# Policy Manual

*January 7, 2013*

U.S. Citizenship and Immigration Services

# About the Policy Manual

U.S. Citizenship and Immigration Services (USCIS) makes decisions on benefit and service requests that not only affect foreign nationals and their future, but also the well-being of U.S. citizens, families, organizations, businesses, industries, localities, states, the nation, and international communities. Accordingly, USCIS strives to secure America's promise as a nation of immigrants by providing accurate and useful information to customers, promoting awareness and understanding of citizenship rights and responsibilities, and making adjudication decisions in a consistent and accurate manner that furthers the goals and integrity of our nation's immigration system. Our policies drive our benefit and services decisions and ensure that our guidance to USCIS officers who make those decisions reflects our agency's mission, and strategic vision. These policies also greatly affect our interaction with USCIS's diverse customer and stakeholder community.

USCIS has undertaken a comprehensive review of our adjudication and customer service policies to improve quality, transparency, and efficiency. As a result of this extensive and ongoing review, USCIS has created the USCIS Policy Manual, which is the agency's centralized online repository for USCIS's immigration policies. The USCIS Policy Manual will ultimately replace the Adjudicator's Field Manual (AFM), the USCIS Immigration Policy Memoranda site, and other policy repositories. The manual is structured to house several volumes pertaining to different areas of immigration benefits administered by the agency such as citizenship and naturalization, adjustment of status, admissibility, protection and parole, nonimmigrants, refugees, asylees, immigrants, waivers, and travel and employment.

The USCIS Policy Manual is organized into different volumes, parts, and chapters that present policies in a logical and sequential manner. The USCIS Policy Manual provides several user-friendly features and enhancements. These features include up-to-the-minute comprehensive policy updates, an expanded table of contents, and links to related Immigration and Naturalization Act (INA) sections, Code of Federal Regulations (CFR), and public use forms. The manual is also equipped with a keyword search function, which will make locating policy and related information faster, easier, and less time consuming. Citations of statutes, regulations, case law, authoritative sources, and other explanatory references appear in footnotes rather than the body of the text. Tables and charts supplement and simplify policy information to facilitate understanding of complex topics and instructions.

The USCIS Policy Manual provides transparency to our customers, including outlining policies that are easy to understand, while also furthering consistency, quality, and efficiency in our adjudications and customer service. The USCIS Policy Manual contains the official policies of USCIS and must be followed by all USCIS officers in the performance of their duties. The Policy Manual does not create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

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## PART A – CITIZENSHIP AND NATURALIZATION POLICIES AND PROCEDURES

### Chapter 1: Purpose and Background

#### A. Purpose

The United States has a long history of welcoming immigrants from all parts of the world. The United States values the contributions of immigrants who continue to enrich this country and preserve its legacy as a land of freedom and opportunity. USCIS is proud of its role in maintaining our country's tradition as a nation of immigrants and will administer immigration and naturalization benefits with integrity.

United States citizenship is a unique bond that unites people around civic ideals and a belief in the rights and freedoms guaranteed by the U.S. Constitution. The promise of citizenship is grounded in the fundamental value that all persons are created equal and serves as a unifying identity to allow persons of all backgrounds, whether native or foreign-born, to have an equal stake in the future of the United States.

This volume of the USCIS Policy Manual explains the laws and policies that govern United States citizenship and naturalization.

USCIS administers citizenship and naturalization law and policy by:

- Providing accurate and useful information to citizenship and naturalization applicants;
- Promoting an awareness and understanding of citizenship; and
- Adjudicating citizenship and naturalization applications in a consistent and accurate manner.

Accordingly, USCIS reviews benefit request for citizenship and naturalization to determine whether:

- Foreign-born children of U.S. citizens by birth or naturalization meet the eligibility requirements before recognizing their acquisition or derivation of U.S. citizenship.

- Persons applying for naturalization based on their time as lawful permanent residents meet the eligibility requirements to become U.S. citizens.

- Persons applying for naturalization based on their marriage to a U.S. citizen meet the eligibility requirements for naturalization through the provisions for spouses of U.S. citizens.

- Members of the U.S. armed forces and their families are eligible for naturalization and ensure that qualified applicants are naturalized expeditiously through the military provisions.

- Persons working abroad for certain entities, to include the U.S. Government, meet the eligibility requirements for certain exceptions to the general naturalization requirements.

Volume 12, Citizenship and Naturalization, contains detailed guidance on the requirements for citizenship and naturalization.

| Volume 12: Citizenship and Naturalization | | |
|---|---|---|
| **Volume 12 Parts** | | **Guidance** |
| Part A | **Citizenship and Naturalization Policies and Procedures** | General policies and procedures relating to citizenship and naturalization |
| Part B | **Naturalization Examination** | Naturalization examination, to include security checks, interview and eligibility review |
| Part C | **Accommodations** | Accommodations and modifications that USCIS may provide in the naturalization process |
| Part D | **General Naturalization Requirements** | General naturalization requirements that apply to most lawful permanent residents |
| Part E | **English and Civics Testing and Exceptions** | Testing for educational requirements for naturalization |
| Part F | **Good Moral Character** | Good moral character for naturalization and the related permanent and conditional bars |
| Part G | **Spouses of U.S. Citizens** | Spouses of U.S. citizens who reside in the United States or abroad |
| Part H | **Children of U.S. Citizens** | Children of U.S. citizens who may have acquired or derived citizenship stateside or abroad |
| Part I | **Military Members and their Families** | Provisions based on military service for members of the military and their families |
| Part J | **Oath of Allegiance** | Oath of Allegiance for naturalization, to include modifications and waivers |
| Part K | **Certificates of Citizenship and Naturalization** | Issuance and replacement of Certificates of Citizenship and Certificates of Naturalization |

| Volume 12: Citizenship and Naturalization | |
|---|---|
| **Volume 12 Parts** | **Guidance** |
| Part L **Revocation of Naturalization** | General procedures for revocation of naturalization (denaturalization) |

**B. Background**

Upon the adoption of the U.S. Constitution in 1787, the first U.S. citizens were granted citizenship status retroactively as of 1776. Neither an application for citizenship, nor the taking of an Oath of Allegiance was required at that time.[1] Persons only needed to remain in the United States at the close of the war and the time of independence to show that they owed their allegiance to the new Government and accepted its protection.

The following key legislative acts provide a basic historical background for the evolution of the general eligibility requirements for naturalization as set forth in the Immigration and Nationality Act (INA).

| Evolution of Naturalization Requirements Prior to the Immigration and Nationality Act (INA) of 1952 | |
|---|---|
| **Act** | **Statutory Provisions** |
| **Naturalization Act of 1790** | • Established uniform rule of naturalization and oath of allegiance<br>• Established two year residency requirement for naturalization<br>• Required good moral character of all applicants |
| **Naturalization Act of 1798** | • Permitted deportation of foreign nationals considered dangerous<br>• Increased residency requirements from 2 years to 14 years |
| **Naturalization Act of 1802** | • Reduced residency requirement from 14 years to 5 years |
| **Naturalization Act of 1891** | • Rendered polygamists, persons suffering from contagious disease and persons convicted of a "misdemeanor involving moral turpitude" ineligible for naturalization. |
| **Naturalization Act of 1906** | • Standardized naturalization procedures<br>• Required knowledge of English language for citizenship<br>• Established the Bureau of Immigration and Naturalization |
| **The Alien Registration Act of 1940** | • Required the registration and fingerprinting of all aliens in the United States over the age of 14 years |

**C. Legal Authorities**

- INA 103; 8 CFR 103 – Powers and duties of the Secretary, the Under Secretary, and the Attorney General

[1] See Franklin, F. (1906). *The Legislative History of Naturalization in the United States; From the Revolutionary War to 1861*. Chicago: The University of Chicago Press.

- INA 310; 8 CFR 310 – Naturalization authority
- INA 312; 8 CFR 312 – Educational requirements for naturalization
- INA 316; 8 CFR 316 – General requirements for naturalization
- INA 332; 8 CFR 332 – Naturalization administration; executive functions
- INA 336; 8 CFR 336 – Hearings on denials of applications for naturalization
- INA 337; 8 CFR 337 – Oath of renunciation and allegiance
- 8 CFR 2 – Authority of the Secretary of the Department of Homeland Security

## Chapter 2: Becoming a U.S. Citizen

A person may derive or acquire U.S. citizenship at birth. Persons who are born in the United States and subject to the jurisdiction of the United States are citizens at birth. Persons who are born in certain territories or outlying possessions of the United States are also eligible for citizenship at birth. In general, this includes persons born in:

- Puerto Rico on or after April 11, 1899[2]
- Canal Zone or Republic of Panama on or after February 26, 1904[3]
- Virgin Islands on or after January 17, 1917[4]
- Guam born after April 11, 1899 (if residing in Guam or territory on August 1, 1950)[5]

Persons born in American Samoa and Swain Island are generally considered nationals but not citizens of the United States.[6]

In addition, persons who are born outside of the United States may be U.S. citizens at birth if one or both parents were U.S. citizens at their time of birth. Persons who are not U.S. citizens at birth may become U.S. citizens through naturalization. Naturalization is the conferring of U.S. citizenship after birth by any means whatsoever.

In general, an applicant files a naturalization application and then USCIS grants citizenship after adjudicating the application. In some cases, a person may be naturalized by operation of law. This is often referred to as deriving citizenship. In either instance, the foreign citizen or national must fulfill all of the requirements established by Congress. In most cases, a person may not be naturalized unless he or she has been lawfully admitted to the United States for permanent residence.

Deciding to become a U.S. citizen is one of the most important decisions an immigrant can make. Naturalized U.S. citizens share equally in the rights and privileges of U.S. citizenship. U.S. citizenship offers immigrants the ability to:

- Vote in Federal elections
- Travel with a U.S. Passport

[2] See INA 302.
[3] See INA 303. (One parent must have been a U.S. citizen).
[4] See INA 306.
[5] See INA 307.
[6] See INA 308.

- Run for elective office where citizenship is required
- Participate on a jury
- Become eligible for federal and certain law enforcement jobs
- Obtain certain State and Federal benefits not available to noncitizens
- Obtain citizenship for minor children born abroad
- Expand and expedite their ability to bring family members to the United States

## Chapter 3: USCIS Authority to Naturalize

It has long been established that Congress has the exclusive authority under its constitutional power to establish a uniform rule of naturalization and to enact legislation under which citizenship may be conferred upon persons.[7] Before 1991, naturalization within the United States was a judicial function exercised since 1790 by various courts designated in statutes enacted by Congress under its constitutional power to establish a uniform rule of naturalization.

As of October 1, 1991, Congress transferred the naturalization authority to the Attorney General (now the Secretary of DHS).[8] USCIS is authorized to perform such acts as are necessary to properly implement the Secretary's authority.[9] In certain cases, an applicant for naturalization may choose to have the Oath of Allegiance[10] administered by USCIS or by an eligible court with jurisdiction. Eligible courts may choose to have exclusive authority to administer the Oath of Allegiance.

[7] See *Chirac v. Chirac*, 15 U.S. 259 (1817).
[8] See INA 310(a).
[9] See INA 310.
[10] See INA 337(a).

# PART B – NATURALIZATION EXAMINATION

## Chapter 1: Purpose and Background

### A. Purpose

USCIS conducts an investigation and examination of all naturalization applicants to determine whether an applicant meets all pertinent eligibility requirements to become a U.S. citizen. The investigation and examination process encompasses all factors relating to the applicant's eligibility:[11]

- Completion of security and criminal background checks
- Review of the applicant's complete immigration record
- In-person interview(s) with oral and written testimony
- Testing for English and civics requirements
- Qualification for a disability exception

USCIS officers have authority to conduct the investigation and examination.[12] The authority includes the legal authority for certain officers to administer the Oath of Allegiance, obtain oral and written testimony during an in-person interview, subpoena witnesses, and request evidence.[13]

The applicant has the burden of establishing eligibility by a preponderance of the evidence throughout the examination.[14] The officer must resolve any pending issues and obtain all of the necessary information and evidence to make a decision on the application. Uniformity in decision-making and application processing is vital to the integrity of the naturalization process. Consistency in the decision-making process enhances USCIS's goal to ensure that the relevant laws and regulations are applied accurately to each case.

### B. Background

Beginning in 1906, a complete examination and questioning under oath was required of the "petitioner" (now "applicant") for naturalization and his or her witnesses at the final hearing for naturalization in court.[15] Congress amended the statute in 1940 to include English language requirements and a provision for questioning applicants on their understanding of the principles of the Constitution.[16]

Today, USCIS conducts an investigation and examination of all applicants for naturalization to determine their eligibility for naturalization, including the applicant's lawful admission for permanent residence, ability to establish good moral character, attachment to the Constitution, residence and physical presence in the United States, and the English and civics requirements for naturalization.

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[11] See INA 335. See 8 CFR 335.1 and 8 CFR 335.2.
[12] See INA 335(b). See 8 CFR 332.1 and 8 CFR 335.2. The authority is delegated by the Secretary of the Department of Homeland Security.
[13] See INA 332, INA 335, and INA 337. See 8 CFR 332, 8 CFR 335, and 8 CFR 337.
[14] See 8 CFR 316.2(b).
[15] In 1981 Congress enacted legislation which eliminated the character witness requirements of naturalization, though USCIS has the authority to subpoena witnesses if necessary.
[16] See the Nationality Act of 1940, Pub. L. 76-853, 54 Stat. 1137.

### C. Legal Authorities

- INA 310, 8 CFR 310 – Naturalization authority
- INA 312; 8 CFR 312 – Educational requirements for naturalization
- INA 316; 8 CFR 316 – General requirements for naturalization
- INA 332; 8 CFR 332 – Procedural and administrative provisions; executive functions
- INA 335; 8 CFR 335 – Investigation and examination of applicant
- INA 336; 8 CFR 336 – Hearings on denials of naturalization application

## Chapter 2: Background and Security Checks

### A. Background Investigation

USCIS conducts an investigation of the applicant upon his or her filing for naturalization. The investigation consists of certain criminal background and security checks.[17] The background and security checks include collecting fingerprints and requesting a "name check" from the Federal Bureau of Investigations (FBI). In addition, USCIS conducts other inter-agency criminal background and security checks on all applicants for naturalization. The background and security checks apply to most applicants and must be conducted and completed before the applicant is scheduled for his or her naturalization interview.[18]

### B. Fingerprints

#### 1. Fingerprint Requirement

USCIS must collect fingerprint records as part of the background check process on most applicants for naturalization.[19] Applicants 75 years of age and older are generally not required to submit fingerprints. USCIS notifies applicants in writing to appear for fingerprinting after submitting the naturalization application. Fingerprints are valid for 15 months from the date of processing by the FBI. An applicant abandons his or her naturalization application if the applicant fails to appear for the fingerprinting appointment without good cause and without notifying USCIS.[20]

Once an Application Support Center (ASC) collects an applicant's biometrics, USCIS submits the records to the FBI for a full criminal background check.[21] The response from the FBI that a full criminal background check has been completed includes confirmation that:

- The applicant does not have an administrative or a criminal record;
- The applicant has an administrative or a criminal record; or
- The applicant's submitted fingerprint records have been determined "unclassifiable" for the purpose of conducting a criminal background check and have been rejected.

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[17] See INA 335. See 8 CFR 335.1. See forthcoming Volume 1, General Policies and Procedures for specific guidance on fingerprint requirements and waivers and other security check.
[18] See 8 CFR 335.2(b).
[19] See 8 CFR 103.2(b)(9), 8 CFR 335.1, and 8 CFR 335.2. See Part I, Military Members and their Families, Chapter 6, Required Background Checks, for guidance on the background and security check procedures for members or veterans of the U.S. armed forces.
[20] See 8 CFR 103.2(b)(13)(ii). See Chapter 4, Results of the Naturalization Examination.
[21] See 8 CFR 335.2(b).

2. Fingerprint Waivers

*Applicants Age 75 or Older*

An applicant who is 75 years old or older at the time of filing his or her naturalization application is not required to provide fingerprints.

*Applicants with Certain Medical Conditions*

An applicant may qualify for a waiver of the fingerprint requirement if the applicant is unable to provide fingerprints because of a medical condition, to include birth defects, physical deformities, skin conditions, and psychiatric conditions. Only certain USCIS officers are authorized to grant a fingerprint waiver.[22]

An officer responsible for overseeing applicant fingerprinting may grant the waiver in the following situations:

- The officer has met with the applicant in person;
- The officer or authorized technician has attempted to fingerprint the applicant; and
- The officer determines that the applicant is unable to be fingerprinted at all or is unable to provide a single legible fingerprint.

An applicant who is granted a fingerprint waiver must bring local police clearance letters covering the relevant period of good moral character to his or her naturalization interview. All clearance letters become part of the record. In cases where the applicant is granted a fingerprint waiver or has two unclassifiable fingerprint results, the officer must take a sworn statement from the applicant covering the period of good moral character.

An officer should not grant a waiver if the waiver is solely based on:

- The applicant has fewer than 10 fingers;
- The officer considers that the applicant's fingerprints are unclassifiable; or
- The applicant's condition preventing the fingerprint capturing is temporary.

An officer's decision to deny a fingerprint waiver is final and may not be appealed.

**C. FBI Name Checks**

The FBI conducts "name checks" on all naturalization applicants, and disseminates the information contained in the FBI's files to USCIS in response to the name check requests. The FBI's National Name Check Program (NNCP) includes a search against the FBI's Universal Index (UNI), which contains personnel, administrative, applicant, and criminal files compiled for law enforcement purposes. The FBI disseminates the information contained in the FBI's files to USCIS in response to the name check requests.

[22] See forthcoming Volume 1, General Policies and Procedures, for specific guidance on fingerprint requirements and waivers and other security checks.

The FBI name check must be completed and cleared before an applicant for naturalization is scheduled for his or her naturalization interview. A definitive FBI name check response of "NR" (No Record) or "PR" (Positive Response) is valid for the duration of the application for which they were conducted. Definitive responses used to support other applications are valid for 15 months from the FBI process date. A new name check is required in cases where the final adjudication and naturalization have not occurred within that timeframe or the name check was processed incorrectly.

## Chapter 3: Naturalization Interview

### A. Roles and Responsibilities

1. USCIS Officers

*Authority to Conduct Examination*

USCIS officers have authority to conduct the investigation and examination, to include the naturalization interview.[23] The officer should introduce him or herself and explain the purpose of the naturalization examination and place the applicant under oath at the start of the interview.

USCIS's authority includes the legal authority for officers to:

- Place an applicant under oath;
- Obtain oral and written testimony during an in-person interview;
- Subpoena witnesses;
- Request evidence; and
- Administer the Oath of Allegiance (when delegated by the Field Office Director).

*Questions on Eligibility*

An officer's questioning of an applicant during the applicant's naturalization interview must cover all of the requirements for naturalization.[24] In general, the officer's questions focus on the information in the naturalization application. The officer may ask any questions that are pertinent to the eligibility determination. The officer should provide the applicant with suitable opportunities to respond to questions in all instances.

In general, the officer's questions may include, but are not limited to, the following questions:

- Biographical information, to include marital history and military service
- Admission and length of time as a lawful permanent resident (LPR)
- Absences from the United States after becoming an LPR
- Places of residence and employment history
- Knowledge of English and of U.S. history and government (civics)
- Moral character and any criminal history
- Attachment to the principles of the U.S. Constitution

[23] See INA 335(b). See 8 CFR 335.2.
[24] See Part D, General Naturalization Requirements.

- Affiliations or memberships in certain organizations
- Willingness to take an Oath of Allegiance to the United States
- Any other topic pertinent to the eligibility determination

In most cases, the officer conducting the naturalization interview administers the required tests relating to the applicant's ability to read and write English, and his or her knowledge of U.S. history and government (civics), unless the applicant is exempt.[25] The officer who conducts the naturalization interview and who determines the applicant's ability to speak and understand English is not required to also administer the English reading and writing, and civics tests. Accordingly, a different officer may administer the tests.

*Grounding Decisions on Applicable Laws*

An officer must analyze the facts of each case to make a legally sound decision on the naturalization application. The officer must base his or her decision to approve or deny the application on the relevant laws, regulations, precedent decisions, and agency guidance:

- The Immigration and Nationality Act (INA) is the primary source of pertinent statutory law.[26]

- The corresponding regulations explain the statutes further and provide guidance on how the statutes are applied.[27]

- Precedent decisions have the force of law and are binding on cases within the jurisdiction of the court or appellate body making the decision.[28]

- USCIS guidance provides the agency's policies and procedures supporting the laws and regulations. The USCIS Policy Manual is the primary source for agency guidance.[29]

2. Authorized Representatives

An applicant may request the presence and counsel of a representative, to include attorneys or other representatives, at the applicant's in-person interview. The representative must submit to USCIS a properly completed notice of entry of appearance.[30]

In cases where an applicant requests to proceed without the assistance of a representative, the applicant must sign a waiver of representation. If the applicant does not want to proceed with the interview without his or her

[25] See Part E, English and Civics Testing and Exceptions.
[26] See the Immigration and Nationality Act (INA).
[27] See Title 8 of the Code of Federal Regulations (8 CFR). Most of the corresponding regulations have been promulgated by legacy INS or USCIS.
[28] Precedent decisions are judicial decisions that serve as an authority for deciding an immigration matter. Precedent decisions are decisions designated as such by the Board of Immigration Appeals (BIA), Administrative Appeals Office (AAO), and appellate court decisions. Decisions from district courts are not precedent decisions in other cases.
[29] The Adjudicator's Field Manual (AFM) and policy memoranda also serve as key sources for guidance on topics that are not covered in the Policy Manual.
[30] See 8 CFR 335.2(a). The representative must use the Notice of Entry of Appearance as Attorney or Representative (Form G-28).

representative, the officer must reschedule the interview. Officers should consult with a supervisor if the representative fails to appear for multiple scheduled interviews.

The representative's role is to ensure that the applicant's legal rights are protected. A representative may advise his or her client on points of law but should not respond to questions the officer has directed to the applicant.

An applicant may be represented by any of the following:

- Attorneys in the United States;[31]
- Certain law students and law graduates not yet admitted to the bar;[32]
- Certain reputable individuals who are of good moral character, have a pre-existing relationship with the applicant and are not receiving any payment for the representation;[33]
- Accredited representatives from organizations accredited by the Board of Immigration Appeals (BIA);[34]
- Accredited officials of the government to which a person owes allegiance;[35] or
- Attorneys outside the United States.[36]

No other person may represent an applicant.[37]

3. Interpreters

An interpreter may be selected either by the applicant or by USCIS in cases where the applicant is permitted to use an interpreter. The interpreter must:

- Translate what the officer and the applicant say word for word to the best of his or her ability without providing the interpreter's own opinion, commentary, or answer; and

- Complete an interpreter's oath and privacy release statement and submit a copy of his or her government-issued identification at the naturalization interview.

A disinterested party should be used as an interpreter. If the USCIS officer is fluent in the applicant's native language, the officer may conduct the examination in the applicant's language of choice.

USCIS reserves the right to disqualify an interpreter provided by the applicant if an officer considers that the integrity of the examination is compromised by the interpreter's participation.

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[31] See 8 CFR 292.1(a)(1).
[32] See 8 CFR 292.1(a)(2).
[33] See 8 CFR 292.1(a)(3).
[34] See 8 CFR 292.1(a)(4) and 8 CFR 292.2.
[35] See 8 CFR 292.1(a)(5).
[36] See 8 CFR 292.1(a)(6). In naturalization cases, attorneys licensed only outside the United States may represent an applicant only when the naturalization proceeding can occur overseas and where DHS allows the representation as a matter of discretion. Attorneys licensed only outside the United States cannot represent an applicant whose naturalization application is processed solely within the United States unless the attorney also qualifies under another representation category.
[37] See 8 CFR 292.1(e).

## B. Preliminary Review of Application

A USCIS officer who is designated to conduct the naturalization interview should review the applicant's "A-file" and naturalization application before the interview. The A-file is the applicant's record of his or her interaction with USCIS, legacy INS, and other governmental organizations with which the applicant has had proceedings pertinent to his or her immigration record. The officer addresses all pertinent issues during the naturalization interview.

### 1. General Contents of A-File

The applicant's A-file may include the following information along with his or her naturalization application:

- Documents that show how the applicant became an LPR;
- Other applications or forms for immigration benefits submitted by the applicant;
- Correspondence between USCIS and the applicant;
- Memoranda and forms from officers that may be pertinent to the applicant's eligibility;
- Materials such as any criminal records,[38] correspondence from other agencies, and investigative reports and enforcement actions from DHS or other agencies.

### 2. Jurisdiction for Application[39]

In most cases, the USCIS office having jurisdiction over the applicant's residence at the time of filing has the responsibility for processing and adjudicating the naturalization application.[40] An officer should review whether the jurisdiction of a case has changed because the applicant has moved after filing his or her naturalization application. The USCIS office may transfer the application to the appropriate office with jurisdiction when appropriate.[41] In addition, an applicant for naturalization as a battered spouse of a U.S. citizen[42] or child may use a different address for safety which does not affect the jurisdiction requirements.

In cases where an officer becomes aware of a change in jurisdiction during the naturalization interview, the officer may complete the interview and then forward the applicant's A-file with the pending application to the office having jurisdiction. The officer informs the applicant that the application's jurisdiction has changed. The applicant will receive a new appointment notice from the current office with jurisdiction.

### 3. Results of Background and Security Checks[43]

An officer should ensure that all of the appropriate background and security checks have been conducted on the naturalization applicant. The results of the background and security checks should be included as part of the record.

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[38] For example, a Record of Arrest and Prosecution ("RAP" sheet).
[39] See Part D, General Naturalization Requirements, Chapter 6, Jurisdiction, Place of Residence, and Early Filing.
[40] An applicant who is a student or a member of the U.S. armed forces may have different places of residence that may affect the jurisdiction requirement. See 8 CFR 316.5(b).
[41] See 8 CFR 335.9.
[42] See INA 319(a).
[43] See Chapter 2, Background and Security Checks.

