UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NUMBER: _____

[redacted],	)
Plaintiff,	)
v.	)
KEVIN MCALEENAN, Acting Secretary of Homeland Security; LEE CISSNA, Director Of United States Citizenship and Immigration Services; KRISTIAN PARKER, Kendall Field Office Director for United States Citizenship and Immigration Services; UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES,	)
Defendants	)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR REVIEW OF THE DENIAL OF NATURALIZATION UNDER 8 U.S.C. § 1421(c)

1. This is an action brought by a lawful permanent resident of the United States who is statutorily eligible to naturalize and become a United States citizen, but whose application for naturalization has been unlawfully denied.

PARTIES

2. Plaintiff [redacted] is a citizen of Haiti and a permanent resident of the United States. She resides in [redacted] Florida.

3. Defendant Kevin McAleenan is the Acting Secretary of Homeland Security. The Secretary of Homeland Security is charged with the administration and enforcement of all laws relating to immigration and naturalization. 8 U.S.C. § 1103(a). Defendant McAleenan is sued in his official capacity.

4. Defendant Lee Cissna is the Director of United States Citizenship and Immigration Services (USCIS). USCIS is charged with exercising the Department of Homeland Security's (DHS) power to adjudicate applications for naturalization. 8 C.F.R. § 332.1. Defendant Cissna is sued in his official capacity.

5. Defendant Kristian Parker is the Field Office Director for the Kendall Field Office of USCIS. In her capacity as Field Office Director, Defendant Parker denied [redacted] application for naturalization and reaffirmed her decision when [redacted] sought administrative review. Defendant Parker is sued in her official capacity.

6. Defendant United States Citizenship and Immigration Services is an agency within the meaning of 5 U.S.C. § 701(b)(1) and is charged with exercising the Department of Homeland Security's power to adjudicate applications for naturalization. 8 C.F.R. § 332.1.

JURISDICTION

7. This case arises under the Immigration and Nationality Act and the Administrative Procedure Act. The Court has jurisdiction under 8 U.S.C. § 1421(c) (authorizing judicial review of the denial of naturalization) and 28 U.S.C. § 1331 (federal question jurisdiction).

VENUE

8. Venue in the Southern District of Florida is appropriate pursuant to 8 U.S.C. § 1421(c) because [redacted] resides in the district and the administrative decision denying naturalization was issued by the Kendall Field Office, which is located within this district.

STATEMENT OF FACTS

9. [redacted] married [redacted] ([redacted] husband or [redacted]) on June [redacted] 1985 in Port-au-Prince, Haiti. [redacted] and [redacted] were married until [redacted] death.

10. [redacted] husband was granted permanent resident status under section 902 of the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA), Pub. L. No. 105-277, 112 Stat. 2681, 2681-538 (1998), on December [redacted] 2001.

11. On July [redacted] 2003, [redacted] husband died.

12. [redacted] was paroled into the United States on July [redacted] 2004, under 8 U.S.C. § 1182(d)(5), for the purpose of applying for adjustment of status under HRIFA as a derivative beneficiary of her husband's application.

13. On September [redacted], 2004, [redacted] filed an Application to Register Permanent Resident or Adjust Status, Form I-485. On April [redacted] 2006, USCIS approved [redacted] application for adjustment of status and she became a lawful permanent resident.

14. On December [redacted] 2011, [redacted] filed an Application for Naturalization, Form N-400, with USCIS. On her application for naturalization, [redacted] disclosed that her husband had died in 2003. On July [redacted], 2012, she appeared for an interview at the USCIS Kendall Field Office in Miami, Florida, in support of that application.

15. On February [redacted], 2013, DHS initiated removal proceedings against [redacted] in the Miami Immigration Court. DHS charged that she was inadmissible at the time of her adjustment of status for fraud or a willful misrepresentation of a material fact, and, therefore, deportable under 8 U.S.C. § 1227(a)(1)(A).

