

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

GAZMEND POKA,	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.
	:	3:01CV1378 (CFD)
IMMIGRATION AND	:	
NATURALIZATION SERVICE	:	
Defendant.	:	

ORDER

I. Introduction

Gazmend Poka (“Poka”) is a thirty-four year old citizen of Albania who has been living in the United States since October 16, 1993 as a lawful permanent resident. On November 23, 1998, Poka applied for naturalization with the Immigration and Naturalization Service (“INS”). The application was denied by the INS on June 19, 2000 on the basis that Poka lacked the requisite good moral character to become a naturalized U.S. citizen. Poka appealed and received a review hearing with the INS on May 3, 2001. Following the hearing, the INS upheld the denial of naturalization on May 8, 2001. Pursuant to 8 U.S.C. § 1421(c), Poka then filed this pro se action on July 23, 2001, requesting a review of the denial of his application.¹ According to section 1421(c), the Court reviews the case de novo.²

¹Though Poka filed a summons and complaint, rather than a petition for review pursuant to Title 8, Section 336.9(b) of the Code of Federal Regulations, the Court treats the complaint as a petition for review.

²Section 1447(a) provides that “if, after an examination under Section 1446, an application for naturalization is denied, the applicant may request a hearing before an immigration officer.” 8 U.S.C. § 1447(a). A decision on naturalization following such an INS hearing constitutes a final determination and an exhaustion of a petitioner’s administrative remedies. See 8 C.F.R. S 336.9 (2001). Because Poka’s naturalization application was denied after such a hearing before an INS

A hearing on the action was held on May 29, 2002. Based on the testimony of witnesses, documents admitted into evidence, and briefs and argument of the parties, the Court makes the following findings of facts and conclusions of law.

II. Findings of Fact

On November 9, 1996, Poka was arrested in East Hartford, Connecticut for disorderly conduct and interfering with the police in connection with a dispute at Poka's residence between his brother and an unidentified woman. On November 20, 1996, Poka was convicted of creating a public disturbance in violation of Conn. Gen. Stat. § 53a-181a and paid a \$35 fine.

In his application for naturalization, Part 7, Question 15, Poka responded "No" as to whether he had "been arrested, cited, charged, indicted, convicted, fined or imprisoned for breaking or violating any law or ordinance excluding traffic violations." On December 7, 1999, Poka appeared before the District Adjudications Officer (the "hearing officer") for a hearing on his application pursuant to § 335 of the Immigration and Naturalization Act (the "Act"). At that hearing, Poka testified under oath that he had never been arrested, cited, charged, indicted, convicted, fined or imprisoned for breaking or violating any law or ordinance. The hearing officer noted on Poka's application that Poka was "[a]damant he was never arrested." In addition to his sworn testimony, Poka signed an affidavit, sworn to on December 7, 1999 before the hearing officer, in which he stated under oath that he had:

never been arrested, cited, charged, indicted, convicted, fined or imprisoned for breaking or violating any law or ordinance, anywhere in the world . . . never been arrested, and later the charges were disposed of by a court as a dismissal, Nolle Prosequi, or any other pre-trial diversion program such as an accelerated rehabilitation or in any other way . . . never been arrested, and later advised by the court or other legal authority that I could

officer, the Court's jurisdiction under § 1421(c) is properly invoked.

state that I was never arrested.

After Poka had signed the affidavit, the hearing officer informed him that a fingerprint check performed by the Federal Bureau of Investigation (“FBI”) revealed that Poka had in fact been arrested in East Hartford, Connecticut on November 9, 1996, and convicted on November 20, 1996 with the offense of creating a public disturbance.³

On January 28, 2000, the hearing officer recommended the denial of Poka’s application based upon his statements in his application and affidavit regarding his criminal history. On February 2, 2000, an INS supervisor concurred with the hearing officer’s recommendation.

In a written decision dated June 19, 2000, the INS denied petitioner’s application on the ground that he lacked “good moral character as required by the statute.” The INS concluded:

you failed to disclose that you had been arrested on November 9, 1996 for disorderly conduct and interfering with police, and convicted of that offense on November 20, 1996. By giving false information during the hearing on your naturalization application, you may have closed off a legitimate line of inquiry which may have led to the discovery of other information concerning other aspects of your character and eligibility for citizenship. You have demonstrated a lack of candor during your naturalization proceedings. The burden of proving good moral character is on the applicant with any doubts to be resolved against him.

