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19 UNITED STATES DISTRICT COURT

20 [REDACTED]

Case No.

Petitioner,

vs.

UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICE, an entity

Respondent.

**PETITION FOR *DE NOVO*
REVIEW OF DENIAL OF
APPLICATION FOR
NATURALIZATION AND
REQUEST FOR HEARING
PURSUANT TO 8 U.S.C. § 1421(c)**

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1 INTRODUCTION

2 1. Through this lawsuit, Petitioner [REDACTED] seeks *de novo*
3 review of the United States Citizenship and Immigration Service’s (“USCIS”)
4 denial of his application for naturalization as a United States citizen, and a hearing
5 *de novo* on that application in accordance with 8 U.S.C. § 1421(c).

6 2. [REDACTED] is a sixty-one-year-old national of Iran and a lawful
7 permanent resident (“LPR”) of the United States.

8 3. Having resided in the United States since 1977, the United States is the
9 only country that [REDACTED] calls home. United States citizenship means the
10 opportunity to finally participate in American democracy; and it symbolizes the
11 belonging and loyalty he feels towards the United States.

12 4. [REDACTED] meets all of the requirements for naturalization.
13 Nonetheless, it took USCIS fourteen years to issue a final decision on his
14 application for naturalization, even though the agency is required to adjudicate
15 naturalization applications within 120 days of an interview, 8 C.F.R. § 335.3, and
16 is encouraged to take no more than six months to adjudicate an application from
17 the time it is received, 8 U.S.C. § 1571(b) (providing that the processing of an
18 immigration benefit application should be completed within 180 days).

19 5. [REDACTED] has led a peaceful life in the United States. Yet, for
20 unexplained reasons, USCIS significantly delayed adjudicating his application, and
21 then issued plainly unfounded administrative decisions denying his applications.

22 6. Although [REDACTED] applied for naturalization in 2000, USCIS did not
23 issue a decision on that application until 2010—ten years later. That decision
24 denied his application on the grounds that he failed to submit information
25 requested of him; however, the agency had never actually requested some of the
26 information it cited, and [REDACTED] fully complied with the agency’s requests.

27 7. In March of 2010, [REDACTED] filed an administrative appeal of that
28 denial, explaining in a letter-brief that he had submitted all of the requested

1 information. It took an additional two years for USCIS to issue a decision on that
2 appeal.

3 8. In August of 2012, USCIS denied the appeal, this time claiming he was
4 ineligible to naturalize for wholly different reasons that were equally unfounded.
5 USCIS stated that [REDACTED] had been absent from the United States from
6 November 15, 2008 through June 6, 2010, and allegedly “reaffirmed” its previous
7 denial on these grounds—despite the fact that it had never denied his application
8 on these grounds, and even though [REDACTED] had presented evidence to the
9 contrary.

10 9. In light of the blatant errors reflected in the decision, [REDACTED]
11 requested that USCIS reopen his appeal and re-adjudicate it. In October of 2012,
12 USCIS agreed to reopen his appeal and hold a new hearing. It finally conducted
13 that hearing on September 23, 2013.

14 10. Ten months later, USCIS still had not issued a decision. In July 2014,
15 [REDACTED] filed a lawsuit against USCIS.¹ The lawsuit alleged that the sole
16 reason why the agency had not granted his application—and instead subjected it to
17 lengthy delays and baseless denials—was because of an agency policy known as
18 the Controlled Application Review and Resolution Program (“CARRP”), which
19 the agency secretly applied to the adjudication of [REDACTED] application. He
20 alleged that the CARRP policy violated the Immigration and Nationality Act
21 (“INA”), the Administrative Procedure Act (“APA”), and the United States
22 Constitution because, *inter alia*, it imposes additional eligibility criteria for
23 immigration benefits not authorized by law.

24 11. Only after [REDACTED] filed this lawsuit did USCIS issue a final
25 decision on his appeal. On October 3, 2014, USCIS denied his application,
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27 ¹ See *Muhanna v. USCIS*, No. 2:14-cv-05995-PSG-FFM (C.D. Cal. July 31,
28 2014), voluntarily dismissed without prejudice on Dec. 23, 2014.

1 claiming that [REDACTED] failed to establish by a preponderance of the evidence his
2 continuous residence in the United States, a prerequisite for citizenship.

