

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ANGE SAMMA *et al.*, on behalf of
themselves and others similarly situated,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
DEFENSE *et al.*,

Defendants.

No. 20-cv-1104-PLF

DECLARATION OF DARYA KUTOVAYA

I, Darya Kutovaya, hereby declare as follows:

1. I am a 27-year-old native of Uzbekistan. I became a United States citizen on January 6, 2021.
2. In August 2010, I entered the United States on a tourist visa.
3. In September 2019, I obtained my Two-Year Green Card.
4. On June 25, 2020, I enlisted in the California Army National Guard. On that day, I signed an eight-year enlistment contract and took the oath of enlistment.
5. I currently serve as a Private First Class (E-3) in the California Army National Guard, which is part of the Selected Reserve of the Ready Reserve. My military occupational specialty is Tactical Power Generation Specialist (91D).
6. I began drilling with the 223rd Military Intelligence Battalion in San Francisco, California in August 2020. I attended drill on August 15-16, 2020 and the Army compensated me for this drill.
7. On July 10, 2020, I requested my certification of honorable service (“N-426 certification”) from my chain of command. However, I did not receive any response. I followed up

multiple times on my request by text and email, including after attending my first drill in August.

8. On September 10, 2020, my husband, Mitchell Weller, contacted the Judge Advocate General (“JAG”) office for the California National Guard by phone to request assistance with my N-426 certification and spoke with Master Sergeant (“MSG”) Karina Foutz. Mitchell was a recent law graduate at the time and I hoped that he would be more successful in explaining my eligibility for an N-426 certification. During that call, Mitchell provided a copy of the Court’s August 25, 2020 Memorandum Opinion (“*Samma* Opinion”) in this case to MSG Karina Foutz by email. Attached as Exhibit A is a true and correct copy of this email. MSG Foutz informed Mitchell over the phone that it would take two weeks for the JAG office to review the *Samma* Opinion and determine a course of action.
9. On September 22, 2020, Mitchell followed up with the JAG office by phone and spoke with Lieutenant Colonel (“LTC”) Paul Eck. LTC Eck told Mitchell that the California National Guard was not bound by the Court’s ruling in the *Samma* Opinion because the Opinion was issued by a court in Washington D.C. Mitchell persisted in requesting LTC Eck review the *Samma* Opinion again and JAG assistance with obtaining my N-426 certification. LTC Eck responded that if Mitchell and I persisted in requesting my N-426 certification, he would be required to characterize my service as “dishonorable” for failing to meet the minimum service requirements (even though they were invalidated by the *Samma* Order). Following that call, Mitchell also sent MSG Foutz a copy of the Court’s August 25, 2020 Order (“*Samma* Order”) in this case. Attached as Exhibit A is a true and correct copy of this email.
10. On September 22, 2020, Mitchell contacted the American Civil Liberties Union

(“ACLU”) for assistance regarding my N-426 certification. On September 23, 2020, Sana Mayat, an ACLU attorney, provided Mitchell with a September 3, 2020 memorandum from then-Assistant Secretary of the Army for Manpower & Reserve Affairs, E. Casey Wardynski (“Army Memorandum”) regarding compliance with the *Samma* Order.

11. On September 23, 2020, Mitchell provided the Army Memorandum to MSG Foutz by email and asked the JAG office to reconsider LTC Eck’s prior position, but Mitchell never received a reply. Attached as Exhibit A is a true and correct copy of this email.
12. I shipped to basic combat training (“BCT”) at Fort Jackson, South Carolina on September 21, 2020 and completed BCT on December 3, 2020.
13. On September 24, 2020, I asked my drill sergeant during basic training in-processing to help me obtain my N-426 certification. My drill sergeant refused to help me and handed me a memorandum stating that soldiers must complete BCT and advanced individual training (“AIT”) then report to their duty station before beginning citizenship processing. Attached as Exhibit B is a true and correct copy of the memorandum I received at BCT.
14. That same day, I provided my drill sergeant with copies of the *Samma* Order and Army Memorandum. My drill sergeant told me that the unit JAG needed to do more research on the Army Memorandum and was not “set up” for processing immigration paperwork “at this time.” My drill sergeant also told me that the Army Memorandum only applied to the Army Reserve and did not apply to the National Guard.
15. Over the next few weeks, I followed up with multiple drill sergeants on my request for assistance with my N-426 certification but all refused to help me or send my request to the unit’s JAG.
16. On September 30, 2020, Sana Mayat provided me via email an email address she received from Defendants’ counsel for class members serving in the Selected Reserve to seek

assistance regarding N-426 certification: usarmy.usarc.usarc-hq.mbx.mavni.usarc-g1-action@mail.mil. Attached as Exhibit C is a true and correct copy of this email.

17. On the same day, my husband Mitchell sent an email to that address, explaining my situation and requesting assistance with my N-426 certification. Mitchell never received a response to that email. Attached as Exhibit D is a true and correct copy of this email.
18. On October 7, 2020, Sana Mayat followed up with Mitchell with another email address provided by Defendants' counsel for class members serving active duty to seek assistance regarding N-426 certification: usarmy.pentagon.hqda-dcs-g-1.mbx.dmpm-mavni-ops@mail.mil. Sana explained that Defendants' counsel had suggested that I use this new email address because the earlier address would not be helpful for members of the National Guard. Attached as Exhibit C is a true and correct copy of this email.
19. On the same day, Mitchell sent an email to the active duty email address requesting assistance with my N-426 certification. Mitchell never received a response to that email. Attached as Exhibit E is a true and correct copy of this email.
20. On October 22, 2020, Sana Mayat followed up with Mitchell, explaining that Defendants' counsel had provided the active duty email address in error. She further explained that Defendants' counsel acknowledged that this error may have caused confusion and agreed to help me obtain my N-426 certification if Mitchell could provide additional identifying information. Mitchell provided Sana with that information later that day. Attached as Exhibit F is a true and correct copy of this email exchange.
21. On November 2, 2020, Sana Mayat received my N-426 certification from Defendants' counsel and sent it to Mitchell. Attached as Exhibit G is a true and correct copy of this email.
22. On November 2, 2020, my counsel submitted my naturalization application, together with

my N-426 certification, to United States Citizenship and Immigration Services (“USCIS”). However, USCIS informed me that my N-426 certification was not valid because during the period from when I first sought N-426 certification to when I finally obtained the certification, USCIS had published a new N-426 form, rendering the one I had used to seek certification invalid.

23. On November 10, 2020, Mitchell contacted Sana Mayat and requested assistance with obtaining another N-426 certification for me. On November 20, 2020, Sana Mayat responded and told Mitchell that Defendants’ counsel had agreed to certify the new form as a courtesy. On December 1, 2020, Sana received my new N-426 certification from Defendants’ counsel and sent it to Mitchell. Attached as Exhibit H is a true and correct copy of this email correspondence.
24. I shipped to AIT at Fort Lee, Virginia on December 5, 2020 and completed AIT on March 10, 2021.
25. Since reporting for duty with the 223rd Military Intelligence Battalion, I have attended drills on: April 17, 2020; April 22-26, 2020; and May 15-16, 2020. The Army has compensated me for these drills.
26. Until I received a completed N-426 certification from the Army, I could not apply for naturalization with USCIS.
27. I was interviewed by USCIS, took the citizenship test and oath, and naturalized as a U.S. citizen on January 6, 2021.
28. By the time I received a properly certified N-426, it had been approximately two and a half months since I began my service in the military by attending drill.
29. I have served honorably at all times since entering service.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 21, 2021.



Darya Kutovaya