4. Other Documents or Requests in the Record

*Requests for Accommodations or Disability Exceptions*

USCIS accommodates applicants with disabilities by making modifications to the naturalization examination process.[44] An officer reviews the application for any accommodations request, any oath waiver request or for a medical disability exception from the educational requirements for naturalization.[45]

*Previous Notice to Appear, Order to Show Cause, or Removal Order*

An officer reviews an applicant's record and relevant databases to identify any current removal proceedings or previous proceedings resulting in a final order of removal from the United States. If an applicant is in removal proceedings, a Notice to Appear or the previously issued "Order to Show Cause" may appear in the applicant's record.[46] USCIS cannot make a decision on any naturalization application from an applicant who is in removal proceedings.[47]

The officer should deny the naturalization application if the applicant has already received a final order of removal from an immigration judge, unless:

- The applicant was removed from the United States and later reentered with the proper documentation and authorization; or
- The applicant is filing for naturalization under the military naturalization provisions.[48]

**C. Initial Naturalization Examination**

All naturalization applicants must appear for an in-person examination before a USCIS officer after filing an Application for Naturalization (Form N-400).[49] The applicant's examination includes both the interview and the administration of the English and civics tests. The applicant's interview is a central part of the naturalization examination. The officer conducts the interview with the applicant to review and examine all factors relating to the applicant's eligibility.

The officer places the applicant under oath and interviews the applicant on the questions and responses in the applicant's naturalization application. [50] The initial naturalization examination includes:

- An officer's review of information provided in the applicant's naturalization application,
- The administration of tests on the educational requirements for naturalization,[51] and

[44] See Part C, Accommodations.
[45] See Part E, English and Civics Testing and Exceptions, Chapter 3, Medical Disability Exception (N-648). See Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers.
[46] An "Order to Show Cause" was the notice used prior to enactment of IIRIRA on April 1, 1997.
[47] This does not apply in cases involving naturalizations based on military service where the applicant may not be required to be lawfully admitted for permanent residence. See INA 318 and INA 329.
[48] See INA 328(b)(2) and INA 329(b)(1).
[49] See 8 CFR 335.2(a).
[50] If an applicant is unable to undergo any part of the naturalization examination because of a physical or developmental disability or mental impairment, a legal guardian, surrogate or an eligible designated representative completes the naturalization process for the applicant. See Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers.

- An officer's questions relating to the applicant's eligibility for naturalization.[52]

The applicant's written responses to questions on his or her naturalization application are part of the documentary record signed under penalty of perjury. The written record includes any amendments to the responses in the application that the officer makes in the course of the naturalization interview as a result of the applicant's testimony. The amendments, sworn affidavits, and oral statements and answers document the applicant's testimony and representations during the naturalization interview(s).

At the officer's discretion, he or she may record the interview by a mechanical, electronic, or videotaped device, may have a transcript made, or may prepare an affidavit covering the testimony of the applicant.[53] The applicant or his or her authorized attorney or representative may request a copy of the record of proceedings through the Freedom of Information Act (FOIA).[54]
The officer provides the applicant with a notice of results at the end of the examination regardless of the outcome.[55] The notice provides the outcome of the examination and should explain what the next steps are in cases that are continued.[56]

**D. Subsequent Re-examination**

USCIS may schedule an applicant for a subsequent examination (re-examination) to determine the applicant's eligibility.[57] During the re-examination:

- The officer reviews any evidence provided by the applicant in a response to a request for evidence issued during or after the initial interview.

- The officer considers new oral and written testimony and determines whether the applicant meets all of the naturalization eligibility requirements, to include re-testing the applicant on the educational requirements (if necessary).

In general, the re-examination provides the applicant with an opportunity to overcome deficiencies in his or her naturalization application. Where the re-examination is scheduled for failure to meet the educational requirements for naturalization during the initial examination, the subsequent re-examination is scheduled between 60 and 90 days from the initial examination.[58]

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[51] See Part E, English and Civics Testing and Exceptions. USCIS may administer the test separately from the interview.
[52] See the relevant Volume 12 part for the specific eligibility requirements for each naturalization provision.
[53] See 8 CFR 335.2(c).
[54] The applicant or authorized attorney or representative may request a copy of the record of proceedings by filing a Freedom of Information/Privacy Act Request (Form G-639).
[55] The officer must use the Naturalization Interview Results (Form N-652).
[56] See Chapter 4, Results of the Naturalization Examination.
[57] A USCIS field office may allow the applicant to provide documentation by mail in order to overcome any deficiencies without scheduling the applicant to come in person for another interview.
[58] See 8 CFR 335.3(b) (Re-examination no earlier than 60 days from initial examination). See 8 CFR 312.5(a) (Re-examination for educational requirements scheduled no later than 90 days from initial examination). In cases where an applicant does not meet the educational requirements for naturalization during the re-examination, USCIS denies the application. See Part E, English and Civics Testing and Exceptions, Chapter 2, English and Civics Testing.

If the applicant is unable to overcome the deficiencies in his or her naturalization application, the officer denies the naturalization application. An applicant or his or her authorized representative may request a USCIS hearing before an officer on the denial of the applicant's naturalization application.[59]

**E. Expediting Applications from Certain SSI Beneficiaries**

USCIS will expedite naturalization applications filed by applicants:

- Who are within one year or less of having their Supplemental Security Income (SSI) benefits terminated by the Social Security Administration (SSA); and

- Whose naturalization application has been pending for four months or more from the date of receipt by USCIS.

Although USCIS will prioritize processing of these applications, each applicant is still required to meet all eligibility requirements for naturalization at the time of filing. Applicants, who have pending applications, must inform USCIS of the approaching termination of benefits by INFOPASS appointment or by United States postal mail or other courier service by providing:

- A cover letter or cover sheet to explain that SSI benefits will be terminated within one year or less and that their naturalization application has been pending for four months or more from the date of receipt by USCIS; and

- A copy of the applicant's most recent SSA letter indicating the termination of their SSI benefits. (The USCIS alien number must be written at the top right of the SSA letter).

Applicants who have not filed their naturalization application may write "SSI" at the top of page one of the application. Applicants should include a cover letter or cover sheet along with their application to explain that their SSI benefits will be terminated within one year or less.

## Chapter 4: Results of the Naturalization Examination

USCIS has 120 days from the date of the initial naturalization interview to issue a decision. If the decision is not issued within 120 days of the interview, an applicant may request judicial review of his or her application in district court. The officer must base his or her decision on the laws, regulations, precedent decisions, and governing policies.

The officer may:

- Approve the application;
- Continue the examination without making a decision (if more information is needed), if the applicant needs to be rescheduled, or for other relevant reasons; or
- Deny the application.

[59] See Chapter 6, USCIS Hearing and Judicial Review. See Chapter 3, Naturalization Interview, Section A, Roles and Responsibilities, for a list of authorized representatives. See 8 CFR 292.1.

The officer must provide the applicant with a notice of results at the end of the interview regardless of the outcome. The notice should address the outcome of the interview and the next steps involved for continued cases.[60]

**A. Approval of Naturalization Application**

If an officer approves a naturalization application, the application goes through the appropriate internal procedures before the USCIS office schedules the applicant to appear at a ceremony for the administration of the Oath of Allegiance.[61] The internal procedures include a "re-verification" procedure where all approved applications are reviewed for quality. The officer who conducts the re-verification is not the same officer who conducts the interview. While the officer conducting the re-verification process does not adjudicate the application once again, the officer may raise any substantive eligibility issues.

USCIS does not schedule an applicant for the Oath of Allegiance in cases where USCIS receives or identifies potentially disqualifying information about the applicant after approval of his or her application.[62] If USCIS cannot resolve the disqualifying information and the adjudicating officer finds the applicant ineligible for naturalization, USCIS then issues a Motion to Reopen and re-adjudicates the naturalization application.

**B. Continuation of Examination**

1. Continuation to Request Evidence

An officer issues the applicant a written request for evidence if additional information is needed to make an accurate determination on the naturalization application.[63] In general, USCIS permits a period of 30 days for the applicant to respond to a request for evidence.[64]

The request for evidence should include:

- The specific documentation or information that the officer is requesting;
- The ways in which the applicant may respond; and
- The period of time that the applicant has to reply.

The applicant must respond to the request for evidence within the timeframe specified by the officer. If the applicant timely submits the evidence as requested, the officer makes a decision on the applicant's eligibility. If the applicant fails to submit the evidence as requested, the officer may adjudicate the application based on the available evidence.[65]

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[60] The officer issues a Notice of Examination Results (Form N-652).
[61] See Part J, Oath of Allegiance.
[62] See 8 CFR 335.5. See Chapter 5, Motion to Reopen.
[63] The officer issues a request for evidence on Form N-14.
[64] See 8 CFR 335.7. The applicant has up to three more days after the 30-day period for responding to an RFE in cases where USCIS has mailed the request. See 8 CFR 103.8(b).
[65] See 8 CFR 335.7.

2. Scheduling Subsequent Re-examination

If an applicant fails any portion of the naturalization test, an officer must provide the applicant a second opportunity to pass the test within 60 to 90 days after the initial examination unless the applicant is statutorily ineligible for naturalization based on other grounds.[66] An officer should also schedule a re-examination in order to resolve any issues on eligibility.

The outcome of the re-examination determines whether the officer conducting the second interview continues, approves, or denies the naturalization application.[67]

If the applicant fails to appear for the re-examination and USCIS does not receive a timely or reasonable request to reschedule, the officer should deny the application based on the applicant's failure to meet the educational requirements for naturalization. The officer also should include any other areas of ineligibility within the denial notice.

**C. Denial of Naturalization Application**

If an officer denies a naturalization application based on ineligibility or lack of prosecution, the officer must issue the applicant and his or her attorney or representative a written denial notice no later than 120 days after the initial interview on the application.[68] The written denial notice should include:

- A clear and concise statement of the facts in support of the decision,
- Citation of the specific eligibility requirements the applicant failed to demonstrate, and
- Information on how the applicant may request a hearing on the denial.[69]

The table below provides certain general grounds for denial of the naturalization application. An officer should review the pertinent parts of this volume that correspond to each ground for denial and its related eligibility requirement for further guidance.

| General Grounds for Denial of Naturalization Application (Form N-400) | |
|---|---|
| **Failure to establish…** | **Citation** |
| **Lawful Admission for Permanent Residence** | INA 316(a)(1) and INA 318<br>8 CFR 316.2(a)(2) |
| **Continuous Residence** | INA 316(a)(2) and INA 316(b)<br>8 CFR 316.2(a)(3) and 316.5(c) |
| **Physical Presence** | INA 316(a)<br>8 CFR 316.2(a)(4) |

[66] See 8 CFR 312.5(a) and 8 CFR 335.3(b).
[67] See Part E, English and Civics Testing and Exceptions, Chapter 2, English and Civics Testing.
[68] See INA 335(d). See 8 CFR 336.1(a).
[69] See 8 CFR 336.1(b). See Chapter 6, USCIS Hearing and Judicial Review.

| General Grounds for Denial of Naturalization Application (Form N-400) | |
|---|---|
| **Failure to establish…** | **Citation** |
| **3 Months of Residence in State or Service District** | INA 316(a)<br>8 CFR 316.2(a)(5) |
| **Good Moral Character** | INA 316(a)(3), INA 316(e), and INA 101(f); 8 CFR 316.10 |
| **Attachment and Favorable Disposition to the Good Order and Happiness of the United States** | INA 316(a)(3)<br>8 CFR 316.11 |
| **Understanding of English (Including Reading, Writing, and Speaking)** | INA 312(a)(1)<br>8 CFR 312.1 |
| **Knowledge of U.S. History and Government** | INA 312(a)(2)<br>8 CFR 312.2 |
| **Lack of Prosecution** | INA 335(e)<br>8 CFR 335.7 |

**D. Administrative Closure, Lack of Prosecution, Withdrawal, and Holding in Abeyance**

1. Administrative Closure for Failing to Appear at Initial Interview

An applicant abandons his or her application if he or she fails to appear for his or her initial naturalization examination without good cause and without notifying USCIS of the reason for non-appearance within 30 days of the scheduled appointment. In the absence of timely notification by the applicant, an officer may administratively close the application without making a decision on the merits.[70]

An applicant may request to reopen an administratively closed application without fee by submitting a written request to USCIS within one year from the date the application was closed.[71] The date of the applicant's request to reopen an application becomes the date of filing the naturalization application for purposes of determining eligibility for naturalization.[72]

If the applicant does not request reopening of an administratively closed application within one year from the date the application was closed, USCIS:

- Considers the naturalization application abandoned; and
- Dismisses the application without further notice to the applicant.[73]

[70] See 8 CFR 103.2(b)(13)(ii), 8 CFR 335.6(a), and 8 CFR 335.6(b). Generally, military applicants may file a motion to reopen at any time. See Part I, Military Members and their Families.
[71] See 8 CFR 335.6(b). See Chapter 5, Motion to Reopen.
[72] See 8 CFR 335.6(b).
[73] See 8 CFR 335.6(c).

2. Failing to Appear for Subsequent Re-examination or to Respond to Request for Evidence

If the applicant fails to appear at the subsequent re-examination or fails to respond to a Request for Evidence within 30 days, officer must adjudicate the application on the merits.[74] This includes cases where the applicant fails to appear at a re-examination or to provide evidence as requested.

An officer should consider any good cause exceptions provided by the applicant for failing to respond or appear for an examination in adjudicating a subsequent motion to reopen.

3. Withdrawal of Application

The applicant may request, in writing, to withdraw his or her application. The officer must inform the applicant that the withdrawal by the applicant constitutes a waiver of any future hearing on the application. If USCIS accepts the withdrawal, the applicant may submit another application without prejudice. USCIS does not send any further notice regarding the application.

If the District Director does not consent to the withdrawal, the officer makes a decision on the merits of the application.[75]

4. Holding Application in Abeyance if Applicant is in Removal Proceedings

USCIS cannot adjudicate the naturalization application of an applicant who is in removal proceedings.[76] In general, USCIS holds the application in abeyance until the immigration judge has either issued a final order of removal or terminates the removal proceedings. Field offices should follow the advice of local USCIS counsel on how to proceed with such cases.

## Chapter 5: Motion to Reopen

### A. USCIS Motion to Reopen

An officer must execute a motion to reopen a previously approved naturalization application if:

- USCIS receives or identifies disqualifying derogatory information about the applicant after approval of his or her application prior to the administration of the Oath of Allegiance;[77] or

- An applicant fails to appear for at least two ceremonies to take the Oath of Allegiance without good cause.[78]

[74] See INA 335(e). See 8 CFR 335.7.
[75] See INA 335(e). See 8 CFR 335.10.
[76] See INA 318. This does not apply in cases involving naturalizations based on military service under INA 329 where the applicant may not be required to be lawfully admitted for permanent residence.
[77] See 8 CFR 335.5.
[78] See 8 CFR 337.10.

USCIS notifies the applicant in writing about the receipt of derogatory information or multiple failures to appear through the motion to reopen. The applicant has 15 days to respond to the motion to reopen and overcome the derogatory information or provide good cause for failing to appear at the Oath ceremony.[79]

If the applicant overcomes the derogatory information and qualifies for naturalization, the officer denies the motion to reopen and schedules the applicant for the Oath of Allegiance. If the applicant is unable to overcome the derogatory information, the officer grants the motion to reopen and denies the application on its merits.[80]

USCIS must not schedule an applicant for the administration of the Oath of Allegiance if USCIS receives or identifies disqualifying derogatory information. USCIS must not administer the Oath of Allegiance to the applicant until the matter is resolved favorably.

An applicant who fails to appear for at least two ceremonies to administer the Oath of Allegiance without good cause abandons his or her intent to be naturalized. USCIS considers multiple failures to appear to be equivalent to receipt of derogatory information after the approval of a naturalization application.[81]

### B. Motion to Reopen Administratively Closed Application

An applicant may request to reopen an administratively closed naturalization application with USCIS by submitting a written request to USCIS within one year of the date his or her application was administratively closed.[82] The applicant is not required to pay any additional fees. USCIS considers the date of the applicant's request to reopen an application as the filing date of the naturalization application for purposes of determining eligibility for naturalization.[83] USCIS sends the applicant a notice approving or denying the motion to reopen.

## Chapter 6: USCIS Hearing and Judicial Review

### A. Hearing Request

An applicant or his or her authorized representative[84] may request a USCIS hearing before an officer on the denial of the applicant's naturalization application. The applicant or authorized representative must file the request with USCIS within 30 days after the applicant receives the notice of denial.[85]

### B. Review of Timely Filed Hearing Request

1. Hearing Scheduled within 180 Days

[79] See 8 CFR 335.5.
[80] See 8 CFR 336.1.
[81] See 8 CFR 337.10.
[82] Generally, military applicants may file a motion to reopen at any time. See Part I, Military Members and their Families, Chapter 6, Required Background Checks, Section C, Ways Service Members may Meet Fingerprint Requirement.
[83] See 8 CFR 335.6(b).
[84] See Chapter 3, Naturalization Interview, Section A, Roles and Responsibilities, for a list of authorized representatives. See 8 CFR 292.1.
[85] See INA 336(a). See 8 CFR 336.2. See the Request for Hearing on a Decision in Naturalization Proceedings under Section 336 of the INA (Form N-336).

Upon receipt of a timely hearing request, USCIS schedules the hearing within 180 days. The hearing should be conducted by an officer other than the officer who conducted the original examination or the officer who denied the application. The officer conducting the hearing must be classified at a grade level equal to or higher than the grade of the examining officer.[86]

2. Review of Application

An officer may conduct a *de novo* review of the applicant's naturalization application or may utilize a less formal review procedure based on:

- The complexity of the issues to be reviewed or determined; and
- The necessity of conducting further examinations essential to the naturalization requirements.[87]

A *de novo* review means that the officer makes a new and full review of the naturalization application.[88]

An officer conducting the hearing has the authority and discretion to:

- Review all aspects of the naturalization application and examine the applicant anew;
- Review any record, file or report created as part of the examination;
- Receive new evidence and testimony relevant to the applicant's eligibility; and
- Affirm the previous officer's denial or re-determine the decision in whole or in part.

The officer conducting the hearing:

- Affirms the findings in the denial and sustains the original decision to deny;

- Re-determines the original decision but denies the application on newly discovered grounds of ineligibility; or

- Re-determines the original decision and reverses the original decision to deny, and approves the naturalization application.

3. English and Civics Testing at Hearing

In hearings involving naturalization applications denied on the basis of failing to meet the educational requirements (English and civics),[89] officers must administer any portion of the English or civics tests that the applicant previously failed. Officers provide only one opportunity to pass the failed portion of the tests at the hearing.

**C. Improperly Filed Hearing Request**

[86] See 8 CFR 336.2(b).
[87] See 8 CFR 336.2(b).
[88] The term "de novo" is Latin for "anew." In this context, it means the starting over of the application's review.
[89] See INA 312. See 8 CFR 312. See Part E, English and Civics Testing and Exceptions.

1. Untimely Filed Request

If an applicant files a hearing request over 30 days after receiving the denial notice (33 days if notice was mailed by USCIS[90]), USCIS considers the request improperly filed. If an applicant's untimely hearing request meets either the motion to reopen or motion to reconsider requirements, USCIS will treat the hearing request as a motion.[91] USCIS renders a decision on the merits of the case in such instances. If the request does not meet the motion requirements, USCIS rejects the request without refund of filing fee.[92]

*Hearing Request Treated as a Motion to Reopen*

USCIS treats an untimely request for a hearing as a motion to reopen if the applicant presents new facts and evidence, and the request is based on any of the following criteria:

- The requested evidence leading to the denial was not material to the issue of eligibility;
- The required initial evidence was submitted with the application, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or
- USCIS sent the relevant correspondence to the wrong address or the applicant filed a timely change of address before USCIS sent the correspondence.[93]

*Hearing Request Treated as a Motion to Reconsider*

USCIS handles an untimely hearing request for a hearing as a motion to reconsider if:

- The applicant explains the reasons for reconsideration;
- Pertinent precedent decisions establish that the decision to deny was based on an incorrect application of law or USCIS policy; and
- The applicant establishes that the decision to deny was incorrect based on the evidence of record at the time of the decision.[94]

2. Requests Improperly Filed by Unauthorized Persons or Entities

USCIS considers a hearing request improperly filed if an unauthorized person or entity files the request.[95] USCIS rejects these requests without refund of filing fee.[96]

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[90] See 8 CFR 103.8(b).
[91] See 8 CFR 336.2(c)(2)(ii).
[92] See 8 CFR 336.2(c)(2)(i).
[93] See 8 CFR 103.5(a)(2).
[94] See 8 CFR 103.5(a)(3).
[95] See Chapter 3, Naturalization Interview, Section A, Roles and Responsibilities, for a list of authorized representatives. See 8 CFR 292.1.
[96] See 8 CFR 336.2(c)(1)(i).

3. Requests Improperly Filed by Attorneys or Authorized Representatives

USCIS considers a hearing request improperly filed if an attorney or representative files the request without properly filing a notice of entry of appearance entitling that person to represent the applicant. The officer must ask the attorney or representative to submit a proper filed notice within 15 days.[97]

If the attorney or representative replies with a properly executed notice within 15 days, the officer should handle the hearing request as properly filed. If the attorney or representative fails to do so, the officer may nevertheless make a new decision favorable to the applicant through the officer's own motion to reopen without notifying the attorney or representative.[98]

**D. Judicial Review**

A naturalization applicant may request judicial review before a United States district court of his or her denied naturalization application after USCIS issues the decision following the hearing with a USCIS officer.[99] The applicant must file the request before the United States District Court having jurisdiction over the applicant's place of residence. The district court reviews the case *de novo* and makes its own findings of fact and conclusions of law.

[97] See 8 CFR 336.2(c)(1)(ii). See Form G-28.
[98] See 8 CFR 336.2(c)(1)(ii) and 8 CFR 103.5(a)(5)(i).
[99] See INA 310(c). See INA 336(a).

# PART C – ACCOMMODATIONS

## Chapter 1: Purpose and Background

### A. Purpose

USCIS accommodates naturalization applicants with disabilities by making modifications to the naturalization process.[100] USCIS aims to provide applicants with disabilities an equal opportunity to successfully complete the process. While USCIS is not required to make major modifications that would result in a fundamental change to the naturalization process or an undue burden for the agency, USCIS makes every effort to provide accommodations to naturalization applicants with disabilities.

- USCIS evaluates disability accommodation requests on a case-by-case basis as accommodations vary according to the nature of the applicant's disability. In determining what type of accommodation is necessary, USCIS gives primary consideration to the requests of the person with a disability.

- USCIS provides applicants with the requested accommodation or an effective alternative that addresses the unique needs of the applicant where appropriate.[101]

Applicants may request an accommodation at the time of filing their naturalization application or at any other time during the naturalization process.[102]

### B. Background

The Rehabilitation Act requires all federal agencies to provide reasonable accommodations to persons with disabilities in the administration of their programs and benefits.[103] USCIS does not exclude persons with disabilities from its programs or activities based on their disability. The Rehabilitation Act and the implemented DHS regulations[104] require USCIS to provide accommodations that assist an applicant with a disability to have an equal opportunity to participate in its programs, to include the naturalization process.

### C. Difference between Accommodations and Waivers

Accommodations are different from statutory waivers or exceptions. For example, if an officer grants an applicant a waiver for a naturalization educational requirement, the applicant is exempt from meeting that educational requirement. An accommodation is a modification of an existing practice or procedure that will enable an applicant with a disability to participate in the naturalization process.

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[100] See 6 CFR 15.3 for the applicable definitions relating to enforcement of nondiscrimination on the basis of disability DHS federal programs or activities.

[101] See, for example, 6 CFR 15.50 and 6 CFR 15.60.

[102] In some cases, applicants with physical impairments such as blindness or low vision or hearing loss may have submitted a medical disability exception form (Form N-648) along with their naturalization application to request an exception from the English and civics tests as they may be unable to take the tests, even with an accommodation. See Part E, English and Civics Testing and Exceptions, Chapter 3, Medical Disability Exception (Form N-648).

[103] See Section 504 of the Rehabilitation Act of 1973. See 29 U.S.C. 794(a). The Act prohibits qualified persons with a disability from being excluded from participation in, denied the benefits of, or being subjected to discrimination under any programs or activities conducted by federal agencies solely on the basis of their disability.

[104] See 6 CFR 15.

The accommodation does not exempt the applicant from the obligation to satisfy any applicable requirement for naturalization. The accommodation is a modification to the way in which the applicant may establish that he or she meets the requirement.[105]

**D. Legal Authorities**

- Rehabilitation Act of 1973 (Sec. 504) – Ensures equal access to federal programs
- 29 U.S.C. 794 – Nondiscrimination under federal grants and programs
- 6 CFR 15 – DHS federal regulations on non-discrimination on the basis of disability of persons who access DHS programs or activities
- 8 CFR 334.4 – Examination and off-site visits for sick or disabled applicants

## Chapter 2: Accommodation Policies and Procedures

USCIS has established policies and procedures for handling and processing accommodation requests, which include:

- Providing information locally as needed on how to request accommodations
- Designating a point-of-contact to handle accommodation requests whenever possible
- Responding to inquiries and reviewing accommodation requests timely
- Establishing internal processes for receiving and for properly filing requests
- Processing requests and providing accommodations whenever appropriate

**A. Requesting an Accommodation**

1. Submitting the Request

It is the applicant's responsibility to request an accommodation in advance, each time an accommodation is needed. Generally, the applicant, his or her attorney or accredited representative, or legal guardian should request an accommodation concurrently with the filing of the naturalization application. However, an applicant may also call the National Customer Service Center (NCSC) at 1-800-375-5283 (TDD: 1-800-767-1833) in order to request an accommodation, or may also request an accommodation with the field office at any time during the naturalization process.

