IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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LIEN LE POLIZZI,

Plaintiff,

v.

U.S. DEPT. OF HOMELAND SECURITY U.S. CITIZENSHIP AND IMMIGRATION SERVICES, Milwaukee, WI,

Defendant.

OPINION AND ORDER

06-C-038-C

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This is a civil action brought under 8 U.S.C. § 1421(c), in which plaintiff Lien Le Polizzi petitions for review of an October 5, 2005 decision of the District Director of the United States Department of Homeland Security denying her application for naturalization. Now before the court is the motion of defendant United States Department of Homeland Security's motion for summary judgment, which plaintiff has not opposed. Because the undisputed facts reveal that the plaintiff has been convicted of crimes that bar approval of her application for naturalization, defendant's motion will be granted.

From defendant's proposed findings of fact, I find the following to be material and undisputed.

UNDISPUTED FACTS

Plaintiff Lien Le Polizzi is a fifty-one year old native and citizen of Vietnam. On November 22,1972 , she entered the United States on a fiancée visa. On June 20,1973, she became a lawful permanent resident of the United States.

In 1990, plaintiff was convicted of misdemeanor theft in violation of Wis. Stat. § 943.20(l)(a)(3)(c), and on June 22,1992, she was convicted of two counts of "forgery-uttering" in violation of Wis. Stat. § 943.38(2). Plaintiff was sentenced to four years in the Wisconsin state prison system for her forgery conviction.

On June 1,1993, the Immigration and Naturalization Service (a precursor agency to the Department of Homeland Security's Bureau of Citizenship and Immigration Services) determined that plaintiff was deportable as a result of her two criminal convictions. However, the department granted plaintiff a waiver of deportability under section 212(c) of the Immigration Act, thereby terminating deportation proceedings.

On April 29, 2002, plaintiff filed an application for naturalization with the Bureau of Citizenship and Immigration Services, which was denied on June 14, 2004, on the ground that plaintiff lacked "good moral character." Plaintiff appealed the decision. On October 5, 2005, following a review hearing conducted before an immigration officer, the Bureau denied plaintiff's appeal.

OPINION

To be eligible for naturalization, an alien must show (1) that "after being lawfully admitted for permanent residence," she has resided continuously in the United States "for at least five years"; (2) "has resided continuously within the United States from the date of the application up to the time of admission to citizenship"; and (3) "during all the[se] periods . . . 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." 8 U.S.C. § 1427(a).

The parties do not dispute that plaintiff was lawfully admitted to the United States as a permanent resident and that she has resided here continuously since her arrival in 1973. At issue is whether her state criminal convictions prohibit immigration officials from finding her to possess "good moral character." In her petition for review in this case, plaintiff asked the court to find her eligible for naturalization despite her prior convictions because she has demonstrated exceptional rehabilitation since she was released from prison.

Although immigration officials are given some discretion in determining whether to count certain minor criminal offenses as evidence of a lack of "moral character," under 8 C.F.R. § 316.10(b)(1)(ii), "an applicant *shall* be found to lack good moral character if the applicant has been . . . convicted of an aggravated felony as defined in section 101(a)(43) of the Act [codified as 8 U.S.C. § 1101(a)(43)] on or after November 29, 1990." (Emphasis added.) Aggravated felonies include any "offense relating to . . . forgery . . . for which the

term of imprisonment is at least one year." 8 U.S.C. § 1101(a)(43)(R). Therefore, the plain language of the statute requires officials to find an applicant lacking in moral character when she has been convicted of forgery and sentenced to more than one year in prison. It is undisputed that plaintiff was convicted of forgery-uttering on June 22,1992, and that she was sentenced to four years' imprisonment as a result of the conviction. Consequently, immigration officials were bound by law to find her lacking in "moral character" as that term is defined by § 1101(a)(43) and to deny her application.

When an applicant who has been convicted of an aggravated felony wants to become a naturalized citizen of the United States, there is only one possible way to clear the path for achieving that goal: to seek a "full and unconditional executive pardon." Although a pardon does not *guarantee* that an applicant will be found to possess good moral character,

> an applicant who receives a full and unconditional executive pardon during the statutory period is not precluded . . . from establishing good moral character, provided the applicant can demonstrate that extenuating and/or exonerating circumstances exist that would establish his or her good moral character.

8 C.F.R. § 316.10(c)(2). Therefore, should plaintiff wish to continue her pursuit of naturalization, her only recourse is to first obtain a pardon from the State of Wisconsin, pursuant to the process described in Wis. Stat. §§ 304.08 et seq. Unless she does so, neither the Bureau nor this court has authority to grant her application. Consequently, plaintiff's application must be denied.

ORDER

IT IS ORDERED that the motion for summary judgment of defendant United States Department of Homeland Security is GRANTED. The clerk of court is directed to enter judgment in favor of defendant and close this case.

Entered this 8th day of June, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge