

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

ERIOLA ARAPI, *et al.*,

Plaintiffs,

v.

U.S. CITIZENSHIP & IMMIGRATION  
SERVICES, *et al.*,

Defendants.

No. 4:16-cv-00692-JAR

**DEFENDANTS’ MOTION TO DISMISS THE FIRST AMENDED COMPLAINT**

**I. INTRODUCTION**

U.S. Citizenship and Immigration Services (“USCIS”) has adjudicated the naturalization applications of each of the twenty originally named Plaintiffs in this matter, and nineteen of these twenty Plaintiffs have been voluntarily dismissed. The sole remaining Plaintiff is Wafaa Alwan, whose naturalization application USCIS denied for lack of good moral character, a requirement for naturalization. *See* Ex. A.

The First Amended Complaint (“FAC”) neither challenges nor even mentions Plaintiff Alwan’s naturalization denial. Indeed, the FAC could not have mentioned the denial because USCIS made the decision well after filing of the FAC. Instead, the FAC alleges delays by USCIS in adjudicating Plaintiff Alwan’s naturalization application.<sup>1</sup> Because USCIS has adjudicated Plaintiff Alwan’s application, however, the FAC is moot. Moreover, to the extent that the Court considers the FAC a challenge by Plaintiff Alwan to her naturalization denial, the Court should dismiss such a challenge for lack of ripeness because Plaintiff Alwan has

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<sup>1</sup> Because Plaintiff Alwan is the sole remaining Plaintiff, Defendants do not address any allegations that pertain to dismissed parties.

administratively appealed USCIS's denial decision and thus remains with administrative remedies before seeking judicial review of her denied naturalization application.

## II. RELEVANT BACKGROUND AND PROCEDURAL HISTORY

On May 18, 2016, Plaintiffs filed the initial Complaint in this matter. Doc. 1.

On June 21, 2016, Plaintiffs filed an amended Complaint (hereinafter "First Amended Complaint" or "FAC"), which added eight Plaintiffs to the initial Complaint and resulted in a total of twenty Plaintiffs.<sup>2</sup> Doc. 3.

On July 12, 2016, this Court granted Defendants' unopposed motion seeking a forty-five day extension of Defendants' initial response date, thereby extending Defendants' initial response date from July 22 to September 5, 2016. Doc. 10.

On August 29, 2016, after Plaintiffs filed a "Rule 41(a) Notice of Voluntary Dismissal of Claims by Certain Plaintiffs," *see* Doc. 12, this Court dismissed the following ten of twenty Plaintiffs in this matter: Eriola Arapi, Saqib Sarwar, Syed Asghar Ali, Hanaa B. Kayem, Mohammad S. Jauda, Musrath Jahan Baig, Mahmood Ali Mansur, Sary Ibrahim Doumbia, Nermin Busevac, and Abdelsamed Alamin.<sup>3</sup> Doc. 13.

On September 1, 2016, this Court granted Defendants' opposed motion filed on the same day seeking a second forty-five day extension of Defendants' initial response date, thereby extending Defendants' initial response date from September 5 to October 20, 2016. Doc. 14.

On October 5, 2016, after Plaintiffs filed a "Second Rule 41(a) Notice of Voluntary Dismissal of Claims by Certain Plaintiffs," *see* Doc. 16, this Court dismissed the following four

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<sup>2</sup> On June 21, 2016, before amending the Complaint, Plaintiffs voluntarily dismissed Plaintiff Syed Tariq Ali from the initial Complaint. *See* Doc. 2.

<sup>3</sup> As indicated in Plaintiff's "Notice," USCIS has approved each of these ten former Plaintiffs' naturalization applications. *See* Doc. 13.

of ten Plaintiffs remaining at that time: Samina Syed, Abdolreza Osouli, Amina Tursunovic, and Sharafat Mohammed.<sup>4</sup> Doc. 17.

On October 13, 2016, after Defendants filed on October 12th an unopposed motion seeking a sixty-day extension of Defendants' initial response date, *see* Doc. 18, this Court granted the motion and extended Defendants' initial response date from October 20 to December 19, 2016. Doc. 19.

On December 12, 2016, after Plaintiffs filed a "Third Rule 41(a) Notice of Voluntary Dismissal of Claims by Certain Plaintiffs," *see* Doc. 20, this Court dismissed the following five of six Plaintiffs that remained in this matter at that time: Ibrahim Mohamed Zidan, Abubakar Ahmed Abulfathi, Mirzeta Tursunovic, Mohammad A. Al Muttan, and Adnan Sawlan.<sup>5</sup> *See* Doc. 21.

As of the date of the instant filing, Wafaa Alwan is the sole Plaintiff remaining in this matter. On August 25, 2016, the Illinois State Police arrested Plaintiff Alwan for the offense of Unlawful Transportation of Contraband Cigarettes, in violation of 35 ILCS 130/9C, a Class 4 Felony. USCIS accordingly issued her attached naturalization denial decision on October 20, 2016. *See* Ex. A.

### III. LEGAL FRAMEWORK FOR NATURALIZATION

The Secretary of the Department of Homeland Security ("DHS") is vested with "sole authority to naturalize persons as citizens of the United States." 8 U.S.C. § 1421(a); Immigration Act of 1990, Pub. L. No. 101-649, § 401, 104 Stat. 4978 1421(a); Immigration Act of 1990, Pub.

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<sup>4</sup> As indicated in Plaintiff's second "Notice," USCIS has approved each of these four former Plaintiffs' naturalization applications. *See* Doc. 17.

