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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

8  
9 United States of America,  
10 Plaintiff,

No. CV12-00482-PHX-DGC

**ORDER**

11 v.

12 Grace Xunmei Li,

13 Defendant.

14  
15 Before the Court is a motion by Plaintiff the United States of America to exclude  
16 the expert witness of Defendant Grace Xunmei Li. Defendant's request for oral  
17 argument is denied because the issues have been fully briefed and oral argument will  
18 not aid the Court's decision. *See* Fed. R. Civ. P. 78(b); *Partridge v. Reich*, 11 F.3d  
19 920, 926 (9th Cir. 1998). For the reasons set forth below, the Court will deny the  
20 motion.

21 **I. Background.**

22 In seeking revocation of Li's citizenship, the government contends that Li made  
23 false oral representations during her April 18, 2005 naturalization interview with  
24 United States Citizenship and Immigration Services ("USCIS") officer Que-Huong  
25 Nguyen that mirrored responses on her N-400 Application for Naturalization. Doc. 16  
26 at ¶ 24; Doc. 20 at ¶ 24. Li denies that she made any oral false statement during the  
27 interview as required to satisfy the false "testimony" requirement for revocation of  
28 citizenship under 8 U.S.C. § 1101(f)(6). Doc. 20 at ¶ 47; *Kungys v. United States*,

1 485 U.S. 759, 780 (1988).<sup>1</sup> Ms. Nguyen has represented that she does not recall the  
2 interview with Li. Doc. 109-1 at 7.

3 In her defense, Li intends to offer the expert testimony of Robert Mautino, an  
4 immigration and naturalization attorney. Doc. 109-1. Mr. Mautino will testify “about  
5 practices and procedures followed by Citizenship and Immigration Services  
6 adjudicators during naturalization interviews,” and “about the materiality of alleged  
7 misstatements by Ms. Li during her naturalization application process and whether  
8 those misstatements resulted in her procuring an immigration benefit that she otherwise  
9 would not have received.” Doc. 109-1 at 5.

10 Mr. Mautino’s opinions are based on his background and experience in  
11 practicing immigration law, and pleadings and documents supplied by Li’s counsel. *Id.*  
12 According to Mr. Mautino’s estimates, he has represented between 800 and 1,000  
13 applicants in naturalization cases in his career, each of which included at least one  
14 interview with a naturalization examiner or other authorized agent. *Id.*

15 The government seeks to have Mr. Mautino’s testimony excluded for two  
16 reasons. First, the government argues that Mr. Mautino’s testimony regarding the  
17 practices and procedures of USCIS adjudicators during naturalization interviews is not  
18 based on reliable principles and methods. Second, it argues that Mr. Mautino’s  
19 testimony about the materiality of any statements that Li may have made is  
20 impermissible legal opinion that encroaches on the province of the court.

## 21 **II. Discussion.**

22 Federal Rule of Evidence 702 provides that “[i]f scientific, technical, or other  
23 specialized knowledge will assist the trier of fact to understand the evidence or to  
24 determine a fact in issue, a witness qualified as an expert by knowledge, skill,  
25 experience, training, or education, may testify thereto in the form of an opinion or

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27 <sup>1</sup> Li did plead guilty to False Statements Relating to Naturalization in violation of  
28 18 U.S.C. § 1015(a) and admitted to false statements and omissions in her N-400  
application. Doc. 25-3 at 3.

1 otherwise.” If expert testimony lacks either reliability or relevance, it must be  
2 excluded. *Cooper v. Brown*, 510 F.3d 870, 943 (9th Cir. 2007).

3 **A. Reliability of Expert Methodology.**

4 The government argues that Mr. Mautino’s testimony regarding USCIS practice  
5 and procedures during naturalization interviews lacks a sound scientific basis because it  
6 is based on anecdotal methods, rather than any formal or informal survey. Doc. 109 at  
7 7. This argument fails under well-established precedent.

