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Denaturalization

Peter D. Williamson

DENATURALIZATION

Most denaturalization cases are governed by the INA §340, 8 U.S.C. §1451. The key phraseology in §340(a) is a follows:

> "It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any district court of the United States in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively...."

This is done by the government filing a lawsuit. A sample of such a lawsuit is attached.

The basis of current thinking in denaturalization cases begins with *Fedorenko v. United States*, 449 U.S. 490 (1981). *Fedorenko* had been admitted to the United States as a displaced person after World War II, having lied about his status as a displaced person, and about his military service as a concentration camp guard during World War II. He came to the United States in 1949 under the Displaced Persons Act, became a permanent resident, and was naturalized in 1970. People who had served as enemy soldiers were not eligible for relief under that Act. He did not disclose his military service on his DPA visa application, nor on his naturalization application. Thereafter, in about 1977, the lies were discovered and the government tried to denaturalize him. The district court ruled in his favor on the basis that the naturalization had followed procedural regularity, that the lies were not material, and since he had been law abiding while in the U.S., he should be permitted to retain his citizenship. Thus, the court reasoned that he had been lawfully

admitted for permanent residence, the misrepresentation on his visa was not material to the issue of his eligibility for naturalization, and the equities were in his favor. The Fifth Circuit reversed, finding that his misrepresentation was material, and that Fedorenko had made a willful misrepresentation of material facts. The Supreme Court, however, took it a step farther. They held that regardless of whether the misrepresented facts were "material," the fact of misrepresentation on his underlying visa was clear; and thus his subsequent naturalization was "illegally procured." The Supreme Court determined that he had to have been lawfully admitted for permanent residence before he could apply for naturalization, emphasis on the word "lawfully." And since he had lied about his status as a soldier and concentration camp guard, he had not been lawfully admitted, and thus was subject to denaturalization. Ultimately, he was denaturalized, reverted back to permanent residence status, and was deported to Ukraine in 1984. The LA Times reported in 1987 that the Soviets had found him guilty of treason and mass murder, and that in 1986 he was executed.

Note that the statute specifies that naturalization can be set aside if it was either "illegally procured" or was "procured by concealment of a material fact or by willful misrepresentation." The *Fedorenko* case was decided on the basis of illegal procurement, and that is the prevailing theory in denaturalization cases today. One must have been lawfully admitted for permanent residence.

Cases involving denaturalization of Nazi war criminals included *United States v. Geiser*, 527 F.3d 288 (3rd Cir. 2008); *United States v. Firishchak*, 426 F.Supp.2d 780 (ND Ill. 2005), 468 F.3d 1015 (7th Cir. 2006); *United States v. Wittje*, 422 F.3d 479 (7th Cir. 2005); *United States v.*

Title search: Denaturalization

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