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11 UNITED STATES DISTRICT COURT
12 DISTRICT OF NEVADA

14 MOHAMMAD AL FALAHI,
15 Petitioner,
16 vs.
17 UNITED STATES CITIZENSHIP AND
18 IMMIGRATION SERVICE, an entity,
19 Respondent.

Case No.: 16-2921

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

20 **INTRODUCTION**

21
22 1. Through this lawsuit, Petitioner Mohammad Al Falahi seeks *de novo* review of the United
23 States Citizenship and Immigration Service’s (“USCIS”) denial of his application for naturalization
24 as a United States citizen. Mr. Al Falahi requests a hearing *de novo* on that application in
25 accordance with 8 U.S.C. § 1421(c).
26

27 2. Mr. Al Falahi fled Iraq as a refugee and was placed by the United Nations in the United
28 States in 2009. When he arrived in America he spoke little English, but was determined to make

1 America his new home. Mr. Al Falahi has since become proficient in English and tried to better
2 himself by taking classes and graduating from the College of Southern Nevada. Mr. Al Falahi
3 now works full time, pays his taxes, and longs to finally become a citizen of this country. To Mr.
4 Al Falahi, United States citizenship means the opportunity to finally participate in American
5 democracy; and it symbolizes the belonging and loyalty he feels toward the United States.
6

7 3. Mr. Al Falahi meets all of the requirements for naturalization and submitted his N-400
8 application for naturalization on January 14, 2014.
9

10 4. Federal law provides that USCIS should take no more than six (6) months to adjudicate an
11 application from the time it is received. 8 U.S.C. § 1571(b) (providing that the processing of an
12 immigration benefit application should be completed within 180 days).
13

14 5. Yet, USCIS completely ignored these rules for Mr. Al Falahi. Mr. Al Falahi did not even
15 receive a first interview for his N-400 application until eighteen (18) months after filing his
16 application. And, importantly, this first interview occurred only after Mr. Al Falahi filed a Writ
17 of Mandamus asking the federal court to force USCIS to process his application after his
18 application had been pending for almost sixteen (16) months. (*Al Falahi v. Johnson et al*, Case
19 No. 2:15-cv-00857-JAD-GWF, filed May 7, 2015).
20

21 6. Mr. Al Falahi received a final determination from USCIS denying his citizenship on
22 January 19, 2016 - **over two (2) years after filing his N-400 application.**
23

24 7. The denial of Mr. Al Falahi's application was based on plainly unfounded and pre-textual
25 reasons.
26

27 8. In February of 2016, Mr. Al Falahi filed an administrative appeal of that denial explaining
28 that he had met all of the requirements for citizenship, and that his denial was unfounded.

1 9. Mr. Al Falahi alleged in his administrative appeal statement that the sole reason why the
2 agency had not granted his application—and instead subjected it to lengthy delays and baseless
3 denials—was because of an agency policy known as the Controlled Application Review and
4 Resolution Program (“CARRP”), which USCIS surreptitiously applied to the adjudication of Mr.
5 Al Falahi’s application.
6

7 10. CARRP is a little known, and unconstitutional program, that disproportionally targets
8 citizenship applicants from Arab, Middle Eastern, Muslim and South Asian communities. Under
9 CARRP, USCIS unjustifiably labels law abiding citizenship applicants as “national security
10 concerns” based on lawful religious activity, national origin, and innocuous associations.
11 Applications subject to CARRP are subject to substantial delays and are ultimately denied for pre-
12 textual reasons - all without ever being told why their applications were treated differently than
13 other applicants.
14

15
16 11. CARRP violates the Immigration and Nationality Act (“INA”), the Administrative
17 Procedure Act (“APA”), and the United States Constitution and imposes additional eligibility
18 criteria for immigration benefits not authorized by law. CARRP deprives applicants of a fair
19 process throughout the naturalization process.
20

21 12. On August 22, 2016, USCIS denied Mr. Al Falahi’s administrative appeal.
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23 13. Upon information and belief, USCIS denied Mr. Al Falahi’s application because CARRP
24 policy did not permit the officer to grant his application, not because he failed to meet the
25 requirements for citizenship.
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27 14. Mr. Al Falahi is entitled to the same fair and prompt evaluation of his eligibility to
28 naturalize based on the statutory criteria afforded other applicants.

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

5 **JURISDICTION AND VENUE**

6 16. This Court has jurisdiction over the present action pursuant to 8 U.S.C. § 1421(c) (denial
7 of a naturalization application may be reviewed *de novo* by the United States District Court) and
8 28 U.S.C. § 1331.
9

10 17. Venue is properly with this Court pursuant to 8 U.S.C. § 1421(c) and 28 U.S.C. § 1391(e)
11 and under 28 U.S.C. § 1391(b)(2) because Petitioner resides within the District of Nevada . *See*
12 *also* 8 C.F.R. § 336.9(b).

13 18. Petitioner has timely filed this Petition for Review. Even assuming that the 120 day
14 deadline set forth by the agency’s regulation governs this Court’s jurisdiction this action has been
15 filed within 120 days of Respondent’s August 22, 2016 final decision denying his application for
16 naturalization. *See* 8 C.F.R. § 336.9(b); *but see Nagahi v. INS*, 219 F.3d 1166 (10th Cir. 2000).
17

18 **PARTIES**

19 19. Petitioner Mohamad Al Falahi is a citizen and national of Iraq, and a lawful permanent
20 resident of the United States. Petitioner resides within Las Vegas, Nevada and the jurisdiction of
21 this Court.
22

23 20. Respondent United States Citizenship and Immigration Service (“USCIS”), which is a
24 division of the Department of Homeland Security (“DHS”), is the federal agency responsible for
25 the adjudication of naturalization applications. *See* 8 C.F.R. § 336.9(b) (“The petition for review
26 must be brought against USCIS . . .”).
27

28 //

LEGAL FRAMEWORK FOR NATURALIZATION

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2 21. To naturalize as a United States citizen, an applicant must be a lawfully admitted permanent
3 resident alien who has continuously resided in the United States. 8 U.S.C. § 1429; 8 U.S.C. § 1427.
4 An applicant must have also demonstrated “good moral character” by showing they are “attached
5 to the principles of the Constitution of the United States, and favorably disposed toward the good
6 order and happiness of the United States” 8 C.F.R. § 316.2(a)(7).

7
8 22. An applicant is presumed to possess the requisite “good moral character” for naturalization
9 unless, during the five years preceding the date of the application, he or she is found (1) to be a
10 habitual drunkard, (2) to have committed certain drug-related offenses, (3) to be a gambler whose
11 income derives principally from gambling or has been convicted of two or more gambling
12 offenses, (4) to have given false testimony for the purpose of obtaining immigration benefits or if
13 the applicant (5) has been convicted and confined to a penal institution for an aggregate period of
14 180 days or more, (6) has been convicted of an aggravated felony, or (7) has engaged in conduct
15 such as aiding Nazi persecution or participating in genocide, torture, or extrajudicial killings. 8
16 U.S.C. § 1101(f).

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19 23. To constitute false testimony under 8 U.S.C. § 1101(f)(6), it is not sufficient that a given
20 statement be incorrect. Rather, an applicant gives false testimony only where he or she provides
21 an intentionally misleading response, and only when it is done for the specific purpose of obtaining
22 immigration benefits, not where the misrepresentation is made for other reasons. “[I]nadvertently
23 inaccurate answers to vague questions do not satisfy the subjective intent required under §
24 1101(f)(6).” *Hamdi v. U.S. Citizenship & Immigration Servs.*, No. EDCV 10-894 VAP DTBX,
25 2012 WL 632397, at *10 (C.D. Cal. Feb. 25, 2012)(citing *United States v. Hovsepien*, 422 F.3d
26 883, 888 (9th Cir. 2005) (“*Hovsepien II*”).
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1 24. An applicant for naturalization has the burden of demonstrating eligibility for
2 naturalization by a preponderance of the evidence. 8 C.F.R. § 316.2(b).

3
4 **FACTUALBACKGROUND**

5 25. Mr. Al Falahi was born in Iraq in 1985. He is a Sunni Muslim who grew up under the
6 regime of Saddam Hussein and the ruling Ba'ath Party.

7 26. In 2004, in order for Mr. Al Falahi to graduate high school in Iraq, he was required to sign
8 a document agreeing to be part of the Ba'ath Party. Moreover, if Mr. Al Falahi refused to sign the
9 document, his life, and the life of his family, would have been put at great risk.

10 27. Accordingly, Mr. Al Falahi signed the document to protect himself, his family and to
11 obtain his high school diploma.

12 28. Mr. Al Falahi, however, never attended any meetings, made any payments, engaged in any
13 Ba'ath Party related activities nor ever considered himself an actual member of the Ba'ath Party.

14 29. After the fall of Saddam Hussein's regime in 2005, Mr. Al Falahi moved to Lebanon to
15 seek better work opportunities. Yet when war broke out in Lebanon in July 2006, Mr. Al Falahi
16 returned back to his home in Iraq.