8 Experts are permitted wide latitude to offer opinions under Rule 702. *Daubert*  
9 *v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 592 (1993). When an expert is testifying  
10 on a non-scientific subject based on his or her experience in a specialized area, the  
11 exacting standards of *Daubert* “simply are not applicable to this kind of testimony,  
12 whose reliability depends heavily on the knowledge and experience of the expert,  
13 rather than the methodology or theory behind it.” *United States v. Hankey*, 203 F.3d  
14 1160, 1169 (9th Cir. 2000) (citing *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137,  
15 149 (1999) (“Engineering testimony rests upon scientific foundations, the reliability of  
16 which will be at issue in some cases . . . . In other cases, the relevant reliability  
17 concerns may focus upon personal knowledge or experience.”)).

18 The Court must nonetheless “make some kind of reliability determination to  
19 fulfill its gatekeeping function.” *Hangerter v. Provident Life & Acc. Ins. Co.*, 373  
20 F.3d 998, 1018 (9th Cir. 2004). Mr. Mautino’s qualifications and experience as stated  
21 in his affidavit satisfy the Court that he has first-hand experience in an area that is  
22 relevant to the issues in the case. Mr. Mautino estimates that he has assisted clients in  
23 up to 1,000 naturalization cases over the 30-year course of his career, all of which  
24 included a naturalization interview. Doc. 109-1 at 5. Mr. Mautino has been  
25 recognized by the California State Bar as a specialist in immigration and nationality  
26 law, and has served as both Chairman and on the Board of Governors of the American  
27 Immigration Lawyers’ Association, a nationally recognized legal association devoted to  
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1 this area of law. *Id.* at 11. The Court is satisfied that Mr. Mautino has the experience  
2 and qualifications to opine on issues related to naturalization interviews, and cannot  
3 conclude that his opinions should be excluded as unreliable. The government will have  
4 a full and fair opportunity to cross-examine Mr. Mautino at trial and challenge the  
5 credibility of his opinions.

6 **B. Impermissible Legal Opinion.**

7 It is well-established that “an expert witness cannot give an opinion as to her  
8 *legal conclusion*, i.e., an opinion on an ultimate issue of law.” *Nationwide Transp.*  
9 *Fin. v. Cass Info. Sys., Inc.*, 523 F.3d 1051, 1058 (9th Cir. 2008) (emphasis in  
10 original). The Court cannot conclude, however, that materiality is purely a question of  
11 law. Juries often decide materiality, applying the appropriate legal definition of  
12 materiality to misrepresentations or omissions and the context in which they were  
13 made. Expert testimony can prove helpful in making this determination.

14 In addition, concerns about undue expert influence are diminished in a bench  
15 trial. The Court generally is in a better position than a jury to assess the credibility and  
16 reliability of an expert’s testimony. *United States v. Hall*, 969 F.2d 1102, 1110 (D.C.  
17 Cir. 1992) (“The perceived danger of indiscriminate admission of expert testimony is  
18 that ‘because of its aura of special reliability and trust’ it can unduly bias the  
19 factfinder.”). The Court is not in danger of being “swayed by the ‘aura’ of the  
20 expert’s testimony.” *Id.* at 1102.

21 Even if the Court accepted Mr. Mautino’s testimony as fact testimony, it is  
22 relevant to the Court’s assessment of the processes and procedures employed by  
23 USCIS. This is particularly true given that the government has identified Mr. Alan  
24 Susoeff, a Supervisory Immigration Services Officer and the supervisor to Ms. Nguyen  
25 at the time of Li’s interview, to testify to the practices and procedures of USCIS.  
26 Doc. 120 at 11. The Court must determine whether the alleged statements by Li “had  
27 a natural tendency to influence the decisions of the Immigration and Naturalization  
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1 Service.” *Kungys*, 485 U.S. at 772. Legal and practical expertise from both Li and  
2 the government’s witness will assist the Court in this assessment, and the Court  
3 anticipates that Mr. Mautino’s testimony as to the import of the alleged misstatements  
4 will be met by the government witness’s testimony to the same.

5 **IT IS ORDERED** that the government’s motion to exclude Defendant’s expert  
6 (Doc. 109) is **denied**.

7 Dated this 3rd day of December, 2013.

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12 David G. Campbell  
13 United States District Judge  
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