

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
NASSER ALAVI aka SEYED NASSER  
ALAVI LOTFABAD,  
Defendant.

Civil No. 09cv602 L(NLS)  
**ORDER GRANTING MOTION FOR  
SUMMARY JUDGMENT [doc. #8]  
and DIRECTING ENTRY OF  
JUDGMENT**

The United States of America (“United States” or “plaintiff”) moves for summary judgment seeking to revoke and set aside the grant of United States citizenship for Nasser Alavi and to cancel his Certificate of Naturalization. Defendant, who is a fugitive, was served with the Complaint pursuant to California Code of Civil Procedure § 415.50 and Civil Local Rule 83.7, by the publication of the summons in the “San Diego Commerce” for the period and in the manner specified in California Government Code § 6064.

Defendant has not responded to the Complaint or to the motion for summary judgment which was filed electronically with the Clerk of the Court.

Summary judgment is appropriate if the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(c).

1 Alavi entered the United States on a J-1 visitor visa on June 28, 1992. He was then  
2 admitted to the United States for permanent residence on April 9, 1996. Between May 14, 2003  
3 and August 14, 2003, Alavi committed six separate acts of sexual battery and one act of rape by  
4 a foreign object. Although an arrest warrant was issued for Alavi on August 15, 2003, he was  
5 not arrested and charged with these acts until March 15, 2005.

6 After committing these acts and the issuance of the arrest warrant, Alavi completed his  
7 naturalization application but under penalty of perjury, indicated he had never committed a  
8 crime. He filed his application for naturalization and was interviewed. Under oath, he stated he  
9 had never committed a crime. On June 1, 2004, Alavi's application for naturalization was  
10 granted and on July 15, 2004, he took the Oath of Allegiance and was formally naturalized and  
11 admitted as a United States citizen.

12 On March 15, 2005, Alavi was arrested and charged with seven counts of Felony Sexual  
13 Battery committed between May 14, 2003 and August 14, 2003, and one count of Felony Rape  
14 by Foreign Object committed on August 14, 2003. Alavi was found guilty of Felony Rape by  
15 Foreign Object and six counts of Sexual Battery.<sup>1</sup> Pending sentencing, Alavi was released on a  
16 \$100,000 bond. He failed to appear for sentencing, the bond was forfeited and a bench warrant  
17 issued on November 8, 2005. Alavi remains a fugitive.

18 Alavi bears the burden of demonstrating he possessed good moral character during the  
19 statutory period to qualify for naturalization. He has not done so. The United States has  
20 presented evidence that proves Alavi had engaged in criminal activity during the statutory  
21 period, *i.e.*, Alavi's conviction of Sexual Battery on six separate occasions and Rape by Foreign  
22 Object with all acts occurring during the statutory period. His failure to disclose that he had  
23 committed these criminals acts to the United States preclude a finding that he had "good moral  
24 character."

25 The Court therefore finds that there are no genuine issues of material fact in dispute  
26 concerning Alavi's lack of good moral character and resultant ineligibility for naturalization.  
27

---

28 <sup>1</sup> Alavi was found not guilty on one count of Felony Sexual Battery.

1 Based on the foregoing, **IT IS ORDERED:**

2 1. **GRANTING** the United States' motion for summary judgment;


3 2. **REVOKING AND SETTING ASIDE** the grant of United States citizenship to  
4 defendant and **CANCELLING** his Certificate of Naturalization, No. 28 282 586;

5 3. **DIRECTING** the United States to publish this Order granting the revocation of  
6 Alavi's United States citizenship in the "San Diego Commerce."

7 4. **DIRECTING** the Clerk of the Court to enter judgment in accordance with this  
8 Order.

9 **IT IS SO ORDERED.**

10 DATED: May 3, 2010

11   
12 M. James Lorenz  
United States District Court Judge

13 COPY TO:

14 HON. NITA L STORMES  
15 UNITED STATES MAGISTRATE JUDGE

16 ALL PARTIES/COUNSEL  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28