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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TAREK HAMDI,)
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Petitioner,)
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v.)
)
UNITED STATES)
CITIZENSHIP AND)
IMMIGRATION SERVICE;)
DEPARTMENT OF HOMELAND)
SECURITY; IRENE MARTIN,)
DIRECTOR, SAN BERNARDINO)
FIELD OFFICE, UNITED)
STATES CITIZENSHIP AND)
IMMIGRATION SERVICE, IN)
HER OFFICIAL CAPACITY;)
JANE ARELLANO, DIRECTOR,)
LOS ANGELES OFFICE,)
UNITED STATES)
CITIZENSHIP AND)
IMMIGRATION SERVICE, IN)
HER OFFICIAL CAPACITY;)
ALEJANDRO MAYORKAS,)
DIRECTOR, UNITED STATES)
CITIZENSHIP AND)
IMMIGRATION SERVICE, IN)
HIS OFFICIAL CAPACITY;)
JANET NAPOLITANO,)
SECRETARY, DEPARTMENT OF)
HOMELAND SECURITY, IN)
HER OFFICIAL CAPACITY,)
)
Respondents.)

Case No. EDCV 10-00894
VAP (DTBx)

**ORDER GRANTING-IN-PART AND
DENYING-IN-PART DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT
(DOC. NO. 85)**

**[Motion filed on October 28,
2011]**

1 After Respondent the United States Citizenship and
2 Immigration Service ("USCIS," or "the Government") denied
3 his application for naturalization, Petitioner Tarek
4 Hamdi requested this Court grant him American
5 citizenship, pursuant to the Court's authority under 8
6 U.S.C. § 1421(c). (See generally Petition (Doc. No. 1).)
7 The Government opposes Hamdi's petition, arguing Hamdi is
8 ineligible for citizenship because he offered false
9 testimony in earlier naturalization proceedings, thereby
10 demonstrating that he lacks the requisite good moral
11 character for American citizenship. The Government now
12 moves for summary judgment, contending that undisputed
13 evidence shows Hamdi testified falsely about four things
14 in earlier proceedings before USCIS. (See Mot. for Summ.
15 J. ("MSJ") (Doc. No. 85).)

16
17 First, the Government contends Hamdi lied about where
18 his wife and children lived during his naturalization
19 interview. (See MSJ at 11-13.) Second, the Government
20 avers Hamdi lied about his employment status at the time
21 of his interview. (See id. at 14-17.) Third, the
22 Government posits Hamdi lied to USCIS about his
23 connection to the Benevolence International Foundation, a
24 charity designated a terrorist financier (albeit after
25 Hamdi's alleged involvement with it). (See id. at 17-
26 22.) Fourth, the Government contends Hamdi lied to USCIS
27 about his connection to Care International, another
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1 charity subsequently tied to terrorist organizations.
2 (See id. at 22-23.)
3

4 Though the Government raises the specter of
5 terrorism, it does not argue that Hamdi himself is a
6 terrorist, or a supporter of terrorism, or otherwise a
7 risk to national security. The Government argues only
8 that Hamdi lied in an effort to gain citizenship, and
9 therefore lacks the good moral character necessary to
10 naturalize. The evidence supporting the Government's
11 argument, however, is insufficient for the Court to grant
12 summary judgment. As discussed more fully, below, the
13 Court therefore DENIES IN PART the Government's Motion
14 for Summary Judgment.
15

16 Hamdi's Petition contains a second claim, arguing
17 that the phrase "associated with," in question 8 of part
18 10 of the application for naturalization (i.e., "Have you
19 ever been a member of or associated with and organization
20 . . . in the United States . . . ?"), is
21 unconstitutionally vague. (Pet. ¶ 48.) The Petition,
22 however, requests no relief predicated on the Court
23 finding question 8 unconstitutionally vague.
24 Consequently, any opinion rendered on the question would
25 not redress Hamdi's alleged injury; the Court's opinion
26 would thus be solely advisory. See Ursack Inc. v. Sierra
27 Interagency Black Bear Group, 639 F.3d 949, 955 (9th Cir.
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1 2011) (reciting the rule that lest they render advisory
2 opinions, federal courts may only rule upon live cases
3 and controversies); see also Lujan v. Defenders of
4 Wildlife, 504 U.S. 555, 560 (1992) (holding the doctrine
5 of standing, a "core component . . . of the case-or-
6 controversy requirement," may only be satisfied if it is
7 likely that a party's injury "will be 'redressed by a
8 favorable decision.'" (internal citation omitted)). As
9 the Court may not issue advisory opinions, Hayburn's
10 Case, 2 U.S. (Dall.) 409 (1792), the Court GRANTS the
11 Government's Motion as to Hamdi's second claim.

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I. BACKGROUND

14

A. Preliminary Evidentiary Issues

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The Court first disposes of two preliminary issues related to the evidence before it. First, throughout this Order, the Court will refer to exhibits proffered by the Government in support of its Motion as "Gov.'s Ex."; those proffered by Hamdi in opposition to the Government's Motion will be referenced throughout "Pet.'s Ex."

Second, the Court addresses any objections that might narrow the scope of evidence before it. As to Hamdi's Evidentiary Objections (Doc. No. 86-1), because it is irrelevant to these proceedings that Hamdi failed to

1 appear for a naturalization interview in 2006, the Court
2 sustains Hamdi's Objection No. 16.

3
4 The Court overrules the remainder of Hamdi's
5 objections, most of which lack any merit whatsoever. For
6 example, Hamdi makes a series of objections to
7 immigration service officer Roberto Osuna's competency to
8 testify to events that occurred during Osuna's interview
9 of Hamdi (see, e.g., Objection Nos. 3-15). Osuna,
10 however, is one of the two people who would have personal
11 knowledge of what occurred in that interview. Hamdi
12 further objects that various documents have not been
13 authenticated, though they are either self-authenticating
14 documents - e.g., checks, see United States v. Pang, 362
15 F.3d 1187, 1192 (9th Cir. 2004) - or are authenticated by
16 testimony in the declaration to which they are attached,
17 see Fed. R. Evid. 901(b). Hamdi's objection to the
18 authenticity of his checks (Objection No. 23) is
19 particularly frivolous, because in addition to their
20 status as self-authenticating, Hamdi himself testified
21 previously that he wrote the checks at issue (Hamdi Dep.
22 221:1-9, Apr. 14, 2011 ("Gov.'s Ex. G") (Doc. No. 85-9)).
23 Hamdi goes so far as to object that a fact pled in his
24 own Petition is irrelevant, and therefore inadmissible
25 (Objection No. 30).

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1 These types of meritless objections waste the
2 parties' and the Court's time and resources, and
3 consequently diminish the credibility of attorneys who
4 make them.

5

6 **B. Factual Background**

7 Petitioner Tarek Hamdi is an Egyptian citizen who
8 became a lawful permanent resident of the United States
9 in 1988, after his marriage to Linda Carriere, a United
10 States citizen. (See Gov.'s Ex. A (Doc. No. 85-3);
11 Gov.'s Ex. C (Doc. No. 85-5); Carriere Dep. 24:20-22,
12 Apr. 7, 2011 ("Pet.'s Ex. C") (Doc. No. 86-6).) Hamdi
13 and Carriere met while students at Northeastern
14 University in Massachusetts; the couple are still
15 married, and have four children between the ages of 14
16 and 22. (See Pet.'s Ex. C 25:10-18; Gov.'s Ex. A.) As
17 observant Muslims, Hamdi and his family practice zakat,
18 or charitable giving.

19

20 In service of this obligation, Hamdi and Carriere
21 both donated to the Benevolence International Foundation
22 ("BIF"), an organization that first came to their
23 attention in the mid-1990s. (See Hamdi Dep. 171:3-16,
24 Apr. 14, 2011 ("Gov.'s Ex. G"); Pet.'s Ex. C 107:20-
25 116:16.) Sometime in the early spring of 2000, while he
26 was living in Westborough, Massachusetts, Hamdi wrote a
27 check to the BIF for \$8,000; that sum represented

28

1 contributions from Hamdi, and from others who gave Hamdi
2 money, to donate towards BIF's endeavors in Chechnya.
3 (See Gov.'s Ex. G 226:23-227:14.) The memo line on the
4 check indicated it was for "Chechnya Relief." (See
5 Caputo Decl. ("Gov.'s Ex. B") (Doc. No. 85-4); Gov.'s Ex.
6 G 223:13-20.) The check was accompanied by a message
7 stating the funds were to be directed to the "Chechnya
8 Relief fund," and "in particular the *Injured Mujahadeen*."
9 (Gov.'s Ex. B (emphasis in original); see Gov.'s Ex. G.
10 224:5-226:17.) Between May 2000 and January 2002,
11 smaller amounts were drawn for BIF from Hamdi's and
12 Carriere's joint checking account on twenty occasions.
13 (Pet.'s Resp. to Gov.'s First Req. for Admis. No. 3.
14 ("Gov.'s Ex. J") (Doc. No. 85-12).) In November 2002,
15 the Treasury Department designated BIF a terrorist
16 financier. (Pet. ¶ 26.;¹ see Press Release, U.S. Dep't
17 of Treasury, Treasury Designates Benevolence
18 International Foundation and Related Entities as
19 Financiers of Terrorism (Nov. 19, 2002), available at
20 [http://www.treasury.gov/press-center/press-releases/Pages](http://www.treasury.gov/press-center/press-releases/Pages/po3632.aspx)
21 [/po3632.aspx](http://www.treasury.gov/press-center/press-releases/Pages/po3632.aspx)) There is no evidence that Hamdi or
22 Carriere donated money to BIF after January 2002.

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27 ¹ Hamdi pled this fact in his petition and the
28 Government did not dispute it in its answer. (See Answer
(Doc. No. 10) ¶ 26.) Accordingly, the Court treats the
fact as admitted.

1 In addition to his donations to BIF, during his time
2 in Westborough, Hamdi had some involvement with Care
3 International ("Care"), an eleemosynary entity whose
4 principals were investigated by the United States for
5 falsely securing tax-exempt status for an organization
6 that promoted violent jihad.² (See Gov.'s Ex. G 236:2-
7 252:19; United States v. Mubayyid, 658 F.3d 35 (1st Cir.
8 2011).) Specifically, Hamdi volunteered to give out
9 newsletters and fliers for Care from time to time, and
10 occasionally made announcements of upcoming events for
11 the organization; he also stuffed envelopes with fliers
12 on how to calculate zakat. (See Gov.'s Ex. G 238:3-7;
13 242:7-16.) Additionally, Hamdi made financial donations
14 to Care. (Id. 242:23-25.)

15
16 Hamdi also attended various functions at which some
17 of Care's principals were present. (See id. 247:25-
18 248:6.) He became acquainted with Suheil Lahir (a
19 president of the organization),³ Emad Aldeen Muntsar (the
20 incorporator and also a past president of the
21 organization, see Mubayyid, 658 F.3d at 42), and Mohamed
22

23
24 ² In recounting the evidence on which a jury
25 convicted several of Care's principals, the United States
26 Court of Appeals for the First Circuit referred to the
27 form of jihad advocated by Care as "violent jihad,"
28 Mubayyid, 658 F.3d at 43, as distinguished from jihad,
defined broadly, which could include more benign forms of
struggle or resistance.

³ See Care International, Inc., Annual Report (M.G.L
Ch. 180 Corp. Annual Report) (Nov. 20, 2001).

1 Mubayed (a past treasurer, see Mubayyid, 658 F.3d at
2 43).⁴ (See Gov.'s Ex. G 248:13-25.) Hamdi testified
3 that he has not "really communicat[ed]" with Lahir, since
4 leaving Massachusetts in 2002, but Lahir "was a friend";
5 he further testified that while volunteering for Care, he
6 saw Lahir "once a month at most." (Id. 249:1-17; see id.
7 250:14-20.) Hamdi then testified that he no longer knows
8 Muntsar, and that he was closer to Lahir than to Muntsar
9 - though he visited Muntsar's home "a couple times" and
10 attended his wedding as a member of the Islamic
11 community. (Id. 250:21-251:8.) As for Mubayed, Hamdi
12 testified that they also lost contact in 2002, but that
13 Hamdi knew him as "a neighbor." (See id. 252:11-15.)
14

15 In mid-2002, Hamdi - a civil engineer - moved from
16 Westborough to Stockton, California, for work. (See
17 Gov.'s Ex. A; Gov.'s Ex. G. 44:1-15.) In January 2003,
18 FBI agents visited Hamdi at his Stockton residence, and
19 arranged to interview him at a local coffee shop. (See
20 Gov.'s Ex. G 214:4-215:4.) Acting on a request that they
21 interview Hamdi about "his associations and/or
22 fundraising efforts related to the Benevolence
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25 ⁴ These names appear here as spelled in the
26 transcript of Hamdi's deposition. In the criminal
27 proceedings against them, Muhmaed Mubayyid's and
28 Emadeddin Muntasser's names are spelled differently. See
Mubayyid, 658 F.3d at 40. Likewise, Suheil Laher's name
is spelled differently in Care's corporate filings. See
Care International, Inc., Annual Report (M.G.L Ch. 180
Corp. Annual Report) (Nov. 20, 2001).

1 International Foundation," the two agents, Michael Caputo
2 and Leticia Lucero, met with Hamdi on January 8, 2003.
3 (Caputo Dep. 31:5-32:18 ("Gov.'s Ex. I") (Doc. No.85-
4 11).) Caputo later testified that in the interview,
5 Hamdi "claimed that . . . he had only ever done
6 fundraising for children, children's causes, and that his
7 amounts had only ever been small amounts. His terms, a
8 couple of hundred dollars." (Gov.'s Ex. I 49:22-50:3.)
9

10 Caputo then confronted Hamdi with copies of the
11 \$8,000 check and accompanying message, suggesting that
12 Hamdi had contributed more than a couple of hundred
13 dollars, and to something other than a children's cause.
14 (See id. at 65:17-66:17.) Hamdi admitted to Caputo that
15 the message looked like a document he drafted, and that
16 the checks were his - but he did not recall sending so
17 large an amount, and did not recall sending anything
18 specifically for the benefit of mujahadeen. (Id. 66:9-
19 17.) There is no evidence before the Court that Hamdi
20 had any subsequent interactions with the FBI.
21

22 Hamdi found the climate in Stockton disagreeable, and
23 obtained a job in Southern California, so he moved to
24 Corona with his family in early 2006. (See Gov.'s Ex. A;
25 Gov.'s Ex. G 156:1-157:15; Carriere Dep. 144:1-7, Apr. 7,
26 2011 ("Gov.'s Ex. H") (Doc. No. 85-10).) On February 15,
27 2007, Hamdi completed an application for naturalization.
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1 (See Gov.'s Ex. A.) Several entries on the application
2 are central to the dispute now before the Court:

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- When asked to list "where [he] has worked . . . during the last five years," Hamdi wrote that between June 28, 2005, and the time of his application, he was working for Harris & Associates. (Id.)

- When asked his spouse's "home address," Hamdi wrote the address of the family's house in Corona. (Id.)

- When asked for the "current address" of his children, Hamdi wrote, for each child, "WITH ME." (Id.)

- When asked if he has "ever been a member of or associated with any organization, association, fund, foundation, party, club, society or similar group in the United States or in any other place," Hamdi answered "yes," and then listed three groups: (1) Al Hamra Academy School Board; (2) Islamic Society of Greater Worcester, and; (3) Islamic Society of Corona/Norco. (Id.)

1 At the end of the 2008 school year, Carriere and
2 Hamdi's four daughters flew to Egypt, on one-way tickets.
3 (See Pet.'s Ex. C 151:24-153:6; Gov.'s Ex. G 311:14-19.)
4 Carriere testified the family went because "Tarek's
5 mother . . . was ill and we hadn't seen her in awhile,
6 and we have never been to Egypt." (Pet.'s Ex. C 152:1-
7 10.) Hamdi then moved from Corona to a one-bedroom
8 apartment in Riverside. (See Gov.'s Ex. G 311:20-
9 313:11.) By the end of October, Hamdi was laid off from
10 his job at Harris & Associates. (See Hamdi Dep. 169:2-5,
11 Apr. 14, 2011 ("Pet.'s Ex. F") (Doc. No. 86-7).)

12
13 On November 3, 2008, immigration service officer
14 Roberto Osuna interviewed Hamdi in connection with his
15 application for naturalization. Osuna testified that
16 during the interview, he went over Hamdi's application
17 and asked him to verify his responses to various
18 questions. (See Osuna Decl. ¶¶ 5-7 (Doc. No. 85-1).)
19 Osuna further declared that as he went through the
20 application, he "made a check mark . . . indicating that
21 [he] asked a particular question" (id. ¶ 6), and "where
22 Mr. Hamdi's answers differed from the written responses .
23 . . or where particular information needed to be updated
24 from the time Mr. Hamdi filed his . . . [a]pplication,"
25 Osuna "wrote the updated information in the corresponding
26 sections on [Hamdi's application] contemporaneous[ly]

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1 with Mr. Hamdi['s]" responses to Osuna's questions (id. ¶
2 7).

3
4 It is those responses the Government now alleges are
5 false. Osuna declares he asked Hamdi whether Hamdi was
6 employed at Harris & Associates at the time of the
7 interview, and that Hamdi responded he was. (Id. ¶ 10.)
8 Osuna further states he asked Hamdi where his wife and
9 children lived, and Hamdi replied that they lived with
10 him. (Id. ¶¶ 12-13.) Osuna also declares that when
11 asked whether "he is or was a member of or associated
12 with any other organization that he did not report,"
13 Hamdi answered that he was not. (Id. ¶ 14.) When asked
14 specifically whether he had ever made any donations to
15 BIF, Osuna recalls that Hamdi responded "no," and further
16 answered that he had never "given any false or misleading
17 information to any U.S. government official while
18 applying for any immigration benefit." (Id. ¶¶ 14-17.)
19

20 For his part, as the Court will discuss at greater
21 length below, Hamdi argues that he told Osuna he was
22 unemployed at the time of the interview. (Pet.'s Ex. F
23 291:2-15.) Hamdi further explains that he may have told
24 Osuna that his wife and children lived with him, because
25 the family still considered Hamdi's address in the United
26 States their permanent address. (See Gov.'s Ex. H
27 144:25-145:2.) Further, Hamdi does not recall Osuna ever
28

1 asking him whether he contributed to BIF. (See Pet.'s
2 Ex. F 293:8-10.)

3

4 USCIS rejected Hamdi's application for naturalization
5 on June 8, 2009. (See Gov.'s Ex. F (Doc. No. 85-8).) In
6 the letter denying Hamdi's application, USCIS wrote:

7

8 You failed to reveal your affiliation with the
9 Benevolent International Foundation, an
10 organization based in Chicago, IL. In addition,
11 a source of public information revealed that your
12 last employer was LIM & Nascimento Engineering
13 Corp., Lan Engineering Corp.. You failed to
14 reveal the aforementioned employer on your N-400
15 application and at your interview. Furthermore,
16 the same public source reveals that you are
17 currently unemployed and have no source of income
18 which is contrary to your statement made during
19 the interview.

20 (Gov.'s Ex. F.)⁵

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25 ⁵ This passage is copied verbatim - including
typographical errors - from the original document.

26

27 The reader will observe the appearance, for the first
time in this narrative, of the name "LAN Engineering."
28 The Court will discuss Hamdi's relationship with LAN,
which appears wholly irrelevant to anything Hamdi may
have discussed with Osuna, in the pages to follow.