17 30. In September 2006, after his return to Iraq, Mr. Al Falahi started to work at a transportation
18 company in Basrah, Iraq. While working for the company, Mr. Al Falahi's boss discovered that
19 the Jaish al Mahdi, a militia group, was forging the company's name and signature to steal cargo
20 belonging to the company and he reported it to the authorities. In retaliation, Mr. Al Falahi's boss
21 was then kidnapped and beaten by the Jaish al Mahdi and his life was spared only because he was
22 a Shi'ite Muslim, like the kidnappers. As Mr. Al Falahi is a Sunni Muslim, had he stayed working
23 for the company his life would have been in danger. For his safety, Mr. Al Falahi went home to
24 live with his parents.
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1 31. After living with his parents, Mr. Al Falahi then left home for a short while and when he
2 came back, he discovered that the Jaish al Mahdi had forced his parents out of their home. The
3 Jaish Al Mahdi, a Shiite group, was killing people who were of Sunni faith. As members of Mr.
4 Al Falahi's family were Sunni, they left fearing for their lives.

5 32. Mr. Al Falahi then went to live with his parents in their new home away from the Jaish al
6 Mahdi.

7 33. In April 2007, a man claiming to be a high ranking member of the military in the former
8 Saddam regime, named Abu Omar Al Baghdadi, called Mr. Al Falahi's house and demanded that
9 Mr. Al Falahi's father turn over Mr. Al Falahi's brother-in-law to him. The man on the phone
10 believed that Mr. Al Falahi's brother-in-law was affiliated with Al Qaida.
11

12 34. A few days later, Abu Omar Al Baghdadi called a second time and talked to Mr. Al Falahi's
13 father. Abu Omar Al Baghdadi threatened to kill Mr. Al Falahi's family unless the brother-in-law
14 was turned over.
15

16 35. Mr. Al Falahi's father was worried again for the life of his family and so told his son, Mr.
17 Al Falahi, to go back again to Lebanon and away from the dangers in Iraq.
18

19 36. Shortly after escaping the danger in Iraq, Mr. Al Falahi learned that his sister, who had
20 been married to the suspected Al Qaida member being sought, had been kidnapped. Her kidnappers
21 demanded that her husband be turned over in exchange for her return. Mr. Al Falahi's sister was
22 eventually released, but only because she was a Sunni Muslim and of the same sect as one of the
23 kidnappers. After her safe return, Mr. Al Falahi's sister divorced her husband.
24

25 37. While in Lebanon, Mr. Al Falahi applied for official refugee status with the United Nations.
26 When he applied for refugee status, Mr. Al Falahi spoke little English and told his persecution
27 story through a UN interpreter who spoke a Lebanese dialect, different from the one used by Mr.
28

1 Al Falahi. As a result, Mr. Al Falahi's official persecution story has minor details recorded
2 incorrectly. For example, the persecution story says that Mr. Al Falahi talked to the kidnapper
3 himself, when it was only his father who actually picked up the phone call; and the persecution
4 story names "Abu Omar Al Rawi" as the caller, but the name of the man actually threatening his
5 family was Abu Omar Al Baghdadi.

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7 38. During this refugee interview Mr. Al Falahi answered the interviewer's questions about
8 whether he had to sign a document to join the Ba'ath Party in order to continue his studies. The
9 fact that Mr. Al Falahi was *mandated* to sign this document was recorded in his official persecution
10 story.

11
12 39. Mr. Al Falahi completed the UN refugee admissions process, was granted refugee status
13 and was eventually placed in the United States. Mr. Al Falahi then completed the process to
14 become a permanent resident of the United States.

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16 40. On January 21, 2014, Mr. Al Falahi submitted his N-400 application to USCIS hoping to
17 finally become a citizen of the county he had grown to love.

18
19 41. When asked the vague question of, "Have you ever been a member of or associated with
20 any organization, association, fund, foundation, party, club, society or similar group in the United
21 States or in any other place?" on his N-400 application for naturalization he did not list the Ba'ath
22 Party because he never considered himself to be a member or associated with the Ba'ath Party.

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24 42. On May 7, 2015, Mr. Al Falahi's application had been pending for over a year without a
25 scheduled interview. Accordingly, he filed for a Writ of Mandamus against USCIS to compel
26 USCIS to process his N-400 application.

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28 43. After filing this Writ of Mandamus, Mr. Al Falahi was finally scheduled for an interview
on August 7, 2015 to determine eligibility for citizenship. This first interview occurred over

1 eighteen (18) months after Mr. Al Falahi filed his N-400 application.

2 44. During this interview, Mr. Al Falahi answered all of the interviewer's questions fully and
3 truthfully. During this first interview no questions were asked about whether he had any
4 associations with the Ba'ath Party and no questions were asked about his sister's kidnapping.

5 45. USCIS then took the unusual step of scheduling a second interview for Mr. Al Falahi to
6 determine eligibility for citizenship.

7 46. At this second interview on October 22, 2015, when asked specifically about the Ba'ath
8 Party, Mr. Al Falahi answered, consistent with his refugee application, that he was required to sign
9 a document to graduate from school, pledging allegiance to the Ba'ath Party, but that he never
10 considered himself a member.