2. Timeliness of Request

The field office's ability to provide an accommodation on the date that it is needed may be affected by the timeliness of the accommodation request. Some types of accommodations do not require advance notice and can be immediately provided. This may include a USCIS employee speaking loudly or slowly to an applicant, or allowing additional time for an applicant to answer during the examination. Other types of accommodations

[105] The accommodations discussed in this part are distinguished from the Oath waiver process by which the applicant's complete examination is conducted by a legal guardian or surrogate appointed by a court of law, or an eligible designated representative. See Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers.

may be difficult to provide without advance planning. This may include providing a sign language interpreter, additional time for the examination, or scheduling an applicant for an off-site examination.

**B. Documentation and Evidence**

USCIS evaluates each request for an accommodation on a case-by-case basis. While an applicant is not required to include documentation of his or her medical condition, there may be rare cases where documentation is needed to evaluate the request.[106]

**C. Providing Accommodations as Requested**

If an accommodation is warranted, a field office should provide the accommodation on the date and time the applicant is scheduled for his or her appearance. The field office should aim to provide the requested accommodation without having to reschedule the applicant's appointment. If an accommodation cannot be provided for the scheduled appointment, the applicant and his or her attorney or accredited representative should be notified as soon as possible. The applicant's appointment should be rescheduled within a reasonable period of time.

## Chapter 3: Types of Accommodations

There are many types of accommodations that USCIS provides for applicants with disabilities.[107] Accommodations typically relate to the following:

- Naturalization interview;
- Naturalization test; and
- Oath of Allegiance.

Each accommodation may apply to any aspect of the naturalization process as needed, to include any pre-examination procedures.

USCIS recognizes that some applicants may only require one accommodation, while others may need more. Some applicants may need one accommodation at a particular stage of the naturalization process and may require the same or another type of accommodation at a later date.

**A. Accommodations for the Naturalization Examination**

Field offices are able to make modifications to provide accommodations during the naturalization examination to applicants with disabilities. The table below serves as a quick reference guide listing common examples of accommodations to the naturalization examination for applicants with disabilities. The paragraphs that follow the table provide further guidance on each accommodation example.

[106] Officers should contact local USCIS counsel prior to contacting the applicant and his or her attorney or accredited representative for further information.

[107] The lists of accommodations in this chapter are not exhaustive. USCIS determines and provides accommodations on a case-by-case basis.

| Accommodations for the Naturalization Examination | |
|---|---|
| **Accommodation** | **Explanation** |
| **Extending Examination Time and Breaks** | Some applicants with disabilities may need more time than is regularly scheduled for the examination |
| **Providing English Sign Language Interpreters or other aids for deaf or hard of hearing applicants** | Deaf or hard of hearing applicants may need a sign language interpreter, or other accommodation, to complete the examination |
| **Allowing Relatives to Attend the Examination and Assist in Signing Forms** | Presence of a relative may have a calming effect, and such persons may assist applicants who are unable to sign or make any kind of mark |
| **Legal Guardian, Surrogate or Designated Representative at Examination** | Some applicants are unable to undergo an examination because of a physical or developmental disability or mental impairment |
| **Allowing Nonverbal Communication** | Applicants may be unable to speak sufficiently to respond to questions but may be able to communicate in non-verbal ways |
| **Off-site Examination** | Some applicants may be unable to appear at the field office because of their disability |

1. Extending Examination Time and Breaks

An officer may provide additional time for the examination and allow breaks if necessary for applicants with disabilities who have requested that type of accommodation. USCIS recognizes that some applicants may need more time than is regularly scheduled.

2. Providing Accommodations for Deaf or Hard of Hearing Applicants

In determining what type of auxiliary aid is necessary for deaf or hard of hearing applicants, USCIS gives primary consideration to the requests of the person with a disability.

Unless the applicant chooses to bring his or her own English sign language interpreter, the field office must provide an English sign language interpreter for a deaf or hard of hearing applicant upon his or her request.[108]

The Rehabilitation Act requires USCIS to make an effective accommodation for the customer's disability, and USCIS cannot transfer the accommodation burden back to the customer. For example, if the person uses the sign language Pidgeon English, USCIS must provide an interpreter who uses Pidgeon English if one is reasonably

[108] If an applicant qualifies for an exception to the English requirement, the sign language interpreter does not need to sign in English. See Part E, English and Civics Testing and Exceptions, Chapter 2, English and Civics Testing.

available. USCIS cannot tell the person it will provide an American Sign Language (ASL) interpreter and require the person to provide an interpreter to translate between Pigeon English and ASL.[109]

The officer should use any communication aids for the deaf or hard of hearing where available, permit the applicant to read lips, and allow the applicant to answer the officer's questions in writing, as needed.

3. Allowing Relatives and Others to Attend Examinations and Assist in Signing Forms

In cases where an applicant has a disability, the officer may allow an applicant's family member, legal guardian, or other person to attend the examination with the applicant. The presence of such a person or persons may help the applicant to remain calm and responsive during the examination. However, if the presence of such person or persons becomes disruptive to the examination, the officer may at any time remove the person from the examination and reschedule the examination if the applicant is unable to proceed at that time.

An officer may allow the person accompanying the applicant to repeat the officer's questions in cases where such repetition facilitates the applicant's responsiveness. An applicant's mark is acceptable as the applicant's signature on the naturalization application or documents relating to the application when an applicant is unable to sign. A family member may assist an applicant to sign, initial, or make a mark when completing the attestation on the naturalization application. Except as provided below, a family member or other person may not sign the naturalization application for the applicant.

4. Legal Guardian, Surrogate or Designated Representative at Examinations

Currently, all applicants for naturalization are required to appear in person and give testimony under oath as to their eligibility for naturalization.[110] When an applicant is unable to undergo an examination because of a physical, developmental disability, or mental impairment, a legal guardian, surrogate, or an eligible designated representative completes the naturalization process for the applicant. USCIS waives the Oath of Allegiance and the legal guardian, surrogate or designated representative attests to the applicant's eligibility for naturalization. In addition to oath waiver, this process may require accommodations including off-site examinations.[111]

Persons eligible to act on behalf of the applicant include:

- A person who a proper court has designated as the applicant's legal guardian or surrogate and who is authorized to exercise legal authority over the applicant's affairs; or

- In the absence of a legal guardian or surrogate, a United States citizen, spouse, parent, adult son or daughter, or adult brother or sister, who is the primary custodial caregiver and who takes responsibility for the applicant.

USCIS will only recognize one designated representative in the following order of priority:

[109] Contact the Registry of Interpreters for the Deaf (RID) at 703-838-0030 (voice), 703-838-0459 (TTY), or use RID's searchable interpreter agency referral database.
[110] See 8 CFR 335.2.
[111] See Part J, Oath of Allegiance.

- Legal guardian or surrogate (highest priority)
- U.S. citizen spouse
- U.S. citizen parent
- U.S. citizen adult son or daughter
- U.S. citizen adult brother or sister (lowest priority)

If there is a priority conflict between the persons seeking to represent the applicant and the persons share the same degree of familial relationship, USCIS gives priority to the party with seniority in age.

The person acting on behalf of the applicant must provide proof of legal guardianship, or documentation to establish the familial relationship, such as a birth certificate, marriage certificate, or adoption decree. In addition, the person must provide documentation to establish that he or she has the primary custodial care and responsibility for the applicant (for example, income tax returns, Social Security Administration documents, and affidavits from other relatives). A spouse, parent, adult son or daughter, or adult brother or sister who is not the legal guardian or surrogate must provide evidence of U.S. citizenship.

5. Allowing Nonverbal Communication

An officer may accept forms of nonverbal communication, such as blinking, head shaking or nodding, tapping, or other effective forms of nonverbal communication during the naturalization examination. The officer should also allow the applicant to point to answers on the application and allow the applicant to write out the answers to the civics test if the applicant is not able to communicate verbally. Prior to the start of the naturalization examination, the officer, the applicant, and the applicant's representative (if any) should agree to the form of communication.

6. Off-site Examination

An officer may conduct a naturalization examination in an applicant's home or other residence such as a nursing home, hospice, hospital, or senior citizens center when appropriate.[112] This applies to cases where the applicant's illness or disability makes it medically unsuitable for him or her to appear at the field office in person.

**B. Accommodations for the Naturalization Test**

An applicant with a disability may require an accommodation to take the English and civics tests. The officer should use the appropriate accommodation to meet the applicant's particular needs. In addition, some applicants with disabilities may qualify for an exception to these requirements for naturalization.[113]

The table below serves as a quick reference guide listing common examples of accommodations to the naturalization test for applicants with disabilities. The paragraphs that follow the table provide further guidance on each accommodation.

[112] See INA 335(b).
[113] See Part E, English and Civics Testing and Exceptions, Chapter 2, English and Civics Testing. See INA 312(b). See 8 CFR 312.1(b) and 8 CFR 312.2(b).

| Accommodations for the Naturalization Test | |
|---|---|
| **Accommodation** | **Explanation** |
| **Providing Reading Tests in Large Print** | Partially blind applicants may be unable to read small print |
| **Oral Writing Test** | Applicants with physical impairments or with limited use of their hands may be unable to write sentences in the test itself |
| **Allowing Nonverbal Communication** | Applicants may be unable to speak sufficiently to respond to questions but may be able to communicate in non-verbal ways |
| **Providing English Sign Language Interpreters** | Deaf or hard of hearing applicants may need a sign language interpreter to complete the tests |

1. Providing Reading Test in Large Print

An officer should provide the current reading naturalization test version in large print for applicants who are partially blind (have low vision).[114]

2. Oral Writing Test

An officer should administer the writing portion of the naturalization test orally for applicants with physical impairments, which cause limited or no use of their hands in a way as to preclude the applicant's ability to write. The applicant may satisfy the writing requirements by spelling out the words from the writing test.

3. Allowing Nonverbal Communication

An officer may accept forms of nonverbal communication, such as blinking, head shaking or nodding, tapping, or other effective forms of nonverbal communication during the naturalization examination. The officer should also allow the applicant to point to answers on the application and allow the applicant to write out the answers to the civics test if the applicant is not able to communicate verbally. Prior to the start of the naturalization examination, the officer, the applicant, and the applicant's representative (if any) should agree to the form of communication.

4. Providing Sign Language Interpreters

In determining what type of accommodation is necessary for deaf or hard of hearing applicants, USCIS gives primary consideration to the requests of the person with a disability.

Unless the applicant chooses to bring his or her own English sign language interpreter, the field office must provide an English sign language interpreter for a deaf or hard of hearing applicant upon his or her request.[115]

[114] Officers may photocopy the current versions of the test into larger print or increase the font electronically.

The officer should use any communication aids for the deaf or hard of hearing where available, permit the applicant to read lips, and allowing the applicant to answer the officer's questions in writing, as needed.

**C. Accommodations for the Oath of Allegiance**

A disability or medical impairment may make it difficult for some applicants to take the Oath of Allegiance at the oath ceremony. The table below lists examples of accommodations to the Oath of Allegiance. The paragraphs that follow the table provide further guidance on each accommodation. Some applicants may qualify for a waiver of the Oath of Allegiance.[116]

| Accommodations for the Oath of Allegiance | |
|---|---|
| **Accommodation** | **Explanation** |
| **Simplifying Language for Assent to the Oath** | Applicants with disabilities may need simpler language to show they assent to the oath |
| **Expedited Scheduling for Oath** | Applicants with disabilities may be unable to attend a later ceremony because of their condition |
| **Providing Sign Language Interpreter at Oath** | Deaf or hard of hearing applicants may need a sign language interpreter to participate in the ceremony |
| **Off-site Administration of Oath** | Applicants with disabilities may be unable to attend the court or field office ceremony because of their condition |

1. Simplifying Language for Assent to the Oath

An officer may question the applicant about the Oath of Allegiance in a clear, slow manner and in simplified language if the applicant presents difficulty understanding questions regarding the oath. This approach allows the applicant to understand and assent to the Oath of Allegiance and understand that he or she is becoming a U.S. citizen.

2. Expedited Scheduling for Oath

A field office should expedite administration of the Oath of Allegiance for an applicant who is unable to attend a ceremony at a later time because of his or her medical impairment. The expedited process may include a ceremony on the same day or an off-site visit.

3. Providing Sign Language Interpreter at Oath

[115] If an applicant qualifies for an exception to the English requirement, the sign language interpreter does not need to sign in English. See Part E, English and Civics Testing and Exceptions, Chapter 2, English and Civics Testing.
[116] See Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers.

A field office should provide an English sign language interpreter for an applicant who is deaf or hard of hearing or permit the applicant to use his or her own interpreter during an administrative oath ceremony or for a judicial ceremony where a court is unable to provide an English sign language interpreter.

4. Off-site Administration of Oath

A field office should administer the Oath of Allegiance immediately following the off-site examination for an applicant who is unable to attend because of his or her medical condition. Some applicants may have appeared at the field office for the examination, but due to a deteriorating condition are unable to attend the oath ceremony. In such cases, an off-site visit may be scheduled to administer the Oath of Allegiance.

# PART D – GENERAL NATURALIZATION REQUIREMENTS

## Chapter 1: Purpose and Background

### A. Purpose

Naturalization is the conferring of U.S. citizenship after birth by any means whatsoever.[117] There are various ways a foreign citizen or national may become a U.S. citizen through the process of naturalization. This chapter addresses the general naturalization requirements.[118]

The applicant has the burden of establishing by a preponderance of the evidence that he or she meets the requirements for naturalization.

### B. General Eligibility Requirements

The following are the general naturalization requirements that an applicant must meet in order to become a U.S. citizen:[119]

| General Eligibility Requirements for Naturalization |
|---|
| The applicant must be age 18 or older at the time of filing for naturalization |
| The applicant must be an LPR for at least five years before being eligible for naturalization |
| The applicant must have continuous residence in the United States as an LPR for at least five years immediately preceding the date of filing the application and up to the time of admission to citizenship |
| The applicant must be physically present in the United States for at least 30 months out of the five years immediately preceding the date of filing the application |
| The applicant must have lived within the State or USCIS district with jurisdiction over the applicant's place of residence for at least three months prior to the date of filing |
| The applicant must demonstrate good moral character for five years prior to filing for naturalization, and during the period leading up to the administration of the Oath of Allegiance |

[117] See INA 101(a)(23).
[118] See INA 316. See relevant parts in Volume 12 for other naturalization provisions and requirements.
[119] See INA 316.

| General Eligibility Requirements for Naturalization |
| --- |
| The applicant must have an attachment to the principles of the U.S. Constitution and be well disposed to the good order and happiness of the United States during all relevant periods under the law |
| The applicant must be able to read, write, and speak and understand English and have knowledge and an understanding of U.S. history and government |

**C. Legal Authorities**

- INA 312; 8 CFR 312 – Educational Requirements for Naturalization
- INA 316; 8 CFR 316 – General Requirements for Naturalization
- INA 318 – Prerequisites to Naturalization

## Chapter 2: LPR Admission for Naturalization

**A. LPR at Time of Filing and Naturalization**

In general, an applicant for naturalization must be at least 18 years old and must establish that he or she has been lawfully admitted to the United States for permanent residence at the time of filing the naturalization application.[120] An applicant is not lawfully admitted for permanent residence in accordance with all applicable provisions of the INA if his or her LPR status was obtained by mistake or fraud, or if the admission was otherwise not in compliance with the law.[121]

In determining an applicant's eligibility for naturalization, USCIS must determine whether the LPR status was lawfully obtained, not just whether the applicant is in possession of a Permanent Resident Card (PRC). If the status was not lawfully obtained for any reason, the applicant is not lawfully admitted for permanent residence in accordance with all applicable provisions of the INA, and is ineligible for naturalization even though the applicant possesses a PRC.

An applicant must also reside continuously in the U.S. for at least five years as an LPR at the time of filing,[122] though the applicant may file his or her application up to 90 days before reaching the five-year continuous residence period.[123]

**B. Conditional Residence in the General Requirements (INA 316)**

[120] See INA 101(a)(20) and INA 334(b). See 8 CFR 316.2(a)(2).
[121] See INA 318. See *Matter of Koloamatangi*, 23 I & N Dec 548, 550 (2003). See ***Estrada-Ramos v. Holder,*** 611 F.3d 318, (7th Cir. 2010). See *Mejia-Orellana v. Gonzales*, 502 F.3d 13 (1st Cir 2007). See *De La Rosa v DHS*, 489 F.3d 551 (2nd Cir 2007). See *Savoury v. U.S. Att'y General*, 449 F.3d 1307 (11th Cir 2006). See *Arellano-Garcia v. Gonzales*, 429 F.3d 1183 (8th Cir 2005). See *Monet v. INS*, 791 F.2d 752 (9th Cir. 1986). See *Matter of Longstaff*, 716 F.2d 1439, 1441 (5th Cir. 1983).
[122] See Chapter 3, Continuous Residence.
[123] See Chapter 6, Jurisdiction, Place of Residence, and Early Filing.

A conditional permanent resident (CPR) filing for naturalization under the general provision on the basis of his or her permanent resident status for five years[124] must have met all of the applicable requirements of the conditional residence provisions.[125] CPRs are not eligible for naturalization unless the conditions on their resident status have been removed because such CPRs have not been lawfully admitted for permanent residence in accordance with all applicable provisions of the INA.[126] Unless USCIS approves the applicant's Petition to Remove the Conditions of Residence (Form I-751), the applicant remains ineligible for naturalization.[127]

**C. Exceptions**

1. Nationals of the United States

The law provides an exception to the LPR requirement for naturalization for non-citizen nationals of the United States. Currently, persons who are born in American Samoa or Swains Island, which are outlying possessions of the United States, are considered nationals of the United States.[128]

A non-citizen national of the United States may be naturalized without establishing lawful admission for permanent residence if he or she becomes a resident of any State[129] and complies with all other applicable requirements of the naturalization laws. These nationals are not "aliens" as defined in the INA and do not possess a Permanent Resident Card (PRC).[130]

2. Certain Members of the U.S. Armed Forces

Certain members of the U.S. armed forces with service under specified conditions are also exempt from the LPR requirement.[131]

**D. Documentation and Evidence**

USCIS issues a PRC to each person who has been lawfully admitted for permanent residence as evidence of his or her status. LPRs over 18 years of age are required to have their PRC in their possession as evidence of their status.[132] The PRC contains the date and the classification under which the person was accorded LPR status. The PRC alone, however, is insufficient to establish that the applicant has been lawfully admitted for permanent residence in accordance with all applicable provisions of the INA.[133]

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[124] See INA 316(a).
[125] See INA 216. See forthcoming Volume 7, Adjustment of Status.
[126] See INA 216 and INA 318. See forthcoming Volume 7, Adjustment of Status.
[127] See Part G, Spouses of U.S. Citizens; Part H, Children of U.S. Citizens; and Part I, Military Members and their Families, for special circumstances under which where the applicant may not be required to have an approved petition to remove conditions prior naturalization.
[128] See INA 101(a)(29) and INA 308.
[129] See INA 325. See 8 CFR 325.2. Non-citizen nationals may satisfy the residence and physical presence requirements through their residence and presence within any of the outlying possessions of the United States.
[130] See INA 101(a)(20).
[131] See Part I, Military Members and their Families, Chapter 3, Military Service during Hostilities (INA 329).
[132] See INA 264(e).
[133] See Section A, LPR at Time of Filing and Naturalization.

## Chapter 3: Continuous Residence

### A. Continuous Residence Requirement

An applicant for naturalization under the general provision[134] must have resided continuously in the United States after his or her LPR admission for at least five years prior to filing the naturalization application and up to the time of naturalization. An applicant must also establish that he or she has resided in the State or Service District having jurisdiction over the application for three months prior to filing.[135]

The concept of continuous residence involves the applicant maintaining a permanent dwelling place in the United States over the period of time required by the statute. The residence in question "is the same as that alien's domicile, or principal actual dwelling place, without regard to the alien's intent, and the duration of an alien's residence in a particular location measured from the moment the alien first establishes residence in that location."[136] Accordingly, the applicant's residence is generally the applicant's actual physical location regardless of his or her intentions to claim it as his or her residence.

Certain classes of applicants may be eligible for a reduced period of continuous residence, for constructive continuous residence while outside the United States, or for an exemption from the continuous residence requirement altogether.[137] These classes of applicants include certain military members and certain spouses of U.S. citizens.[138]

The requirements of "continuous residence" and "physical presence" are interrelated but are different requirements. Each requirement must be satisfied (unless otherwise specified) in order for the applicant to be eligible for naturalization.[139]

### B. Maintenance of Continuous Residence following LPR Status

USCIS will consider the entire period from the LPR admission until the present when determining an applicant's compliance with the continuous residence requirement.

An order of removal terminates the applicant's status as an LPR and therefore disrupts the continuity of residence for purposes of naturalization. However, an applicant who has been readmitted as an LPR after a deferred inspection or by an immigration judge in removal proceedings can satisfy the residence and physical presence requirements in the same manner as any other applicant for naturalization.[140]

Other examples that may raise a rebuttal presumption that an applicant has abandoned his or her LPR status include cases where there is evidence that the applicant voluntarily claimed nonresident alien status to qualify

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[134] See INA 316(a).
[135] See INA 316(a). See Chapter 6, Jurisdiction, Place of Residence, and Early Filing.
[136] See 8 CFR 316.5(a).
[137] See Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence.
[138] See Part I, Military Members and their Families.
[139] See Chapter 4, Physical Presence.
[140] See 8 CFR 316.5(c)(3) and 8 CFR 316.5(c)(4).

for special exemptions from income tax liability or fails to file either federal or state income tax returns because he or she considers himself or herself to be a non-resident alien.[141]

**C. Breaks in Continuous Residence**

An applicant for naturalization has the burden of establishing that he or she has complied with the continuous residence requirement, if applicable. There are two types of absences from the United States that are automatically presumed to break the continuity of residence for purposes of naturalization.[142]

- Absences of more than 6 months but less than one year; and
- Absences of one year or more.

In addition, absences of less than 6 months may also break the continuity of residence depending on the facts surrounding the absence.

1. Absence of More than Six Months (but Less than One Year)

An absence of more than six months (more than 181 days but less than one year (less than 365 days)) during the period for which continuous residence is required is presumed to break the continuity of such residence. This includes any absence that takes place prior to filing the naturalization application or between filing and the applicant's admission to citizenship.[143]

An applicant's intent is not relevant in determining the location of his or her residence. The period of absence from the United States is the defining factor in determining whether the applicant is presumed to have disrupted his or her residence.

An applicant may overcome the presumption of loss of his or her continuity of residence by providing evidence to establish that the applicant did not disrupt his or her residence. The evidence may include, but is not limited to, documentation that during the absence:[144]

- The applicant did not terminate his or her employment in the United States or obtain employment while abroad.
- The applicant's immediate family remained in the United States.
- The applicant retained full access to his or her United States abode.

2. Absence of One Year or More

An absence from the United States for a continuous period of one year or more (365 days or more) during the period for which continuous residence is required will break the continuity of residence. This applies whether the absence takes place prior to or after filing the naturalization application.[145]

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[141] See 8 CFR 316.5(c)(2).
[142] See INA 316(b).
[143] See INA 336 (Hearings on Denials of Applications for Naturalization).
[144] See 8 CFR 316.5(c)(1)(i).
[145] See INA 316(b).

The naturalization application of a person who is subject to the continuous residence requirement must be denied for failure to meet the continuous residence requirements if the person has been continuously absent for a period of one year or more without qualifying for the exception benefits of INA 316(b). An applicant who is absent for one year or more to engage in qualifying employment abroad may be permitted to preserve his or her residence.[146]

3. Eligibility after Break in Residence

An applicant who is required to establish continuous residence for at least five years[147] and whose application for naturalization is denied for an absence of one year or longer, may apply for naturalization four years and one day after returning to the United States to resume permanent residence. An applicant who is subject to the three-year continuous residence requirement[148] may apply two years and one day after returning to the United States to resume permanent residence.[149]

**D. Preserving Residence for Naturalization (Form N-470)**

Certain applicants[150] may seek to preserve their residence for an absence of one year or more to engage in qualifying employment abroad.[151] Such applicants must file an Application to Preserve Residence for Naturalization Purposes (Form N-470) in accordance with the form instructions.

In order to qualify, the following criteria must be met:

- The applicant must have been physically present in the United States as an LPR for an uninterrupted period of at least one year prior to working abroad.

- The application may be filed either before or after the applicant's employment begins, but before the applicant has been abroad for a continuous period of one year.[152]

In addition, the applicant must have been:

- Employed with or under contract with the U.S. Government or an American institution of research[153] recognized as such by the Attorney General;

[146] See Section D, Preserving Residence for Naturalization (Form N-470).
[147] See INA 316(a).
[148] See INA 319(a).
[149] See 8 CFR 316.5(c)(1)(ii).
[150] See Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence, for classes of applicants eligible to preserve residence.
[151] The applicant may also need to apply for a reentry permit to be permitted to enter the United States. See forthcoming Volume 11, Travel, Employment & Identity Documents.
[152] See 8 CFR 316.5(d).
[153] See 8 CFR 316.20. See www.uscis.gov/AIR for lists of recognized organizations.

- Employed by an American firm or corporation engaged in the development of U.S. foreign trade and commerce, or a subsidiary thereof if more than 50 percent of its stock is owned by an American firm or corporation; or

- Employed by a public international organization of which the United States is a member by a treaty or statute and by which the applicant was not employed until after becoming an LPR.[154]

The applicant's spouse and dependent unmarried sons and daughters are also entitled to such benefits during the period when they were residing abroad as dependent members of the principal applicant's household. The application's approval notice will include the applicant and any dependent family members who were also granted the benefit.