<sup>5</sup> As indicated in Plaintiff's third "Notice," USCIS approved three and denied three naturalization applications for these six then-remaining Plaintiffs. *See* Doc. 20.

L. No. 101-649, § 401, 104 Stat. 4978.<sup>6</sup> Under the administrative naturalization process, USCIS is responsible for adjudicating naturalization applications, including investigating the applicant, interviewing and if necessary subpoenaing witnesses, conducting an examination, and making a determination of whether to grant or deny the application. 8 U.S.C. § 1446(a), (c). To be statutorily eligible for naturalization, an applicant must show that she has been a person of good moral character for a five-year period prior to filing her naturalization application, and this period continues until the time she becomes a naturalized United States citizen. 8 U.S.C. § 1427(a)(3).

If USCIS fails to adjudicate a naturalization application within 120 days after interviewing a naturalization applicant, the applicant may apply to the district court for a hearing on the naturalization application, in which case the court “may either determine the matter or remand the matter, with appropriate instructions, to [USCIS] to determine the matter.” 8 U.S.C. § 1447(b). If USCIS denies a naturalization application, the applicant may administratively appeal the denial by requesting a hearing before an immigration officer by submitting a Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA). 8 U.S.C. § 1447(a); 8 C.F.R. § 336.2(b). If, after administratively appealing the denial by filing of a Form N-336, USCIS sustains a naturalization denial, an applicant may seek *de novo* review of naturalization eligibility with the district court. *See* 8 U.S.C. §§ 1447(a), 1421(c).

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<sup>6</sup> The transfer of the former Immigration and Naturalization Service’s (“INS”) naturalization functions to DHS included the transfer of the authority to naturalize from the Attorney General to the Secretary of DHS. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, § 1512(d), 116 Stat. 2135, 2310.

## IV. ANALYSIS

### A. The First Amended Complaint is Moot

The FAC alleges that USCIS “has failed to finally adjudicate” Plaintiff Alwan’s naturalization application. *See* Doc. 3 at ¶¶20, 137.<sup>7</sup> USCIS has now completed this adjudication. Thus, Plaintiff Alwan’s claim is moot, and the Court should dismiss the FAC on this basis.<sup>8</sup>

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<sup>7</sup> Specific to naturalization, the FAC also seeks this Court’s “grant” of Plaintiff Alwan’s naturalization application. *See* Doc. 3 at ¶¶20, 137; *see also* Prayer for Relief at ¶4 (asking this Court to “naturalize” Plaintiff Alwan). This Court, however, cannot grant this specific relief. As a threshold matter, the FAC lacks a simple statement in the “Prayer for Relief” requesting the hearing proscribed under 8 U.S.C. § 1447(b) and, as such, Plaintiff Alwan’s request that the Court “naturalize” her is facially insufficient. Second, as explained further below as to lack of ripeness, Plaintiff Alwan has filed a Form N-336 seeking administrative review of her denied naturalization application, which constitutes administrative action that remains pending with USCIS. At the administrative hearing that Plaintiff Alwan has requested, she will be provided the opportunity to explain any “extenuating circumstances” related to her naturalization denial based on the commission of unlawful acts. *See* 8 C.F.R. § 316.10(b)(3)(iii); *see also* 8 U.S.C. §§ 1101(f), 1427(a)(3).

<sup>8</sup> Aside from Plaintiff Alwan’s naturalization adjudication-directed claims, the FAC’s other allegations focus generally on CARRP, *see* Doc. 3 at ¶¶3, 7-15, 63-135, which the FAC describes as “an agency-wide policy for identifying, processing, and adjudicating immigration applications that raise ‘national security concerns,’” *id.* at ¶63. Relatedly, aside from the request that the Court naturalize Plaintiff Alwan and award costs, *see* Doc. 3 at “Prayer for Relief” at ¶¶4-5, the remaining relief requested in the FAC focuses on CARRP, *id.* at ¶¶1-3.

To the extent that, despite USCIS’s articulated bases for denying her naturalization application, Plaintiff Alwan at this stage of the litigation continues to assert that USCIS has “appl[ied] CARRP” to the adjudication of her application, this assertion is warrantless. As a threshold matter, there can be no reasonable dispute that Plaintiff Alwan’s naturalization denial is *the* agency decision now at issue given that Plaintiff Alwan filed a Form N-336 on November 17, 2016, seeking administrative review of the denial. *See* Ex. B. Further, the denial explains that she is ineligible to naturalize – *not based on any alleged CARRP considerations* – but based on unlawful acts committed during the good moral character period. *See* Ex. A (citing 8 U.S.C. §§ 1101(f), 1427(a)(3); 8 C.F.R. § 316.10(b)(3)(iii)). With these threshold considerations in mind, the FAC’s CARRP claims – encompassing Counts One through Five of Six total counts – fail on two bases. First, the Court lacks jurisdiction to review them because Counts One through Five do not identify an injury in fact. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 95 (1983). USCIS has plainly stated the statutory bases for denying Plaintiff Alwan’s naturalization application, and nowhere does Plaintiff Alwan state in the FAC just how this denial decision relates to CARRP or how it injured her. Given no injury and the consequent lack of standing, this Court should dismiss Counts One through Five for lack of subject-matter jurisdiction under