1 On July 15, 2009, Hamdi appealed USCIS's decision.
2 (See Pet.'s Ex. P (Doc. No. 86-11).) Responding to the
3 charge that he failed in both his application and his
4 interview to disclose his affiliation with BIF, Hamdi
5 argued that as a mere donor to a charitable organization,
6 he had no "affiliation" with the organization to
7 disclose. (See id.) Further responding to the charge he
8 failed to disclose his employment with LAN Engineering
9 Corporation, Hamdi argued that he could not have
10 disclosed that employment because he did not work for LAN
11 until January 2009, while his interview took place in
12 November 2008. (See id.) Finally, Hamdi contraverted
13 USCIS's allegation that he was unemployed at the time
14 USCIS denied his application. (See id.)

15
16 On April 8, 2010, USCIS again denied Hamdi's
17 application. (Pet.'s Ex. T (Doc. No. 86-11).) In sum,
18 USCIS found the following:

- 19
- 20 • Hamdi made a false statement in his November 8,
21 2003, interview, "in that [he] failed to reveal
22 [his] affiliation with . . . BIF" (Id.)
23
 - 24 • Hamdi made a false statement during the hearing
25 on his appeal, when he first "stated, under
26 oath, that [he] had no knowledge that the BIF
27 had been involved in the financial support of
28

1 terrorist groups and activities," but "later in
2 the interview, revealed that [he was] indeed
3 aware that the BIF had been accused of financing
4 terrorism" (Id.)

- 5
- 6 • Hamdi's "testimony and responses did not include
7 any voluntary mention of the BIF until [he was]
8 shown a copy of [his] cancelled personal check .
9" (Id.)

10

11 USCIS therefore concluded Hamdi's "omission of the
12 material facts, both on [his] N-400 application and
13 during [his] interview, that [he is] associated with and
14 [has] made monetary contributions to the Benevolence
15 International Foundation compromised the credibility of
16 your testimony and made it impossible for you to
17 establish that you are a person of good moral character .
18" (Id.)

19

20 Following USCIS's denial of his appeal, Hamdi
21 petitioned this Court for naturalization. The Government
22 now moves for summary judgment on the ground that Hamdi
23 lacks the good moral character required to naturalize.
24 (See generally MSJ.) Hamdi filed a timely Opposition
25 (Doc. No. 86), and the Government filed a Reply (Doc. No.
26 88).

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1 **II. LEGAL STANDARD**

2 **A. Naturalization**

3 Under 8 U.S.C. § 1421(c), a district court may
4 conduct a de novo review of a denied application for
5 naturalization, making its own findings of fact and
6 conclusions of law. A court may order a person
7 naturalized if the person meets the criteria set forth in
8 8 U.S.C. § 1427. See United States v. Hovsepien, 359
9 F.3d 1144, 1165 (9th Cir. 2004); see, e.g., Attala v.
10 Kramer, No. CV09-1610-PHX-NVW, 2011 WL 2457492, at *13
11 (D. Ariz., June 20, 2011). The statutory criteria must
12 be applied strictly, as "Congress alone has the
13 constitutional authority to prescribe rules for
14 naturalization, and the courts' task is to assure
15 compliance with the particular prerequisites to the
16 acquisition of United States citizenship . . . to
17 safeguard the integrity of this 'priceless treasure.'" Fedorekno v. United States, 449 U.S. 490, 506-07 (1981)
18 (quoting Johnson v. Eisentrager, 339 U.S. 763, 791 (1950))
19 (Black, J., dissenting)).
20

21
22 As outlined in Section 1427, the criteria for
23 naturalization are:

- 24
- 25 • An applicant must have resided continuously, as
26 a lawful permanent resident, in the United
27 States for five years immediately preceding his
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1 application to naturalize; must have been
2 physically present in the United States at least
3 half of that time, and; must have resided within
4 the state or USCIS district in which he filed
5 his application for at least three months. 8
6 U.S.C. § 1427(a) (1); see 8 C.F.R. § 316.5.

- 7
- 8 • An applicant must reside in the United States
9 from the time of his application until the time
10 of his "admission to citizenship." 8 U.S.C. §
11 1427(a) (2); see 8 C.F.R. § 316.5.

 - 12
 - 13 • An applicant must have been, and remain, "a
14 person of good moral character, attached to the
15 principles of the Constitution of the United
16 States, and well disposed to the good order and
17 happiness of the United States." 8 U.S.C. §
18 1427(a) (3); see 8 C.F.R. §§ 316.10-316.11. "In
19 determining whether the applicant has sustained
20 the burden of establishing good moral
21 character," during the five year period prior to
22 his application, the United States "may take
23 into consideration . . . the applicant's conduct
24 and acts at any time," including before and
25 after the five year period. 8 U.S.C. § 1427(e);
26 see United States v. Hovsepian, 422 F.3d 883,
27 886 (9th Cir. 2005) (en banc) ("Conduct
28

1 occurring outside the regulatory period [i.e.,
2 the five year period in Section 1427(a)(1)] is
3 relevant only insofar as it bears on [an
4 applicant's] present moral character.").

5
6 The burden is on an applicant to show that he meets
7 all of the criteria set forth in Section 1427 and
8 expounded upon in 8 C.F.R. §§ 316.1 et seq. See Berenyi
9 v. Dist. Dir., Immigration & Naturalization Serv., 385
10 U.S. 630, 671 (1967) ("[I]t has been universally accepted
11 that the burden is on the alien applicant to show his
12 eligibility for citizenship in every respect."). Any
13 doubts about an applicant's eligibility should be
14 resolved against the applicant. Id.

15
16 **B. Summary Judgment**

17 A motion for summary judgment shall be granted when
18 there is no genuine issue as to any material fact and the
19 moving party is entitled to judgment as a matter of law.
20 Fed. R. Civ. P. 56(a); Anderson v. Liberty Lobby, Inc.,
21 477 U.S. 242, 247-48 (1986). The moving party must show
22 that "under the governing law, there can be but one
23 reasonable conclusion as to the verdict." Anderson, 477
24 U.S. at 250.

25
26 Generally, the burden is on the moving party to
27 demonstrate that it is entitled to summary judgment.

28

1 Margolis v. Ryan, 140 F.3d 850, 852 (9th Cir. 1998);
2 Retail Clerks Union Local 648 v. Hub Pharmacy, Inc., 707
3 F.2d 1030, 1033 (9th Cir. 1983). The moving party bears
4 the initial burden of identifying the elements of the
5 claim or defense and evidence that it believes
6 demonstrates the absence of an issue of material fact.
7 Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

8
9 When the non-moving party has the burden at trial,
10 however, the moving party need not produce evidence
11 negating or disproving every essential element of the
12 non-moving party's case. Celotex, 477 U.S. at 325.
13 Instead, the moving party's burden is met by pointing out
14 there is an absence of evidence supporting the non-moving
15 party's case. Id.