The approval of an application to preserve residence does not relieve an applicant (or any family members) from any applicable required period of physical presence, unless the applicant was employed by, or under contract with, the U.S. Government.[155]

In addition, the approval of an application to preserve residence does not guarantee that the applicant (or any family members) will not be found, upon returning to the United States, to have lost LPR status through abandonment. USCIS may find that an applicant who claimed special tax exemptions as a nonresident alien to have lost LPR status through abandonment. The applicant may overcome that presumption with acceptable evidence establishing that he or she did not abandon his or her LPR status.[156]

Approval of an application to preserve residence also does not relieve the LPR of the need to have an appropriate travel document when the LPR seeks to return to the United States.[157] A PRC card, generally, is acceptable as a travel document only if the person has been absent for less than one year.[158] If an LPR expects to be absent for more than one year, the LPR should also apply for a reentry permit. [159] The LPR must actually be in the United States when he or she applies for a reentry permit.[160]

**E. Residence in the Commonwealth of the Northern Mariana Islands**

As of November 28, 2009, the Commonwealth of the Northern Mariana Islands (CNMI) is defined as a State in the United States for naturalization purposes.[161] Previously, residence in the CNMI only counted as residence in the United States for naturalization purposes for an alien who was an immediate relative of a U.S. citizen residing in the CNMI.

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[154] See INA 316(b). See 8 CFR 316.20.
[155] See INA 316(c). See Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence.
[156] See *Matter of Huang,* 19 I&N Dec. 748. In removal proceedings, DHS bears the burden of proving abandonment by clear and convincing evidence. But if the probative evidence is sufficient to meet that standard of proof, approval of the application to preserve residence, by itself, would not preclude a finding of abandonment.
[157] See INA 212(a)(7)(A).
[158] See 8 CFR 211.1(a)(2).
[159] See forthcoming Volume 11, Travel, Employment & Identity Documents.
[160] See 8 CFR 223.2(b)(1).
[161] See INA 101(a)(36) and INA 101(a)(38). See 48 U.S.C. 1806(a) and 48 U.S.C. 1806(f). See section 705(b) of the Consolidated Natural Resources Act of 2008 (CNRA), Pub. L.110-229 (48 U.S.C. 1806 note).

All other noncitizens, including any non-immediate relative lawful permanent residents (LPR), were considered to be residing outside of the United States for immigration purposes. Therefore, some LPRs residing in the CNMI, before the Consolidated Natural Resources Act of 2008 (CNRA) was enacted, were considered to have abandoned their lawful permanent resident status if they continuously lived in the CNMI.

Under the current law, USCIS no longer considers lawful permanent residents to have abandoned their LPR status solely by residing in the CNMI. This provision is retroactive and provides for the restoration of permanent resident status. However, the provision did not provide that the residence would count towards the naturalization continuous and physical presence requirements. Therefore, USCIS will only count residence in the CNMI on or after November 28, 2009, as continuous residence within the United States for naturalization purposes.[162]

### F. Documentation and Evidence

Mere possession of a Permanent Resident Card (PRC) for the period of time required for continuous residence does not in itself establish the applicant's continuous residence for naturalization purposes. The applicant must demonstrate actual maintenance of his or her principal dwelling place, without regard to intent, in the United States through testimony and documentation.

For example, a "commuter alien" may have held and used a PRC[163] for seven years, but would not be eligible for naturalization until he or she had actually taken up permanent residence in the United States and maintained such residence for the required statutory period.

USCIS will review all of the relevant records to determine whether the applicant has met the required period of continuous residence. The applicant's testimony will also be considered to determine whether the applicant met the required period of continuous residence.

## Chapter 4: Physical Presence

### A. Physical Presence Requirement

An applicant for naturalization is generally required to have been physically present in the United States for at least half the time for which his or her continuous residence is required. Applicants for naturalization under INA 316(a) are required to demonstrate physical presence in the United States for at least 30 months (at least 913 days) before filing the application.[164]

Physical presence refers to the number of days the applicant must physically be present in the United States during the statutory period up to the date of filing for naturalization. The continuous residence[165] and physical presence requirements are interrelated but each must be satisfied for naturalization.

USCIS will count the day that an applicant departs from the United States and the day he or she returns as days of physical presence within the United States for naturalization purposes.[166]

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[162] See section 705(c) of the CNRA (48 U.S.C. 1806 note). See Eche v. Holder, __ F.3d __, 2012 (9th Cir. Sept. 11, 2012).
[163] See 8 CFR 211.5.
[164] See INA 316(a). See 8 CFR 316.2.
[165] See Chapter 3, Continuous Residence.

**B. Documentation and Evidence**

Mere possession of a PRC for the period of time required for physical presence does not in itself establish the applicant's physical presence for naturalization purposes. The applicant must demonstrate actual physical presence in the United States through documentation. USCIS will review all of the relevant records to assist with the determination of whether the applicant has met the required period of physical presence. The applicant's testimony will also be considered in determining whether the applicant met the required period of physical presence.

## Chapter 5: Modifications and Exceptions to Continuous Residence and Physical Presence

Certain classes of applicants may be eligible for a reduced period of continuous residence and physical presence. Certain applicants may also be eligible to count time residing abroad as residence and physical presence in the United States for naturalization purposes.

Other applicants may be exempt from the residence or physical presence requirement, or both. Although not required in all cases, applicants are generally required to have been "physically present and residing within the United States for an uninterrupted period of at least one year" at some time after becoming an LPR and before filing to qualify for an exemption.

**A. Qualifying Employment Abroad**

The table below serves as a quick reference guide on certain continuous residence and physical presence provisions for persons residing abroad under qualifying employment. The paragraphs that follow the table provide further guidance on each class of applicant.

**Continuous Residence and Physical Presence for Qualifying Employment Abroad**

| Employer or Vocation | Provision | Continuous Residence | Physical Presence |
|---|---|---|---|
| **United States Government or Contractor** | INA 316(b)<br>INA 316(c) | Preserves residence through N-470 process | Exempt (through N-470 process) |
| **American Institution of Research** | INA 316(b)<br>INA 316(c) | Preserves residence through N-470 process | Must meet regular statutory requirement |
| **American Firm** | INA 316(b)<br>INA 316(c) | Preserves residence through N-470 process | Must meet regular statutory requirement |

[166] USCIS will only count residence in the CNMI on or after November 28, 2009, as time counted for physical presence within the United States for naturalization purposes.

| Continuous Residence and Physical Presence for Qualifying Employment Abroad | | | |
|---|---|---|---|
| **Employer or Vocation** | **Provision** | **Continuous Residence** | **Physical Presence** |
| **Media Organizations** | INA 319(c) | Exempt | |
| **Interpreter or Translator in Iraq or Afghanistan** | § 1059(e) of PL 110-036 | Exempt | Must meet regular statutory requirement unless otherwise exempt through N-470 process |
| **Religious Vocation** | INA 317 | Time residing abroad in religious vocation may count as residence and physical presence in the United States | |

1. Employee of U.S. Government or Specified Entities

LPRs who have been continuously physically present in the United States for at least one year before filing an application to preserve residence and who obtain approval of the application from USCIS for employment by or contract with the U.S. Government abroad will not break the continuity of their residence during such time abroad. Such persons are exempt from the physical presence requirement.[167] Persons employed by or under contract with the Central Intelligence Agency can accrue the required year of continuous physical presence at any time prior to applying for naturalization and not just before filing the application to preserve residence.[168]

LPRs who have been continuously physically present in the United States for at least one year before filing an application to preserve residence and who obtain approval of the application from USCIS for employment abroad by an American institution of research recognized as such by the Attorney General (now DHS Secretary) or by an American firm[169] engaged in development of U.S. foreign trade and commerce or its subsidiary, or a public international organization, will not break the continuity of their residence during such time abroad. Such applicants are subject to the physical presence requirement.[170]

Only applicants who are employed by or under contract with the U.S. Government may be exempt from the physical presence requirements. All other applicants who are eligible to preserve their residence remain subject to the physical presence requirement.

[167] See INA 316(b) and INA 316(c).
[168] See INA 316(c).
[169] USCIS has adopted the AAO decision in *Matter of Chawathe*. The decision states that under INA 316(b), a publicly held corporation may be deemed an "American firm or corporation" if the applicant establishes that the corporation is both incorporated and trades its stock exclusively on U.S. Stock Exchange markets. If the applicant is unable to meet this qualification, then he or she must meet the requirements under *Matter of Warrach*, 17 I & N Dec 285, 286-287 (Reg. Comm. 1979). USCIS then determines the nationality of the corporation by reviewing whether more than 50 percent is owned by U.S. citizens. The applicant must establish this by a preponderance of the evidence.
[170] See INA 316(b) and INA 316(c). See 8 CFR 316.20. See www.uscis.gov/AIR for a list of recognized organizations.

The applicant's spouse and dependent unmarried sons and daughters, included in the application, are entitled to the same benefits for the period during which they were residing abroad with the applicant.[171]

2. Employee of Certain Media Organizations Abroad

An applicant for naturalization employed by a U.S. incorporated nonprofit communications media organization that disseminates information significantly promoting United States interests abroad, that is so recognized by the Secretary of Homeland Security, is exempt from the continuous residence and physical presence requirements if:

- The applicant files the application for naturalization while still employed, or within six months of termination of employment;
- The applicant has been continuously employed with the organization for at least five years after becoming an LPR;
- The applicant is within the United States at the time of naturalization; and
- The applicant declares a good faith intention to take up residence within the United States immediately upon termination of employment.[172]

3. Employed as an Interpreter or Translator in Iraq or Afghanistan

An applicant employed abroad by, or under contract with, the U.S. Chief of Mission (Department of State) or by the U.S. Armed Forces as an interpreter or translator in Iraq or Afghanistan does not break the continuity of his or her residence in the United States during such time abroad.

This benefit is available for the entire period of absence from the United States even if only a portion of the employment as an interpreter or translator was spent in Iraq or Afghanistan, so long as the applicant was employed by the U.S. Chief of Mission or by the U.S. Armed Forces as an interpreter or translator during the entire absence.

For example, if the applicant was employed by the Chief of Mission as an interpreter or translator and only spent one day in Iraq or Afghanistan, that applicant receives credit for the entire time abroad. However, if the applicant spent part of that time abroad in a position other than translator or interpreter, then the applicant does not receive credit for that part of the time.

Other employment in Iraq or Afghanistan, or employment as an interpreter or translator by an entity other than the U.S. Chief of Mission or the U.S. Armed Forces does not provide a benefit to the applicant. Such an applicant would still be required to meet the continuous residence requirement unless the applicant qualified for preservation of residence as the spouse of a U.S. citizen employed abroad.[173]

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[171] See INA 316(b)(2). See 8 CFR 316.5(d)(1)(ii).
[172] See INA 319(c). See 8 CFR 319.4.
[173] See INA 319(b). See Section A, Qualifying Employment Abroad.

This benefit only applies to the continuous residence requirement. Applicants must still meet the physical presence requirement.[174]

The applicant has the responsibility of providing all documentation to establish eligibility.[175]

- The applicant must be employed by the Chief of Mission or U.S. armed forces, or employed by a firm or corporation under contract with the Chief of Mission of U.S. armed forces;
- The applicant must be employed as an interpreter or translator; and
- The applicant must be employed as such in Iraq or Afghanistan.

4. Employed Abroad in Religious Vocation

LPRs who go abroad temporarily for the purpose of performing the ministerial or priestly functions of such religious denomination, or of serving as a missionary, brother, nun, or sister for a religious denomination organized in the United States may treat such time abroad as continuous residence and physical presence in the United States for naturalization purposes.

LPRs must have been physically present and residing within the United States for an uninterrupted period of at least one year in order to qualify.[176]

**B. Qualifying Military Service**

Applicants with certain types of military service may be eligible for a modification or exception to the continuous residence and physical presence requirements for naturalization.

See Part I, Military Members and their Families, for modifications and exceptions for applicants with certain types of military service, to include:

- One Year of Military Service – INA 328
- Service during Hostilities – INA 329
- Service in WWII Certain Natives of Philippines – § 405 of IMMACT90
- Members who Enlisted under Lodge Act – Act of June 30, 1950, 64 Stat. 316

**C. Spouse, Child, or Parent of Certain U.S. Citizens**

The spouse, child, or parent of certain U.S. citizens may be eligible for a modification or exception to the continuous residence and physical presence requirements for naturalization.

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[174] See INA 316(c) (exempting applicants employed by or under contract with the U.S. Government from the physical presence requirements under certain conditions). While applicants who qualify for this benefit are not required to file an application to preserve their residence, applicants who do file the application to preserve residence and whose application is approved, will be exempt from the physical presence requirements.

[175] Public Law 110-036 added section 1059(e) to the National Defense Authorization Act for Fiscal Year 2006, which added the interpreter and translator provisions.

[176] See INA 317.

See Part G, Spouses of U.S. Citizens, for modifications and exceptions for spouses of certain U.S. citizens, to include:

- Spouse of U.S. Citizen for 3 Yrs – INA 319(a)
- Spouse of Military Member Serving Abroad – INA 319(e)
- Surviving Spouse of U.S. Citizen – INA 319(d)
- Surviving Spouse Person Conducting U.S. Intelligence[177]

See Part H, Children of U.S. Citizens, for modifications and exceptions to the continuous residence and physical presence requirements for children of certain U.S. citizens.

- Child of U.S. Government Employee (Abroad) – INA 320
- Surviving Child of U.S. Citizen – INA 319(d)
- Surviving Child of Person Conducting U.S. Intelligence[178]

These parts will also include information on modifications and exceptions to the continuous residence and physical presence requirements for surviving parents of certain U.S. citizens.

**D. Other Special Classes of Applicants**

The table below serves as a quick reference guide to certain continuous residence and physical presence provisions for special classes of applicants. The paragraphs that follow the table provide further guidance on each class of applicant.

**Continuous Residence and Physical Presence for Special Classes of Applicants**

| Applicant | Provision | Continuous Residence | Physical Presence |
|---|---|---|---|
| **Citizens who lost Citizenship through Foreign Military Service** | INA 327 | Exempt | |
| **Noncitizen Nationals** | INA 325 | Time residing in outlying possession may count as residence and physical presence in the United States | |
| **Service on Certain U.S. Vessels** | INA 330 | Time in service on certain U.S. vessels may count as residence and physical presence in the United States | |
| **Service Contributing to** | INA 316(f) | Exempt | |

[177] See Section 305 of the Intelligence Authorization Act of 1997, Pub. L. 204-293 (October 11, 1996).
[178] See Section 305 of the Intelligence Authorization Act of 1997, Pub. L. 204-293 (October 11, 1996).

| Continuous Residence and Physical Presence for Special Classes of Applicants | | | |
|---|---|---|---|
| **Applicant** | **Provision** | **Continuous Residence** | **Physical Presence** |
| **Nat'l Security** | | | |

1. Citizens who Lost U.S. Citizenship through Foreign Military Service[179]

Former citizens who lost citizenship through service during the Second World War in foreign armed forces not then at war with the United States can regain citizenship. The applicant must be admitted as an LPR. However, the applicant is exempt from the continuous residence and physical requirements for naturalization.[180]

2. Noncitizen Nationals of the United States

The time a noncitizen national of the United States spends within any of the outlying possessions of the United States counts as continuous residence and physical presence in the United States.[181]

3. Service on Certain U.S. Vessels

Any time an LPR has spent in qualifying honorable service on board a vessel operated by the United States or on board a vessel whose home port is in the United States will be considered residence and physical presence within the United States.[182] The qualifying service must take place within five years immediately preceding the date the applicant files for naturalization.

4. Service Contributing to National Security

The Director of Central Intelligence, the Attorney General, and the Director of USCIS may designate annually up to five persons who have "made an extraordinary contribution to the national security of the United States or to

[179] See INA 327.
[180] See 8 CFR 327.1(f).
[181] See INA 325. See 8 CFR 325.2. Unless otherwise provided under INA 301, the following persons are nationals, but not citizens of the United States at birth: (1) a person born in an outlying possession of the United States on or after the date of formal acquisition of such possession; (2) a person born outside the United States and its outlying possessions of parents both of whom are nationals, but not citizens, of the United States, and have had a residence in the United States, or one of its outlying possessions prior to the birth of such person; (3) a person of unknown parentage found in an outlying possession of the United States while under the age of five years, until shown, prior to his attaining the age of twenty- one years, not to have been born in such outlying possession; and (4) a person born outside the United States and its outlying possessions of parents one of whom is an alien, and the other a national, but not a citizen, of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than seven years in any continuous period of ten years: during which the national parent was not outside the United States or its outlying possessions for a continuous period of more than one year, and at least five years of which were after attaining the age of fourteen years. See INA 101(a)(22) and INA 308.
[182] See INA 330. See 8 CFR 330.1.

the conduct of United States intelligence activities." Such persons are exempted from the continuous residence and physical presence requirements.[183]

## Chapter 6: Jurisdiction, Place of Residence, and Early Filing

### A. Three-Month Residency Requirement (in State or Service District)

In general, an applicant for naturalization must file his or her application for naturalization with the State or Service District that has jurisdiction over his or her place of residence. The applicant must have resided in that location for at least three months prior to filing.

The term "State" includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.[184] The term "Service District" is defined as the geographical area over which a USCIS office has jurisdiction.[185]

The Service District that has jurisdiction over an applicant's application may or may not be located within the State where the applicant resides. In addition, some Service Districts may have jurisdiction over more than one State and most States contain more than one USCIS office.[186]

In cases where an applicant changes or plans to change his or her residence after filing the naturalization application, the applicant is required to report the change of address to USCIS so that the applicant's A-file (with application) can be transferred to the appropriate office having jurisdiction over the applicant's new place of residence.

### B. Place of Residence

The applicant's "residence" refers to the applicant's principal, actual dwelling place in fact, without regard to intent.[187] The duration of an applicant's residence in a particular location is measured from the moment the applicant first establishes residence in that location.[188]

### C. Place of Residence in Certain Cases

There are special considerations regarding the place of residence for the following applicants:[189]

1. Military Member

[183] See INA 316(f).
[184] See INA 101(a)(36). As of November 28, 2009, Commonwealth of the Northern Mariana Islands (CNMI) is part of the definition of United States. See Consolidated Natural Resources Act of 2008, Public Law 110-229. See Chapter 3, Continuous Residence, Section E, Residence in the Commonwealth of the Northern Mariana Islands.
[185] See 8 CFR 316.1.
[186] See 8 CFR 100.4.
[187] See INA 101(a)(33). This is the same as the applicant's actual domicile.
[188] See 8 CFR 316.5(a).
[189] See 8 CFR 316.5(b).

Special provisions exist for applicants who are serving or have served in the U.S. armed forces but who do not qualify for naturalization on the basis of the military service for one year.[190]

- The service member's place of residence may be the State or Service District where he or she is physically present for at least three months immediately prior to filing (or the examination if filed early);

- The service member's place of residence may be the location of the residence of his or her spouse or minor child, or both; or

- The service member's place of residence may be his or her home of record as declared to the U.S. armed forces at the time of enlistment and as currently reflected in the service member's military personnel file.

2. Spouse of Military Member (Residing Abroad)

The spouse of a U.S. armed forces member may be eligible to count the time he or she is residing (or has resided) abroad with the service member as continuous residence and physical presence in any State or district of the United States.[191] Such a spouse may consider his or her place of residence abroad as a place of residence in any State or district in the United States.

3. Students

An applicant who is attending an educational institution in a State or Service District other than the applicant's home residence may apply for naturalization where that institution is located, or in the State of the applicant's home residence if the applicant is financially dependent upon his or her parents at the time of filing and during the naturalization process.[192]

4. Commuter

A commuter must have taken up permanent residence (principal dwelling place) in the United States for the required statutory period and must meet the residency requirements to be eligible for naturalization.[193]

5. Residence in Multiple States
http://www.uscis.gov/policymanual/ - 0-0-0-19579
If an applicant claims residence in more than one State, the residence for purposes of naturalization will be determined by the location from which the applicant's annual federal income tax returns have been and are being filed.[194]

6. Residence During Absences of Less than One Year

[190] See INA 328. See Part I, Military Members and their Families, Chapter 2, One Year of Military Service during Peacetime (INA 328).
[191] See INA 319(e). See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section B, Spouses of Military Members. See Part G, Spouses of U.S. Citizens, Chapter 3, Spouses of U.S. Citizens Residing in the United States.
[192] See 8 CFR 316.5(b)(2).
[193] See 8 CFR 211.5. See 8 CFR 316.5(b)(3).
[194] See 8 CFR 316.5(b)(4).

http://www.uscis.gov/policymanual/ - 0-0-0-19579An applicant's residence during any absence abroad of less than one year will continue to be the State or Service District where the applicant resided before departure. If the applicant returns to the same residence, he or she will have complied with the three-month jurisdictional residence requirement when at least three months have elapsed, including any part of the absence, from when the applicant first established that residence.[195]

If the applicant establishes residence in a different State or Service District from where he or she last resided, the applicant must reside three months at that new residence before applying in order to meet the three-month jurisdictional residence requirement.[196]

7. Noncitizen Nationals of the United States
http://www.uscis.gov/policymanual/ - 0-0-0-8991
A noncitizen national may naturalize if he or she becomes a resident of any State and is otherwise qualified.[197] Noncitizen nationals will satisfy the continuous residence and physical presence requirements while residing in an outlying possession. Such applicants must reside for three months prior to filing in a State or Service District to be eligible for naturalization.

**D. 90-Day Early Filing Provision (INA 334)**

An applicant filing under the general naturalization provision may file his or her application up to 90 days before he or she would first meet the required 5-year period of continuous residence as an LPR.[198] Although an applicant may file early according to the 90 day early filing provision, the applicant is not eligible for naturalization until he or she has reached the required five-year period of continuous residence as an LPR.

USCIS calculates the early filing period by counting back 90 days from the day before the applicant would have first satisfied the continuous residence requirement for naturalization. For example, if the applicant would satisfy the five-year continuous residence requirement for the first time on June 10, 2010 USCIS will begin to calculate the 90-day early filing period from June 9, 2010. In such a case, the earliest that the applicant is allowed to file would be March 12, 2010 (90 calendar days earlier).

In cases where an applicant has filed early and the required three month period of residence in a State or Service District falls within the required five-year period of continuous residence, jurisdiction for filing will be based on the three-month period immediately preceding the examination on the application.[199]

**E. Expediting Applications from Certain SSI Beneficiaries**

USCIS will expedite naturalization applications filed by applicants:

- Who are within one year or less of having their Supplemental Security Income (SSI) benefits terminated by the Social Security Administration (SSA); and

[195] See 8 CFR 316.5(b)(5).
[196] See 8 CFR 316.2(a)(5).
[197] See INA 325. See Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence.
[198] See INA 334(a). See 8 CFR 334.2(b).
[199] See 8 CFR 316.2(a)(5).

- Whose naturalization application has been pending for four months or more from the date of receipt by USCIS.

Although USCIS will prioritize processing of these applications, each applicant is still required to meet all eligibility requirements for naturalization at the time of filing. Applicants must inform USCIS of the approaching termination of benefits by INFOPASS appointment or by United States postal mail or other courier service by providing:

- A cover letter or cover sheet to explain that SSI benefits will be terminated within one year or less and that their naturalization application has been pending for four months or more from the date of receipt by USCIS; and

- A copy of the applicant's most recent SSA letter indicating the termination of their SSI benefits. (The USCIS alien number must be written at the top right of the SSA letter).

## Chapter 7: Attachment to the Constitution

### A. Attachment to the Constitution

An applicant for naturalization must show that he or she has been and continues to be a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States during the statutorily prescribed period.[200] "Attachment" is a stronger term than "well disposed" and implies a depth of conviction, which would lead to active support of the Constitution.[201]

Attachment includes both an understanding and a mental attitude including willingness to be attached to the principles of the Constitution. An applicant who is hostile to the basic form of government of the United States, or who does not believe in the principles of the Constitution, is not eligible for naturalization.[202]

In order to be admitted to citizenship, naturalization applicants must take the Oath of Allegiance in a public ceremony. At that time, an applicant declares his or her attachment to the United States and its Constitution.[203] In order to be admitted to citizenship:

- The applicant must understand that he or she is taking the Oath freely without any mental reservation or purpose of evasion;

- The applicant must understand that he or she is sincerely and absolutely renouncing all foreign allegiance;

- The applicant must understand that he or she is giving true faith and allegiance to the United States, its Constitution and laws;

[200] See INA 316(a). See 8 CFR 316.11.
[201] See *In re Shanin*, 278 F. 739 (1922).
[202] See *Allan v. U.S.*, 115 F.2d 804 (1940).
[203] See INA 337. See 8 CFR 337.1. See Part J, Oath of Allegiance.

- The applicant must understand that he or she is intending to make the United States his or her permanent home where he or she will fully assume residency; and

- The applicant must understand that he or she is discharging all duties and obligations of citizenship including military and civil service when required by the law.

The applicant's true faith and allegiance to the United States includes supporting and defending the principles of the Constitution by demonstrating an acceptance of the democratic, representational process established by the U.S. Constitution, and the willingness to obey the laws which result from that process.[204]

**B. Selective Service Registration**

1. Males Required to Register

In general, males must register with Selective Service within 30 days of their 18th birthday but not after reaching 26 years of age. The U.S. Government suspended the registration in April of 1975 and resumed it in 1980. An applicant who refused to or knowingly and willfully failed to register for Selective Service negates his disposition to the good order and happiness of the United States, attachment to the principles of the Constitution, good moral character, and willingness to bear arms on behalf of the United States.[205]

Applicants may register for Selective Service at their local post office, return a Selective Service registration card received by mail, or online at the Selective Service System website.[206] Confirmation of registration may be obtained by calling (847) 688-6888 or online at www.sss.gov. The officer may also accept other persuasive evidence presented by an applicant as proof of registration.

USCIS assists with the registration process by transmitting the appropriate data to the Selective Service System (SSS) for male applicants between the ages of 18 and 26 who apply for adjustment of status.[207] After registering the eligible male, Selective Service will send an acknowledgement to the applicant that can be used as his official proof of Selective Service registration.