16. In removal proceedings, [redacted] applied for a waiver under 8 U.S.C. § 1227(a)(1)(H), which permits the Attorney General to waive the deportation provisions "relating to the removal of aliens within the United States on the ground that they were inadmissible at the time of admission as aliens [who procured an immigration benefit by fraud or willfully misrepresenting a material fact]." 8 U.S.C. § 1227(a)(1)(H).

17. On December [redacted], 2014, Immigration Judge Stephen Mander issued an order granting [redacted] application for a waiver under 8 U.S.C. § 1227(a)(1)(H). DHS did not appeal from this order, and the order became administratively final on January [redacted] 2015.

18. On March [redacted] 2017, [redacted] submitted another N-400 Application for Naturalization. On April [redacted] 2018, [redacted] attended an interview at the USCIS Kendall Field Office in support of her application. At the end of the interview, she was advised that she passed the tests of English and U.S. history and government, but that a decision about her application could not yet be made.

19. On August [redacted], 2018, USCIS issued a decision signed by Defendant Parker, which denied [redacted] application for naturalization. As the basis for denying [redacted] application, USCIS stated:

> On September [redacted] 2004, you filed your Form I-485 residency application under HRIFA. Furthermore, because your spouse died on July [redacted], 2004 [sic], you no longer met the definition of a spouse of an individual who adjusted as a principal HRIFA applicant. The qualifying relationship to a principal alien who adjusted to lawful permanent resident status under HRIFA must continue to exist at the time of adjustment of status. You no longer had a qualifying relationship to your spouse at the time that you filed your I-485, nor when your I-485 was approved, therefore you did not qualify to adjust status to that of a lawful permanent resident under HRIF [sic] and you have not demonstrated that you have been lawfully admitted for permanent resident status.
>
> To qualify for naturalization under INA 316, you must demonstrate that you meet all the requirements for naturalization including the requirement of having been lawfully admitted for permanent residence. You have not demonstrated that you have been lawfully admitted for permanent residence and, therefore, are ineligible for naturalization. See INA 318.

20. USCIS's initial decision denying [redacted] application for naturalization did not acknowledge that [redacted] had been granted a waiver under 8 U.S.C. § 1227(a)(1)(H).

21. On September [redacted] 2018, [redacted] filed a Form-336 Request for a Hearing on a Decision in Naturalization Proceedings. On November [redacted], 2018, she appeared for a hearing at the USCIS Kendall Field Office to review the denial of her application for naturalization. [redacted] argued that the Immigration Judge's grant of a waiver under 8 U.S.C. § 1227(a)(1)(H) rendered her lawfully admitted for permanent residence as of the date that her application for adjustment of status was granted.

22. On January [redacted] 2019, USCIS, through Defendant Parker, reaffirmed its decision to deny [redacted] application for naturalization. In its decision, USCIS stated that it "does not disagree that you were allowed to remain a permanent resident after the grant of a humanitarian waiver, even though you were unlawfully admitted." However, the agency went on to state that "[e]ven though you were not found to be inadmissible for fraud, you are not eligible for Naturalization because you were adjusted improperly."

23. The January [redacted], 2019, decision stated that it "constitutes a final administrative denial of your naturalization application" and that [redacted] "may request judicial review of this final determination by filing a petition for review in the United States District Court having jurisdiction over your place of residence."

24. The validity of the January [redacted] 2019, decision has not been upheld in any other proceeding.

FIRST CLAIM FOR RELIEF

(Immigration and Nationality Act, Administrative Procedure Act)

25. All of the foregoing allegations are repeated and realleged as if fully set forth herein.

26. Pursuant to 8 U.S.C. § 1421(c), "[a] person whose application for naturalization is denied, after a hearing before an immigration officer under section 1447(a) of this title, may seek review of such denial before the United States district court for the district in which such person resides in accordance with chapter 7 of title 5. 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."

27. The Administrative Procedure Act (APA), 5 U.S.C. § 706 provides that a Court "shall hold unlawful and set aside agency action, findings, and conclusions found to be – (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity, [or] (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right."