16
17 The burden then shifts to the non-moving party to
18 show that there is a genuine issue of material fact that
19 must be resolved at trial. Fed. R. Civ. P. 56(e);
20 Celotex, 477 U.S. at 324; Anderson, 477 U.S. at 256. The
21 non-moving party must make an affirmative showing on all
22 matters placed in issue by the motion as to which it has
23 the burden of proof at trial. Celotex, 477 U.S. at 322;
24 Anderson, 477 U.S. at 252; see also William W. Schwarzer,
25 A. Wallace Tashima & James M. Wagstaffe, Federal Civil
26 Procedure Before Trial, 14:144. "This burden is not a
27 light one. The non-moving party must show more than the
28

1 mere existence of a scintilla of evidence." In re Oracle
2 Corp. Securities Litigation, 627 F.3d 376, 387 (9th Cir.
3 2010) (citing Anderson, 477 U.S. at 252). "The
4 non-moving party must do more than show there is some
5 'metaphysical doubt' as to the material facts at issue."
6 In re Oracle, 627 F.3d at 387 (citing Matsushita Elec.
7 Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586
8 (1986)).

9
10 A genuine issue of material fact exists "if the
11 evidence is such that a reasonable jury could return a
12 verdict for the non-moving party." Anderson, 477 U.S. at
13 248. In ruling on a motion for summary judgment, the
14 Court construes the evidence in the light most favorable
15 to the non-moving party. Barlow v. Ground, 943 F.2d
16 1132, 1135 (9th Cir. 1991); T.W. Elec. Serv. Inc. v. Pac.
17 Elec. Contractors Ass'n, 809 F.2d 626, 630-31 (9th Cir.
18 1987).

20 III. DISCUSSION

21 The Government contends it is entitled to summary
22 judgment on the question whether Hamdi lacks the good
23 moral character necessary to naturalize. (See generally
24 MSJ.) As the Court set forth previously, the Government
25 presents four areas in which it argues Hamdi lacked
26 candor during the administrative process, thereby
27 presenting an insurmountable obstacle to his
28

1 naturalization.⁶ (See id. 11-13, 14-17, 17-22, 22-23.)

2
3 To carry its burden on summary judgment, the
4 Government therefore must prove there is no genuine issue
5 of material fact as to whether, in the course of his
6 application, Hamdi testified falsely about: (1) where
7 his wife and children lived; (2) whether he was
8 unemployed; (3) his involvement with BIF, and; (4) his
9 involvement with Care. This is no mean feat, however,
10 because Hamdi's allegedly false testimony only undermines
11 his good moral character if given "for the purpose of
12 obtaining [immigration benefits]." 8 U.S.C. §
13 1101(f)(6). Hamdi therefore must have made any culpable
14 misrepresentations with the subjective intent of
15 obtaining immigration benefits. Kungys v. United States,
16 485 U.S. 759, 779-80 (1988). Thus, to prevail on summary
17 judgment, the Government must demonstrate that a
18 reasonable factfinder could not conclude that Hamdi made
19 the alleged misrepresentations for some other reason,
20 "such as embarrassment, fear, or a desire for privacy."
21 Kungys, 485 U.S. at 780 (internal quotation omitted).
22 With these principles in mind, the Court examines each of
23 Hamdi's four alleged misrepresentations, in turn.

24
25
26

27 ⁶ The Government does not argue that any of Hamdi's
28 actions outside the context of the naturalization process
evidence a lack of a good moral character.

1 **1. Did Hamdi testify falsely about where his wife and**
2 **children lived?**

3
4 The Government argues Hamdi lacks good moral
5 character because he falsely told Osuna that his wife and
6 children lived with him, even though they flew to Egypt -
7 on one-way tickets - months before Hamdi's interview with
8 Osuna. (See Pet.'s Ex. C 151:24-153:6; Gov.'s Ex. G
9 311:14-19.) Hamdi counters that he did not lie, because
10 he did not believe his wife and children had "moved," and
11 still considered them domiciled at his house. Presented
12 with this conflicting evidence, a reasonable factfinder
13 could conclude that Hamdi's testimony about where his
14 wife and children lived was not meant to deceive USCIS
15 into granting Hamdi an immigration benefit, because Hamdi
16 did not intend to testify falsely.

17
18 Hamdi wrote on his application for naturalization
19 that both he and Carriere lived at "1000 Trailview Lane"
20 in Corona. (See Gov.'s Ex. A.) While interviewing
21 Hamdi, Osuna marked through Hamdi's address, and wrote in
22 "1112 Linden St," in Riverside; he marked through
23 Carriere's address and wrote "SAME." (Osuna Decl. ¶¶ 9,
24 12; see Gov.'s Ex. A.) Osuna testified that he made the
25 changes after first asking Hamdi whether he was still
26 living in Corona, and then asking Hamdi "where his wife
27 lived." (Osuna Decl. ¶¶ 9, 12; Osuna Dep. 181:8-15, Apr.

28

1 13, 2011 ("Gov.'s Ex. L") (Doc. No. 85-14).) Hamdi also
2 wrote on his application that the "current address" of
3 all four of his children was "WITH ME." (See Gov.'s Ex.
4 A.) Osuna testified that Hamdi confirmed, at the time of
5 the interview, his children lived with him. (Osuna Decl.
6 ¶ 13; Gov.'s Ex. L 183:13-23.)

7
8 Courts regularly draw a "distinction between
9 individuals who are physically present without intending
10 to stay in a locale" - visitors - "and those who are
11 present with an intent to remain" - domiciliaries. United
12 States v. Jackson, 480 F.3d 1014, 1023-24 (9th Cir.
13 2007). "[O]ne can reside in one place but be domiciled
14 in another," Miss. Band of Choctaw Indians v. Holyfield,
15 490 U.S. 30, 48 (1989), for example, one can reside in a
16 place for the purpose of attending college while lacking
17 the intent to remain after graduation.⁷ In this case,
18 the Government avers that Hamdi's wife and children
19 traveled to Egypt with the intent to remain there, thus
20 changing both their residence and domicile, and
21 categorically belying Hamdi's statements to Osuna. (See
22 MSJ at 11.)

23
24
25

26 ⁷ For Hamdi himself, however, the rule is different:
27 "an alien's residence is the same as that alien's
28 domicile, or principal actual dwelling place, without
regard to the alien's intent" 8 C.F.R. § 316.5.