2. Failure to Register for Selective Service

USCIS will deny a naturalization application when the applicant refuses to register with Selective Service or has knowingly and willfully failed to register during the statutory period.[208] The officer may request for the applicant to submit a status information letter and registration acknowledgement card before concluding that he failed to register.

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[204] The attachment to the Constitution and oath requirements may be modified for religious objections or waived for applicants with an inability to comprehend the oath. Prior to November 6, 2000, certain disabled applicants were precluded from naturalization because they could not personally express intent or voluntary assent to the oath requirement. However, subsequent legislation authorized USCIS to waive the attachment and the oath requirements for any individual who has a medical condition physical or developmental disability or mental impairment that makes him or her unable to understand or communicate an understanding of the meaning of the oath. See Pub. L. 106-448 (November 6, 2000). See Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers.

[205] See INA 316(a) and INA 337(a)(5)(A). See the Military Selective Service Act of 1940.

[206] See www.sss.gov.

[207] See forthcoming Volume 7, Adjustment of Status.

[208] Failure to register is not a permanent bar to naturalization.

The status information letter will indicate whether a requirement to register existed. The applicant must show by a preponderance of the evidence that his failure to register was not a knowing or willful act.[209] Failure on the part of USCIS or SSS to complete the process on behalf of the applicant, however, will not constitute a willful failure to register on the part of the applicant.

The denial notice in cases where willful failure to register is established may also show that in addition to failing to register, the applicant is not well disposed to the good order and happiness of the United States. This determination depends on the applicant's age at the time of filing the application and up until the time of the oath:

*Applicants Under 26 Years of Age*

The applicant is generally ineligible.

*Applicants Between 26 and 31 Years of Age*

The applicant may be ineligible for naturalization. USCIS will allow the applicant an opportunity to show that he did not knowingly or willfully fail to register, or that he was not required to do so.

*Applicants Over 31 Years of Age*

The applicant is eligible. This is the case even if the applicant knowingly and willfully failed to register because the applicant's failure to register would be outside of the statutory period.

3. Males Not Required to Register

The following classes of males are not required to register for Selective Service:

- Males over the age of 26
- Males who did not live in the United States between the ages of 18 and 26 years
- Males who lived in the United States between the ages of 18 and 26 years but who maintained lawful nonimmigrant status for the entire period
- Males born after March 29, 1957 and before December 31, 1959[210]

**C. Draft Evaders**

In general, the law prohibits draft evaders and deserters from the U.S. armed forces during wartime from naturalizing for lack of attachment to the Constitution and favorable disposition to the good order of the United States.[211]

[209] See 50 U.S.C. App. 462.
[210] See Proc. No. 4771 of July 2, 1980 1-101, 94 Stat. 3775 (1980). See 50 U.S.C. App. 456(a). See Sec. 3(a) of the Military Selective Service Act [50 U.S.C. App. 453(a)].
[211] See INA 316(a)(3).

A conviction by a court martial or a court of competent jurisdiction for a military desertion or a departure from the United States to avoid a military draft will preclude naturalization.[212] USCIS may obtain such information from the applicant's testimony during the naturalization examination (interview), security checks, and from the Request for Certification of Military or Naval Service (Form N-426).[213]

An applicant who admits to desertion during wartime, but who has not been convicted of desertion by court martial or court of competent jurisdiction may still be eligible for naturalization.[214] An applicant's military record may list him or her as a deserter but without a final conviction.

**D. Membership in Certain Organizations**

The officer will review an applicant's record and testimony during the interview on the naturalization application to determine whether he or she was ever a member of or in any way associated (either directly or indirectly) with:

- The Communist Party;
- Any other totalitarian party; or
- A terrorist organization.

Current and previous membership in these organizations may indicate a lack of attachment to the Constitution and an indication that the applicant is not well disposed to the good order and happiness of the United States.[215] Membership in these organizations may also raise issues of lawful admission, good moral character,[216] or may even render the applicant removable.[217]

The burden rests on the applicant to prove that he or she has an attachment to the Constitution and that he or she is well disposed to the good order and happiness of the United States, among the other naturalization requirements. An applicant who refuses to testify or provide documentation relating to membership in such organizations has not met the burden of proof. USCIS may still deny the naturalization application under such grounds in cases where such an applicant was not removed at the end of removal proceedings.[218]

1. Communist Party Affiliation

An applicant cannot naturalize if any of the following are true within ten years immediately preceding his or her filing for naturalization and up until the time of the Oath of Allegiance:

- The applicant is or has been a member of or affiliated with the Communist Party or any other totalitarian party;

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[212] See INA 314.
[213] See Part I, Military Members and their Families.
[214] See *State v. Symonds*, 57 Me. 148 (1869). See *Holt v. Holt,* 59 Me. 464 (1871). See *McCafferty v. Guyer*, 59 Pa. 109 (1868).
[215] See INA 313 and INA 316. See 8 CFR 316.
[216] See Part F, Good Moral Character.
[217] See INA 237(a)(4).
[218] See INA 313. See the Legal Decisions and Opinions of the Office of Immigration Litigation Case Summaries - No. 93-380, *Price v. U.S. Immigration and Naturalization USCIS*, seeking review of *Price v. US INS*, 962 F.2d. 836 (9th Cir. 1992).

- The applicant is or has advocated communism or the establishment in the United States of a totalitarian dictatorship;

- The applicant is or has been a member of or affiliated with an organization that advocates communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterance or through any written or printed matter published by such organization;

- The applicant is or has been a subversive, or a member of, or affiliated with, a subversive organization;

- The applicant is knowingly publishing or has published any subversive written or printed matter, or written or printed matter advocating communism;

- The applicant is knowingly circulating or has circulated, or knowingly possesses or has possessed for the purpose of circulating, subversive written or printed matter, or written or printed matter advocating communism; or

- The applicant is or has been a member of, or affiliated with, any organization that publishes or circulates, or that possesses for the purpose of publishing or circulating, any subversive written or printed matter, or any written or printed matter advocating communism.

2. Exemptions to Communist Party Affiliation

The burden is on the applicant to establish eligibility for an exemption. An applicant may be eligible for naturalization if he or she establishes that:

- The applicant's membership or affiliation was involuntary;

- The applicant's membership or affiliation was without awareness of the nature or the aims of the organization, and was discontinued when the applicant became aware of the nature or aims of the organization;

- The applicant's membership or affiliation was terminated prior to his or her attaining the age of 16;

- The applicant's membership or affiliation was terminated more than 10 years prior to the filing for naturalization;

- The applicant's membership or affiliation was by operation of law; or

- The applicant's membership or affiliation was necessary for purposes of obtaining employment, food rations, or other essentials of living.[219]

Even if participating without awareness of the nature or the aims of the organization, the applicant's participation must have been minimal in nature. The applicant must also demonstrate that membership in the

[219] See INA 313(d).

covered organization was necessary to obtain the essentials of living like food, shelter, clothing, employment, and an education, which were routinely available to the rest of the population.

For purposes of this exemption, higher education qualifies as an essential of living only if the applicant can establish the existence of special circumstances which convert the need for higher education into a need as basic as the need for food or employment, and that he or she participated only to the minimal extent necessary to receive the essentials of living.

However, unless the applicant can show special circumstances that establish a need for higher education as basic as the need for food or employment, membership to obtain a college education is not excusable for obtaining an essential of living.[220]

3. Nazi Party Affiliation

Applicants who were affiliated with the Nazi Government of Germany or any government occupied by or allied with the Nazi government of Germany, either directly or indirectly, are ineligible for admission into the United States and permanently barred from naturalization.[221] The applicant is responsible for providing any evidence or documentation to support a claim that he or she is not ineligible for naturalization based on involvement in the Nazi Party.

4. Persecution and Genocide

An applicant who has engaged in persecution or genocide is permanently barred from naturalization because he or she is precluded from establishing good moral character.[222] Additionally, an applicant who engaged in persecution or genocide prior to admission as an LPR would have been inadmissible. Such an applicant would not have lawfully acquired LPR status in accordance with all applicable provisions and would be ineligible for naturalization.[223] Such persons may also be deportable.[224]

5. Membership or Affiliation with Terrorist Organizations

Information concerning an applicant's membership in a terrorist organization implicates national security issues. Such information is important in determining the applicant's eligibility in terms of the good moral character (GMC) and attachment requirements.

## Chapter 8: Educational Requirements[225]

In general, applicants for naturalization must demonstrate an understanding of the English language, including an ability to read, write, and speak words in ordinary usage. Applicants must also demonstrate a knowledge and

[220] See *Langhammer v. Hamilton*, 194 F. Supp. 854, 857 (1961).
[221] See INA 212(a)(3)(E).
[222] See INA 101(a)(42), INA 101(f), and INA 208(b)(2)(A)(i). See Part F, Good Moral Character, Chapter 4, Permanent Bars to GMC, Section C, Persecution, Genocide, Torture, or Severe Violations of Religious Freedom.
[223] See INA 318. See Chapter 2, LPR Admission for Naturalization.
[224] See INA 212(a)(3)(E).
[225] See Part E, English and Civics Testing and Exceptions and Part B, Naturalization Examination.

understanding of the fundamentals of the history and principles and form of government of the United States (civics). These are the English and civics requirements for naturalization.

An applicant may be eligible for an exception to the English requirements if he or she is a certain age and has been an LPR for a certain period of time. In addition, an applicant who has a physical or developmental disability or mental impairment may be eligible for a medical exception of both the English and civics requirements.[226]

## Chapter 9: Good Moral Character[227]

One of the requirements for naturalization is good moral character (GMC). An applicant for naturalization must show that he or she has been, and continues to be, a person of good moral character. In general, the applicant must show GMC during the five-year period immediately preceding his or her application for naturalization and up to the time of the Oath of Allegiance. Conduct prior to the five-year period may also impact whether the applicant meets the requirement.[228]

[226] See INA 312 and 8 CFR 312. See Part E, English and Civics Testing and Exceptions.
[227] See Part F, Good Moral Character, for guidance on the GMC requirement for naturalization.
[228] See Part F, Good Moral Character.

# PART E – ENGLISH AND CIVICS TESTING AND EXCEPTIONS

## Chapter 1: Purpose and Background

### A. Purpose

In general, a naturalization applicant must demonstrate an understanding of the English language, including an ability to read, write, and speak words in ordinary usage. An applicant must also demonstrate a knowledge and understanding of the fundamentals of the history and principles and form of government of the United States (civics). These are the English and civics requirements for naturalization.[229]

### B. Background

Prior to 1906, an applicant was not required to know English, history, civics, or understand the principles of the constitution to naturalize. If the court determined the applicant was a "thoroughly law-abiding and industrious man, of good moral character," the applicant became a U.S. citizen.[230] As far back as 1908, the former Immigration Service and the Courts determined that a person could not establish the naturalization requirement of showing an attachment to the Constitution unless he or she had some understanding of its provisions.[231]

In 1940, Congress made amendments to include an English language requirement and certain exemptions based on age and residence, as well as a provision for questioning applicants on their understanding of the principles of the Constitution.[232] In 1994, Congress enacted legislation providing an exception to the naturalization educational requirements for applicants who cannot meet the requirements because of a medical disability. Congress also amended the exceptions to the English requirement based on age and residence that are current today.[233]

On October 1, 2008, USCIS implemented a redesigned English and civics test. With this redesigned test, USCIS ensures that all applicants have the same testing experience and have an equal opportunity to demonstrate their understanding of English and civics.

### C. Legal Authorities

- INA 312; 8 CFR 312 – Educational requirements for naturalization
- INA 316; 8 CFR 316 – General requirements for naturalization

## Chapter 2: English and Civics Testing

### A. Educational Requirements

An officer administers a naturalization test to determine whether an applicant meets the English and civics requirements.

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[229] See INA 312. See 8 CFR 312.
[230] See *In re Rodriguez*, 81 F. 337 (W.D. Tex. 1897).
[231] See *In re Meakins*, 164 F. 334 (1908). See *In re Vasicek*, 271 F. 326 (1921).
[232] See the Nationality Act of 1940, Pub. L. 76-853, 54 Stat. 1137.
[233] See the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103-416 (October 25, 1994).

The naturalization test consists of two components:

- English language proficiency, which is determined by the applicant's ability to read, write, speak and understand English; and

- Knowledge of U.S. history and government, which is determined by a civics test.

An applicant has two opportunities to pass the English and civics tests: the initial examination and the re-examination interview. USCIS will deny the naturalization application if the applicant fails to pass any portion of the tests after two attempts. In cases where an applicant requests a USCIS hearing on the denial, officers must administer any failed portion of the tests.[234]

Unless excused by USCIS, the applicant's failure to appear at the re-examination for testing or to take the tests at an examination or hearing counts as a failed attempt to pass the test.

**B. Exceptions**

An applicant may qualify for an exception from the English requirement, civics requirement, or both requirements. The table below serves as a quick reference guide on the exceptions to the English and civics requirements for naturalization.

**Exceptions to English and Civics Requirements for Naturalization**

| **Exceptions** *INA 312(b)* | **Educational Requirements** | |
|---|---|---|
| | ***English*** Read, write, speak and understand | ***Civics*** Knowledge of U.S. history and government |
| **Age 50 or older and resided in U.S. as an LPR for at least 20 years at time of filing** | Exempt | Still required. Applicants may take civics test in their language of choice using an interpreter. |
| **Age 55 or older and resided in U.S. as an LPR for at least 15 years at time of filing** | Exempt | |
| **Age 65 or older and resided in U.S. as an LPR for at least 20 years at time of filing** | Exempt | Still required but officers administer specially designated test forms. Applicants may take the civics test in their language of choice using |

[234] Only one opportunity to pass the failed portion of the tests is provided at the hearing. See Part B, Naturalization Examination, Chapter 6, USCIS Hearing and Judicial Review, Section B, Review of Timely Filed Hearing Request.

| Exceptions to English and Civics Requirements for Naturalization | | |
|---|---|---|
| **Exceptions** *INA 312(b)* | **Educational Requirements** | |
| | ***English*** Read, write, speak and understand | ***Civics*** Knowledge of U.S. history and government |
| | | an interpreter. |
| **Medical Disability Exception (Form N-648)** | May be exempt from English, civics, or both | |

1. Age and Residency Exceptions to English

An applicant is exempt from the English language requirement but is still required to meet the civics requirement if:

- The applicant is age 50 or older at the time of filing for naturalization and has lived as an LPR in the United States for at least 20 years; or
- The applicant is age 55 or older at the time of filing for naturalization and has lived as an LPR in the United States for at least 15 years.

The applicant may take the civics test in his or her language of choice with the use of an interpreter.

2. Special Consideration for Civics Test

An applicant receives special consideration in the civics test if, at the time of filing the application, the applicant is 65 years of age or older and has been living in the United States for periods totaling at least 20 years subsequent to a lawful admission for permanent residence.[235] An applicant who qualifies for special consideration is administered specific test forms.

3. Medical Disability Exception to English and Civics

An applicant who cannot meet the English and civics requirements because of a medical disability may be exempt from the English requirement, the civics requirement, or both requirements.

**C. Meeting Requirements under IRCA 1986**

The Immigration Reform and Control Act of 1986 (IRCA) mandated that persons legalized under INA 245A meet a basic citizenship skills requirement in order to be eligible for adjustment to LPR status. An applicant was permitted to demonstrate basic citizenship skills by:

[235] See INA 312(b)(3).

- Passing the English and civics tests administered by legacy Immigration and Naturalization Service (INS); or

- Passing standardized English and civics tests administered by organizations then authorized by the INS.[236]

At the time of the naturalization re-examination, the officer will only retest the applicant on any portion of the test that the applicant did not satisfy under IRCA. In all cases, the applicant must demonstrate the ability to speak English at the time of the naturalization examination, unless the applicant meets one of the age and time as resident exemptions of English or qualifies for a medical waiver.[237]

**D. English Portion of the Test**

A naturalization applicant must only demonstrate an ability to read, write, speak, and understand words in ordinary usage.[238] Ordinary usage means comprehensible and pertinent communication through simple vocabulary and grammar, which may include noticeable errors in pronouncing, constructing, spelling, and understanding completely certain words, phrases, and sentences.

An applicant may ask for words to be repeated or rephrased and may make some errors in pronunciation, spelling, and grammar and still meet the English requirement for naturalization. An officer should repeat and rephrase questions until the officer is satisfied that the applicant either fully understands the question or is unable to understand English.[239]

1. Speaking Test

An officer determines an applicant's ability to speak and understand English based on the applicant's ability to respond to questions normally asked in the course of the naturalization examination. The officer's questions relate to eligibility and include questions provided in the naturalization application.[240] The officer should repeat and rephrase questions during the naturalization examination until the officer is satisfied that the applicant either understands the questions or does not understand English.

An applicant who does not qualify for a waiver of the English requirement must be able to communicate in English about his or her application and eligibility for naturalization. An applicant does not need to understand every word or phrase on the application.

*Passing the Speaking Test*

If the applicant generally understands and responds meaningfully to questions relevant to his or her naturalization eligibility, then he or she has sufficiently demonstrated the ability to speak English.

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[236] The INS Standardized Citizenship Testing Program was conducted by five non-government companies on behalf of the INS. That program was established in 1991 and ended on August 30, 1998. See 63 FR 25080 (May 6, 1998).
[237] See INA 245A(b)(1)(D)(iii). See 8 CFR 312.3.
[238] See INA 312. See 8 CFR 312.
[239] See 8 CFR 335.2(c).
[240] See 8 CFR 312.1(c)(1).

*Failing the Speaking Test*

An applicant fails the speaking test when he or she does not understand sufficient English to be placed under oath or to answer the eligibility questions on his or her naturalization application.
The officer must still administer all other parts of the naturalization test, including the portions on reading, writing, and civics.

An officer cannot offer or accept a withdrawal of a naturalization application from an applicant who does not speak English unless the applicant has an interpreter present who is able to clearly understand the consequences of withdrawing the application.[241]

2. Reading Test

To sufficiently demonstrate the ability to read in English, applicants must read one sentence out of three sentences. The reading test is administered by the officer using standardized reading test forms. Once the applicant reads one of the three sentences correctly, the officer stops the reading test.

*Passing the Reading Test*

An applicant passes the reading test if the applicant reads one of the three sentences without extended pauses in a manner that the applicant is able to convey the meaning of the sentence and the officer is able to understand the sentence. In general, the applicant must read all content words but may omit short words or make pronunciation or intonation errors that do not interfere with the meaning.

*Failing the Reading Test*

An applicant fails the reading test if he or she does not successfully read at least one of the three sentences. An applicant fails to read a sentence successfully when he or she:

- Omits a content word or substitutes another word for a content word;
- Pauses for extended periods of time while reading the sentence; or
- Makes pronunciation or intonation errors to the extent that the applicant is not able to convey the meaning of the sentence and the officer is not able to understand the sentence.

3. Writing Test

To sufficiently demonstrate the ability to write in English, the applicant must write one sentence out of three sentences in a manner that the officer understands. The officer dictates the sentence to the applicant using standardized writing test forms. An applicant must not abbreviate any of the words. Once the applicant writes one of the three sentences in a manner that the officer understands, the officer stops the writing test.

[241] See Part B, Naturalization Examination, Chapter 4, Results of the Naturalization Examination, Section D, Administrative Closure, Lack of Prosecution, Withdrawal, and Holding in Abeyance.

An applicant does not fail the writing test because of spelling, capitalization, or punctuation errors, unless the errors interfere with the meaning of the sentence and the officer is unable to understand the sentence.

*Passing the Writing Test*

The applicant passes the writing test if the applicant is able to convey the meaning of one of the three sentences to the officer. The applicant's writing sample may have the following:

- Some grammatical, spelling, or capitalization errors
- Omitted short words that do not interfere with meaning
- Numbers spelled out or written as digits

*Failing the Writing Test*

An applicant fails the writing test if he or she makes errors to a degree that the applicant does not convey the meaning of the sentence and the officer is not able to understand the sentence.

An applicant fails the writing test if he or she writes the following:

- A different sentence or words;
- An abbreviation for a dictated word;[242]
- Nothing or only one or two isolated words; or
- A sentence that is completely illegible.

**E. Civics Portion of the Test**

A naturalization applicant must demonstrate a knowledge and understanding of the fundamentals of the history, the principles, and the form of government of the United States (civics).[243]

1. Civics Test

To sufficiently demonstrate knowledge of civics, the applicant must answer correctly at least six of ten questions from the standardized civics test form administered by an officer. The officer administers the test orally.[244] Once the applicant answers six of the ten questions correctly, the officer stops the test.

*Passing the Civics Test*

An applicant passes the civics test if he or she provides a correct answer or provides an alternative phrasing of the correct answer for six of the ten questions.

*Failing the Civics Test*

[242] An abbreviation for a dictated word may be accepted if the officer has approved the abbreviation.
[243] See 8 CFR 312.2.
[244] See 8 CFR 312.2(c)(1).

An applicant fails the civics test if he or she provides an incorrect answer or fails to respond to six out of the ten questions from the standardized test form.

2. Special Consideration

An officer gives special consideration to an applicant who is 65 years of age or older and who has been living in the United States for periods totaling at least 20 years subsequent to a lawful admission for permanent residence.[245] The age and time requirements must be met at the time of filing the naturalization application. An officer only asks questions from the three "65/20" test forms when administering the civics test to such applicants. The test forms only contain 20 specially designated civics questions from the usual list of 100 questions.

3. Due Consideration

An officer should exercise "due consideration" on a case-by-case basis in choosing subject matters, phrasing questions, and evaluating responses when administering the civics test. The officer's decision to exercise due consideration should be based on a review of the applicant's:

- Age;
- Background;
- Level of education;
- Length of residence in the United States;
- Opportunities available and efforts made to acquire the requisite knowledge; and
- Any other relevant factors relating to the applicant's knowledge and understanding.[246]

**F. Failure to Meet the English or Civics Requirements**

If an applicant fails any portion of the English test, the civics test, or all tests during the initial naturalization examination, USCIS will reschedule the applicant to appear for a second examination between 60 and 90 days after the initial examination.[247]

In cases where the applicant appears for a re-examination, the reexamining officer must not administer the same English or civics test forms administered during the initial examination. The officer must only retest the applicant in those areas that the applicant previously failed. For example, if the applicant passed the English speaking, reading, and civics portions but failed the writing portion during the initial examination, the officer must only administer the English writing test during the re-examination.[248]

If an applicant fails any portion of the naturalization test a second time, the officer must deny the application based upon the applicant's failure to meet the educational requirements for naturalization. The officer also must address any other areas of ineligibility in the denial notice. An applicant who refuses to be tested or to

[245] See INA 312(b)(3).
[246] See 8 CFR 312.2(c)(2).
[247] See 8 CFR 335.3(b) (Re-exam no earlier than 60 days from initial examination). See 8 CFR 312.5(a) (Re-examination no later than 90 days from initial examination).
[248] See 8 CFR 312.5.

respond to individual questions on the reading, writing, or civics test, or fails to respond to eligibility questions because he or she did not understand the questions as asked or rephrased, fails to meet to the educational requirements. An officer should treat an applicant's refusal to be tested or to respond to test questions as a failure of the test.[249]

### G. Documenting Test Results

All officers administering the English and civics tests are required to record the test results in the applicant's A-file. Officers are required to complete and provide to each applicant at the end of the naturalization examination the results of the examination and testing, unless the officer serves the applicant with a denial notice at that time.[250] The results include the results of the English and civics tests.

## Chapter 3: Medical Disability Exception (Form N-648)

### A. Medical Exception Requirements

In 1994, Congress enacted legislation providing an exception to the naturalization educational requirements for applicants who cannot meet the educational requirements because of a physical or developmental disability or mental impairment.[251]

The English and civics requirements do not apply to naturalization applicants who are unable to comply due to a "medically determinable" physical or developmental disability or mental impairment that has lasted, or is expected to last, at least 12 months. The regulations define "medically determinable" as a determination made by acceptable clinical or laboratory techniques. [252]

The applicant must demonstrate a disability or impairment that affects the functioning of the individual such that, even with reasonable accommodations, he or she is unable to demonstrate the educational requirements for naturalization. Illiteracy alone is not a valid reason to seek an exception to the educational requirements. In addition, advanced age, in and of itself, is not a medically determinable physical or developmental disability or mental impairment.

An applicant seeking an exception to the educational requirements submits a Medical Certification for Disability Exceptions (Form N-648) as an attachment to the naturalization application.[253] A licensed medical professional must complete the form. The medical professional must certify that the applicant's medical condition prevents the applicant from meeting the English requirement, the civics requirement, or both requirements.

USCIS recognizes that certain circumstances may prevent concurrent filing of the naturalization application and the disability exception form. Accordingly, an applicant may file the disability exception form during any part of the naturalization process, including after the application is filed but before the first examination, during the

[249] See 8 CFR 312.5(b).
[250] Officers must use the Naturalization Interview Results (Form N-652).
[251] See Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103-416 (October 25, 1994). See INA 312(b). The "55/15" and "50/20" exceptions, as well as the "65/20" special consideration provisions were also added by the same legislation.
[252] See INA 312(b). See 8 CFR 312.1(b)(3) and 8 CFR 312.2(b).
[253] See 8 CFR 312.2(b)(2). The first edition of Form N-648 was made available to the public as an attachment to the final rule. See 62 FR 12915-12928 (March 19, 1997). See 74 Interpreter Releases 512-15 (March 24, 1997).

first examination, during the re-examination if the applicant's first examination was rescheduled, and during the rehearing on a denied naturalization application.

**B. Medical Exception Versus Accommodation**

Requesting an exception to the English and civics requirements is different from requesting an accommodation to the naturalization examination process.[254] An exception to the English and civics requirements exempts the applicant from the educational requirements completely. An accommodation, on the other hand, simply modifies the manner in which an applicant meets the educational requirements; it does not exempt the applicant from the educational requirements.