28. In *Matter of Sosa-Hernandez*, the Board of Immigration Appeals (BIA) held that 8 U.S.C. 1227(a)(1)(H)'s predecessor statute, section 241(f) of the Immigration and Nationality Act, "waives not only the exclusion ground but also waives the underlying fraud and renders the waiver recipient a lawful permanent resident from the time of his initial entry." 20 I. & N. Dec. 758, 760-61 (BIA 1993).

29. The BIA acts as the Attorney General's delegate in the cases that come before it. 8 C.F.R. § 1003.1(a)(1). Precedential BIA decisions, like *Matter of Sosa-Hernandez*, are binding on all officers and employees of the Department of Homeland Security. 8 C.F.R. 1003.1(g); 8 U.S.C. § 1103(a).

30. USCIS's denial of [redacted] application for naturalization was arbitrary, capricious, otherwise not in accordance with law, in excess of statutory authority and limitations, and short of statutory right because it conflicts with published decisions of the

BIA, which are binding on USCIS officers, as well as the text and structure of the Immigration and Nationality Act.

SECOND CLAIM FOR RELIEF

(Immigration and Nationality Act)

31. All of the foregoing allegations are repeated and realleged as if fully set forth herein.

32. Pursuant to 8 U.S.C. § 1421(c), "[a] person whose application for naturalization is denied, after a hearing before an immigration officer under section 1447(a) of this title, may seek review of such denial before the United States district court for the district in which such person resides in accordance with chapter 7 of title 5. 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."

33. Pursuant to 8 U.S.C. § 1429, except for circumstances not present here, "[n]o person shall be naturalized unless he has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of this chapter."

34. The term "lawfully admitted for permanent residence" is statutorily defined to mean "the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed." 8 U.S.C. § 1101(a)(20).

35. The Immigration Judge's grant of a waiver under 8 U.S.C. § 1227(a)(1)(H) cleared [redacted] original grant of permanent resident status of illegality and accorded her the privilege of residing permanently in the United States as an immigrant.

36. USCIS erroneously concluded that a person who "adjusted improperly," but who now is "allowed to remain a permanent resident after the grant of a humanitarian waiver," is prevented from being naturalized under 8 U.S.C. § 1429.

37. [redacted] is eligible to be naturalized under 8 U.S.C. §§ 1421–1429:

a. [redacted] was 18 years of age or older at the time of filing her application for naturalization.

b. [redacted] had been a lawful permanent resident for at least 5 years at the time of filing her application for naturalization.

c. [redacted] had good moral character for at least 5 years prior to filing her application for naturalization and continues to be a person of good moral character.

d. [redacted] had resided continuously in the United States for at least 5 years as a lawful permanent resident before filing her application for naturalization and has continuously resided in the United States since filing her application for naturalization.

e. [redacted] resided for at least 3 months in the USCIS District where she claimed residence before filing her application for naturalization.

f. [redacted] was physically present in the United States for at least 2 ½ years of the 5 year period referenced in Paragraph 37(d).

g. [redacted] has a basic knowledge of U.S. history and government.

h. [redacted] can read, write, and speak words in ordinary usage in the English language.

i. [redacted] is attached to the principles of the United States Constitution and is disposed to the good order and happiness of the United States.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays this Court to:

a. Declare that USCIS's denial of [redacted] application for naturalization was contrary to law;

b. Declare that Plaintiff has been lawfully admitted to the United States for permanent residence in compliance with 8 U.S.C. § 1429;

c. Enter an order setting aside USCIS's August 10, 2018, and January 9, 2019 decisions;

d. Grant Plaintiff's application for naturalization, after a hearing under 8 U.S.C. § 1421(c);

e. Enter an order directing Defendants to take all necessary steps to issue a certificate of naturalization to Plaintiff;

f. Award Plaintiff's counsel reasonable attorneys' fees under the Equal Access to Justice Act, and any other applicable authority; and

g. Grant such further relief as the Court deems just, equitable, and appropriate.

Dated: May [redacted] 2019

Respectfully submitted,

/s/Whitney Untiedt

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**Application for admission pro hac vice forthcoming*

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