3 12. The Immigration and Nationality Act requires that a naturalization
4 applicant have continuously resided as a lawful permanent resident for five years
5 in the United States prior to the filing of his application for naturalization, and that
6 he have been physically present in the United States during at least half of that
7 time. 8 U.S.C. § 1427(a)(1). The applicant also must reside continuously in the
8 United States while the application for naturalization is pending. 8 U.S.C.
9 §1427(a)(2).

10 13. [REDACTED] has continuously resided in the United States since at least
11 1995, as he originally entered in 1977, and he has never left the country for more
12 than six months. He demonstrated by a preponderance of the evidence that he has
13 continuously resided in the United States since 1995 (five years before he
14 submitted his application) through the submission of records; a list of all
15 international travel dates and locations in chronological order from 1996 through
16 2013; copies of passports with certified translations; tax returns; documentation as
17 to legal source of income; copies of his California Driver's License and Chase,
18 Macy's, and Costco cards for accounts in the Los Angeles area; a letter from the
19 Department of Treasury's Office of Foreign Assets Control granting permission for
20 [REDACTED] to legally transfer personal funds from Iran to the United States, which
21 manifests his intent to maintain residence in the United States as well as his reason
22 for travel to Iran (in addition to visiting his ailing mother); proof of travel from
23 airlines; and his own testimony.

24 14. Upon information and belief, USCIS denied [REDACTED] application
25 because CARRP policy did not permit the officer to grant his application, and not
26 because he failed to establish continuous residence in the United States.

27 15. [REDACTED] is entitled to the same fair, prompt evaluation of his
28 eligibility to naturalize based on the statutory criteria to naturalize afforded other

1 applicants. Accordingly, [REDACTED] now petitions this Court to conduct a *de*
2 *novo* review of his naturalization application and requests a hearing pursuant to 8
3 U.S.C. § 1421(c), which confers on this Court the authority to make its own
4 findings of fact and conclusions of law.

5 **JURISDICTION AND VENUE**

6 16. This Court has jurisdiction over the present action pursuant to 8 U.S.C.
7 § 1421(c) (denial of a naturalization application may be reviewed *de novo* by the
8 United States District Court) and 28 U.S.C. § 1331.

9 17. Venue is properly with this Court pursuant to 8 U.S.C. § 1421(c) and 28
10 U.S.C. § 1391(e) because Petitioner resides within the Central District of
11 California. *See also* 8 C.F.R. § 336.9(b).

12 18. Petitioner has timely filed this Petition for Review. Even assuming that
13 the 120 day deadline set forth by the agency's regulation governs this Court's
14 jurisdiction, *but see Nagahi v. INS*, 219 F.3d 1166 (10th Cir. 2000), this action has
15 been filed within 120 days of Respondent's October 3, 2014 final decision denying
16 his application for naturalization. *See* 8 C.F.R. § 336.9(b).

17 **PARTIES**

18 19. Petitioner [REDACTED] is a citizen and national of Iran, and a
19 lawful permanent resident of the United States. Petitioner resides within the
20 jurisdiction of this Court.

21 20. Respondent UNITED STATES CITIZENSHIP AND IMMIGRATION
22 SERVICE ("USCIS"), which is a division of the Department of Homeland
23 Security ("DHS"), is the federal agency responsible for the adjudication of
24 naturalization applications. *See* 8 C.F.R. § 336.9(b) ("The petition for review must
25 be brought against USCIS . . .").

26 **LEGAL FRAMEWORK FOR NATURALIZATION**

27 21. To naturalize as a United States citizen, an applicant must be a lawfully
28 admitted permanent resident alien who has continuously resided in the United

1 States for at least five years prior to the filing of his or her naturalization petition;
2 has been physically present for at least half that time; and between the filing of his
3 petition and his admission to citizenship, has resided continuously in the United
4 States. 8 U.S.C. § 1429; 8 U.S.C. § 1427(a)(1), (2).

5 22. An “[a]bsence from the United States of more than six months but less
6 than one year during the period for which continuous residence is required for
7 citizenship, immediately preceding the date of filing the application for
8 naturalization, or during the period between the date of filing the application and
9 the date of any hearing under section 336(a) [8 U.S.C. § 1427] shall break the
10 continuity of such residence, unless the applicant shall establish to the satisfaction
11 of the Attorney General that he did not in fact abandon his residence in the United
12 States during such period.” 8 U.S.C. § 1427(b).