11 47. During this second interview, Mr. Al Falahi was also asked several unartful and confusing
12 questions by the interviewer about his sister's kidnapping. The interviewer seemed to be looking
13 for Mr. Al Falahi to recall only the events of his sister's kidnapping, but confused where Mr. Al
14 Falahi was at the time of her kidnapping, and disregarded other important information in Mr. Al
15 Falahi's persecution story.

16 48. For example, the interviewer asked Mr. Al Falahi whether anything happened to his family
17 while he was living in Iraq. Mr. Al Falahi answered no, because he was living in Lebanon when
18 his sister was kidnapped. However, when asked specifically about whether his sister was
19 kidnapped, he answered in the affirmative. Mr. Al Falahi also told the interviewer that while living
20 in Iraq his family moved away from the risks of the fighting between the Sunnis and Shiites –
21 referring to when his family moved away because of the fighting brought on between the Sunnis
22 and Shiites by the Jaish al Mahdi as described above.

23 49. After this second interview, USCIS ultimately issued a denial of citizenship claiming that
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1 Mr. Al Falahi did not demonstrate good moral character. INA § 316(a)(3); *see also* § 8 C.F.R.
2 316.10(a). They based this determination on their pre-textual conclusion that false testimony was
3 given during the statutory period for the purpose of obtaining an immigration benefit. INA §
4 101(f)(6); *see also* § 8 C.F.R. 316.10(b)(2)(vi).

5 50. Specifically, USCIS claimed that Mr. Al Falahi purposefully hid his membership with the
6 Ba'ath Party. Yet, Mr. Al Falahi clearly disclosed the fact that he was forced to join when asked
7 about the Ba'ath Party at his second interview. USCIS also claimed that Mr. Al Falahi
8 misrepresented facts about his sister's kidnapping during his interviews. Yet, a full view of the
9 interview notes shows that the USCIS denial takes Mr. Al Falahi's answer out of context and
10 ignores the plain facts of Mr. Al Falahi's journey to America.

11 51. Mr. Al Falahi then timely submitted an appeal of this denial and request for a hearing. In
12 this request for a hearing he explained both the factual and legal reasons why he had met the
13 requirements for citizenship. He further alleged that his application was subject to serious delays
14 and ultimately denied because he was unconstitutionally subject to CARRP. He alleged that his
15 application was denied in violation of his right to due process, and that the decision to deny his
16 naturalization application was "arbitrary, capricious, an abuse of discretion, or otherwise not in
17 accordance with law" within the meaning of the Administrative Procedures Act, and there was no
18 basis for concluding that he was ineligible for naturalization. 5 U.S.C. § 706(2)(A).

19 52. This appeal was ultimately denied.

20 53. Mr. Al Falahi has exhausted all of his administrative remedies by administratively
21 appealing the denial in accordance with 8 U.S.C. § 1447(a), attending the appeal hearing before
22 an immigration officer, and receiving a decision on the administrative appeal. *See also* 8 U.S.C. §
23 1421(c) ("A person whose application for naturalization [] is denied, after a hearing before an
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1 immigration officer under section 336(a) [], may seek review of such denial before the United
2 States district court . . . ”).

3 **CAUSE OF ACTION**

4 **COUNT ONE**

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

6 54. The allegations contained in paragraphs 1-53 are repeated and re-alleged as though fully
7 set forth herein.

8 55. The INA at 8 U.S.C. § 1421(c) provides as follows: A person whose application for
9 naturalization under this subchapter is denied, after a hearing before an immigration officer under
10 section 1447 (a) [8 U.S.C. 1447(a)], may seek review of such denial before the United States
11 district court for the district in which such person resides in accordance with chapter 7 of title 5.
12 Such review shall be de novo, and the court shall make its own findings of fact and conclusions of
13 law and shall, at the request of the petitioner, conduct a hearing de novo on the application.
14

15 56. Mr. AlFalahi’s application for naturalization was denied on August 22, 2016 and this Court
16 has the authority to conduct a de novo hearing on his naturalization application under 8 U.S.C. §
17 1421(c), and petitioner hereby requests such hearing.
18

19 **PRAYER FOR RELIEF**

20
21 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 22 (1) Assume jurisdiction over this matter;
23 (2) Conduct a de novo hearing on Petitioner’s application for naturalization;
24 (3) Grant Petitioner’s application for naturalization;
25 (4) Administer the oath of allegiance or order Respondent to administer this oath;
26 (5) Award reasonable costs and attorneys’ fees; and
27
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1 (6) Grant such further relief as the Court deems just and proper.
2

3 Dated this 16th of December, 2016

4 Respectfully Submitted,

5 /s/ Amy M. Rose

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