The power of federal courts is restricted by Article III of the Constitution to cases and controversies. *DeFunis v. Odegaard*, 416 U.S. 312, 314 (1974); *United States v. Sanders*, 276 Fed. Appx. 532, 533 (8th Cir. 2008); *Arkansas AFL-CIO v. F.C.C.*, 11 F.3d 1430, 1435 (8th Cir. 1993). The Eighth Circuit defines a “case or controversy” as requiring “a definite and concrete controversy involving adverse legal interests at every stage in the litigation.” *Arkansas AFL-CIO*, 11 F.3d at 1435 (citations omitted). The controversy must be a “live” one where the court can grant conclusive relief. *Id.* (“Occasionally, due to the passage of time or a change in circumstance, the issues presented in a case will no longer be ‘live’ or the parties will no longer have a legally cognizable interest in the outcome of the litigation. When such changes prevent a federal court from granting effective relief, the case becomes moot.”). Federal courts lack power to decide the merits of a moot case. *Potter v. Norwest Mortg., Inc.*, 329 F.3d 608, 611 (8th Cir. 2003); *Missouri ex rel. Nixon v. Craig*, 163 F.3d 482, 484 (8th Cir. 1998).

There is no question here that USCIS adjudicated Plaintiff Alwan’s naturalization application and issued a decision on October 20, 2016. *See* Ex. A. Plaintiff Alwan acknowledged that USCIS has reached a decision on her naturalization application by filing an administrative appeal on November 17, 2016. *See* Ex. B. As such, whatever “live” controversy previously existed between Plaintiff Alwan and Defendant USCIS concerning pending adjudication of the naturalization application *no longer exists* for this Court to either review or

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Rule 12(b)(1). Second, Counts One through Five fail to state claims for relief. Nowhere does Plaintiff Alwan state any claim that mentions her naturalization denial. And, even if the Court were to overlook the statutory denial basis USCIS has identified and were to read into Counts One through Five an allegation that CARRP influenced the denial decision, such an allegation would fail as speculative and conclusory, rather than plausible on its face – and would warrant dismissal under Rule 12(b)(6) – in light of the denial bases the decision identifies. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (*quoting Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570). To the extent that there remains disagreement on this point after the Court reviews briefing concerning this motion and issues an order on it, Defendants respectfully request the opportunity to address the CARRP allegations.

relieve. *See Arkansas AFL-CIO*, 11 F.3d at 1435. Accordingly, given the specific nature of the relief Plaintiff Alwan seeks in the FAC, *see* Doc. 3 at ¶¶20, 137, all claims concerning this relief are now moot. Dismissal of the FAC under Federal Rule of Civil Procedure 12(b)(1) therefore is warranted.

### **B. Alternatively, This Matter is Not Ripe for Judicial Review**

To the extent that this Court were to consider the FAC as a challenge by Plaintiff Alwan to the recent denial of her naturalization application, such a challenge is not ripe. Plaintiff has administratively appealed her denial, and until an appeal decision is reached, there no longer is a concrete USCIS administrative decision for this Court to review. Acknowledging the lack of a ripe conflict at issue concerning Plaintiff Alwan, dismissal for lack of subject-matter jurisdiction of any naturalization denial challenge by her is appropriate.<sup>9</sup>

A goal of the ripeness doctrine “is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.” *Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Dev. Comm'n*, 461 U.S. 190, 200 (1983) (internal quotations and citations omitted).<sup>10</sup> The Eighth Circuit has determined that “[t]he

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<sup>9</sup> Significantly, if this Court were to dismiss the FAC, Plaintiff Alwan would yet remain with a means of challenging her naturalization denial if USCIS affirms the denial on review. As outlined above, judicial review is available under section 1421(c) for naturalization application denials once the applicant has exhausted administrative remedies by filing an administrative appeal through Form N-336 and obtaining a decision on that appeal. *See* 8 U.S.C. § 1421(c) (citing 8 U.S.C. § 1447(a)). Section 1421(c) provides *de novo* district court review of the applicant’s naturalization eligibility. As such, dismissal of the FAC at this stage does not foreclose further meaningful review options for Plaintiff Alwan.

<sup>10</sup> Dismissal on ripeness grounds can resemble dismissal for lack of final agency action in the APA context, to the extent that – for a challenged matter to be appropriate for judicial review – the ripeness doctrine requires the completion of an agency decision. *See Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (explaining the finality requirement to obtain APA review



ripeness doctrine flows both from the Article III ‘cases’ and ‘controversies’ limitations and also from prudential considerations for refusing to exercise jurisdiction.” *Pub. Water Supply Dist. No. 10 of Cass County, Mo. v. City of Peculiar*, 345 F.3d 570, 572 (8th Cir. 2003) (quoting *Nebraska Pub. Power Dist. v. MidAmerican Energy Co.*, 234 F.3d 1032, 1037 (8th Cir. 2000)) (internal quotation marks omitted). Ripeness analysis requires a court to weigh both “the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.” *Pub. Water Supply Dist.*, 345 F.3d at 572-73 (internal quotations marks omitted). Both ripeness prongs must be satisfied to justify judicial review. *Id.* at 573. The fitness prong implicates the court’s ability to determine whether a case would benefit from further factual development. *Id.* Hardship considerations resulting from delayed review “rarely overcome the finality and fitness problems inherent in attempts to review tentative positions.”