13 23. Under the governing regulations, for absences of more than six months
14 but less than one year, an applicant may establish that the absence did not disrupt
15 the continuous residence requirement by submitting types of documentation that
16 “include, but are not limited to, evidence that during the absence: (A) The
17 applicant did not terminate his or her employment in the United States; (B) The
18 applicant’s immediate family remained in the United States; (C) The applicant
19 retained full access to his or her United States abode; or (D) The applicant did not
20 obtain employment while abroad.” 8 C.F.R. § 316.5(c)(1)(i).

21 24. In addition, applicants must also demonstrate “good moral character”
22 for the five years preceding the date of application, “attach[ment] to the principles
23 of the Constitution of the United States, and favorabl[e] dispos[ition] toward the
24 good order and happiness of the United States” 8 C.F.R. § 316.2(a)(7).

25 25. An applicant is presumed to possess the requisite “good moral
26 character” for naturalization unless, during the five years preceding the date of the
27 application, he or she is found (1) to be a habitual drunkard, (2) to have committed
28 certain drug-related offenses, (3) to be a gambler whose income derives principally

1 from gambling or has been convicted of two or more gambling offenses, (4) to
2 have given false testimony for the purpose of obtaining immigration benefits; or if
3 the applicant (5) has been convicted and confined to a penal institution for an
4 aggregate period of 180 days or more, (6) has been convicted of an aggravated
5 felony, or (7) has engaged in conduct such as aiding Nazi persecution or
6 participating in genocide, torture, or extrajudicial killings. 8 U.S.C. § 1101(f)(6).

7 26. An applicant for naturalization has the burden of demonstrating
8 eligibility for naturalization by a preponderance of the evidence. 8 C.F.R. §
9 316.2(b).

10 **FACTUAL BACKGROUND**

11 27. [REDACTED] is a citizen of Iran and a Lawful Permanent Resident of the
12 United States. He is sixty-one years old and a resident of Beverly Hills, California.

13 28. [REDACTED] has resided in the United States since 1977. He became a
14 Lawful Permanent Resident in 1987, 13 years before he filed for naturalization.

15 29. [REDACTED] has lived continuously in the United States from prior to
16 1995, five years before he applied for naturalization. Since 1994, he has lived in
17 Southern California and has had six residences. He has lived primarily in Beverly
18 Hills, although he has also lived in Los Angeles, San Pedro, and Woodland Hills.
19 He frequently uses the San Pedro address, the address of a childhood friend, to
20 ensure that his mail does not get lost when he travels.

21 30. [REDACTED] was physically present in the United States for at least half
22 of the five years preceding the date of filing his application for naturalization in
23 November 2000. In recent years, [REDACTED] has traveled frequently to Iran to
24 take care of his ailing mother and his deceased father's estate. He has never been
25 absent from the United States for a continuous period of six months or more.

26 31. [REDACTED] has never been convicted of a crime.

27 32. On November 20, 2000, [REDACTED] applied for naturalization.

28 33. On June 18, 2001, [REDACTED] attended his naturalization examination.

1 A USCIS officer told him he passed the examination, but that his case would be
2 continued for supervisory review. Subsequently, on September 18, 2001,
3 November 30, 2001, and March 11, 2002, USCIS sent [REDACTED] requests for
4 additional evidence. He timely responded to each request.

5 34. Nearly ten years passed before USCIS issued a decision on the
6 naturalization application. During this time, [REDACTED] inquired with USCIS on
7 the status of his application on numerous occasions through letters and “Infopass,”
8 a service that allows an applicant to schedule an appointment with a USCIS
9 officer.

10 35. On February 11, 2010, USCIS denied his application on grounds that he
11 failed to submit information requested by the agency.

12 36. [REDACTED] contested this determination and, on March 11, 2010, he
13 filed an administrative appeal with an accompanying letter-brief, which
14 demonstrated that he had provided all of the requested information.

15 37. On July 16, 2010, [REDACTED] attended a hearing on his administrative
16 appeal and provided even more information after additional requests by USCIS.

17 38. Two years later, on August 24, 2012, a USCIS decision denying his
18 administrative appeal asserted that USCIS had denied his naturalization application
19 “because during the statutory period, [he was] continuously absent from the United
20 States from November 15, 2008 through June 6, 2010”—which was factually
21 erroneous because USCIS had not denied his application on those grounds and was
22 unsupported by any evidence.