Poka was advised that he could request a review hearing within thirty days of the date of decision pursuant to Section 336 of the Act. On May 3, 2001, Poka appeared for the review hearing, after which the hearing officer recommended the denial of Poka’s application be affirmed. On May 4, 2001, an INS supervisor concurred with the hearing officer’s recommendation.

In a written decision dated May 8, 2001, the INS District Director affirmed the denial of

³The INS attempted to mail Poka a letter dated August 2, 1999 indicating that an FBI background check revealed Poka had an arrest record and advising Poka to bring any arrest records and court dispositions to the hearing on his application, but the letter was returned by the United States Postal Service with a notation on the envelope “attempted not known.”

Poka's application without prejudice to the filing of a new application after December 7, 2004. The INS District Director found that Poka had given false testimony at the December 7, 1999 hearing on his application by failing to disclose that he was arrested on November 9, 1996, which resulted in a conviction. Thus, the INS District Director concluded that Poka did not meet the requirements for naturalization because of a failure to demonstrate good moral character. The INS District Director informed Poka that he could seek judicial review in a United States District Court.

Poka filed this petition for review on July 23, 2001, claiming that he was wrongfully denied naturalization because his failure to indicate his prior arrest and conviction were the result of misunderstanding the English language, rather than purposeful misrepresentation.

III. Conclusions of Law

According to 8 U.S.C. § 1421(c), this court has the authority to review and decide de novo Poka's application for naturalization.⁴

In naturalization proceedings, when an alien seeks to obtain the privileges and benefits of citizenship, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." Berenyi v. District Director, INS, 385 U.S. 630, 637 (1967). "No alien has the slightest right to naturalization unless all statutory requirements are

⁴Section 1421(c) provides:

A person whose application for naturalization under this subchapter is denied, after a hearing before an immigration officer under section 1447(a) of this Title, may seek review of such denial before the United States district court for the district in which such person resides in accordance with chapter 7 of Title 5. Such review shall be de novo, and the Court shall make its own findings of fact and conclusions of law and shall, at the request of the petitioner, conduct a hearing de novo on the application.

8 U.S.C. § 1421(c).

complied with" U.S. v. Ginsberg, 243 U.S. 472, 475 (1917). Thus, in reviewing the application, this court must strictly comply with all of the congressionally imposed prerequisites to the acquisition of citizenship. See Fedorenko v. U.S., 449 U.S. 490, 506 (1981).

Under the Act and the regulations promulgated thereunder, the general requirements for naturalization specify that no person shall be naturalized unless such an applicant:

(1) immediately preceding the date of filing his application for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years, . . . and had been physically present therein for periods totaling at least half of that time, (2) has resided continuously within the United States from the date of the application up to the time of admission to citizenship, and (3) during all the periods referred to has been and still is a person of good moral character

8 U.S.C. § 1427(a); see also 8 C.F.R. § 316.2(7). The burden is on the applicant to demonstrate that, during the statutorily prescribed period, he has been and continues to be a person of good moral character. See 8 C.F.R. § 316.10(a)(1). Congress has provided that:

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is or was ...one who has given false testimony for the purpose of obtaining any benefits under this chapter.

8 U.S.C. § 1106(f)(6); see also 8 C.F.R. § 316.10(b)(2)(vi) (an applicant shall be found to lack good moral character if, during the statutory period, he has given false testimony to obtain any benefit from the Act, if the testimony was made under oath or affirmation and with an intent to obtain an immigration benefit, regardless of whether the information provided was material).

Section 1101(f)(6) applies "to only those misrepresentations made with the *subjective intent* of obtaining immigration benefits." Kungys v. United States, 485 U.S. 759, 780 (1988) (emphasis added). Indeed, "[i]t is only dishonesty accompanied by this precise intent that Congress found morally unacceptable. Willful misrepresentations made for other reasons, such as embarrassment,

fear, or a desire for privacy, [are] not deemed sufficiently culpable to brand the applicant as someone who lacks good moral character.” Id.