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of agency action). The FAC contains APA claims, which are *directly* pled under the APA’s ‘notice and comment provision’ at 5 U.S.C. § 553, *see* Doc. 3 at ¶¶65, 127, and are *obliquely* pled under the APA’s ‘unreasonable delay’ provision at 5 U.S.C. § 706, *see id.* at heading to Count Three. It is noteworthy that the FAC lacks *any* allegation under the APA provision at 5 U.S.C. § 706(2) allowing a challenge to an agency determination as arbitrary, capricious, or contrary to law. But, were this Court to read in the FAC such an APA challenge by Plaintiff Alwan, it would fail for two reasons. First, it would not be reviewable by this Court because judicial review under the APA is explicitly limited to cases where “there is no other adequate remedy in a court.” *See* 5 U.S.C. § 704; *Bowen v. Massachusetts*, 487 U.S. 879, 903 (1988). Here, subject-matter jurisdiction under section 706(2) is lacking because Plaintiff Alwan has a remedy outside of the APA, as she can seek review under 8 U.S.C. § 1421(c) once the N-336 process is completed and if she is dissatisfied with the result. *See Heslop v. Att’y Gen’l of the United States*, 594 F. App’x 580, 584 (11th Cir. 2014); *cf. Escaler v. U.S.C.I.S.*, 582 F.3d 288, 291 n. 1 (2d Cir. 2009). Thus, dismissal of such an APA claim under Rule 12(b)(1) would be appropriate. Second, an APA challenge under section 706(2) would fail to state a claim under Rule 12(b)(6) because Alwan’s administrative appeal of the naturalization denial means the denial is now provisional and is not ripe, serving only for the time being until a final agency determination is reached when USCIS decides the naturalization appeal. *See Bennett*, 520 U.S. at 578 (“As a general matter . . . to be final . . . the [agency] action must mark the consummation of the agency’s decisionmaking process . . . [and] must not be of a merely tentative or interlocutory nature.”) (internal citations and quotation marks omitted). Accordingly, and aside from the CARRP-related challenges in Counts One through Five, if the Court reads into the FAC at Count Six an APA challenge under 5 U.S.C. § 706(2) to Plaintiff Alwan’s naturalization denial, it should dismiss such a challenge.



*American Petroleum Institute v. EPA*, 683 F.3d 382, 389 (D.C. Cir. 2012). A case is less ripe if dependent on future possibilities. *Id.* Finally, ripeness may be addressed *sua sponte* at any stage in the proceedings because it directly affects the Court’s jurisdiction. *Bergstrom v. Bergstrom*, 623 F.2d 517, 519 n. 1 (8th Cir. 1980).

On November 17, 2016, Plaintiff Alwan administratively appealed her naturalization denial by filing Form N-336. *See* Ex. B. As such, her circumstances have altered as the parties have moved closer in time to this Court’s review of the FAC. In analyzing the ripeness of this matter for judicial review, at least two factors counsel in favor of finding it is not ripe for this Court’s review and that it warrants dismissal for lack of subject-matter jurisdiction.<sup>11</sup> First, this Court should account for Plaintiff Alwan’s *current* situation – and the administrative developments that *she has prompted based on her own filings*. “Ripeness is peculiarly a question of timing and is governed by the situation at the time of review, rather than the situation at the time of the events under review.” *Iowa League of Cities v. E.P.A.*, 711 F.3d 844, 867 (8th Cir. 2013) (internal citations and quotations omitted). Here, in light of Plaintiff Alwan’s Form N-336, USCIS will provide her – on the day of her denial appeal hearing – the opportunity to explain to USCIS any extenuating circumstances that she believes mitigate USCIS’s finding in its naturalization denial decision that she has committed an unlawful act precluding her from establishing the requisite good moral character to naturalize. *See* Ex. A (citing 8 C.F.R. § 316.10(b)(3)(iii)) (providing that, “[u]nless the applicant establishes extenuating circumstances, the applicant shall be found to lack good moral character if, during the statutory period, the

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<sup>11</sup> The subject-matter jurisdiction analysis under ripeness and standing are related. *See Johnson v. Missouri*, 142 F.3d 1087, 1090 n. 4 (8th Cir. 1998) (“Although we realize that standing and ripeness are technically different doctrines, they are closely related in that each focuses on whether the harm asserted has matured sufficiently to warrant judicial intervention.”) (citation and internal quotation marks omitted).

applicant: . . . [c]omitted unlawful acts [.]”). Second, this Court should consider the administrative process already underway and the expertise in immigration matters like the one before this Court that USCIS possesses and can bring to bear in resolving Plaintiff Alwan’s naturalization denial appeal. *See INS v. Ventura*, 537 U.S. 12, 16-17 (2002) (per curiam) (highlighting the benefit of agency expertise “in the immigration context” and the “informed discussion and analysis” that can “help a court later determine whether its decision exceeds the leeway that the law allows.”). Considering these factors, the Court should dismiss the FAC because Plaintiff Alwan cannot show she meets the fitness prong of ripeness analysis.<sup>12</sup> *See Pub. Water Supply Dist.*, 345 F.3d at 572-73.

If, in light of the FAC coupled with Plaintiff Alwan’s current circumstances, this Court considers Alwan’s claims as a challenge to her naturalization denial,<sup>13</sup> it should dismiss such a challenge. Given Plaintiff Alwan’s pending administrative appeal of her naturalization denial, no challenge to that denial before this Court can be considered ripe, and such a challenge warrants dismissal for this reason under Federal Rule of Civil Procedure 12(b)(1).

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<sup>12</sup> As discussed above, a plaintiff is required to meet a two-pronged test to show ripeness. *See Pub. Water Supply Dist.*, 345 F.3d at 572-73 (explaining two-prong ripeness analysis). As such, Plaintiff Alwan’s above-described failure to meet the fitness prong is an independent basis on which this Court can dismiss the FAC without further analysis. Plaintiff Alwan also, however, fails to meet the hardship prong. As explained above, once the administrative process is resolved – with Plaintiff Alwan presenting at her appeal hearing any extenuating circumstances to explain her unlawful act – she can pursue judicial review of her naturalization denial under 8 U.S.C. § 1421(c) if USCIS sustains her denial. Plaintiff Alwan’s failure to show hardship is thus a second independent justification for denial of the FAC for lack of ripeness.