1 In support of its argument that Hamdi's wife and
2 children intended to stay in Egypt, the Government points
3 to Hamdi's testimony that when his family left for Egypt,
4 Hamdi moved from a five-bedroom house to a one-bedroom
5 apartment, and that Hamdi planned to go to Egypt
6 eventually to join them. (Gov.'s Ex. G 311:20-313:18,
7 314:18-20.) Hamdi also testified that he "was certainly
8 going to try to see my hand at finding work [in Egypt]
9 because [he] knew the economy was getting worse in the
10 United States and things were getting expensive." (Id.
11 314:21-315:2.)⁸

12
13 Hamdi disputes telling Osuna anything regarding the
14 residency of his wife and children (Opp'n at 15), but
15 assuming he did, he admits he would have told Osuna they
16 lived at his address, because his family considered (and
17 considers) it their permanent address. (Id.) Thus, when
18 asked whether she ever lived in Riverside (where Hamdi
19 resides currently), Carriere testified "[t]hat's where my
20 husband - that's our permanent address now." (Gov.'s Ex.

21 _____
22 ⁸ The Government also cites the testimony of
23 Carriere's sister, who when asked whether "it was [her]
24 understanding when [Carriere and the children] moved to
25 Egypt that they were moving to Egypt on a permanent
26 basis," responded: "Pretty permanent, well, for awhile.
27 I didn't know if it was going to be permanent, but I knew
28 it was going to be for a little while." (Dragon Dep.
22:7-12, May 16, 2011 ("Gov.'s Ex. K") (Doc. No. 85-13).)
Without responses to further questions, e.g., "how long
is 'a little while,'" or "why did you understand the move
was 'pretty permanent,'" the Court cannot credit this
testimony either in favor of, or against, the
Government's argument.

1 H 144:25-145:2.) When asked whether she intended to stay
2 in Egypt for three years, Carriere testified she did not.
3 (Pet.'s Ex. C 152:19-24.) While Carriere testified the
4 family planned to stay "for awhile," and that Hamdi would
5 join them (id. 152:25-153:3), she also agreed with the
6 propositions that she and the children "were just going
7 to figure out how long [they] were going to stay and
8 purchase one-way tickets back" (id. 153:7-10), and that
9 the family is waiting for Hamdi to complete his
10 naturalization proceedings before making any further
11 decisions (id. 153:18-22).
12

13 Given this evidence, a reasonable factfinder could
14 conclude either that Hamdi's wife and children changed
15 their domicile to Egypt, or that they had taken an
16 extended trip and would be returning in the indefinite
17 future. Consequently, the same factfinder could
18 determine that Hamdi did not intend to testify falsely
19 about where his family lived, because he considered them
20 on an extended, but not permanent, trip. There thus
21 remains a genuine dispute about whether Hamdi testified
22 falsely in his interview with Osuna, with the intent of
23 misleading USCIS into granting him an immigration
24 benefit.
25
26
27
28

1 **2. Did Hamdi testify falsely regarding his employment**
2 **status?**

3
4 The Government further argues that Hamdi
5 misrepresented his employment status during his interview
6 with Osuna. Specifically, the Government contends Hamdi,
7 though unemployed at the time of his interview, told
8 Osuna that he remained employed with Harris & Associates.
9 (MSJ at 14.) Hamdi testified, however, that he recalls
10 telling Osuna he was unemployed. (Pet.'s Ex. F 291:2-
11 15.) The remainder of the evidence before the Court on
12 this question is inconclusive; consequently, the Court
13 cannot find, as a matter of law, that Hamdi
14 misrepresented his employment status.

15
16 On his application for naturalization, Hamdi wrote
17 that as of February 15, 2007, he was employed at Harris &
18 Associates. (See Gov.'s Ex. A.) Osuna declares that
19 when he interviewed Hamdi on November 3, 2008, he "asked
20 Mr. Hamdi if he was still presently employed by Harris &
21 Associates," and that "Mr. Hamdi testified that he was."
22 (Osuna Decl. ¶ 10.) Osuna also declares he made a check
23 mark next to the employment question on Hamdi's
24 application at the same time, "[b]ased on Mr. Hamdi's
25 response to my question." (Id.)

1 Osuna then testified alternately that (1) during the
2 interview, he had a "gut feeling" that Hamdi was lying
3 about being employed (Osuna 30(b)(6) Dep. 72:7-73:15,
4 Sept. 23, 2011 ("Pet.'s Ex. A") (Doc. No. 86-6)), and
5 that (2) he came to believe Hamdi was unemployed after
6 having a discussion with another immigration service
7 officer (Gov.'s Ex. L 73:20-22). In any event, Osuna
8 disbelieved Hamdi's purported testimony regarding his
9 employment at Harris & Associates.

10

11 USCIS did not issue a decision explaining that Hamdi
12 testified falsely about his employment with Harris &
13 Associates; instead, it issued a decision relying on
14 Hamdi's failure to mention his employment with LAN
15 Engineering in his interview. (See Gov.'s Ex. F.) It is
16 undisputed, however, that Hamdi did not start work for
17 LAN Engineering until approximately two months after his
18 interview. (See Pet.'s Ex. P.)

19

20 USCIS's seemingly incongruous conclusion raises
21 questions about the content of Osuna's and Hamdi's
22 discussions of Hamdi's employment during Hamdi's
23 interview. While Osuna states unequivocally that Hamdi
24 told him in the interview he was still employed by Harris
25 & Associates, Hamdi testified unequivocally that he said
26 no such thing (Pet.'s Ex. F 290:25-291:6).

27

28

1 Osuna wrote contemporaneous notes on Hamdi's
2 application form, but these shed little light on what
3 occurred during their interview. Deciphering Osuna's
4 notes requires determining the meaning of various marks
5 he made on Hamdi's application - specifically, check
6 marks. In his sworn declaration, however, Osuna
7 attributes two different meanings to the markings.
8 First, Osuna states he "made a check mark on Mr. Hamdi's
9 Form N-400 Application for Naturalization on or near Mr.
10 Hamdi's written response on his Form N-400, indicating
11 that [he] asked that particular question." (Osuna Decl.
12 ¶ 6.) Later, however, Osuna declares that based on
13 Hamdi's response to his question about Harris &
14 Associates, he "contemporaneously made a check mark next
15 in the row of Part 6.B. on page 3 of Mr. Hamdi's Form N-
16 400 indicating that Mr. Hamdi testified that he was
17 presently employed by Harris & Associates." (Id. at 10.)

