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1. [Al-Saadoon v. Lynch, 816 F.3d 1012](#)

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## [Al-Saadoon v. Lynch](#)

United States Court of Appeals for the Eighth Circuit

October 22, 2015, Submitted; March 14, 2016, Filed

No. 14-3807

### Reporter

816 F.3d 1012 \*; 2016 U.S. App. LEXIS 4627 \*\*; 2016 WL 945360

Orwa Ali Al-Saadoon; Farok Abdulmajid Hamod, Petitioners - Appellants v. Loretta E. Lynch, Attorney General of the United States of America; Janet Napolitano, Secretary of the United States Department of Homeland Security; Alejandro Mayorkas, Director, United States Citizenship and Immigration Services; Sharon V. Dooley, Field Office Director, United States Citizenship and Immigration Services, Respondents - Appellees

**Subsequent History:** Rehearing denied by, Rehearing, en banc, denied by [Al-Saadoon v. Lynch, 2016 U.S. App. LEXIS 9895 \(8th Cir. Minn., May 31, 2016\)](#)

**Prior History:** **[\*\*1]** Appeal from United States District Court for the District of Minnesota - Minneapolis.

[Al-Saadoon v. Holder, 2014 U.S. Dist. LEXIS 149202 \(D. Minn., Oct. 21, 2014\)](#)

### Core Terms

naturalization, religious, district court, visa, authorization, petitions, services, started, sworn

### Case Summary

#### Overview

**HOLDINGS:** [1]-The finding that a naturalization applicant violated the terms of his visa and was not lawfully admitted under [8 U.S.C.S. § 1255\(c\)](#) as he accepted employment from a cultural community center (CCC) before he could do so was supported by substantial evidence; [2]-The CCC could not employ him until August 2, 2000; [3]-He stated under penalty of perjury on his 2007 application that he was employed by the CCC from 7-15-2000 to the present; [4]-In a sworn

interview, he said that he began working at a school in 1999 and that he was employed by them for less than a year before he started working for the CCC; [5]-The school confirmed that he started working there in June 1999; [6]-He testified that he was working at the CCC in April 2000; [6]-The applicant baldly claimed that he was mistaken and was not employed by the CCC until after its I-360-Petition was approved.

### Outcome

Judgment affirmed.

### LexisNexis® Headnotes

Administrative Law > Judicial Review > Standards of Review > Clearly Erroneous Standard of Review

Immigration Law > Naturalization > Appeals & Reconsiderations > Judicial Review

Administrative Law > Judicial Review > Standards of Review > De Novo Standard of Review

Administrative Law > Judicial Review > Reviewability > Factual Determinations

Administrative Law > Judicial Review > Reviewability > Questions of Law

### [HN1](#) **Standards of Review, Clearly Erroneous Standard of Review**

The appellate court reviews the district court's factual findings in review of a petition for naturalization for clear error and its legal conclusions de novo. The appellate court will overturn a factual finding under this standard in only three circumstances: if it is not supported by substantial evidence in the record, if it is based on an

erroneous view of the law, or if the appellate court is left with the definite and firm conviction that an error was made.

Evidence > Burdens of Proof > Preponderance of Evidence

Immigration Law > Adjustment of Status

Immigration Law > Naturalization > Residency Requirements

Immigration Law > Naturalization > Administrative Proceedings > Applications for Citizenship

## [HN2](#) **Burdens of Proof, Preponderance of Evidence**

An applicant bears the burden of establishing by a preponderance of the evidence that he meets all of the requirements for naturalization. [8 C.F.R. § 316.2\(b\)](#). Those requirements include establishing eligibility through strict compliance with all statutory mandates. In order to be naturalized, the applicant must show that he was lawfully admitted for permanent residence. [8 U.S.C.S. § 1427\(a\)\(1\)](#). Lawful admission is absent if he accepted unauthorized employment prior to filing an application for adjustment of status or otherwise violated the terms of a nonimmigrant visa. [8 U.S.C.S. § 1255\(c\)](#).

Immigration Law > Adjustment of Status

## [HN3](#) **Immigration Law, Adjustment of Status**

See [8 C.F.R. § 214.2\(r\)\(6\) \(1999\)](#).

**Counsel:** For Orwa Ali Al-Saadoon, Farok Abdulmajid Hamod, Petitioners - Appellants: Herbert Igbanugo, Igbanugo Partners, Minneapolis, MN.

For Loretta E. Lynch, Attorney General of the United States of America, Appellee: Christopher Westley Dempsey, Senior Litigation Counsel, Anna Nelson, U.S. Department of Justice, Civil Division, Office of Immigration Litigation, Washington, DC.