<sup>13</sup> Again, this Court should not read into the FAC a challenge to Plaintiff Alwan’s naturalization denial as the FAC lacks any such claim, and such a claim nonetheless is not ripe. *See State of Mo. ex rel. Missouri Highway & Transp. Comm’n v. Cuffley*, 112 F.3d 1332, 1338 (8th Cir. 1997) (“A federal court is neither required nor empowered to wade through a quagmire of what-ifs like the one the State placed before the District Court in this case. Until the State acts on the Klan’s application and creates a concrete record for judicial consideration, this dispute is simply not ripe for review.”).

## V. CONCLUSION

For the foregoing reasons, the Court should dismiss the FAC for lack of subject-matter jurisdiction.

Dated: December 19, 2016

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CERTIFICATE OF SERVICE

I hereby certify that, on December 19, 2016, the foregoing Defendants' Motion to Dismiss the First Amended Complaint was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following counsel of record for Plaintiff:

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/s/ Christopher W. Hollis  
CHRISTOPHER W. HOLLIS  
U.S. Department of Justice

# Exhibit A

Denial Decision by U.S. Citizenship and Immigration Services on Plaintiff Alwan's  
Form N-400, Application for Naturalization

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
St. Louis Field Office  
1222 Spruce Street, Room 2.205  
St. Louis, MO 63103



U.S. Citizenship  
and Immigration  
Services

OCT 20 2016

Wafaa Alwan

[REDACTED]  
Ballwin, MO 63021

A212166955  
NBC005536134

### DECISION

Dear Wafaa Alwan:

Thank you for submitting Form N-400, Application for Naturalization, to U.S. Citizenship and Immigration Services (USCIS) under section 316 of the Immigration and Nationality Act (INA).

After a thorough review of the information provided in your application for naturalization, the documents supporting your application, and your testimony during your naturalization interview, USCIS has determined that you are not eligible for naturalization. Accordingly, USCIS must deny your application for naturalization.

Generally, to qualify for naturalization under INA 316, an applicant must:

- Be 18 years of age or older at the time of filing Form N-400;
- Be lawfully admitted for permanent residence;
- Be a lawful permanent resident for at least 5 years at the time of filing Form N-400;
- Demonstrate good moral character for at least 5 years prior to the Form N-400 filing date, and during the period leading to administration of the Oath of Allegiance;
- Have resided continuously in the United States for at least 5 years as a lawful permanent resident before filing Form N-400;
- Have resided for at least 3 months in the State or USCIS District where residency is claimed before filing Form N-400;
- Have resided continuously in the United States from the date of filing Form N-400 up to the time of administration of the Oath of Allegiance;
- Be physically present in the United States for at least 2½ years at the time of filing Form N-400;
- Demonstrate a basic knowledge of U.S. history and government;
- Demonstrate the ability to read, write, and speak words in ordinary usage in the English language; and
- Establish an attachment to the principles of the U.S. Constitution and be disposed to the good order and happiness of the United States.

**Statement of Facts and Analysis Including Ground(s) for Denial**

On August 25, 2009, you obtained permanent resident status in immigrant classification RE6. USCIS received your Form N-400 on December 17, 2014, and on August 31, 2015, you appeared for an interview to determine your eligibility for naturalization.

During the interview and review of your application with an Immigration Services Officer, you testified that the information on your Form N-400, along with any amendments made during the naturalization interview, and the documents submitted by you were true and correct. The record reflects that during the statutory period of December 17, 2009 to the present, you were arrested on August 25, 2016 by the Illinois State Police for the offense of Unlawful Transportation of Contraband Cigarettes, a violation of 35ILCS 130/9C and a Class 4 felony. The arresting officer seized 500 cartons of cigarettes with Missouri tax stamps on them, which you attempted to conceal in the back seat and trunk of your car.

The police officer initially detained you for following another car too closely. You told the officer that you were en route from St. Louis, Missouri to Chicago, Illinois to pick up a relative. The officer observed a rubber mat in the back of your car that appeared to be covering something. When the officer asked if you were carrying illegal contraband, you replied that you had about 400 to 500 cartons of cigarettes, which you had bought at Sam's Club in St. Louis.

To be eligible for naturalization, you must demonstrate that you are a person of good moral character. USCIS finds that the unlawful act for which you have been arrested adversely reflects upon your moral character because it does not meet the standard of behavior of the average citizen in your community. Additionally, you have not established any extenuating circumstances that would warrant a departure from this finding. Since you have not established that you are a person of good moral character because of the unlawful act for which you have been arrested, you are ineligible for naturalization at this time. See INA 101(f) and 316(a)(3) and Title 8, Code of Federal Regulations (8 CFR), section 316.10 (b)(3)(iii).

If you believe that you can overcome the grounds for this denial, you may submit a request for a hearing on Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings, within 30 calendar days of service of this decision (33 days if this decision was mailed). See 8 CFR 336.2 (a) and 103.8(b). Without a properly filed Form N-336, this decision will become final. See INA 336.

To access Form N-336 or if you need additional information, please visit the USCIS Web site at [www.uscis.gov](http://www.uscis.gov) or call our National Customer Service Center toll free at 1-800-375-5283. You may also make an appointment to speak to a USCIS staff member in person at the USCIS office having jurisdiction over your current place of residence. To schedule an appointment, go to [www.uscis.gov](http://www.uscis.gov) and select INFOPASS.