Reasonable accommodations include, but are not limited to, sign language interpreters, extended time for testing, and off-site testing. A disability exception requires an applicant to show that his or her medical condition prevents him or her from complying with the English and civics requirements even with reasonable accommodations.

**C. Authorized Medical Professionals**

USCIS only authorizes the following licensed medical professionals to certify the disability exception form:

- Medical doctors;
- Doctors of osteopathy; and
- Clinical psychologists.[255]

These medical professionals must be licensed to practice in any state of the United States, Washington, D.C., Guam, Puerto Rico, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands.[256]

The medical professional must:

- Conduct an in-person examination of the applicant;
- Explain the nature and extent of the medical condition on Form N-648;
- Explain how the medical condition relates to the applicant's inability to comply with the English and civics requirements;
- Attest that the medical condition has lasted or is expected to last at least 12 months; and
- Attest that the cause of the medical condition is not related to the illegal use of drugs.

The medical professional must complete the disability exception form using common terminology that a person without medical training can understand. While staff associated with the medical professional may assist in completing the form, the medical professional alone is responsible for verifying the accuracy of the form's

[254] See Part C, Accommodations.
[255] See 8 CFR 312.2(b)(2).
[256] Initially, the corresponding Notice of Proposed Rulemaking (NPRM) issued by legacy INS to address this legislation proposed that all exception eligibility determinations be based on individual assessments by civil surgeons or qualified individuals or entities designated by the Attorney General. The proposed rule suggested that the civil surgeon (or "authorized entity") provide their assessment in a one-page document. The assessment would attest to the origin, nature, and extent of the applicant's medical condition. INS removed the requirement for a civil surgeon determination in the final rule. See NPRM at 61 FR 44227-44230 (August 28, 1996).

content. The medical professional certifying the form may attach supporting documents, such as medical diagnostic reports and records. The attachments must not replace written responses to each question or item on the form.

**D. Guidelines for Officer's Review**

1. General Guidelines for Review

An officer must review the disability exception form to determine whether the applicant is eligible for the exception. The officer may reach one of the following outcomes after his or her review:

- The form sufficiently establishes that the applicant is eligible for the exception; or
- The form is insufficient in establishing that the applicant is eligible for the exception.

The tables below provide general guidelines on what an officer should and should not do when reviewing a disability exception form.

| General Guidelines for Officer's Review of Form N-648 |
|---|
| **When reviewing the form, an officer SHOULD:** |
| Determine whether the form has been properly completed, certified, and signed (the medical professional must have certified the form within six months of its submission). Once certified, the form is valid for the duration of the application. |
| Ensure that the form relates to the applicant and that there are no discrepancies between the form and other information, including biographic data, testimony during the interview, or information contained in the applicant's A-file |
| Determine whether the form fully addresses the underlying medical condition and its causal connection with the applicant's inability to comply with the requirements |
| Determine whether the form contains sufficient information to establish that the applicant is eligible for the exception by a preponderance of the evidence ("more likely than not") |
| **When reviewing the form, an officer SHOULD NOT:** |
| Assume responsibility or authority to determine the validity of the medical diagnosis or opinion on the applicant's ability to comply with the English and civics requirements |
| Refer an applicant to another medical professional solely because the applicant sought care from a professional who shares the same language, culture, ethnicity, or nationality |
| Conclude that the applicant does not have the medical condition because it was not previously recorded in other immigration related medical examinations or documents |
| Question an applicant about the applicant's ability to complete a certain activity if the form does not discuss that particular activity |

| General Guidelines for Officer's Review of Form N-648 |
|---|
| Require that an applicant complete specific medical, clinical, or laboratory diagnostic techniques, tests, or methods |
| Develop and substitute his or her own diagnosis of the applicant's medical condition in lieu of the medical professional's diagnosis |
| Use questionnaires or tests to challenge each applicant's diagnosed medical condition |
| Question the applicant about his or her medical care, job duties, community and civic affairs, or daily living activities unless facts in the form or during the examination directly contradict facts in the A-file |
| Request to see an applicant's medical records or prescription medication solely to question whether there was a proper basis for the medical professional's diagnosis |
| Infer that the applicant is able to comply with all portions of the English and civics requirements in cases where an applicant only seeks an exception from certain portions |

2. Review for Completeness of Form

An officer must verify that the submitted disability exception form is complete. The officer should verify that the medical professional has answered all of the required questions and has certified the form along with the applicant. If a question has not been answered completely or the medical professional or applicant does not sign the form, the officer must proceed with the examination in English as if the applicant had not submitted the form. The officer provides the applicant with an opportunity to take each portion of the English and civics test.

A complete form[257] must contain all of the information requested on the form, to include the information listed in the table below.

| Properly Completed Form N-648 |
|---|
| **All forms must contain the information requested on the form, to include:** |
| Clinical diagnosis of the applicant's medical condition and its DSM code (if applicable) |
| Description of the medical condition forming the basis for the disability exception |
| Date the medical professional examined the applicant |
| Description of the doctor-patient relationship indicating whether the medical professional regularly treats the applicant for the cited conditions or an explanation of why he or she is certifying the disability form instead of the regularly treating medical professional |

[257] See Medical Certification for Disability Exceptions (Form N-648).

| Properly Completed Form N-648 |
| --- |
| **All forms must contain the information requested on the form, to include:** |
| Statement that the medical condition has lasted, or is expected to last, at least 12 months |
| Statement whether the medical condition is the result of the illegal use of drugs |
| Explanation of what caused the medical condition, if known |
| Description of the clinical methods used to diagnose the medical condition |
| Description of the medical condition's effect on the applicant's ability to successfully complete the educational requirements for naturalization |
| Statement whether the medical professional used an interpreter to examine the applicant |

The medical professional is not required to address the severity of the effects of the medical condition on the applicant's daily life.

3. Medical Examination and Nexus

In reviewing the request for the medical exception, the officer must focus on whether the medical professional has explained that the applicant has a disability or impairment and that there is a nexus (causal connection) between the disability or the impairment and the applicant's inability to demonstrate the educational requirements for naturalization. The medical professional must specifically explain how the applicant's disability or impairment prohibits the applicant from being unable to demonstrate the educational requirements.

4. Missing Interpreter Certification

There may be instances where the interpreter certification on the disability exception form may not have been completed. In this instance, the officer should ask the applicant whether the medical professional used an interpreter during the medical examination that formed the basis of the medical exception form.

- The officer should not draw a negative inference if the medical professional did not use an interpreter if he or she examined the applicant in the applicant's native language.

- The officer may question the applicant about the applicant's visits with the medical professional and the nature of their relationship if the interpreter certification is not complete and the medical professional did not conduct the examination in the applicant's native language.

- The officer should question the applicant under oath in the applicant's language of choice with use of an interpreter to address the issues of concern related to the medical exception form.

5. Requesting a Supplemental Disability Determination

In general, an officer should not request a supplemental disability determination and should evaluate the original form on its own merits. If an officer questions the veracity of the information on the disability exception form, the officer should exercise caution when requesting an applicant to obtain a supplemental disability determination from another authorized medical professional.[258] The officer must:

- Explain the reasons for doubting the veracity of the information on the original disability exception form;
- Consult with his or her supervisor and receive approval before requesting the applicant to undergo a supplemental disability determination; and
- Provide the applicant with the relevant state medical board contact information to facilitate the applicant's ability to find another medical professional.

**E. Establishing Eligibility for the Exception**

An officer determines a request for a medical exception is sufficient if:

- The medical exception form is properly completed; and
- The medical professional explains how the applicant's medical condition prohibits the applicant from meeting the English requirement, the civics requirement, or both requirements.

The table below provides the general procedures for cases where an applicant qualifies for a disability exception. The procedures apply to any phase of the naturalization examination, to include the initial or re-examination, or hearing on a denial.

| General Procedures if Form N-648 Establishes Eligibility |
|---|
| **If form is deemed sufficient at any naturalization examination or hearing:** |
| The officer must proceed with the interview without administering the test, in the applicant's language of choice with the use of an interpreter, if the medical professional indicated on the form that the applicant was unable to comply with any of the educational requirements. |
| The officer must administer the tests for the other requirements, if the medical professional indicated on the form that the applicant was unable to comply with only some of the educational requirements. If the medical professional indicated that the applicant was unable to comply with the English speaking requirement, the interview can proceed in the applicant's language of choice with the use of an interpreter. |
| The officer must determine whether the applicant meets the rest of the applicable naturalization requirements and make a decision on the naturalization application. |

[258] See 8 CFR 312.2(b)(2).

**F. Failing to Establish Eligibility for the Exception**

An officer determines that a request for a medical exception is insufficient if:

- The N-648 form is not properly completed;
- The medical professional fails to explain how the applicant's medical condition prohibits the applicant from meeting the English requirement, the civics requirement, or both requirements; or
- The officer finds that the applicant listed on the form was not examined by the certifying medical professional or is not the same person as the naturalization applicant.

The table below provides the general procedures for cases where an applicant is ineligible for the disability exception. The procedures apply to any phase of the naturalization examination, to include the initial or re-examination or hearing on a denial.

| General Procedures if Form N-648 Fails to Establish Eligibility |
|---|
| **If form is deemed insufficient at any naturalization examination or hearing:** |
| The officer must proceed with the initial or re-examination, or hearing, in English as if the applicant had not submitted a disability exception form. |
| The officer must provide the applicant with an opportunity to take all portions of the English and civics testing. |

1. Insufficient Request for Medical Exception at Initial Interview

*Passing the English and Civics Tests*

If an applicant fails to qualify for a disability exception but subsequently meets the English and civics requirements in the same examination:

- The officer should proceed with the naturalization examination to determine whether the applicant meets the rest of the applicable eligibility requirements for naturalization.
- The officer should not determine that the applicant engaged in fraud or lacks good moral character (GMC) for the sole reason that the applicant met the English and civics requirements after submitting a disability exception form.
- The officer may question the applicant further, however, on the reasons for submitting the form and the applicant's relationship to the medical professional.

*Failing the English and Civics Tests*

If an applicant fails to qualify for the disability exception and fails to meet the English and civics requirements:

- The officer must issue the applicant a request for evidence addressing the issues with the medical disability exception form.[259]

- The USCIS office must reschedule the applicant to appear for a re-examination, to include a second opportunity to meet the English and civics requirements, between 60 and 90 days after the initial examination.

2. Insufficient Request for Medical Exception at Re-examination

If an officer determined that an applicant's disability exception form was insufficient at the initial examination, the officer should have issued a request for evidence addressing the deficiencies of the form. An officer conducting the re-examination should review the evidence submitted in response to the request for evidence issued at the initial examination.

The reexamining officer may review an applicant's disability exception form for the first time if the applicant is submitting the form for the first time at the re-examination.

If an applicant submits a medical exception form for the first time during the re-examination, the officer determines if the form is sufficient or insufficient. If the officer determines that the form is sufficient to establish eligibility for the disability exception, the officer must proceed with the naturalization examination with the use of an interpreter, exempting the applicant from the educational requirements.

If the officer determines that the form is insufficient, the officer must afford the applicant a second opportunity to take the English and civics tests. If the applicant fails any portion of the test or refuses to respond to test questions during the re-examination, the officer must deny the naturalization application based on the applicant's failure to meet the educational requirements for naturalization. In the denial notice, the officer must provide a detailed explanation for finding the medical exception form insufficient.

If an officer determines that the evidence submitted in response to the request for evidence is insufficient:

- The officer must proceed with the re-examination in English as if the applicant had not submitted a disability exception form.

- The officer must provide the applicant with a second opportunity to take any portion of the English and civics tests that the applicant previously failed.

- The officer must not provide the applicant a third opportunity to submit a disability exception form or to take the English and civics tests.

[259] The officer should issue a request for evidence on Form N-14.

- If the applicant fails any portion of the testing, to include a refusal to be tested or to respond, the officer must deny the naturalization application based on the applicant's failure to meet the educational requirements for naturalization.

- The officer must provide a detailed explanation of the disability exception form's deficiencies in the naturalization application denial notice.

3. Insufficient Request for Medical Exception at Hearing on Denial

An officer may conduct a full *de novo* hearing on a denied naturalization application, including review of a previously submitted disability exception form during the hearing on the naturalization denial.[260] An applicant may submit additional documentation for review at the hearing, to include a new disability exception form.

If the applicant submits a new or initial form at the hearing, the hearing officer determines whether the form is sufficient for the medical exception. If the form is insufficient, the officer should retest the applicant on any portion of the English and civics tests previously failed by the applicant.[261]

4. Discrepancies and Misrepresentation

Some cases may present questions about whether the certifying medical professional actually examined the applicant. An officer should find a disability exception form insufficient if the officer identifies any discrepancies or misrepresentations indicating:

- The applicant on the form was not examined by the certifying medical professional; or
- The applicant on the form is not the same person as the naturalization applicant.

**G. Fraud Referrals**

There may be cases where an officer suspects or determines that an applicant or medical professional has committed fraud in the process of seeking a medical disability exception. The officer should consult with his or her supervisor to determine whether to refer such a case to Fraud Detection and National Security (FDNS).

If an officer or the local FDNS office determines that an applicant or medical professional has committed fraud, the officer must explain the findings of fraud in the denial notice.

[260] See 8 CFR 336.2.
[261] See Part B, Naturalization Examination, Chapter 6, USCIS Hearing and Judicial Review, Section B, Review of Timely Filed Hearing Request.

# PART F – GOOD MORAL CHARACTER

## Chapter 1: Purpose and Background

### A. Purpose

One of the general requirements for naturalization is good moral character (GMC). GMC means character which measures up to the standards of average citizens of the community in which the applicant resides.[262] In general, an applicant must show that he or she has been and continues to be a person of GMC during the statutory period prior to filing and up to the time of the Oath of Allegiance.[263]

The applicable naturalization provision under which the applicant files determines the period during which the applicant must demonstrate GMC.[264] The applicant's conduct outside the GMC period may also impact whether he or she meets the GMC requirement.[265]

While USCIS determines whether an applicant has met the GMC requirement on a case-by-case basis, certain types of criminal conduct automatically preclude applicants from establishing GMC and may make the applicant subject to removal proceedings.[266] An applicant may also be found to lack GMC for other types of criminal conduct (or unlawful acts).

An officer's assessment of whether an applicant meets the GMC requirement includes an officer's review of:

- The applicant's record;
- Statements provided in the naturalization application; and
- Oral testimony provided during the interview.

There may be cases that are affected by specific jurisdictional case law. The officer should rely on local USCIS counsel in cases where there is a question about whether a particular offense rises to the level of precluding an applicant from establishing GMC. In addition, the offenses and conduct which affect the GMC determination may also render an applicant removable.

### B. Background

The Naturalization Act of 1790 introduced the long-standing GMC requirement for naturalization. Any conduct or act that offends the accepted moral character standards of the community in which the applicant resides should be considered without regard to whether the applicant has been arrested or convicted of an offense.

In general, an applicant for naturalization must establish GMC throughout the requisite periods of continuous residence in the United States. In prescribing specific periods during which GMC must be established, Congress generally intended to make provision for the reformation and eventual naturalization of persons who were guilty of certain past misconduct.

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[262] See 8 CFR 316.10(a)(2). See INA 101(f). See *In re Mogus,* 73 F. Supp. 150 (1947) (Moral standard of average citizen).
[263] See INA 316(a). See 8 CFR 316.10(a)(1).
[264] See Chapter 2, Adjudicative Factors, Section A, Applicable Statutory Period.
[265] See INA 316(e). See 8 CFR 316.10(a)(2).
[266] See INA 101(f).

### C. Legal Authorities

- INA 101(f) – Good moral character definition
- INA 316; 8 CFR 316 – General naturalization requirements
- INA 316(e); 8 CFR 316.10 – Good moral character requirement
- INA 318 – Prerequisite to Naturalization, burden of proof

## Chapter 2: Adjudicative Factors

### A. Applicable Statutory Period

The applicable period during which an applicant must show that he or she has been a person of GMC depends on the corresponding naturalization provision.[267] In general, the statutory period for GMC for an applicant filing under the general naturalization provision starts five years prior to the date of filing.[268]

The statutory period starts three years prior to the date of filing for certain spouses of U.S. citizens.[269] The period during which certain service members or veterans must show GMC starts one or five years from the date of filing depending on the military provision.[270]

In all cases, the applicant must also show that he or she continues to be a person of GMC until the time of his or her naturalization.[271]

### B. Conduct Outside of the Statutory Period

USCIS is not limited to reviewing the applicant's conduct only during the applicable GMC period. An applicant's conduct prior to the GMC period may affect the applicant's ability to establish GMC if the applicant's present conduct does not reflect a reformation of character or the earlier conduct is relevant to the applicant's present moral character.[272]

In general, an officer must consider the totality of the circumstances and weigh all factors, favorable and unfavorable, when considering reformation of character in conjunction with GMC within the relevant period.[273] The following factors may be relevant in assessing an applicant's current moral character and reformation of character:

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[267] See the relevant Volume 12 part for the specific statutory period pertaining to each naturalization provision.
[268] See Part D, General Naturalization Requirements, Chapter 1, Purpose and Background, Section B, General Eligibility Requirements. See INA 316(a). See 8 CFR 316.2(a)(7).
[269] See Part G, Spouses of U.S. Citizens, Chapter 1, Purpose and Background, Section C, Table of General Provisions. See INA 319(a) and 8 CFR 319.1(a)(7).
[270] See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section B, Spouses of Military Members. See INA 328(c) and INA 329. See 8 CFR 328.2(d) and 8 CFR 329.2(d).
[271] See 8 CFR 316.10(a)(1).
[272] See INA 316(e). See 8 CFR 316.10(a)(2).
[273] See *Ralich v. U.S.*, 185 F.2d 784 (1950) (Provided false testimony within the statutory period and operated a house of prostitution prior to the statutory period). See *Marcantonio v. U.S.*, 185 F.2d 934 (1950) (Applicant had rehabilitated his character after multiple arrests before statutory period).

- Family ties and background
- Absence or presence of other criminal history
- Education
- Employment history
- Other law-abiding behavior (meeting financial obligations, paying taxes, etc.)
- Community involvement
- Credibility of the applicant
- Compliance with probation
- Length of time in United States

**C. Definition of Conviction**

1. Statutory Definition of Conviction for Immigration Purposes

Most of the criminal offenses that preclude a finding of GMC require a conviction for the disqualifying offense or arrest. A "conviction" for immigration purposes means a formal judgment of guilt entered by the court. A conviction for immigration purposes also exists in cases where the adjudication of guilt is withheld if the following conditions are met:

- A judge or jury has found the alien guilty or the alien entered a plea of guilty or *nolo contendere*[274] or has admitted sufficient facts to warrant a finding of guilt; and

- The judge has ordered some form of punishment, penalty, or imposed a restraint on the alien's liberty.[275]

It is not always clear if the outcome of the arrest resulted in a conviction. Various states have provisions for diminishing the effects of a conviction. In some states, adjudication may be deferred upon a finding or confession of guilt. Some states have a pretrial diversion program whereby the case is removed from the normal criminal proceedings. This way the person may enter into a counseling or treatment program and potentially avoid criminal prosecution.

If the accused is directed to attend a pre-trial diversion or intervention program, where no admission or finding of guilt is required, the order may not count as a conviction for immigration purposes.[276]

2. Juvenile Convictions

In general, a guilty verdict, ruling, or judgment in a juvenile court does not constitute a conviction for immigration purposes.[277] A conviction for a person who is under 18 years of age and who was charged as an adult constitutes a conviction for immigration purposes.

3. Court Martial Convictions

[274] The term "nolo contendere" is Latin for "I do not wish to contest."
[275] See INA 101(a)(48)(A).
[276] See *Matter of Grullon,* 20 I&N Dec. 12 (BIA 1989).
[277] See *Matter of Devison-Charles*, 22 I&N Dec. 1362 (BIA 2000).

A general "court martial" is defined as a criminal proceeding under the governing laws of the U.S. armed forces. A judgment of guilt by a court martial has the same force and effect as a conviction by a criminal court.[278] However, disciplinary actions in lieu of a court martial are not convictions for immigration purposes.

4. Deferrals of Adjudication

In cases where adjudication is deferred, the original finding or confession of guilt and imposition of punishment is sufficient to establish a conviction for immigration purposes because both conditions establishing a conviction are met. If the court does not impose some form of punishment, then it is not considered a conviction even with a finding or confession of guilt. A decision or ruling of *nolle prosequi*[279] does not meet the definition of conviction.

5. Vacated Judgments

If a judgment is vacated for cause due to Constitutional defects, statutory defects, or pre-conviction errors affecting guilt, it is not considered a conviction for immigration purposes. The judgment is considered a conviction for immigration purposes if it was dismissed for any other reason, such as completion of a rehabilitative period (rather than on its merits) or to avoid adverse immigration consequences.[280]

A conviction vacated where a criminal court failed to advise a defendant of the immigration consequences of a plea, which resulted from a defect in the underlying criminal proceeding, is not a conviction for immigration purposes.[281]

6. Foreign Convictions

USCIS considers a foreign conviction to be a "conviction" in the immigration context if the conviction was the result of an offense deemed to be criminal by United States standards.[282] In addition, federal United States standards on sentencing govern the determination of whether the offense is a felony or a misdemeanor regardless of the punishment imposed by the foreign jurisdiction.[283] The officer may consult with local USCIS counsel in cases involving foreign convictions.

7. Pardons

An applicant who has received a full and unconditional executive pardon[284] prior to the start of the statutory period may establish GMC if the applicant shows that he or she has been reformed and rehabilitated prior to the statutory period.[285] If the applicant received a pardon during the statutory period, the applicant may

[278] See *Matter of Rivera-Valencia,* 24 I&N Dec. 484 (BIA 2008).
[279] The term "nolle prosequi" is Latin for "we shall no longer prosecute."
[280] See *Pickering v. Gonzales*, 465 F.3d 263 (6th Cir. 2006).
[281] See *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006). See *Alim v. Gonzales*, 446 F.3d 1239 (11th Cir 2006).
[282] See *Matter of Squires*, 17 I&N Dec. 561 (BIA 1980). See *Matter of McNaughton,* 16 I&N Dec. 569 (BIA 1978).
[283] See *Lennon v. INS*, 527 F.2d 187 (2nd Cir. 1975).
[284] Executive pardons are given by the President or a governor of the United States.
[285] See 8 CFR 316.10(c)(2)(i).

establish GMC if he or she shows evidence of extenuating or exonerating circumstances that would establish his or her GMC.[286]

Foreign pardons do not eliminate a conviction for immigration purposes.[287]

8. Expunged Records

*Expunged Records and the Underlying Conviction*

A record of conviction that has been expunged does not remove the underlying conviction.[288] For example, an expunged record of conviction for a controlled substance violation[289] or any crime involving Moral turpitude (CIMT) does not relieve the applicant from the conviction in the immigration context.[290] In addition, foreign expungements are still considered convictions for immigration purposes.[291]

The Board of Immigration Appeals (BIA) has held that a state court action to "expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute" has no effect on removing the underlying conviction for immigration purposes.[292]

The officer may require the applicant to submit evidence of a conviction regardless of whether the record of the conviction has been expunged. It remains the applicant's responsibility to obtain his or her records regardless of whether they have been expunged or sealed by the court. USCIS may file a motion with the court to obtain a copy of the record in states where the applicant is unable to obtain the record.

**D. Effect of Probation**

An officer may not approve a naturalization application while the applicant is on probation, parole, or under a suspended sentence.[293] However, an applicant who has satisfactorily completed probation, parole, or a suspended sentence during the relevant statutory period is not automatically precluded from establishing GMC. The fact that an applicant was on probation, parole, or under a suspended sentence during the statutory period, however, may affect the overall GMC determination.

**E. Admission of Certain Criminal Acts**

An applicant may be unable to establish GMC if he or she admits committing certain offenses even if the applicant has never been formally charged, indicted, arrested or convicted.[294] This applies to offenses involving

[286] See 8 CFR 316.10(c)(2)(ii).
[287] See *Marino v. INS,* 537 F.2d 686 (2nd Cir. 1976). See *Mullen-Cofee v. INS,* 976 F.2d 1375 (11th Cir. 1992). See *Matter of B-*, 7 I&N Dec. 166 (BIA 1956) (Referring to amnesty).
[288] See *Matter of Marroquin*, 23 I&N Dec. 705 (AG 2005).
[289] For cases arising in the Ninth Circuit involving state law convictions for simple possession of a controlled substance, please consult local counsel as the date of the conviction may affect whether possible treatment under the Federal First Offender Act renders the conviction invalid for immigration purposes. See *Nunez-Reyes v. Holder*, 646 F.3d 684 (9th Cir 2011).
[290] See 8 CFR 316.10(c)(3)(i) and (ii).
[291] See *Danso v. Gonzales,* 489 F.3d 709 (5th Cir. 2007). See *Elkins v. Comfort,* 392 F.3d 1159 (10th Cir. 2004).
[292] See *In re Roldan-Santoyo*, 22 I&N Dec. 512 (BIA 1999).
[293] See 8 CFR 316.10(c)(1).
[294] See 8 CFR 316.10(b)(2)(iv).

"moral turpitude" or any violation of, or a conspiracy or attempt to violate, any law or regulation relating to a controlled substance.[295] When determining whether an applicant committed a particular offense, the officer must review the relevant statute in the jurisdiction where it is alleged to have been committed.

The officer must provide the applicant with a full explanation of the purpose of the questioning stemming from the applicant's declaration that he or she committed an offense. In order for the applicant's declaration to be considered an "admission," it must meet the long held requirements for a valid "admission" of an offense:[296]

- The officer must provide the applicant the text of the specific law from the jurisdiction where the offense was committed;
- The officer must provide an explanation of the offense and its essential elements in "ordinary" language; and
- The applicant must voluntarily admit to having committed the particular elements of the offense under oath.[297]

The officer must ensure that the applicant is under oath when taking the sworn statement to record the admission. The sworn statement must cover the requirements for a valid admission, to include the specifics of the act or acts that may prevent the applicant from establishing GMC. The officer may consult with his or her supervisor to ensure that sufficient written testimony has been received from the applicant prior to making a decision on the application.