For Janet Napolitano, Secretary of the United States Department of Homeland Security, Alejandro Mayorkas, Director, United States Citizenship and Immigration

Services, Sharon V. Dooley, Field Office Director, United States Citizenship and Immigration Services, Respondents - Appellees: Christopher Westley Dempsey, Senior Litigation Counsel, Anna Nelson, U.S. Department of Justice, Civil Division, Office of Immigration Litigation, Washington, DC.

**Judges:** Before RILEY, Chief Judge, SMITH and SHEPHERD, Circuit Judges.

**Opinion by:** SMITH

## Opinion

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[\*1013] SMITH, Circuit Judge.

Farok Abdulmajid Hamod and his wife, Orwa Ali Al-Saadoon, appeal the district court's<sup>1</sup> denial of their petitions for naturalization. They came to this country on a religious-worker visa in 1999 when Hamod accepted [\*\*2] a position at the Al-Amal School in Minnesota. Hamod's visa prohibited him from changing employers without prior authorization from the Immigration and Naturalization Service (INS). In August 2000, the Islamic Cultural Community Center (ICCC), a different legal entity, filed a petition seeking authorization to employ Hamod; the petition was granted in December 2000. But the information that Hamod provided on his naturalization application reveals that he began working for the ICCC on July 15, 2000, before the ICCC had filed the petition for authorization. On this basis, the district court denied Hamod's and Al-Saadoon's petitions for naturalization. We affirm.

### I. Background

Hamod and Al-Saadoon are natives of Iraq. They entered this country in June 1999 when the Al-Amal School in Minnesota invited Hamod to serve as a teacher. Hamod entered on a religious-worker visa that permitted him to work only for the religious organization sponsoring his entry into the country, the Al-Amal School.

As a respected sheikh and Islamic scholar, Hamod grew increasingly involved in the local Muslim community at the [\*\*3] ICCC. His activities included leading prayer services, giving lectures, counseling, conducting

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<sup>1</sup>The Honorable Paul A. Magnuson, United States District Judge for the District of Minnesota.

marriage ceremonies, and holding seminars. On August 2, 2000, the ICCC filed an I-360 Petition for Special Immigrant Religious Worker on Hamod's behalf, seeking to permanently employ him as an Imam. The Al-Amal School supported the petition, confirming that it had "initially employed [Hamod] as a religious teacher in June 1999 pursuant to an R-1 visa" and that "[h]e later became the Religious Curriculum Director at the school." The INS granted the ICCC's petition on December 8, 2000. In 2002, Hamod and Al-Saadoon adjusted to permanent-residence status.

In 2007, Hamod and Al-Saadoon sought naturalization. The naturalization application included the following query, "Where have you worked . . . during the last five years?" Below the question, the application provided blanks for "Employer or School Name," "Dates," and "Your Occupation." Hamod filled in "Islamic Cultural Community Center," "07-15-2000" to the "present," and "president and Imam." He signed the application, certifying its accuracy under penalty of perjury. The ICCC supported Hamod's application with a letter certifying that "Dr. Farok [\*\*4] Hamod is working for The Islamic Cultural Community Center as president and Imam for this organization since 2000 until now." In a sworn interview connected with his application, Hamod said that he had been working for the ICCC "[s]ince 2000." The United States Citizenship and Immigration [\*\*1014] Services (USCIS) denied Hamod's and Al-Saadoon's applications for naturalization, concluding that they lacked good moral character.

Hamod and Al-Saadoon then administratively appealed the denial of their applications. In a sworn interview related to his appeal, Hamod testified that he began working for the ICCC in 2000. Later he said that he began working for the Al-Amal School in 1999 and was employed there for "less than a year" before he started working for the ICCC. He agreed that the Al-Amal School and the ICCC are separate entities. The USCIS affirmed the denial of Hamod's and Al-Saadoon's petitions for naturalization. Hamod and Al-Saadoon then filed this action in the district court, seeking de novo review of the denial of their petitions pursuant to [8 U.S.C. § 1421\(c\)](#).

In preparation for the district court's review, Hamod gave sworn testimony at a pretrial deposition. During this deposition, he stated that he had no [\*\*5] reason to doubt his former testimony that he had been employed by the ICCC since 2000. He also testified that he was working for the ICCC as an Imam in April 2000. After a hearing, the court concluded that Hamod had not

lawfully been admitted to permanent residence status because he accepted employment from the ICCC "starting at least in early to mid-2000," before he was authorized to do so. The court therefore concluded that he was not eligible for naturalization. The court also denied Al-Saadoon's petition for naturalization because her status is dependent upon Hamod's. Hamod and Al-Saadoon appeal. We have jurisdiction to review the final judgment of the district court pursuant to [28 U.S.C. § 1291](#).

## II. Discussion

The district court conducted a de novo review of Hamod's and Al-Saadoon's petitions for naturalization, making its own findings of fact and conclusions of law pursuant to [8 U.S.C. § 1421](#). [HN1](#) We review the district court's factual findings for clear error and its legal conclusions de novo. [Outdoor Cent., Inc. v. GreatLodge.com, Inc., 688 F.3d 938, 941 \(8th Cir. 2012\)](#). We will overturn a factual finding under this standard in only three circumstances: "if it is not supported by substantial evidence in the record, if it is based on an erroneous view of the law, or if we are left with the [\*\*6] definite and firm conviction that an error was made." [Wright v. St. Vincent Health Sys., 730 F.3d 732, 737 \(8th Cir. 2013\)](#) (quotations and citations omitted).

The district court denied Hamod's petition for naturalization, concluding that he violated the terms of his visa by accepting employment from the ICCC before he received authorization to do so. Hamod challenges the district court's findings of fact with respect to his employment, arguing that he was not employed by the ICCC until after he received the required authorization. Because the district court's findings are supported by substantial evidence in the record, we affirm.

[HN2](#) Hamod "bear[s] the burden of establishing by a preponderance of the evidence that he . . . meets all of the requirements for naturalization." [8 C.F.R. § 316.2\(b\)](#). Those requirements include establishing eligibility through strict compliance with all statutory mandates. See [INS v. Pangilinan, 486 U.S. 875, 882-87, 108 S. Ct. 2210, 100 L. Ed. 2d 882 \(1988\)](#); [Fedorenko v. United States, 449 U.S. 490, 506, 101 S. Ct. 737, 66 L. Ed. 2d 686 \(1981\)](#). In order to be naturalized, Hamod must show that he was "lawfully admitted for permanent residence." [8 U.S.C. § 1427\(a\)\(1\)](#). Lawful admission is absent if he "accept[ed] unauthorized employment prior to filing an application for adjustment [\*\*1015] of status . . . or . . . otherwise violated the terms of a nonimmigrant visa." [8 U.S.C. § 1255\(c\)](#). The regulations in effect at the

time prohibited Hamod from changing his employer after he [\*\*7] arrived without the new employer filing a proper form. The pertinent regulation provided the following:

**HN3** [↑] *Change of employers.* A different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker admitted under this section shall file Form I-129 with the appropriate fee. . . . *Any unauthorized change to a new religious organizational unit will constitute a failure to maintain status* within the meaning of section 241(a)(1)(C)(i) of the Act.

[8 C.F.R. § 214.2\(r\)\(6\) \(1999\)](#) (emphasis added). Hamod does not dispute that the ICCC was not authorized to employ him until at least August 2, 2000, when the ICCC filed an I-360 Petition for Special Immigrant Religious Worker on Hamod's behalf. He simply asserts that he was not employed before that time.

The district court found that he began his employment with the ICCC before he was authorized to do so, "starting at least in early to mid-2000." Three of Hamod's own statements are central to the court's finding. First, Hamod stated on his 2007 naturalization application that he was employed by the ICCC from "7-15-2000" to the "present." He signed and certified that application under penalty of perjury. Second, in a sworn interview, [\*\*8] Hamod said that he began working at the Al-Amal School in 1999 and was employed by them for "less than a year" before he started working for the ICCC; a letter from the school confirmed that he started working at the school in June 1999, more than one year before the ICCC filed the petition. Third, in his sworn, pretrial deposition, he testified that he was working at the ICCC as an Imam in April 2000. Hamod points to nothing in the record, other than his bald assertion that he was previously mistaken, to undermine the district court's reliance on his certified naturalization application, his sworn statements, and the corroborating letters. Accordingly, the district court did not clearly err in finding that Hamod accepted unauthorized employment with the ICCC in violation of his visa.<sup>2</sup>

<sup>2</sup>The district court stated an alternative basis for its denial of Hamod's petition for naturalization. It concluded that "even if some of Hamod's religious worker services to the ICCC starting in 2000 were voluntary and not paid . . . , those services constitute unauthorized employment." Hamod argues that this conclusion violates his right to freely exercise his religion. In particular, he argues that because [\*\*9] he was admitted to this country on a religious-worker visa that

### III. Conclusion

We affirm the judgment of the district court.

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permitted him to work only at the religious school, the district court's decision regarding voluntary services punishes him for exercising his religion through volunteer work in his local community of faith. We decline to address Hamod's free-exercise claim, however, because the record clearly supports the district court's primary basis for the petition's denial—Hamod was actually employed by the ICCC before he received the authorization required by his visa. Additionally, we note that the regulatory landscape in this area has changed. The regulations now prohibit a volunteer religious worker from being "compensated for work for any religious organization other than the one for which a petition has been approved." [8 C.F.R. § 214.2\(r\)\(13\)](#).