Sincerely,

*Chester S. Moyer*



Chester S. Moyer  
Field Office Director

cc: John Richards, Esq.



**Attachment**  
**(Applicable Law/Regulations)**

To better assist you, the sections of the law referenced in your decision are provided below:

INA 316

(a) No person, except as otherwise provided in this title, shall be naturalized, unless such applicant, (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

INA 101

(f) For the purposes of this Act—

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;

(2) Repealed. Pub. L. 97-116, § 2(c)(1), Dec. 29, 1981, 95 Stat. 1611.

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D), (6)(E), and (10)(A) 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 marijuana), 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 chapter;

(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) of this section); or

(9) one who at any time has engaged in conduct described in section 1182(a)(3)(E) of this title (relating to assistance in Nazi persecution, participation in genocide, or commission of acts of torture or extrajudicial killings) or 1182(a)(2)(G) of this title (relating to severe violations of religious freedom).

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. In the case of an alien who makes a false statement or claim of citizenship, or who registers to vote or votes in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of such registration or voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such statement, claim, or violation that he or she was a citizen, no finding that the alien is, or was, not of good moral character may be made based on it.

8 CFR 316.10

(b) Finding of a lack of good moral character.

(3) Unless the applicant establishes extenuating circumstances, the applicant shall be found to lack good moral character if, during the statutory period, the applicant:

(iii) Committed unlawful acts that adversely reflect upon the applicant's moral character, or was convicted or imprisoned for such acts although the acts do not fall within the purview of §316.10(b) (1) or (2).

INA 336

(a) If, after an examination under section 335, an application for naturalization is denied, the applicant may request a hearing before an immigration officer.

(b) If there is a failure to make a determination under section 335 before the end of the 120-day period after the date on which the examination is conducted under such section, the applicant may apply to the United States district court for the

district in which the applicant resides for a hearing on the matter. Such court has jurisdiction over the matter and may either determine the matter or remand the matter, with appropriate instructions, to the Service to determine the matter. (c) The Attorney General shall have the right to appear before any immigration officer in any naturalization proceedings for the purpose of cross-examining the applicant and the witnesses produced in support of the application concerning any matter touching or in any way affecting the applicant's right to admission to citizenship, and shall have the right to call witnesses, including the applicant, produce evidence, and be heard in opposition to, or in favor of, the granting of any application in naturalization proceedings.

(d) The immigration officer shall, if the applicant requests it at the time of filing the request for the hearing, issue a subpoena for the witnesses named by such applicant to appear upon the day set for the hearing, but in case such witnesses cannot be produced upon the hearing other witnesses may be summoned upon notice to the Attorney General, in such manner and at such time as the Attorney General may by regulation prescribe. Such subpoenas may be enforced in the same manner as subpoenas under section 335(b) may be enforced.

(e) It shall be lawful at the time and as a part of the administration by a court of the oath of allegiance under section 337(a), for the court, in its discretion, upon the bona fide prayer of the applicant included in an appropriate petition to the court, to make a decree changing the name of said person, and the certificate of naturalization shall be issued in accordance therewith.

#### 8 CFR 336.2

(a) The applicant, or his or her authorized representative, may request a hearing on the denial of the applicant's application for naturalization by filing a request with USCIS within thirty days after the applicant receives the notice of denial.

#### 8 CFR 103.8

This section states authorized means of service by the Service on parties and on attorneys and other interested persons of notices, decisions, and other papers (except warrants and subpoenas) in administrative proceedings before Service officers as provided in this chapter.

(b) Effect of service by mail. Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, 3 days shall be added to the prescribed period. Service by mail is complete upon mailing.

# Exhibit B

Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA) submitted by Plaintiff Alwan and received by U.S. Citizenship and Immigration Services on November 17, 2016

# Request for a Hearing on a Decision in Naturalization Proceedings Under Section 336



Department of Homeland Security  
U.S. Citizenship and Immigration Services

**USCIS**  
**Form N-336**  
OMB No. 1615-0050  
Expires 05/31/2019

### For USCIS Use Only

Barcode	Date Stamp
Remarks	
<input type="checkbox"/> Re-Affirm N-400 Denial <input type="checkbox"/> Re-Determine N-400 Denial	

To be completed by an attorney or accredited representative (if any).	<input checked="" type="checkbox"/> Select this box if Form G-28 is attached.	Attorney State Bar Number (if applicable) 46728	Attorney or Accredited Representative USCIS Online Account Number (if any)
---	---	--	--

▶ **START HERE - Type or print in black ink.**

**NOTE:** Type or print "N/A" if an item is not applicable. Type or print "None" if the answer is none. Failure to answer all of the questions may delay your Form N-336.

Enter Your 9 Digit A-Number:

<b>Part 1. Information About You, the Naturalization Applicant</b>	▶ A-	2 1 2 1 6 6 9 5 5
--	------	-------------------

1. Current Legal Name (do not provide a nickname)

Family Name (Last Name) ALWAN	Given Name (First Name) WAFAA	Middle Name
----------------------------------	----------------------------------	-------------

2. Other Names Used (if any)

List all other names you have ever used, including aliases, maiden name, and nicknames. If you need extra space to complete this section, use the space provided in Part 9. Additional Information.

