S. citizen. 8 U.S.C. § 1427(a); 8 C.F.R. § 316.10(a)(i).

38. Defendant filed his naturalization application on September 27, 2010, and he naturalized on June 8, 2011. Thus, to be eligible for naturalization, Defendant was required to establish that he was a person of good moral character during his "statutory period" from September 27, 2005, until June 8, 2011.

39. Defendant completed and filed his naturalization application during his "statutory period." Under the law then in effect, an individual could not establish good moral character if, during the statutory period, Defendant committed unlawful acts that adversely reflected on his moral character, unless he could establish extenuating circumstances. 8 U.S.C. § 1101(f); 8 C.F.R. § 316.10(b)(3)(iii).

40. Based on the facts stated above, Defendant violated 18 U.S.C. § 1001(a)(1)-(3) by knowingly and willfully concealing in his naturalization application — a matter within the jurisdiction of the executive, branch of the Government of the United States — that he had previously used a different identity and that he been ordered excluded and deported under that identity.

41. Because Defendant committed unlawful acts during the statutory period during which he was required to maintain good moral character, he was and remains ineligible for naturalization under 8 U.S.C. §§ 1427(a)(l) and 1429. Defendant cannot establish extenuating circumstances for this violation in light of the deliberate and continuing nature of his violations.

42. Because he was ineligible to naturalize, Defendant illegally procured his citizenship, and this Court must revoke his citizenship as provided for in 8 U.S.C. § 145l(a).

Count III

PROCUREMENT OF NATURALIZATION BY CONCEALMENT OF A MATERIAL FACT OR WILLFUL MISREPRESENTATION

43. The United States realleges and incorporates by reference the allegations set forth in paragraphs 1 through 23 of this Complaint.

44. Under 8 U.S.C. § 1451(a), this Court must revoke Defendant's citizenship and cancel his Certificate of Naturalization because he procured his naturalization by concealment of a material fact or by willful misrepresentation.

45. As set forth herein, throughout the naturalization process, Defendant willfully misrepresented and concealed, among other things: (i) his use of another identity, including a different date of birth; (ii) his prior order of exclusion and deportation; (iii) his prior application for an immigration benefit; (iv) that he had given false or misleading information to a U.S. Government official while applying for any immigration benefit or to prevent deportation, exclusion, or removal; (v) that removal, exclusion, rescission, or deportation proceedings were pending against him; (vi) that he had lied to a U.S. Government official to gain entry or admission into the United States; (vii) that he had been ordered to be removed, excluded, or deported from the United States; (viii) and that he had previously applied for relief from removal, exclusion, or

deportation. Defendant knew each of these statements to be false.

46. Defendant made such misrepresentations voluntarily and deliberately, despite knowing that such representations were false and misleading. Accordingly, Defendant made these misrepresentations willfully.

47. Defendant's misrepresentations were material to his naturalization because the disclosure of his multiple identities, multiple claimed dates of birth, prior application for an immigration benefit, prior order of exclusion and deportation, and prior representations to U.S. Government officials while applying for an immigration benefit would have had a natural tendency to influence USCIS's decision whether to approve Defendant's application for naturalization. Indeed, had USCIS been aware of this information, it would have denied his naturalization application.

48. Defendant thus procured his naturalization by willful misrepresentation and concealment of material facts, and this Court must revoke his citizenship pursuant to 8 U.S.C. § 1451(a).

Claim for Relief

WHEREFORE, Plaintiff, the United States of America, respectfully requests:

(1) A declaration that Defendant illegally procured his citizenship;

(2) A declaration that Defendant procured his citizenship by concealment of material fact and by willful misrepresentation;

(3) Judgment revoking and setting aside the order admitting Defendant to citizenship and canceling Certificate of Naturalization No. [redacted], effective as of the original date of the certificate, June 8, 2011;

(4) Judgment forever restraining and enjoining Defendant from claiming any rights, privileges, benefits, or advantages under any document that evidences United States citizenship

obtained as a result of his June 8, 2011 naturalization;

(5) Judgment requiring the Defendant, within ten (10) days of the entry of judgment against him, to surrender and deliver his Certificate of Naturalization No. [redacted] and any copies thereof in his possession or control (and to make good faith efforts to recover and then surrender any copies thereof that he knows are in the possession or control of others), to the Attorney General, or her designated representative, including undersigned counsel;

(6) Judgment requiring the Defendant, within ten (10) days of the entry of judgment, to surrender and deliver any other indicia of U.S. citizenship (including, but not limited to, United States passports and passport cards, Enhanced Driver's License, and other relevant documents), whether current or expired, and any copies thereof in his possession or control-and to make good faith efforts to recover and then surrender any copies thereof that he knows are in the possession or control of others-to the Attorney General, or her representative, including undersigned counsel; and

(7) Judgment granting the United States any other relief that may be lawful and proper in this case.

Respectfully submitted,

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