**F. "Purely Political Offense" Exception**

There is an exception to certain conditional bars to GMC in cases where the offense was a "purely political offense" that resulted in conviction, or in conviction and imprisonment, outside of the United States.[298] Purely political offenses are generally offenses that "resulted in convictions obviously based on fabricated charges or predicated upon repressive measures against racial, religious or political minorities."[299]

The "purely political offense" exception applies to the following conditional bars to GMC:[300]

- Conviction for one or more crimes involving moral turpitude (CIMTs);[301]
- Conviction of two or more offenses with a combined sentence of five years or more;[302] and
- Incarceration for a total period of 180 days or more.[303]

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[295] See Chapter 5, Conditional Bars for Acts in Statutory Period. See 8 CFR 316.10(b)(2)(i) (Offenses involving "moral turpitude"). See 8 CFR 316.10(b)(2)(iii) (Violation of controlled substance law).
[296] See *Matter of K-*, 7 I&N Dec. 594 (BIA 1957).
[297] See *Matter of J-*, 2 I&N Dec. 285 (BIA 1945).
[298] See *In re O'Cealleagh*, 23 I. & N. Dec. 976 (BIA 2006) (finding that a CIMT offense must be completely or totally political for "purely political offense" exception to apply).
[299] See 22 CFR 40.21(a)(6).
[300] See Chapter 5, Conditional Bars for Acts in Statutory Period, for further guidance on each bar to GMC.
[301] See Chapter 5, Conditional Bars for Acts in Statutory Period, Section A, One or More Crimes Involving Moral Turpitude.
[302] See Chapter 5, Conditional Bars for Acts in Statutory Period, Section B, Aggregate Sentence of Five Years or More.
[303] See Chapter 5, Conditional Bars for Acts in Statutory Period, Section D, Imprisonment for 180 Days or More.

These conditional bars to GMC do not apply if the underlying conviction was for a "purely political offense" abroad. The officer should rely on local USCIS counsel in cases where there is a question about whether a particular offense should be considered a "purely political offense."

### G. Extenuating Circumstances

Certain conditional bars to GMC should not adversely affect the GMC determination if the applicant shows extenuating circumstances.[304] The extenuating circumstance must precede or be contemporaneous with the commission of the offense. USCIS does not consider any conduct or equity (including evidence of reformation or rehabilitation) subsequent to the commission of the offense as an extenuating circumstance.

The "extenuating circumstances" provision applies to the following conditional bars to GMC:[305]

- Failure to support dependents[306]
- Adultery[307]
- Unlawful acts[308]

These conditional bars to GMC do not apply if the applicant shows extenuating circumstances. The officer should provide the applicant with an opportunity during the interview to provide evidence and testimony of extenuating circumstances in relevant cases.

### H. Removability and GMC

Certain permanent and conditional bars to GMC may warrant a recommendation that the applicant be placed in removal proceedings.[309] This depends on various factors specific to each case. Not all applicants who are found to lack GMC are removable. An applicant may be found to lack GMC and have his or her naturalization application denied under those grounds without necessitating a recommendation for removal proceedings. USCIS will not make a decision on any naturalization application from an applicant who is in removal proceedings.[310]

## Chapter 3: Evidence and the Record

### A. Applicant Testimony

Issues relevant to the GMC requirement may arise at any time during the naturalization interview. The officer's questions during the interview should elicit a complete record of any criminal, unlawful, or questionable activity

[304] See 8 CFR 316.10(b)(3).
[305] See Chapter 5, Conditional Bars for Acts in Statutory Period, for further guidance on extenuating circumstances.
[306] See Chapter 5, Conditional Bars for Acts in Statutory Period, Section K, Failure to Support Dependents.
[307] See Chapter 5, Conditional Bars for Acts in Statutory Period, Section L, Adultery.
[308] See Chapter 5, Conditional Bars for Acts in Statutory Period, Section M, Unlawful Acts.
[309] See INA 237 ("General classes of deportable aliens").
[310] See INA 318. See Part B, Naturalization Examination, Chapter 3, Naturalization Interview, Section B, Preliminary Review of Application.

in which the applicant has ever engaged regardless of whether that information eventually proves to be material to the GMC determination.

The officer should take into consideration the education level of the applicant and his or her knowledge of the English language. The officer may rephrase questions and supplement the inquiry with additional questions to better ensure that the applicant understands the proceedings.[311]

The officer must take a sworn statement from an applicant when the applicant admits committing an offense for which the applicant has never been formally charged, indicted, arrested or convicted.[312]

**B. Court Dispositions**

In general, an officer has the authority to request the applicant to provide a court disposition for any criminal offense committed in the United States or abroad to properly determine whether the applicant meets the GMC requirement. USCIS requires applicants to provide court dispositions for any offense committed during the statutory period. In addition, USCIS may request any additional evidence that may affect a determination regarding the applicant's GMC. The burden is on the applicant to show that an offense does not prevent him or her from establishing GMC.[313]

In cases where a court disposition or police record is not available, the applicant must provide original or certified confirmation that the record is not available from the applicable law enforcement agency or court.

**C. Failure to Respond to Request for Evidence**

In cases where the initial naturalization examination has already been conducted, the officer should adjudicate the naturalization application on the merits where the applicant fails to respond to a request for additional evidence.[314] The officer should not deny the application for lack of prosecution after the initial naturalization examination.[315]

## Chapter 4: Permanent Bars to GMC

**A. Murder**

An applicant who has been convicted of murder at any time is permanently barred from establishing GMC for naturalization.[316]

**B. Aggravated Felony**

[311] See Part E, English and Civics Testing and Exceptions, Chapter 2, English and Civics Testing, for guidance on rephrasing questions.
[312] See 8 CFR 316.10(b)(2)(iv). See Chapter 2, Adjudicative Factors, Section E, Admission of Certain Criminal Acts.
[313] See 8 CFR 316.10(a)(1).
[314] See Part B, Naturalization Examination, Chapter 4, Results of the Naturalization Examination, for guidance on decisions on the application, to include cases where the applicant fails to respond.
[315] See INA 335(e). See 8 CFR 335.7.
[316] See 8 CFR 316.10(b)(1)(i).

In 1996, Congress expanded the definition and type of offense considered an "aggravated felony" in the immigration context.[317] An applicant who has been convicted of an "aggravated felony" on or after November 29, 1990, is permanently barred from establishing GMC for naturalization.[318]

While an applicant who has been convicted of an aggravated felony prior to November 29, 1990, is not permanently barred from naturalization, the officer should consider the seriousness of the underlying offense (aggravated felony) along with the applicant's present moral character in determining whether the applicant meets the GMC requirement. If the applicant's actions during the statutory period do not reflect a reform of his or her character, then the applicant may not be able to establish GMC.[319]

Some offenses require a minimum term of imprisonment of one year to qualify as an aggravated felony in the immigration context. The term of imprisonment is the period of confinement ordered by the court regardless of whether the court suspended the sentence.[320] For example, an offense involving theft or a crime of violence is considered an aggravated felony if the term of imprisonment ordered by the court is one year or more, even if the court suspended the entire sentence.[321]

The table below serves as a quick reference guide listing aggravated felonies in the immigration context. The officer should review the specific statutory language for further information.

| "Aggravated Felonies" in the Immigration Context | |
|---|---|
| **Aggravated Felony** | **Citation** |
| **Murder, Rape, or Sexual Abuse of a Minor** | INA 101(a)(43)(A) |
| **Illicit Trafficking in Controlled Substance** | INA 101(a)(43)(B) |
| **Illicit Trafficking in Firearms or Destructive Devices** | INA 101(a)(43)(C) |
| **Money Laundering Offenses (over $10,000)** | INA 101(a)(43)(D) |
| **Explosive Materials and Firearms Offenses** | INA 101(a)(43)(E)(i)–(iii) |
| **Crime of Violence (imprisonment term of at least 1 yr)** | INA 101(a)(43)(F) |

[317] See INA 101(a)(43). See the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009-546 (September 30, 1996).
[318] See 8 CFR 316.10(b)(1)(ii).
[319] See 8 CFR 316.10(a)(2).
[320] See INA 101(a)(48)(B). See *Matter of S-S-,* 21 I&N Dec. 900 (BIA 1997).
[321] See INA 101(a)(43)(F) and (G).

| "Aggravated Felonies" in the Immigration Context | |
|---|---|
| **Aggravated Felony** | **Citation** |
| **Theft Offense (imprisonment term of at least 1 yr)** | INA 101(a)(43)(G) |
| **Demand for or Receipt of Ransom** | INA 101(a)(43)(H) |
| **Child Pornography Offense** | INA 101(a)(43)(I) |
| **Racketeering, Gambling (imprisonment term of at least 1 yr)** | INA 101(a)(43)(J) |
| **Prostitution Offenses (managing, transporting, trafficking)** | INA 101(a)(43)(K)(i)–(iii) |
| **Gathering or Transmitting Classified Information** | INA 101(a)(43)(L)(i)–(iii) |
| **Fraud or Deceit Offenses or Tax Evasion (over $10,000)** | INA 101(a)(43)(M)(i), (ii) |
| **Alien Smuggling** | INA 101(a)(43)(N) |
| **Illegal Entry or Reentry by Removed Aggravated Felon** | INA 101(a)(43)(O) |
| **Passport, Document Fraud (imprisonment term of at least 1 yr)** | INA 101(a)(43)(P) |
| **Failure to Appear Sentence (offense punishable by at least 5 yrs)** | INA 101(a)(43)(Q) |
| **Bribery, Counterfeiting, Forgery, or Trafficking in Vehicles** | INA 101(a)(43)(R) |
| **Obstruction of Justice, Perjury, Bribery of Witness** | INA 101(a)(43)(S) |
| **Failure to Appear to Court (offense punishable by at least 2 yrs)** | INA 101(a)(43)(T) |
| **Attempt or Conspiracy to Commit an Aggravated Felony** | INA 101(a)(43)(U) |

**C. Persecution, Genocide, Torture, or Severe Violations of Religious Freedom**

The applicant is responsible for providing any evidence or documentation to support a claim that he or she is not ineligible for naturalization based on involvement in any of the activities addressed in this section.

1. Nazi Persecutions

An applicant who ordered, incited, assisted, or otherwise participated in the persecution of any person or persons in association with the Nazi Government of Germany or any government in an area occupied by or allied with the Nazi government of Germany is permanently barred from establishing GMC for naturalization.[322]

2. Genocide

An applicant who has ordered, incited, assisted, or otherwise participated in genocide, at any time is permanently barred from establishing GMC for naturalization.[323] The criminal offense of "genocide" includes any of the following acts committed in time of peace or time of war with the specific intent to destroy in whole or in substantial part a national, ethnic, racial, or religious group as such:

- Killing members of that group;
- Causing serious bodily injury to members of that group;
- Causing the permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques;
- Subjecting the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part;
- Imposing measures intended to prevent births within the group; or
- Transferring by force children of the group to another group.[324]

3. Torture or Extrajudicial Killings

An applicant who has committed, ordered, incited, assisted, or otherwise participated in the commission of any act of torture or under color of law of any foreign nation any extrajudicial killing is permanently barred from establishing GMC for naturalization.[325]

"Torture" is defined as an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his or her custody or physical control.[326]

An "extrajudicial killing" is defined as a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees, which are recognized as indispensable by civilized peoples.[327]

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[322] See INA 101(f)(9) and INA 212(a)(3)(E).
[323] See INA 101(f)(9) and INA 212(a)(3)(E). See 18 U.S.C. 2340 and 18 U.S.C. 1091(a).
[324] See 18 U.S.C. 1091. See Article II of the United Nations *Convention on the Prevention and Punishment of the Crime of Genocide* (78 U.N.T.S. 278 [Dec. 9, 1948]).
[325] See INA 101(f)(9) and INA 212(a)(3)(E).
[326] See 18 U.S.C. 2340.
[327] See 28 U.S.C. 1350 (Note). See Section 3(a) of the Torture Victim Protection Act of 1991.

4. Particularly Severe Violations of Religious Freedom

An applicant who was responsible for, or directly carried out, particularly severe violations of religious freedom while serving as a foreign government official at any time is not able to establish GMC.[328] "Particularly severe violations of religious freedom" are defined as systematic, ongoing, egregious violations of religious freedom, including violations such as:

- Torture or cruel, inhuman, or degrading treatment or punishment;
- Prolonged detention without charges;
- Causing the disappearance of persons by the abduction or clandestine detention of those persons; or
- Other flagrant denial of the right to life, liberty, or the security of persons.[329]

## Chapter 5: Conditional Bars for Acts in Statutory Period

In addition to the permanent bars to GMC, the INA and corresponding regulations include bars to GMC that are not permanent in nature. USCIS refers to these bars as "conditional bars." These bars are triggered by specific acts, offenses, activities, circumstances, or convictions within the statutory period for naturalization, including the period prior to filing and up to the time of the Oath of Allegiance.[330] An offense that does not fall within a permanent or conditional bar to GMC may nonetheless affect an applicant's ability to establish GMC.[331]

With regard to bars to GMC requiring a conviction, the officer reviews the relevant federal or state law or regulation of the United States, or law or regulation of any foreign country to determine whether the applicant can establish GMC.

The table below serves as a quick reference guide on the general conditional bars to establishing GMC for acts occurring during the statutory period. The sections and paragraphs that follow the table provide further guidance on each bar and offense.

**Conditional Bars to GMC for Acts Committed in Statutory Period**

| Offense | Citation | Description |
|---|---|---|
| **One or More CIMTs** | 8 CFR 316.10(b)(2)(i), (iv)<br>INA 101(f)(3) | Conviction or admission of one or more CIMTs (other than political offense), except for one petty offense |
| **Aggregate Sentence of Five Yrs or More** | 8 CFR 316.10(b)(2)(ii), (iv)<br>INA 101(f)(3) | Conviction of two or more offenses with combined sentence of five years or more (other than political offense) |
| **Controlled Substance Violation** | 8 CFR 316.10(b)(2)(iii), (iv)<br>INA 101(f)(3) | Violation of any law on controlled substances, except for simple |

[328] See INA 101(f)(9) and INA 212(a)(2)(G).
[329] See 22 U.S.C. 6402.
[330] See INA 316(a). See 8 CFR 316.10.
[331] See INA 101(f). See Chapter 1, Purpose and Background.

| Conditional Bars to GMC for Acts Committed in Statutory Period | | |
|---|---|---|
| **Offense** | **Citation** | **Description** |
| | | possession of 30g or less of marijuana |
| **Incarceration for 180 Days** | 8 CFR 316.10(b)(2)(v)<br>INA 101(f)(7) | Incarceration for a total period of 180 days or more, except political offense and ensuing confinement abroad |
| **False Testimony under Oath** | 8 CFR 316.10(b)(2)(vi)<br>INA 101(f)(6) | False testimony for the purpose of obtaining any immigration benefit |
| **Prostitution Offenses** | 8 CFR 316.10(b)(2)(vii)<br>INA 101(f)(3) | Engaged in prostitution, attempted or procured to import prostitution, or received proceeds from prostitution |
| **Smuggling of a Person** | 8 CFR 316.10(b)(2)(viii)<br>INA 101(f)(3) | Involved in smuggling of a person to enter or try to enter the United States in violation of law |
| **Polygamy** | 8 CFR 316.10(b)(2)(ix)<br>INA 101(f)(3) | Practiced or is practicing polygamy (the custom of having more than one spouse at the same time) |
| **Gambling Offenses** | 8 CFR 316.10(b)(2)(x)–(xi)<br>INA 101(f)(4)–(5) | Two or more gambling offenses or derives income principally from illegal gambling activities |
| **Habitual Drunkard** | 8 CFR 316.10(b)(2)(xii)<br>INA 101(f)(1) | Is or was a habitual drunkard |
| **Failure to Support Dependents** | 8 CFR 316.10(b)(3)(i)<br>INA 101(f) | Willful failure or refusal to support dependents, unless extenuating circumstances are established |
| **Adultery** | 8 CFR 316.10(b)(3)(ii)<br>INA 101(f) | Extramarital affair tending to destroy existing marriage, unless extenuating circumstances are established |
| **Unlawful Acts** | 8 CFR 316.10(b)(3)(iii)<br>INA 101(f) | Unlawful act that adversely reflect upon GMC, unless extenuating circumstances are established |

**A. One or More Crimes Involving Moral Turpitude**

1. Crime Involving Moral Turpitude (CIMT)

"Crime involving moral turpitude" (CIMT) is a term used in the immigration context that has no statutory definition. Extensive case law, however, has provided sufficient guidance on whether an offense rises to the level of a CIMT. The courts have held that moral turpitude "refers generally to conduct that shocks the public

conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general."[332]

Whether an offense is a CIMT is largely based on whether the offense involves willful conduct that is morally reprehensible and intrinsically wrong, the essence of which is a reckless, evil or malicious intent. The Attorney General has decreed that a finding of "moral turpitude" requires that the perpetrator committed a reprehensible act with some form of guilty knowledge.[333]

The officer should consider the nature of the offense in determining whether it is a CIMT.[334] In many cases, the CIMT determination depends on whether the relevant state statute includes one of the elements that involves moral turpitude. For example, an offense or crime may be a CIMT in one state, but a similarly named crime in another state may not be a CIMT because of differences in the definition of the crime or offense. The officer may rely on local USCIS counsel in cases where there is a question about whether a particular offense is a CIMT.

The table below serves as a quick reference guide on the general categories of CIMTs and their respective elements or determining factors. The paragraphs that follow the table provide further guidance on each category.

**General Categories of Crimes Involving Moral Turpitude (CIMTs)**

| CIMT Category | Elements of Crime |
|---|---|
| **Crimes against a person** | Criminal intent or recklessness, or is defined as morally reprehensible by state (may include statutory rape) |
| **Crimes against property** | Involving fraud against the government or an individual (may include theft, forgery, robbery) |
| **Sexual and family crimes** | No one set of principles or elements; see further explanation below (may include spousal or child abuse) |
| **Crimes against authority of the Government** | Presence of fraud is the main determining factor (may include offering a bribe, counterfeiting) |

*Crimes Against a Person*

Crimes against a person involve moral turpitude when the offense contains criminal intent or recklessness or when the crime is defined as morally reprehensible by state statute. Criminal intent or recklessness may be inferred from the presence of unjustified violence or the use of a dangerous weapon. For example, aggravated battery is usually, if not always, a CIMT. Simple assault and battery is not usually considered a CIMT.

[332] See *Medina v. United States*, 259 F.3d 220, 227 (4th Cir. 2001) quoting *Matter of Danesh*, 19 I&N Dec. 669, 670 (BIA 1988). See *Matter of Perez-Contreras*, 20 I&N Dec. 615, 618 (BIA 1992). See *Matter of Flores*, 17 I&N Dec. 225 (BIA 1980) (and cases cited therein).
[333] See *Matter of Silva-Trevino*, 24 I&N Dec. 687, 688, 706 (A.G. 2008).
[334] See *Matter of Esfandiary,* 16 I&N Dec. 659 (BIA 1979).

*Crimes Against Property*

Moral turpitude attaches to any crime against property which involves fraud, whether it entails fraud against the government or against an individual. Certain crimes against property may require guilty knowledge or intent to permanently take property. Petty theft, grand theft, forgery, and robbery are CIMTs in some states.

*Sexual and Family Crimes*

It is difficult to discern a distinguishing set of principles that the courts apply to determine whether a particular offense involving sexual and family crimes is a CIMT. In some cases, the presence or absence of violence seems to be an important factor. The presence or absence of criminal intent may also be a determining factor. The CIMT determination depends upon state statutes and the controlling case law and must be considered on a case-by-case basis.

Offenses such as spousal or child abuse may rise to the level of a CIMT, while an offense involving a domestic simple assault generally does not. An offense relating to indecent exposure or abandonment of a minor child may or may not rise to the level of a CIMT. In general, if the person knew or should have known that the victim was a minor, any intentional sexual contact with a child involves moral turpitude.[335]

*Crimes Against the Authority of the Government*

The presence of fraud primarily determines the presence of moral turpitude in crimes against the authority of the government. Offering a bribe to a government official and offenses relating to counterfeiting are generally CIMTs. Offenses relating to possession of counterfeit securities without intent and contempt of court, however, are not generally CIMTs.

2. Committing One or More CIMTs in Statutory Period

An applicant who is convicted of or admits to committing one or more CIMTs during the statutory period cannot establish GMC for naturalization.[336] If the applicant has only been convicted of (or admits to) one CIMT, the CIMT must have been committed within the statutory period as well. In cases of multiple CIMTs, only the commission and conviction (or admission) of one CIMT needs to be within the statutory period.

*Petty Offense Exception*

An applicant who has committed only one CIMT that is a considered a "petty offense," such as petty theft, may be eligible for an exception if all of the following conditions are met:

- The "petty offense" is the only CIMT the applicant has ever committed;
- The sentence imposed for the offense was six months or less; and
- The maximum possible sentence for the offense does not exceed one year.[337]

[335] See *Matter of Silva-Trevino*, 24 I&N Dec. 687 (AG 2008).
[336] See INA 101(f)(3). See 8 CFR 316.10(b)(2)(i).
[337] See INA 212(a)(2)(A)(ii)(II).

The petty offense exception does not apply to an applicant who has been convicted of or who admits to committing more than one CIMT even if only one of the CIMTs was committed during the statutory period. An applicant who has committed more than one petty offense of which only one is a CIMT may be eligible for the petty offense exception.[338]

*Purely Political Offense Exception*

This bar to GMC does not apply to a conviction for a CIMT occurring outside of the United States for a purely political offense committed abroad.[339]

**B. Aggregate Sentence of Five Years or More**

An applicant may not establish GMC if he or she has been convicted of two or more offenses during the statutory period for which the combined, imposed sentence was five years or more.[340] The underlying offenses must have been committed within the statutory period.

*Purely Political Offense Exception*

The GMC bar for having two or more convictions does not apply if the convictions and resulting sentence or imprisonment of five years or more occurred outside of the United States for purely political offenses committed abroad.[341]

**C. Controlled Substance Violation**

An applicant cannot establish GMC if he or she has been convicted of or admits to having violated any controlled substance-related federal or state law or regulation of the United States or law or regulation of any foreign country during the statutory period.[342] This bar to establishing GMC also applies to an admission to committing acts which constitute the essential elements of any controlled substance violation.

*Exception for Single Offense of Simple Possession*

The conditional bar to GMC for a controlled substance violation does not apply if the violation was for a single offense of simple possession of 30 grams or less of marijuana.[343]

**D. Imprisonment for 180 Days or More**

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[338] See *Matter of Garcia-Hernandez*, 23 I&N Dec. 590, 594-95 (BIA 2003).
[339] See Chapter 2, Adjudicative Factors, Section F, "Purely Political Offense" Exception.
[340] See 8 CFR 316.10(b)(2)(ii).
[341] See Chapter 2, Adjudicative Factors, Section F, "Purely Political Offense" Exception.
[342] See INA 101(f)(3) and INA 212(a)(2)(A)(i)(II). See 8 CFR 316.10(b)(2)(iii) and (iv). See Chapter 2, Adjudicative Factors, Section E, Admission of Certain Criminal Acts.
[343] See INA 101(f)(3). See 8 CFR 316.10(b)(2)(iii). While an offense for simple possession of 30 grams or less of marijuana is excluded from INA 101(f)(3), it may nonetheless affect GMC under the residual clause of the GMC definition. See INA 101(f). See 8 CFR 316.10(a)(2).

An applicant cannot establish GMC if he or she is or was imprisoned for an aggregate period of 180 days or more during the statutory period based on a conviction.[344] This bar to GMC does not apply if the conviction resulted only in a sentence to a period of probation with no sentence of incarceration for 180 days or more. This bar applies regardless of the reason for the conviction. For example, this bar still applies if the term of imprisonment results from a violation of probation rather than from the original sentence.[345]

The commission of the offense resulting in conviction and confinement does not need to have occurred during the statutory period for this bar to apply. Only the confinement needs to be within the statutory period for the applicant to be precluded from establishing GMC.

*Purely Political Offense Exception*

This bar to GMC does not apply to a conviction and resulting confinement of 180 days or more occurring outside of the United States for a purely political offense committed abroad.[346]

**E. False Testimony**

1. False Testimony in Statutory Period

An applicant who gives false testimony to obtain any immigration benefit during the statutory period cannot establish GMC.[347] False testimony occurs when the applicant deliberately intends to deceive the U.S. Government while under oath in order to obtain an immigration benefit. This holds true regardless of whether the information provided in the false testimony would have impacted the applicant's eligibility. The statute does not require that the benefit be obtained, only that the false testimony is given in an attempt to obtain the benefit.[348]

While the most common occurrence of false testimony is failure to disclose a criminal or other adverse record, false testimony can occur in other areas. False testimony may include, but is not limited to, facts about lawful admission, absences, residence, marital status or infidelity, employment, organizational membership, or tax filing information.

2. Three Elements of False Testimony

There are three elements of false testimony established by the Supreme Court that must exist for a naturalization application to be denied on false testimony grounds:[349]

*Oral Statements*

The "testimony" must be oral. False statements in a written application and falsified documents, whether or not under oath, do not constitute "testimony."[350] However, false information provided orally under oath to an

[344] See INA 101(f)(7). See 8 CFR 316.10(b)(2)(v).
[345] See *Matter of Piroglu*, 17 I&N Dec. 578 (BIA 1980).
[346] See Chapter 2, Adjudicative Factors, Section F, "Purely Political Offense" Exception.
[347] See INA 101(f)(6). See 8 CFR 316.10(b)(2)(vi).
[348] See *Matter of R-S-J-*, 22 I&N Dec. 863 (BIA 1999).
[349] See *Kungys v. United States*, 485 U.S. 759, 780-81 (1988).

officer in a question-and-answer statement relating to a written application is "testimony."[351] The oral statement must also be an affirmative misrepresentation. The Court makes it clear that there is no "false testimony" if facts are merely concealed, to include incomplete but otherwise truthful answers.