Family Name (Last Name)	Given Name (First Name)	Middle Name

3. Date of Birth (mm/dd/yyyy)

  1966

4. USCIS Online Account Number (if any)

▶

5. Physical Address (do not provide a PO Box in this space unless it is your only address)

Street Number and Name	Apt.	Ste.	Flr.	Number
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	B

City or Town	County	State	ZIP Code + 4
BALLWIN	ST LOUIS	MO	63021 -

Province or Region (foreign address only)	Postal Code (foreign address only)	Country (foreign address only)
		USA



**Part 1. Information About You, the Naturalization Applicant**  
(continued)

▶ A- 2 1 2 1 6 6 9 5 5

6. Mailing Address

In Care Of Name (if any)

WAFAA ALMAN

Street Number and Name

[REDACTED]

Apt. Ste. Flr. Number

B

City or Town

BALLWIN

County

ST LOUIS

State

MO

ZIP Code + 4

63021

Province or Region  
(foreign address only)

[REDACTED]

Postal Code  
(foreign address only)

[REDACTED]

Country  
(foreign address only)

USA

7. Contact Information

A. Daytime Telephone Number

[REDACTED]

B. Work Telephone Number (if any)

[REDACTED]

C. Evening Telephone Number

[REDACTED]

D. Mobile Telephone Number (if any)

[REDACTED]

E. Email Address (if any)

[REDACTED]@yahoo.com

**Part 2. Information About Form N-400 Denial On Which You (the Naturalization Applicant) Are Requesting a Hearing**

1. Form N-400 Receipt Number

NBC\*005536134

2. Date of Form N-400 Denial Notice (mm/dd/yyyy)

10/20/2016

3. USCIS Office That Issued Form N-400 Denial Notice

ST LOUIS FIELD OFFICE

**Part 3. Biographic Information**

1. Ethnicity (Select only one box)

Hispanic or Latino  Not Hispanic or Latino

2. Race (Select all applicable boxes)

White  Asian  Black or African American  American Indian or Alaska Native  Native Hawaiian or Other Pacific Islander

3. Height Feet  Inches

4. Weight Pounds

5. Eye Color (Select only one box)

Black  Blue  Brown  Gray  Green  Hazel  Maroon  Pink  Unknown/Other

6. Hair Color (Select only one box)

Bald (No hair)  Black  Blond  Brown  Gray  Red  Sandy  White  Unknown/Other



**Part 4. Reason You Are Requesting a Hearing**

▶ A- 2 1 2 1 6 6 9 5 5

Provide the reasons you are requesting a hearing on your denied Form N-400. If you need extra space to complete this section, use the space provided in Part 9, Additional Information.

**NOTE:** Refer to the What Evidence Must You Submit section of Form N-336 Instructions for documents to submit with your Form N-336.

The decision issued by USCIS is void. USCIS issued its purported decision on October 20, 2016. However, the naturalization applicant filed a mandamus lawsuit against USCIS pursuant to 8 U.S.C. Section 1447(b) prior to this decision being issued in the Eastern District of Missouri. As such, USCIS lost jurisdiction to issue a decision and the alleged decision of September 28, 2016 is null and void.

Moreover, the decision is without merit as denial is based on an arrest that did not result in a conviction or a court appearance. The fact is that the applicant is a good person of good moral character and her application for naturalization should be approved.

**Part 5. Accommodations for Individuals With Disabilities and/or Impairments**

▶ A- 2 1 2 1 6 6 9 5 5

**NOTE:** Read the information in the Form N-336 Instructions before completing this part.

1. Are you requesting an accommodation because of your disabilities and/or impairments?  Yes  No

If you answered "Yes" to Item Number 1., select any applicable box.

A.  I am deaf or hard of hearing and request the following accommodation. (If you are requesting a sign-language interpreter, indicate for which language (for example, American Sign Language).)

\_\_\_\_\_

\_\_\_\_\_

B.  I am blind or have low vision and request the following accommodation:

\_\_\_\_\_

\_\_\_\_\_

C.  I have another type of disability and/or impairment. (Describe the nature of your disability and/or impairment and the accommodation you are requesting.)

\_\_\_\_\_

\_\_\_\_\_

**Part 6. Naturalization Applicant's Statement, Contact Information, Certification, and Signature**

**NOTE:** Read the Penalties section of the Form N-336 Instructions before completing this part.

***Naturalization Applicant's Statement***

**NOTE:** Select the box for either Item A. or B. in Item Number 1. If applicable, select the box for Item Number 2.

1. Naturalization Applicant's Statement Regarding the Interpreter

A.  I can read and understand English, and I have read and understand every question and instruction on this request and my answer to every question.

B.  The interpreter named in Part 7. read to me every question and instruction on this request and my answer to every question in \_\_\_\_\_, a language in which I am fluent, and I understood everything.

2. Naturalization Applicant's Statement Regarding the Preparer

At my request, the preparer named in Part 8., \_\_\_\_\_, prepared this request for me based only upon information I provided or authorized.

***Naturalization Applicant's Contact Information***

3. Naturalization Applicant's Daytime Telephone Number

\_\_\_\_\_

4. Naturalization Applicant's Mobile Telephone Number (if any)

\_\_\_\_\_

5. Naturalization Applicant's Email Address (if any)

\_\_\_\_\_



**Part 6. Naturalization Applicant's Statement, Contact Information, Certification, and Signature (continued)**

▶ A- 2 1 2 1 6 6 9 5 5

**Naturalization Applicant's Certification**

Copies of any documents I have submitted are exact photocopies of unaltered, original documents, and I understand that USCIS may require that I submit original documents to USCIS at a later date. Furthermore, I authorize the release of any information from any of my records that USCIS may need to determine my eligibility for the immigration benefit I seek.

I further authorize release of information contained in this request, in supporting documents, and in my USCIS records to other entities and persons where necessary for the administration and enforcement of U.S. immigration laws.