18
19
20 It makes a substantial difference whether Osuna's
21 check mark means merely that Osuna asked a question, or
22 that Hamdi answered the question in the affirmative.
23 Moreover, if the check mark means Osuna asked a question,
24 the precise question he asked is lost to history, because
25 he did not otherwise record his interview with Hamdi.
26 Given Hamdi's and Osuna's conflicting testimony, the
27 incongruous USCIS decision that came approximately seven
28

1 months after the interview in question, and Osuna's own
2 conflicting remarks about what his notes on Hamdi's
3 application mean, the Government is not entitled to
4 summary judgment on the question whether Hamdi's moral
5 character was besmirched by his allegedly false testimony
6 about his employment status.

7

8 **3. Did Hamdi testify falsely regarding his connection to**
9 **BIF?**

10

11 The Government contends Hamdi testified falsely about
12 his connection to BIF, an organization implicated in
13 financing terrorism, in both his interview with Osuna and
14 in his subsequent appeal interview before immigration
15 service officers Cecil Clark and Elias Valdez. (See MSJ
16 at 17-18, 20-21.) Hamdi argues that he was asked about
17 his "association with" BIF, and based on his
18 understanding of the word "associate," he truthfully
19 denied being associated with an organization to which he
20 donated money and for which he did some insubstantial
21 volunteer fundraising. (See Opp'n at 7-10.) He further
22 notes that whenever he was asked specifically whether he
23 donated money to BIF, he answered that he did. (See id.)
24 Here again, the Government's evidence that Hamdi
25 testified falsely about his association with BIF is
26 insufficient to warrant summary judgment in the
27 Government's favor.

28

1 As discussed above, Hamdi's application for
2 naturalization lists three entities of which Hamdi claims
3 to be a member or with which he claims to be associated.
4 (See Gov.'s Ex. A.) Hamdi did not list BIF. Osuna
5 states that as he interviewed Hamdi, he asked whether "he
6 is or was a member of or associated with any other
7 organization that he did not report," and Hamdi answered
8 he was not. (Osuna Decl. ¶ 14.) Hamdi's file contained
9 a declaration from Caputo, the FBI agent who interviewed
10 Hamdi in 2003. (Id. ¶ 16.) Based on Caputo's
11 declaration, Osuna "asked Mr. Hamdi several questions
12 about BIF, including whether he had ever made any
13 donations to BIF." (Id.) Osuna recalls "Mr. Hamdi
14 responded, 'No.'" (Id.)

15
16 If Hamdi actually told Osuna he had never donated to
17 BIF, it is undisputed that Hamdi's testimony would have
18 been false. Osuna's declaration is the only evidence the
19 Government offers to support its claim that Hamdi denied
20 donating to BIF. Osuna made no notes on Hamdi's
21 application reflecting any questions about donations to
22 BIF, or Hamdi's answers. (See Gov.'s Ex. A.) When asked
23 in his deposition "how . . . the subject of BIF ar[o]se
24 in the course of the interview" with Hamdi, Osuna
25 testified: "I didn't mention the BIF. I don't recall I
26 mentioned the BIF at the time. Actually, it - I think
27 after - after I asked him, 'Are there any other[]

28

1 [affiliations], ' I wrote, 'Claims; no others.'" (Osuna
2 Dep. 71:20-25, Apr. 13, 2011 ("Pet.'s Ex. H") (Doc. No.
3 86-10).) Osuna then testified that Hamdi said he had
4 never even heard of BIF, nor donated to it. (Id. 72:5-
5 13.) However, later in the same deposition, the
6 following colloquy took place:

7
8 Q: But you said in this case that [Hamdi] did
9 not admit that he had given money to BIF;
10 right?

11 Osuna: When I mentioned BIF, he mentioned that they
12 were a charitable organization.

13 Q: Oh. So when you said - when you asked him
14 if he had heard of the BIF, he said it was a
15 charitable organization?

16 Osuna: Yes.

17 Q: And then at that point, did he say that he
18 had given money to BIF?

19 Osuna: No.

20 (Pet.'s Ex. H 152:19-153:4.)

21
22 In addition to Osuna's inconsistent testimony on BIF,
23 when Hamdi appealed USCIS's decision, Hamdi submitted a
24 brief in which he wrote:

25
26 . . . as to [BIF] which is a charitable
27 organization the applicant has sent the
28

1 organization charitable donations like anybody
2 else Islamic Organization which helps the poor and
3 needy people and for that the application believed
4 there is no need to list such organization on his
5 application just for giving charitable donations.

6 (Pet.'s Ex. P.)⁹

7
8 Hamdi therefore admitted freely, in writing, that he
9 had given money to BIF. Based on the evidence before it,
10 the Court could find Hamdi admitted his donations to BIF
11 in his written brief because he realized USCIS knew about
12 them, and wanted to preempt any claim that he previously
13 testified falsely to obtain an immigration benefit. Cf.
14 Paredes-Urrestarazu v. U.S. Immigration & Naturalization
15 Serv., 36 F.3d 801, 817-20 (9th Cir. 1994) (holding that
16 it would be reasonable to conclude that a witness
17 intended to deceive an immigration judge, rather than
18 avoid embarrassment, when the witness lied about his
19 military service and dishonorable discharge until he
20 thought the judge had information belying his original,
21 false, testimony). Alternately, the Court could find -
22 given Osuna's inconsistent testimony, the lack of a
23 contemporaneous record of Osuna's questions about BIF,
24 Hamdi's previous discussion of his BIF donations with
25 Caputo, and his subsequent acknowledgment of the

26

27 ⁹ Typographical errors are reproduced as they appear
28 in the original.

1 donations in his appellate brief - that Hamdi was
2 forthcoming with USCIS about donating to BIF. As the
3 non-moving party, Hamdi is entitled to the benefit of
4 reasonable inferences. Consequently, the Court cannot
5 now conclude as a matter of law that Hamdi testified
6 falsely about his donations to BIF.

7
8 The testimony of officers Clark and Valdez does
9 nothing to alter this result. Clark testified that
10 during Hamdi's appeal, he questioned Hamdi about BIF.
11 (Clark Dep. 116:13, May 3, 2011 ("Gov.'s Ex. N") (Doc.
12 No. 85-16).) Clark further testified that while he could
13 not remember the exact questions he asked Hamdi, Clark
14 and Valdez did ask Hamdi "if he, in fact, had ever
15 donated money to [BIF]," and Hamdi said he did not -
16 until he was presented with the canceled checks. (Id.
17 116:16-22.) Valdez, while testifying that his memory of
18 the interview was limited, recounted that Hamdi never
19 denied donating to BIF, but instead said he did not
20 recall making such a donation until he was shown the
21 checks. (Valdez Dep. 127:13-20, May 11, 2011 ("Pet.'s
22 Ex. K") (Doc. No. 86-10).) To be sure, it is odd that
23 Hamdi would not recall a donation he made to BIF about
24 which he had been questioned previously by the FBI.
25 Nonetheless, Hamdi admitted to making donations to BIF in
26 the brief he filed before Clark and Valdez interviewed
27 him. It is curious that Hamdi would prevaricate about
28

1 making donations to BIF after already admitting having
2 done so. Thus, a reasonable factfinder could conclude
3 Hamdi did not testify falsely to Osuna, Clark, or Valdez
4 about donating money to BIF.

5
6 The remaining question is whether Hamdi testified
7 falsely if he denied being associated with any
8 organizations, e.g., BIF, other than the three he listed.
9 The answer turns on the meaning of the word "associate,"
10 or more precisely, whether a reasonable factfinder could
11 conclude Hamdi lacked the intent to deceive when he
12 denied being associated with BIF, because he did not
13 believe his interactions with BIF (discussed above) made
14 him an "associate" of the organization.

15
16 The Government attempts to sidestep this argument,
17 labeling it "self-serving" and insufficient to create a
18 triable issue of fact. (MSJ at 18.) It notes that his
19 deposition transcript shows "Hamdi has little trouble
20 with the English language" (MSJ at 20), and therefore
21 should have either known the meaning of the word
22 "associate," or known to consult a dictionary or attorney
23 to learn it.

24
25 In the last six months (approximately), the Ninth
26 Circuit Court of Appeals and the United States Supreme
27 Court have turned to at least 15 different dictionaries
28

1 to clarify the meaning of a word. To pick just one, the
2 Oxford English Dictionary offers several definitions of
3 the verb "associate," including "to join in common
4 purpose . . . ," "to keep company or consort with . . .
5 ," or "to make oneself a partner in." Oxford English
6 Dictionary (2d ed. 1989; online version Sept. 2011).¹⁰
7 Which of these definitions, or any definitions in other
8 dictionaries, ought Hamdi have applied? Any person, in
9 the course of his life, "associates" with many groups;
10 some limiting term is required to make sense of the term
11 used in the naturalization application. The only clue
12 Hamdi, or the Court, can take from the application itself
13 as to how "associate" should be limited is that to be
14 "associated with" a group is similar to being "a member
15 of" that group, but not exactly the same thing. See
16 United States v. Williams, 553 U.S. 285, 295 (2008)
17 (explaining "the commonsense canon of noscitur a sociis -
18 which counsels that a word is given more precise content
19 by the neighboring words with which it is associated");

20 _____
21 ¹⁰ Choosing among even these three definitions could
22 alter the outcome as to Hamdi. Asking whether Hamdi
23 joined in common purpose with BIF would require Hamdi to
24 distill one, or a few, purposes for which he donated to
25 BIF, then to consider whether by making such donations,
26 he "joined with" BIF toward that purpose. Asking whether
27 he kept company or consorted with BIF would require an
28 analysis of the corporate form of the organization, and
then questions about whether Hamdi kept company with or
consorted with agents of the entity - or would attending
a function sponsored by the entity be enough? Asking
whether Hamdi made himself a partner in BIF requires a
similar analysis: would Hamdi have to partner with BIF
in the legal sense? If not, when would a donor to an
organization become its partner?

1 Gustafson v. Alloyd Co., 513 U.S. 561, 574 (1995) ("[T]he
2 Court will avoid a reading which renders some words
3 altogether redundant.").

4
5 Nor does the Government offer a definition of the
6 word "associate." Indeed, when deposed as to its meaning
7 as he applies it, Osuna first said the definition he uses
8 "came from the English dictionary" (Pet.'s Ex. H 30:17-
9 18), then said he did not have to look it up because it
10 is a word he knows (id. 30:19-23), and then said he
11 learned it in grade school (id. 31:9-10). He did not,
12 however, give much by way of a substantive definition.
13 Indeed, the Government went so far as to assert a
14 privilege to cloak the definition Osuna used in
15 adjudicating naturalization applications:

16
17 Q: And what definition of association do you
18 apply in processing and adjudicating those
19 applications?

20 Bauer: Object to the extent it calls for privileged
21 information that's covered by the
22 deliberative process privilege. You don't
23 have to answer that question.

24 (Pet.'s Ex. H 26:18-23.)

25
26 In sum, given the lack of an authoritative definition
27 of the word "associate," and indeed, the Government's
28

1 assertion that the definition it uses is so sensitive as
2 to be subject to a privilege, a factfinder could conclude
3 Hamdi lacked the intent to deceive when he denied having
4 any associations other than the three he listed on his
5 naturalization form.

6

7 **4. Did Hamdi testify falsely regarding his connection to**
8 **Care International?**

9

10 Finally, the Government argues Hamdi testified
11 falsely by also omitting Care International from the list
12 of organizations with which he was associated, and then
13 telling Osuna that the list was complete. For at least
14 the same reasons applicable to Hamdi's alleged
15 association with BIF, the Court finds the Government has
16 not presented evidence sufficient to foreclose the
17 conclusion that Hamdi lacked the intent to deceive USCIS
18 when he testified he had no associations other than those
19 listed on his naturalization application.

20

21

IV. CONCLUSION

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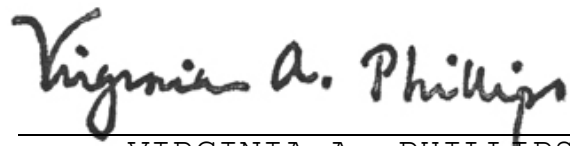
In moving for summary judgment, the Government seeks
to establish that Hamdi lacked the necessary moral
character to naturalize, because he allegedly gave false
testimony in earlier naturalization proceedings. On the
evidence before the Court, however, a reasonable
factfinder could conclude that even if Hamdi's testimony

1 differed from the facts as the Government understood
2 them, his testimony was not given with the intent to
3 deceive, and therefore was not culpably false.
4 Consequently, the Court DENIES the Government's Motion as
5 to Hamdi's naturalization claim.

6
7 The Government also seeks summary judgment as to
8 Hamdi's second claim, *i.e.*, that a question on the
9 application for naturalization is unconstitutionally
10 vague. As Hamdi sought no relief tied to his second
11 claim, the Court cannot adjudicate it summarily.
12 Accordingly, the Court GRANTS the Government's Motion as
13 to Hamdi's vagueness claim.

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Dated: December 14, 2011



VIRGINIA A. PHILLIPS
United States District Judge