The government contends that this Court should deny Poka’s petition for naturalization because Poka gave false testimony to the hearing officer regarding his criminal history, and thus, fails the requirement set forth in § 1101(f)(6) to qualify as someone possessing good moral character under § 1427(a)(3). Poka argues, however, that his statements regarding his criminal history were not intentional misrepresentations, but were innocent inaccuracies due to misunderstanding and confusion.

At the hearing on the instant petition, Poka testified that, at the time of his application for naturalization and at the review hearing on December 7, 1999, he did not understand the meaning of the terms “arrested” and “convicted.” Poka maintains in his complaint that when the INS officer asked if he been arrested at the December 7, 1999 hearing, Poka understood “arrested” to mean having served time in jail. As Poka had not served time in jail, he maintains, he stated that he had never been arrested. Poka testified that, until recently, he did not know that the police officer who came to his home on November 9, 1996 “arrested” him. Poka also testified that he did not understand that the \$35 fine he paid in connection with the events of November 9, 1996 was the result of conviction for a crime. Part of this confusion, Poka testified, was due to his difficulty with the English language.

After a consideration of the testimony at trial, the Court finds Poka’s explanation to be truthful and therefore finds that Poka did not intentionally attempt to deceive the INS in his statements regarding his criminal history for the purpose of obtaining immigration or naturalization benefits. The Court credits Poka’s testimony that he was not trying to mislead the

INS, but rather, was confused about what the terms “arrested” and “convicted” signified. Poka’s testimony at the hearing on the instant petition indicates his limited proficiency in the English language and corroborate his confusion about what constitutes an arrest and conviction.

The Court therefore finds that Poka’s misrepresentations were not made with the requisite subjective intent of offering false testimony to obtain an immigration benefit and thus finds no evidence of bad moral character with respect to such misrepresentations. See DeLuca v. Ashcroft, No. CV-01-A-380-N, 2002 WL 1032592, at *3 (M.D. Ala. May 16, 2002) (finding “no evidence of bad moral character” where petitioner erroneously stated that she had not been arrested based on her interpretation of adjudication as a youthful offender); Chan v. INS, No. 00MISC 243(FB), 2001 WL 521706 at *8 (E.D.N.Y. May 11, 2001) (granting petitioner’s application for naturalization, despite INS’s denial based on lack of good moral character, based on finding that petitioner’s statements that he had not been arrested “were not misrepresentations aimed to deceive the INS; rather they appear to be the consequences of Chan's confusion, misunderstandings, limited command of English, and lack of a full appreciation of the factors that would constitute and render impregnable his arrest under the American legal system”); Plewa v. INS, 77 F. Supp. 2d 905 (N.D. Ill. 1999) (granting petitioner’s application for naturalization based on finding that, despite petitioner’s false testimony that she had not been arrested based on an immigration counselor’s erroneous advice, petitioner was a person of good moral character) (citing Petition of Zele, 140 F.2d 773 (2d Cir. 1944)).

Despite the Court's conclusion that Poka did not intentionally submit false information to the INS in an attempt to gain citizenship, the Court must also find that Poka satisfies all of the congressionally mandated statutory requirements for naturalization. Pursuant to 8 U.S.C. § 1423,

Poka must demonstrate:

an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language: *Provided*, That the requirements of this paragraph relating to the ability to read and write shall be met if the applicant can read or write simple words and phrases to the end that a reasonable test of his literacy shall be made and that no extraordinary or unreasonable condition shall be imposed upon the applicant.

8 U.S.C. § 1423(a)(1). In light of Poka's testimony, however, the Court cannot find that he has demonstrated "an understanding of the English language." 8 U.S.C. § 1423(a)(1). The Court therefore must deny Poka's application for naturalization.

IV. Conclusion

Based upon the findings of fact and conclusions of law contained in this opinion, the Court finds that the Application for the Naturalization of Gazmend Poka is DENIED, without prejudice. However, Poka may reapply at any time for naturalization and demonstrate his understanding of the English language pursuant to § 1423 and satisfy the other requirements. The INS shall treat a re-application de novo and the bar prohibiting filing a renewed application until 2004 is lifted.

SO ORDERED this ____ day of September 2002, at Hartford, Connecticut.

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE