UNITED STATES DISTRICT COURT

DISTRICT OF RHODE ISLAND

SUNNY EMEKA ST. AMANZE,
Petitioner,

v. C.A. No. 02-502T

IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

MEMORANDUM AND ORDER

ERNEST C. TORRES, Chief United States District Judge.

Petitioner Sunny Emeka St. Amanze, acting *pro se*, brought this action pursuant to 8 U.S.C. § 1421(c) seeking judicial review of the denial of his application for naturalization by the Immigration and Naturalization Service (INS). The INS has moved to dismiss for failure to state a claim upon which relief can be granted. For the reasons stated below, the motion to dismiss is hereby DENIED.

Background

St. Amanze is a citizen of Nigeria. In 1994, he was intercepted attempting to enter the United States as a stowaway and, initially, he lied to INS officials about his identity and national origin. In 1996 he admitted that he had lied, provided accurate information, and was granted permanent resident status.

Several years later, St. Amanze applied to be naturalized as a United States citizen. On January 3, 2002, he was examined by an INS officer and was asked if he had ever given false testimony to obtain an immigration benefit. He answered "No" and signed a written statement affirming that answer. INS thereupon denied St. Amanze's application on the ground that he lacked good character because his answer was false.

At his administrative review hearing, St. Amanze testified that he "honestly misunderstood" the question asked during the January 3 examination to be whether he had made any false statement to INS after being granted permanent resident status. The hearing officer was unconvinced by St. Amanze's explanation and affirmed the denial of his naturalization application. This action ensued.

Standard of Review

Section 1421(c) provides for *de novo* review of administrative denial of a naturalization petition. It provides:

> A person whose application for naturalization under this title is denied, after a hearing before an immigration officer . . . may seek review of such denial before the United States district court or the district in which such person resides . . . . 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.

Although the INS's motion does not specifically refer to Fed. R. Civ. P. 12(b)(6), it seeks dismissal on the ground that the petitioner has failed to state a claim. Accordingly, it will be treated as a Rule 12(b)(6) motion.

In deciding a motion to dismiss for failure to state a claim, the well-pleaded factual allegations of the complaint are accepted as true, all reasonable inferences therefrom are drawn in the plaintiff's favor, and the court must determine whether the complaint, so read, sets forth facts sufficient to justify recovery on any cognizable theory. TAG/ICIB Services, Inc. v. Pan-American Grain Co., Inc., 215 F.3d 172, 175 (1st Cir. 2000).

Analysis

I. Eligibility for Naturalization

In order to be eligible for naturalization, an applicant must, *inter alia*, be a person of good moral character. 8 U.S.C. § 1427(a). An applicant is deemed to lack good moral character if he falls into one of the seven non-exclusive classifications listed in 8 U.S.C. § 1101(f)(1)-(8).[1] The classification at

[1]Section 1101(f) provides:

> 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--
> (1) a habitual drunkard;

issue in this case is found in subsection six, which states that an applicant lacks good moral character if he has "given false testimony for the purpose of obtaining any [immigration] benefits." 8 U.S.C. § 1101(f)(6).

The fact that a statement is incorrect does not, by itself, establish that an applicant has "given false testimony." The applicant also must have intended to deceive the INS. Plewa v.

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(2) [Repealed]
(3) a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D) [regarding prostitution], (6)(E) [regarding smugglers of illegal aliens], and (9)(A) [regarding illegal aliens] of section 1182(a) of this title; or subparagraphs (A) and (B) of section 1182(a)(2) of this title and subparagraph (C) thereof of such section (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana), if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;
(4) one whose income is derived principally from illegal gambling activities;
(5) one who has been convicted of two or more gambling offenses committed during such period;
(6) one who has given false testimony for the purpose of obtaining any benefits under this Act;
(7) one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period;
(8) one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43)).

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.

Immigration and Naturalization Service, 77 F. Supp. 2d 905, 910 (N.D. Ill. 1999) (citing Kungys v. United States, 485 U.S. 759, 780 (1988)); Islam v. Harrington, No. 3:00-CV-1683-P, 2001 WL 1335851, at *5 (N.D. Tex. Oct. 23, 2001). Thus, an applicant who makes an untrue statement based on erroneous advice from counsel as to what the correct answer is or based on an honest misunderstanding of the question does not demonstrate a lack of good character. See Plewa, 77 F. Supp. 2d at 912-913 (petitioner who relied on erroneous advice of certified immigration counselor did not have subjective intent to deceive and thus did not lack good character).[2]

Here, the complaint alleges that St. Amanze honestly misunderstood the question to be whether he had lied to INS since he was granted permanent resident status. The Court cannot reject that allegation as patently false, especially in light of the fact that when St. Amanze was granted permanent residency status, he admitted to INS that he had lied when he entered this country. It is perfectly plausible that, as he

[2] By contrast, in Aboud v. INS, the court rejected the petitioner's explanation that he misunderstood the questions he was asked because of a poor grasp of the English language. 876 F. Supp. 938 (S.D. Ohio 1994). The Court noted that the petitioner had taken college courses in English and had demonstrated a good command of English in the courtroom. Id. at 941. Thus, the Court concluded that the petitioner had not "honestly misunderstood" the questions posed and that he lacked good character. Id.

asserts, St. Amanze assumed that the officer questioning him in January of 2002 was referring to false statements made after his admission as a permanent resident.

In short, the Court is presented with a question of fact that turns almost entirely on an assessment of St. Amanze's credibility. Such questions cannot be resolved via a motion to dismiss. Accordingly, this case is scheduled for a hearing on the merits at 2:00 p.m. on May 2, 2003.

Conclusion

For the foregoing reasons, the respondent's motion to dismiss is DENIED.

By Order,

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Deputy Clerk

ENTER:

_____

Ernest C. Torres

Chief United States District Judge

Date: