



**U.S. Citizenship and  
Immigration Services**

HQOPS 70/33-P

## Interoffice Memorandum

MEMORANDUM FOR REGIONAL DIRECTORS  
DISTRICT DIRECTORS  
OFFICERS-IN-CHARGE

FROM: WILLIAM R. YATES /S/ by Janis Sposato  
Director of Operations

DATE: September 19, 2005

SUBJECT: Amendment to AFM 73.6(d)(3)(B) regarding Application of the  
“Unlawful Acts” Regulation in Naturalization Determinations

### Purpose

The purpose of this Memorandum is to provide guidance regarding the application of 8 C.F.R. § 316.10(b)(3)(iii) (the “unlawful acts” regulation) in making good moral character determinations for naturalization purposes. The *Adjudicator’s Field Manual* (AFM) is updated accordingly.

### Background

One of the basic eligibility requirements for naturalization is that of establishing good moral character. An applicant for naturalization must show that, during the statutorily prescribed period, he or she has been and continues to be a person of good moral character.

Section 101(f) of the Immigration and Nationality Act (“INA”) and 8 C.F.R. §316.10 specifically provide that certain criminal conduct precludes a finding of good moral character. Section 101(f) also provides that an applicant may lack good moral character for reasons other than those described in 101(f)(1) – (f)(9). Thus, a determination of lack of good moral character may result either from a statutory bar that precludes the applicant from establishing good moral character, or from the adjudicating officer’s discretionary finding that good moral character is lacking.

The regulations at 8 C.F.R. § 316.10(b)(3)(iii) provide that a naturalization application shall be denied if, during the statutory period, the applicant committed unlawful acts that adversely reflect upon the applicant’s moral character, unless the applicant establishes extenuating circumstances.

## Guidance

In addition to examining the record to determine if there are circumstances that preclude the applicant from establishing good moral character, USCIS naturalization adjudicators must determine if an applicant should be denied as a matter of discretion for a lack of good moral character. Discretionary findings should be made on a case-by-case basis, and should include consideration of all factors relevant to the case.

Proper application of 8 C.F.R. § 316.10(b)(3)(iii) requires that naturalization adjudicators not seize upon minor unlawful acts committed by an applicant without engaging in an individualized analysis of whether the commission of those acts does in fact reflect adversely upon the applicant's moral character. Additionally, naturalization adjudicators must inquire into and make a determination as to whether an applicant can establish "extenuating circumstances" for having committed unlawful acts.

Accordingly, in order to further clarify existing guidance, the following language is incorporated into the AFM Chapter 73.6(d)(3)(B), third subparagraph (entitled "Unlawful Acts"), after the second sentence:

Proper application of this regulation requires the examining officer to make an individualized determination as to whether the applicant's unlawful acts in fact reflect adversely upon the applicant's moral character. In order to make such a determination, the examining officer must consider not only the nature and magnitude of the unlawful act but also the circumstances surrounding the conduct, including any mitigating or favorable factors (extenuating circumstances).

If the officer determines that the applicant's unlawful acts do adversely reflect upon the applicant's moral character, the applicant should be given the opportunity during the interview to establish extenuating circumstances. The applicant's file should be annotated accordingly. The officer will consider evidence of extenuating circumstances if the evidence directly pertains to the applicant's commission of the unlawful act.

In order to pertain to the commission of an unlawful act, an extenuating circumstance must precede or be contemporaneous to the commission of the unlawful act during the statutory period of required good moral character ("statutory period"). No conduct or equities (including evidence of reformation or rehabilitation) subsequent to the commission of the unlawful act during the statutory period shall be considered as an extenuating circumstance.

Additionally, any evidence of extenuating circumstances offered by the applicant “must pertain to the reasons showing lack of good moral character, including acts negating good character, not to the consequences of these matters, including the consequence” of ineligibility for naturalization. *Jean-Baptiste v. United States*, 395 F.3d 1190 (11<sup>th</sup> Cir.2005), *citing Rico v. INS*, 262 F.Supp.2d 6 (E.D.N.Y.2003).

Field offices having questions regarding this Memorandum may submit them, through channels, to Gerard Casale, Office of Field Operations.