

False Statements and U.S. Citizenship

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Issue: When does a false statement create a good moral character bar to eligibility for U.S. citizenship?

Background. The Immigration Act (INA §§101(f) and 316(a)(3) and regulations (8 C.F.R. §316.10(b)(2)(vi)) require but do not define moral character. It is, of course, the applicant's burden to establish proof of good moral character. What must be shown? CIS Interpretations state that good character is "measured by the standard of the community, but does not necessarily require the highest degree of moral excellence." (See CIS Interpretations online, including citations to cases from 1910 through the 1970s)

<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-45077/0-0-0-46756/0-0-0-46857.html#0-0-0-24205>).

Specific Mandatory¹ Bars to Good Moral Character

Instead of defining what is required, the government has developed a list of bars to good moral character. Mandatory or per se bars to establishing good moral character for naturalization purposes, include, *but are not limited to*: habitual drunkard, criminals, illegal gamblers, those involved in prostitution or commercialized vice, alien smugglers, aliens previously removed, aggravated felons, participants in genocide or persecution, illegal voters, those who have made a false claim to U.S. citizenship, and ***those who have given false testimony for the purpose of obtaining a benefit under the INA***. See INA §§ 101(f)(6) and 316.10(b)(2)(vi).

Question – What is False Testimony? When does it matter?

Example - An alien's willful *or innocent* lack of disclosure on an N400 or other CIS form, followed by sworn testimony that the contents are true becomes "false testimony under oath," which is one way to be found to lack good moral character. *Azziz v. Chertoff*, 527 F.Supp.2d 188 (D. Mass. 2007). In *Azziz*, the court upheld a denial of naturalization when applicant lied about residence on a previous I-751 application filed years before the application for citizenship. [This should bring chills to those attorneys who advise clients without knowing their history or having access to the previous immigration file.]

A false statement could also be an oral statement made at a naturalization interview, in response to an officer's question. If CIS denies the application for a false statement, this person can be barred for five years (or other statutory period).

¹ There are also *discretionary* grounds in 8 C.F.R. §316.10(b)(3), including adultery, non-support of dependants, et al., where the government may review extenuating circumstances to rebut a presumption of lack of eligibility. These are not discussed here.

How Long Are False Statements Relevant As A Potential Problem? Most inquiries for naturalization eligibility are limited to the five or three year period prior to application, but not good moral character. INA §316(e); U.S. v. Hovsepian, 359 F. 3d 1144, 1166-67 (9th Cir. 2004)(en banc). (N.B. Hovsepian is a very important case discussing an alien's ability to get mandamus review of a citizenship application in a U.S. District Court when the immigration service fails to take action within 120 days of the interview, pursuant to INA §336(b)).

Any False Statement? The U.S. Supreme Court held in Kungys v. United States, 485 U.S. 759, 780 (1988), that in order to be a false statement under this section, a statement must be made with the subjective intent to secure an immigration benefit. At least one Fifth Circuit court has found that the false testimony must also be material to the application or inquiry in order to deny a benefit, in this case cancellation of removal (Gonzalez-Maldonado v. Gonzalez, 487 F. 3d 975, 977 (5th Cir. 2007). Mr. Gonzalez had used his attorney's address in California instead of his own address in New Mexico. The Fifth Circuit disagreed with the board of immigration appeals that this type of representation makes no difference, and held that such statements do not constitute false testimony.

Remedy: Thoroughly review statements made to CIS on the N400 and in all previous applications to CIS. A pre-application Freedom of Information Act or FOIA request may take 4-6 months or more. This is *not* time wasted when discovery of a previous inconsistent or false statement could save an alien hundreds of dollars in fees, and perhaps avoid a finding that leads to removal proceedings. Current processing times for FOIA applications are much improved in 2010 as compared to years past.

If you – or your client – encounter difficulty with US CIS regarding false statements, contact us. 360-357-7087 or at www.seifertlaw.com.