I understand that USCIS may require me to appear for an appointment to take my biometrics (fingerprints, photograph, and/or signature) and, at that time, if I am required to provide biometrics, I will be required to sign an oath reaffirming that:

- 1) I reviewed and provided or authorized all of the information in my request;
- 2) I understood all of the information contained in, and submitted with, my request; and
- 3) All of this information was complete, true, and correct at the time of filing.

I certify, under penalty of perjury, that I provided or authorized all of the information in my request, I understand all of the information contained in, and submitted with, my request, and that all of this information is complete, true, and correct.

**Naturalization Applicant's Signature**

6. Naturalization Applicant's Signature

Date of Signature (mm/dd/yyyy)

➔ Don't forget to sign! 

11 | 11 | 16

**NOTE TO ALL NATURALIZATION APPLICANTS:** If you do not completely fill out this request or fail to submit required documents listed in the Instructions, USCIS may deny your request.

**Part 7. Interpreter's Contact Information, Certification, and Signature**

Provide the following information about the interpreter.

**Interpreter's Full Name**

1. Interpreter's Family Name (Last Name)

Interpreter's Given Name (First Name)

2. Interpreter's Business or Organization Name (if any)

**Interpreter's Mailing Address**

3. Street Number and Name

Apt. Ste. Fl. Number

City or Town

State

ZIP Code + 4

-

Province

Postal Code

Country



**Part 7. Interpreter's Contact Information, Certification, and Signature**

▶ A- 2 1 2 1 6 6 9 5 5

**Interpreter's Contact Information**

- 4. Interpreter's Daytime Telephone Number
- 5. Interpreter's Mobile Telephone Number (if any)
- 6. Interpreter's Email Address (if any)

**Interpreter's Certification**

I certify, under penalty of perjury, that:

I am fluent in English and , which is the same language specified in Part 6., Item B., in Item Number 1.; and I have read to this naturalization applicant in the identified language every question and instruction on this request and his or her answer to every question. The naturalization applicant informed me that he or she understands every instruction, question, and answer on the request, including the Naturalization Applicant's Certification, and has verified the accuracy of every answer.

**Interpreter's Signature**

- 7. Interpreter's Signature  Date of Signature (mm/dd/yyyy)

**Part 8. Contact Information, Declaration, and Signature of the Person Preparing this Request, if Other Than the Naturalization Applicant**

Provide the following information about the preparer.

**Preparer's Full Name**

- 1. Preparer's Family Name (Last Name)  Preparer's Given Name (First Name)
- 2. Preparer's Business or Organization Name (if any)

**Preparer's Mailing Address**

- 3. Street Number and Name  Apt.  Ste.  Flr.  Number
- City or Town  State  ZIP Code + 4  -
- Province  Postal Code  Country



**Part 8. Contact Information, Declaration, and Signature of the Person Preparing this Request, if Other Than the Naturalization Applicant (continued)**

▶ A- 2 1 2 1 6 6 9 5 5

**Preparer's Contact Information**

4. Preparer's Daytime Telephone Number

3149618200

5. Preparer's Mobile Telephone Number (if any)

3146023794

6. Preparer's Email Address (if any)

jim@hackinglawpractice.com

**Preparer's Statement**

- 7. A.  I am not an attorney or accredited representative but have prepared this request on behalf of the naturalization applicant and with the naturalization applicant's consent.
- B.  I am an attorney or accredited representative and my representation of the naturalization applicant in this case  extends  does not extend beyond the preparation of this request.

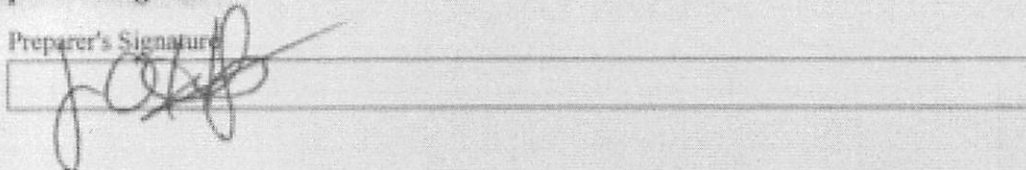
**NOTE:** If you are an attorney or accredited representative whose representation extends beyond preparation of this request, you may be obliged to submit a completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, with this request.

**Preparer's Certification**

By my signature, I certify, under penalty of perjury, that I prepared this request at the request of the naturalization applicant. The naturalization applicant then reviewed this completed request and informed me that he or she understands all of the information contained in, and submitted with, his or her request, including the **Naturalization Applicant's Certification**, and that all of this information is complete, true, and correct. I completed this request based only on information that the naturalization applicant provided to me or authorized me to obtain or use.

**Preparer's Signature**

8. Preparer's Signature



Date of Signature (mm/dd/yyyy)

11/11/2016



**Part 9. Additional Information**

If you need extra space to provide any additional information within this request, use the space below. If you need more space than what is provided, you may make copies of this page to complete and file with this request or attach a separate sheet of paper. Type or print your name and A-Number (if any) at the top of each sheet; indicate the Page Number, Part Number, and Item Number to which your answer refers; and sign and date each sheet.

1. Family Name (Last Name)  Given Name (First Name)  Middle Name

2. A-Number (if any) ▶ A-

3. A. Page Number  B. Part Number  C. Item Number

D. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

4. A. Page Number  B. Part Number  C. Item Number

D. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

5. A. Page Number  B. Part Number  C. Item Number

D. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

6. A. Page Number  B. Part Number  C. Item Number

D. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_