23 39. On September 26, 2012, [REDACTED] moved to reopen and reconsider
24 the denial of his appeal because of these obvious factual errors. USCIS granted his
25 motion to reopen in October 2012 and agreed to reconsider its decision.

26 40. On September 23, 2013, [REDACTED] appeared for a second hearing on
27 his reopened administrative appeal. In accordance with USCIS’s request, he again
28 submitted extensive additional information.

1 41. During the hearing, the USCIS officer informed ██████████ that the
2 agency may possess evidence from an undisclosed individual that ██████████
3 spent more than six months abroad during some time period relevant to his
4 naturalization application. ██████████ requested the opportunity to confront and
5 respond to this information, but USCIS refused to disclose further details. As ██████████
6 ██████████ stated at the interview and in a subsequent letter-brief to USCIS, federal
7 law requires the disclosure of further information if USCIS relied upon this
8 evidence as a basis for its decision. 8 C.F.R §§ 103.2(b)(16)(i), (ii).

9 42. At the conclusion of the September 2013 hearing, the USCIS officer
10 told ██████████ that he would receive a decision within thirty days.

11 43. However, USCIS did not issue a decision until October 3, 2014—more
12 than a year after the interview, and three months after ██████████, together with
13 four other individuals, filed a suit challenging the government’s unlawful CARRP
14 program.

15 44. The government denied ██████████ application on the grounds that he
16 had failed to meet his burden of establishing continuous residence in the United
17 States, as required by 8 U.S.C. § 1427(a)(1), (2). *See also* 8 C.F.R. § 316.2(a), (b).

18 45. The decision states that ██████████ failed to submit specific evidence to
19 establish his continuous residence and provided conflicting addresses, and
20 concludes on this basis that he “did not have access to an abode in the United
21 States.” Among the evidence he allegedly failed to submit is that of his
22 employment and ownership of property in the United States. As ██████████
23 informed USCIS, he is neither employed nor owns property in the United States.
24 The three addresses the USCIS decision cites, in Beverly Hills, San Pedro, and
25 Woodland Hills, are all in the Los Angeles area. During the relevant time period,
26 ██████████ always had access to an abode in the United States.

27 46. ██████████ has exhausted all of his administrative remedies by
28 administratively appealing the denial in accordance with 8 U.S.C. § 1447(a),

1 attending the appeal hearing before an immigration officer, and receiving a
2 decision on the administrative appeal. *See also* 8 U.S.C. § 1421(c) (“A person
3 whose application for naturalization [] is denied, after a hearing before an
4 immigration officer under section 336(a) [], may seek review of such denial before
5 the United States district court . . .”).

6 **CAUSE OF ACTION**

7 **COUNT ONE**

8 **PETITION FOR DE NOVO NATURALIZATION HEARING, 8 U.S.C. §**
9 **1421(c)**

10 47. The allegations contained in paragraphs 1-46 are repeated and realleged
11 as though fully set forth herein.

12 48. The INA at 8 U.S.C. § 1421(c) provides as follows:

13
14 A person whose application for naturalization under this subchapter is
15 denied, after a hearing before an immigration officer under section
16 1447 (a) [8 U.S.C. 1447(a)], may seek review of such denial before
17 the United States district court for the district in which such person
18 resides in accordance with chapter 7 of title 5. Such review shall be de
19 novo, and the court shall make its own findings of fact and
20 conclusions of law and shall, at the request of the petitioner, conduct a
21 hearing de novo on the application.

22 49. [REDACTED] application for naturalization was denied on October 3,
23 2014. This Court has the authority to conduct a de novo hearing on his
24 naturalization application under 8 U.S.C. § 1421(c), and petitioner hereby requests
25 such hearing.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 28
- (1) Assume jurisdiction over this matter;
 - (2) Conduct a de novo hearing on Petitioner’s application for

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- naturalization;
- (3) Grant Petitioner’s application for naturalization;
- (4) Administer the oath of allegiance or order Respondent to administer this oath;
- (5) Award reasonable costs and attorneys’ fees; and
- (6) Grant such further relief as the Court deems just and proper.

Dated: January 30, 2015

Respectfully submitted,

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