*Oath*

The oral statement must be made under oath in order to constitute false testimony.[352] Oral statements to officers that are not under oath do not constitute false testimony.

*Subjective Intent to Obtain an Immigration Benefit*

The applicant must be providing the false testimony in order to obtain an immigration benefit. False testimony for any other reason does not preclude the applicant from establishing GMC.

**F. Prostitution**

An applicant may not establish GMC if he or she has engaged in prostitution, procured or attempted to procure or to import prostitutes or persons for the purpose of prostitution, or received proceeds from prostitution during the statutory period.[353] The BIA has held that to "engage in" prostitution, one must have engaged in a regular pattern of behavior or conduct.[354] The BIA has also determined that a single act of soliciting prostitution on one's own behalf is not the same as procurement.[355]

**G. Smuggling of a Person**

An applicant is prohibited from establishing GMC if he or she is or was involved in the smuggling of a person or persons by encouraging, inducing, assisting, abetting or aiding any alien to enter or try to enter the United States in violation of law during the statutory period.[356]

*Family Reunification Exception*

This bar to GMC does not apply in certain cases where the applicant was involved in the smuggling of his or her spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law before May 5, 1988.[357]

**H. Polygamy**

An applicant who has practiced or is practicing polygamy during the statutory period is precluded from establishing GMC.[358] Polygamy is the custom of having more than one spouse at the same time.[359] The officer

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[350] See *Matter of L-D-E*, 8 I&N Dec. 399 (BIA 1959).
[351] See *Matter of Ngan*, 10 I&N Dec. 725 (BIA 1964). See *Matter of G-L-T-*, 8 I&N Dec. 403 (BIA 1959).
[352] See *Matter of G-*, 6 I&N Dec. 208 (BIA 1954).
[353] See INA 101(f)(3) and INA 212(a)(2)(D)(i) and (ii). See 8 CFR 316.10(b)(2)(vii).
[354] See *Matter of T*, 6 I&N Dec. 474 (BIA 1955).
[355] See *Matter of Gonzalez-Zoquiapan*, 24 I&N Dec. 549 (BIA 2008).
[356] See INA 101(f)(3) and INA 212(a)(6)(E). See 8 CFR 316.10(b)(2)(viii).
[357] See INA 212(a)(6)(E)(ii). See Sec. 301 of the Immigration Act of 1990 (IMMACT90), Pub. L. 101-649 (November 29, 1990).

should review documents in the file and any documents the applicant brings to the interview for information about the applicant's marital history, to include any visa petitions or applications, marriage and divorce certificates, and birth certificates of children.

**I. Gambling**

An applicant who has been convicted of committing two or more gambling offenses or who derives his or her income principally from illegal gambling activities during the statutory period is precluded from establishing GMC.[360] The gambling offenses must have been committed within the statutory period.

**J. Habitual Drunkard**

An applicant who is or was a habitual drunkard during the statutory period is precluded from establishing GMC.[361] Certain documents may reveal habitual drunkenness, to include divorce decrees, employment records, and arrest records. In addition, termination of employment, unexplained periods of unemployment, and arrests or multiple convictions for public intoxication or driving under the influence may be indicators that the applicant is or was a habitual drunkard.

**K. Failure to Support Dependents**

An applicant who willfully failed or refused to support his or her dependents during the statutory period cannot establish GMC unless the applicant establishes extenuating circumstances.[362] The GMC determination for failure to support dependents includes consideration of whether the applicant has complied with his or her child support obligations abroad in cases where it is relevant.[363]

Even if there is no court-ordered child support, the courts have concluded that parents have a moral and legal obligation to provide support for their minor children, and a willful failure to provide such support demonstrates that the individual lacks GMC.[364]

An applicant who fails to support dependents may lack GMC if he or she:

- Deserts a minor child;[365]
- Fails to pay any support;[366] or
- Obviously pays an insufficient amount.[367]

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[358] See INA 101(f)(3) and INA 212(a)(10)(A). See 8 CFR 316.10(b)(2)(ix).
[359] Polygamy is not the same as bigamy. Bigamy is the crime of marrying a person while being legally married to someone else. An applicant who has committed bigamy may be susceptible to a denial under the "unlawful acts" provision.
[360] See INA 101(f)(5). See 8 CFR 316.10(b)(2)(x) and (xi).
[361] See INA 101(f)(1). See 8 CFR 316.10(b)(2)(xii).
[362] See 8 CFR 316.10(b)(3)(i). See Hague Convention on the International Recovery of Child Support.
[363] See Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.
[364] See *Brukiewicz v. Savoretti*, 211 F.2d 541 (5th Cir. 1954). See *Petition of Perdiak*, 162 F. Supp. 76 (S.D. Cal. 1958). See *Petition of Dobric*, 189 F. Supp. 638 (D. Minn. 1960). See *In re Malaszenko*, 204 F. Supp. 744 (D.N.J. 1962) (and cases cited). See *Petition of Dobric*, 189 F. Supp. 638 (D. Minn. 1960). See *In re Huymaier*, 345 F. Supp. 339 (E.D. Pa. 1972). See *In re Valad*, 465 F. Supp. 120 (E.D. Va. 1979).
[365] See *U.S. v. Harrison*, 180 F.2d 981 (9th Cir. 1950).
[366] See *In re Malaszenko*, 204 F. Supp. 744 (D.N.J. 1962). See *In re Mogus*, 73 F. Supp. 150 (W.D. Pa. 1947).

If the applicant has not complied with court-ordered child support and is in arrears, the applicant must identify the length of time of non-payment and the circumstances for the non-payment. An officer should review all court records regarding child support, and non-payment if applicable, in order to determine whether the applicant established GMC.[368]

*Extenuating Circumstances*

If the applicant shows extenuating circumstances, a failure to support dependents should not adversely affect the GMC determination.[369]

The officer should consider the following circumstances:

- An applicant's unemployment and financial inability to pay the child support;[370]
- Cause of the unemployment and financial inability to support dependents;
- Evidence of a good-faith effort to reasonably provide for the support of the child;[371]
- Whether the nonpayment was due to an honest but mistaken belief that the duty to support a minor child had terminated;[372] and
- Whether the nonpayment was due to a miscalculation of the court-ordered arrears.[373]

**L. Adultery**

An applicant who has an extramarital affair during the statutory period that tended to destroy an existing marriage is precluded from establishing GMC.[374]

*Extenuating Circumstances*

If the applicant shows extenuating circumstances, an offense of adultery should not adversely affect the GMC determination.[375] Extenuating circumstances may include instances where the applicant divorced his or her spouse but later the divorce was deemed invalid or the applicant and the spouse mutually separated and they were unable to obtain a divorce.[376]

**M. Unlawful Acts**

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[367] See *In re Halas*, 274 F. Supp. 604 (E.D. Pa. 1967). See *Petition of Dobric*, 189 F. Supp. 638 (D. Minn. 1960).
[368] See 8 CFR 316.10(b)(3)(i).
[369] See Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances.
[370] See *In re Huymaier*, 345 F. Supp. 339 (E.D. Pa. 1972).
[371] See *Petition of Perdiak*, 162 F. Supp. 76 (S.D. Cal. 1958).
[372] See *In re Valad*, 465 F. Supp. 120 (E.D. Va. 1979).
[373] See ***Etape v. Napolitano***, 664 F.Supp.2d 498, 517 (D Md 2009).
[374] See 8 CFR 316.10(b)(3)(ii).
[375] See Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances.
[376] See In *re Petition of Schroers,* 336 F. Supp. 1348 (S.D.N.Y. 1971). See In *re Petition of Russo,* 259 F. Supp. 230 (S.D.N.Y. 1966). See *Dickhoff v. Shaughnessy*, 142 F. Supp. 535 (SDNY 1956).

An applicant who has committed, was convicted, or imprisoned for an unlawful act or acts during the GMC period may be found to lack GMC.[377] This provision may apply to cases where an offense is not specifically listed in the other relevant GMC provisions but rises to the level of preventing the applicant from establishing GMC.[378] This provision does not require the applicant to have been charged or convicted of the offense.

An "unlawful act" includes any act that is against the law, illegal or against moral or ethical standards of the community. The fact that an act is a crime makes any commission thereof an unlawful act.[379]

*Considering Extenuating Circumstances for Unlawful Acts*

If the applicant shows extenuating circumstances, the commission of an unlawful act[380] or acts should not adversely affect the GMC determination.[381] An extenuating circumstance must pertain to the unlawful act and must precede or be contemporaneous with the commission of the unlawful act.[382]

An officer may not consider conduct or equities (including evidence of reformation or rehabilitation) subsequent to the commission of the unlawful act as an extenuating circumstance. Consequences after the fact and future hardship are not considered extenuating circumstances.[383] If a jury or a court acquitted the applicant, he or she has not committed an unlawful act.

The factors considered in the determination are included in the denial notices in cases that result in an unfavorable determination.

*Examples of Unlawful Acts*

The following are examples of offenses that may be considered under the unlawful acts regulation. Each GMC determination is made on a case-by-case basis, to include determinations involving an "unlawful act" consideration.

1. Unlawful Voting and False Claim to U.S. Citizenship for Voting

An applicant may fail to show GMC if he or she engaged in unlawful voting or falsely claimed U.S. citizenship for voting.[384] In September 1996, Congress enacted legislation to address unlawful voting and false claims to U.S. citizenship for purposes of registering to vote or voting.[385]

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[377] See INA 101(f). See 8 CFR 316.10(b)(3)(iii).
[378] See 8 CFR 316.10(b)(1) and (2) (Other relevant GMC regulations).
[379] See *U.S. v. Lekarczyk*, 354 F. Supp. 2d 883 (W.D. Wis. 2005). See *Jean-Baptiste v. United States,* 395 F.3d 1190 (11th Cir.2005). Collateral estoppel bars a defendant who is convicted in a criminal trial from contesting this conviction in a subsequent civil action with respect to issues necessarily decided in the criminal trial. See *Kennedy v. Mendoza-Martinez,* 372 U.S. 144, 157 (1963).
[380] See 8 CFR 316.10(b)(3)(iii).
[381] See INA 101(f). See 8 CFR 316.10(b)(3)(iii). See Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances.
[382] See *Jean-Baptiste v. United States,* 395 F.3d 1190 (11th Cir.2005) citing *Rico v. INS,* 262 F. Supp.2d 6 (E.D.N.Y.2003).
[383] See *Jean-Baptiste v. United States,* 395 F.3d 1190 (11th Cir.2005).
[384] See 18 U.S.C. 611 (Voting by aliens). See 18 U.S.C. 1015(f) (False claim to U.S. citizenship).
[385] See INA 212(a)(10)(D)(i) and INA 237(a)(6)(A) (Addressing unlawful voting). See INA 212(a)(6)(C)(ii)(I) and INA 237(a)(3)(D)(i) (Addressing false claims to U.S. citizenship). These provisions were added by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208 (September 30, 1996).

- A noncitizen who is convicted of unlawful voting may be fined, imprisoned up to one year, or both, and subject to removal.[386]

- A noncitizen who is convicted of making a false claim to U.S. citizenship to register to vote or vote may be fined, imprisoned up to five years, or both, and subject to removal.[387]

The officer may request the applicant to provide a sworn statement regarding his or her testimony on illegal voting or false claim to citizenship for voting. The officer may also require an applicant to obtain any relevant evidence, such as the voter registration card, applicable voter registration form, and voting record from the relevant board of elections commission.

The table below serves as a quick reference guide on the effect on GMC determinations by unlawful voting or for false claims to U.S. citizenship. Further guidance is provided below.

<table>
<tr><th colspan="5">Effect on GMC by Unlawful Voting or<br>False Claim to U.S. Citizenship in Statutory Period</th></tr>
<tr><th rowspan="2">Offense</th><th rowspan="2">Penalty<br>if Convicted</th><th colspan="3">Effect on GMC</th></tr>
<tr><th>If Convicted</th><th>If Imprisoned</th><th>If Not Convicted</th></tr>
<tr><td>Unlawful Voting<br>18 U.S.C. 611</td><td>May be fined or imprisoned up to 1 yr, or both</td><td>Unlikely a CIMT and will not bar GMC by itself</td><td rowspan="2">Bars GMC if incarcerated for 180 days or more, or if sentence from convictions total 5 yrs or more</td><td rowspan="2">May bar GMC depending on totality of the circumstances, and on whether exceptions apply</td></tr>
<tr><td>False Claim to Citizenship<br>18 U.S.C. 1015(f)</td><td>May be fined or imprisoned up to 5 yrs, or both</td><td>CIMT and will bar GMC (may be a felony)</td></tr>
</table>

*Offenses without Convictions*

An officer may find the applicant to lack GMC if the applicant was not convicted of unlawful voting or false claim to citizenship for voting. The officer should consider the totality of the circumstances and weigh all favorable and unfavorable factors of each case, to include whether the applicant qualifies for an exception.

An applicant may only have engaged in unlawful voting if his or her conduct was unlawful under the relevant federal, state, or local election law. The officer should consider the controlling statutes in cases involving potential unlawful voting offenses, because some local municipalities permit lawful permanent residents (LPRs) or other noncitizens to vote in municipal elections.

The officer does not need to focus on the underlying election law for false claims to U.S. citizenship. An applicant may be considered to have made a false claim to U.S. citizenship if the following conditions have been met on or after September 30, 1996.

[386] See 18 U.S.C. 611 (Voting by aliens).
[387] See 18 U.S.C. 1015(f) (False claim to U.S. citizenship).

- The applicant actually falsely represented himself or herself as a U.S. citizen; and
- The applicant made such misrepresentation in order to register to vote or for voting.

*Convictions*

A conviction for unlawful voting, by itself, generally should not bar an applicant from establishing GMC because the conviction is unlikely to be a CIMT.[388] On the other hand, making a false claim to U.S. citizenship in order to register to vote or to vote is a CIMT. An applicant who is convicted of a CIMT is generally precluded from establishing GMC.

A conviction for making a false claim to U.S. citizenship in order to register to vote or for voting is a felony and prevents an applicant from showing GMC unless an exception applies.[389]

*Imprisonment*

Unless an applicant qualifies for an exception, the applicant is barred from establishing GMC if:

- The applicant was convicted and imprisoned for 180 days or more during the statutory period for unlawful voting or for making a false claim to U.S. citizenship;[390] or

- The applicant has multiple convictions with an aggregate sentence of five years or more, which include conviction(s) for unlawful voting or making a false claim to U.S. citizenship.[391]

*Exceptions*

In 2000, Congress added exceptions for GMC determinations and removal of noncitizens for unlawful voting and false claims to U.S. citizenship.[392] The exceptions only apply to convictions that became final on or after October 30, 2000.[393]

An applicant qualifies for an exception if the following conditions are met:

- The applicant's natural or adoptive parents are or were U.S. citizens at the time of the violation;[394]
- The applicant permanently resided in the United States prior to reaching the age of 16 years; and
- The applicant "reasonably believed" at the time of the violation that he or she was a U.S. citizen.

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[388] See 18 U.S.C. 611 (Voting by noncitizens). See 8 U.S.C. 1015(f) (False claim to U.S. citizenship).
[389] See INA 101(f)(3).
[390] See Chapter 5 Conditional Bars for Acts in Statutory Period, Section D, Imprisonment for 180 Days or More. See INA 101(f)(7).
[391] See Chapter 5 Conditional Bars for Acts in Statutory Period, Section B, Aggregate Sentence of Five Years or More. See INA 101(f)(3).
[392] See INA 212(a)(10)(D)(ii) and INA 237(a)(6)(B) (Unlawful voting exception). See INA 212(a)(6)(C)(ii)(I) and INA 237(a)(3)(D)(i) (False claims to U.S. citizenship exception). These provisions were added by the Child Citizenship Act of 2000 (CCA), Pub. L. 106-395 (October 30, 2000).
[393] See Section 201(d)(3) of the CCA, Pub. L. 106-395.
[394] As a matter of policy, USCIS has determined that the applicant's parents had to be U.S. citizens at the time of the illegal voting or false claim to U.S. citizenship in order to meet the first prong of this exception.

To assess whether the applicant "reasonably believed" that he or she was a U.S. citizen at the time of the violation, the officer must consider the totality of the circumstances in the case, weighing such factors as the length of time the applicant resided in the United States and the age when the applicant became an LPR.

2. Failure to File Tax Returns or Pay Taxes

An applicant who fails to file tax returns or pay his or her taxes may be precluded from establishing GMC. LPRs are generally taxed in the same way as U.S. citizens. This means that their worldwide income may be subject to U.S. tax and may need to be reported on their U.S. tax return. The income of LPRs is subject to the same graduated tax rates that apply to U.S. citizens.[395]

An applicant who did not originally file tax returns or did not pay the appropriate taxes may be able to establish GMC by submitting a letter from the tax authority indicating that:

- The applicant has filed the appropriate forms and returns; and
- The applicant has paid the required taxes, or has made arrangements for payment.

If the officer uncovers inconsistencies in facts submitted on the application for naturalization and material elements on the applicant's tax return, such as marital status, number of children, and employment, the applicant may be precluded from establishing GMC due to an attempt to defraud the Internal Revenue Service (IRS) by avoiding taxes.[396]

[395] See IRS Publication 519, U.S. Tax Guide for Aliens.

[396] The following involve defrauding the United States by avoiding taxes (a CIMT). See *Matter of M-*, 8 I&N Dec. 535 (BIA 1960). See *Matter of E-*, 9 I&N Dec. 421 (BIA 1961). See *Carty v. Ashcroft*, 395 F.3d 1081 (9th Cir. 2005) (State failure to pay taxes; evasion is same as fraud). See *Wittgenstein v. INS*, 124 F.3d 1244 (10th Cir. 1997) (State crime).

# PART G – SPOUSES OF U.S. CITIZENS

## Chapter 1: Purpose and Background

### A. Purpose

Spouses of United States citizens may be eligible for naturalization on the basis of their marriage under special provisions of the Immigration and Nationality Act (INA), to include overseas processing. In general, spouses of U.S. citizens are required to meet the general naturalization requirements.[397] The special provisions, however, provide modifications to those requirements.

The spouse of a U.S. citizen may naturalize through various provisions:

- The spouse of a U.S. citizen may naturalize under the general naturalization provisions for applicants who have resided in the United States for at least five years after becoming a lawful permanent resident (LPR).[398]

- The spouse of a U.S. citizen may naturalize after residing in the United States for three years after becoming an LPR, rather than five years as generally required.[399]

- The spouse of a U.S. citizen employed abroad who is working for the U.S. Government (including the armed forces) or other qualified entity may naturalize in the United States without any required period of residence or physical presence in the United States after becoming an LPR.[400]

- The spouse of a U.S. citizen who is serving abroad in the U.S. armed forces may naturalize abroad while residing with his or her spouse, and time spent abroad under these circumstances is considered residence and physical presence in the United States for purposes of the general five-year or three-year provision for spouses.[401]

- The surviving spouse of a U.S. citizen who dies during a period of honorable service in an active-duty status in the U.S. armed forces or was granted citizenship posthumously may naturalize in the United States without any required period of residence or physical presence after becoming an LPR.[402]

In addition, spouses, former spouses, or intended spouses of U.S. citizens may naturalize if they obtained LPR status on the basis of having been battered or subjected to extreme cruelty by their citizen spouse.[403]

### B. Background

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[397] See INA 316. See 8 CFR 316. See Part D, General Naturalization Requirements.
[398] See INA 316(a). See Part D, General Naturalization Requirements.
[399] See INA 319(a). See Chapter 3, Spouses of U.S. Citizens Residing in the United States.
[400] See INA 319(b). See Chapter 4, Spouses of U.S. Citizens Employed Abroad.
[401] See INA 316(a), INA 319(a), and INA 319(e). See 8 U.S.C. 1443a. See Part I, Military Members and their Families.
[402] See INA 319(d). See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section B, Spouses of Military Members.
[403] See INA 319(a). See Chapter 3, Spouses of U.S. Citizens Residing in the United States.

The current naturalization provisions for spouses of U.S. citizens reflect legislation dating back to 1922. Congress considered it inefficient and undesirable to require the spouse of a U.S. citizen to wait five years before naturalization.[404] Congress made further amendments in 1934, to include a required period of three years of residence. In 1940, Congress incorporated provisions into the Nationality Act of 1940 that were substantially similar to those of the 1922 and 1934 acts. Today's statutes reflect Congress' long-standing aim to facilitate the naturalization process for spouses of U.S. citizens to provide spouses with the protections afforded by U.S. citizenship.

### C. Table of General Provisions

The table below serves as a quick reference guide to the pertinent naturalization authorities for spouses of U.S. citizens. The chapters that follow the table provide further guidance.

**General Provisions for Applicants filing as Spouses of U.S. Citizens**

| Provision | Marriage and Marital Union | Continuous Residence | Physical Presence | Eligibility for Overseas Processing |
|---|---|---|---|---|
| Spouses of U.S. Citizens Residing in United States INA 319(a) | Married and living in marital union for at least 3 years prior to filing | 3 years after becoming an LPR | 18 months during period of residence | Not applicable, except for spouses of military members who may complete entire process from abroad – INA 319(e) |
| Spouses of U.S. Citizens Employed Abroad INA 319(b) | Married prior to filing | Must be LPR at filing; no specified period required | | Not applicable; all must be in U.S. for interview and Oath |
| Spouses of Deceased Service Members INA 319(d) | Must have been married and living in marital union at time of death | Must be LPR at filing; no specified period required | | Not applicable; all must be in U.S. for interview and Oath |

### D. Legal Authorities

- INA 316; 8 CFR 316 – General requirements for naturalization
- INA 319; 8 CFR 319 – Spouses of U.S. citizens
- INA 319(e); 8 CFR 316.5(b)(6) and 8 CFR 316.6 – Residence, physical presence, and overseas naturalization for certain spouses of military personnel
- 8 U.S.C. 1443a – Overseas naturalization for service members and their family

[404] See H.R. REP. 67-1110, 2d Sess., p. 2. See Immigration Act of September 22, 1922.

## Chapter 2: Marriage and Marital Union for Naturalization

### A. Validity of Marriage

1. Validity of Marriages in the United States or Abroad

The applicant must establish validity of his or her marriage. In general, a marriage certificate is prima facie evidence that the marriage was properly and legally performed. A marriage is valid for immigration purposes in cases where:

- The marriage is valid under the law of the jurisdiction in which it is performed; and
- The law of the jurisdiction does not conflict with federal laws on marriage or the laws of the state of the spouses' domicile.

In general, states recognize marriages from other states and foreign countries.[405] In all cases, the burden is on the applicant to establish that he or she has a valid marriage with his or her U.S. citizen spouse for the required period of time.[406]

USCIS does not recognize the following relationships as marriages or intended marriages:

- Relationships involving bigamy, polygamy, or incest;[407]
- Relationships where one party is not present during the marriage ceremony (proxy marriages) unless the marriage has been consummated;
- Relationships entered into for purposes of evading immigration laws of the United States;[408] or
- Relationships between two persons of the same sex.[409]

USCIS accepts the validity of marriage in cases involving transgender persons if at the time of the marriage:

- The person has legally changed his or her gender;[410]

- The state or local jurisdiction in which the marriage took place recognizes the marriage as a heterosexual marriage;[411] and

[405] The principle of "comity" requires one state to recognize the legal acts of another state so long as they do not violate public policy.
[406] See 8 CFR 319.1(b)(1).
[407] See *Matter of H-,* 9 I&N Dec. 640 (BIA 1962). Battered spouses who had a bigamous marriage may still be eligible for naturalization. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386 (October 28, 2000).
[408] See *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983). See *Matter of Phillis*, 15 I&N Dec. 385 (BIA 1975). See *Matter of M-*, 8 I&N Dec. 217 (BIA 1958).
[409] See the Defense of Marriage Act (DOMA), Pub. L. 104-199, 110 Stat. 2419 (Sept. 21, 1996). See 1 U.S.C. 7 and 28 U.S.C. 1738C.
[410] Not all states or foreign jurisdictions that recognize a legal change of gender require the completion of gender reassignment surgery before a person can legally change his or her gender. USCIS recognizes the broader range of clinical treatments other than gender reassignment surgery that can result in a legal change of gender under the law of the relevant jurisdiction. See Adjudicator's Field Manual (AFM) Chapter 21.3(a)(2)(J), Transgender Issues and Marriage.
[411] See *Matter of Lovo-Lara*, 23 I&N Dec. 746 (BIA 2005).

- The law where the marriage took place does not bar a marriage between a transgender person and person of the other gender.[412]

2. Validity of Foreign Divorces and Subsequent Remarriages

The validity of a divorce abroad depends on the interpretation of the divorce laws of the foreign country that granted the divorce and the reciprocity laws in the state of the United States where the applicant remarried.[413] If the divorce is not final under the foreign law, remarriage to a U.S. citizen is not valid for immigration purposes.[414]

An officer should ensure that the court issuing the divorce had jurisdiction to do so.[415] Foreign divorce laws may allow for a final decree even when the applicants are not residing in the country. Some states, however, do not recognize these foreign divorces and do not provide reciprocity. The applicant and his or her former spouse's place of domicile at the time of the divorce is important in determining whether the court had jurisdiction.

3. Evidence

The burden is on the applicant to establish that he or she is in a valid marriage with his or her U.S. citizen spouse for the required period of time.[416] A spouse of a U.S. citizen must submit with the naturalization application an official civil record to establish that the marriage is legal and valid. If an official civil record cannot be produced, secondary evidence may be accepted on a case-by-case basis. An officer has the right to request an original record if there is doubt as to the authenticity of the record.[417]

**B. Common Law Marriage**

The concept of common law marriage presupposes an honest good-faith intention on the part of two persons, free to marry, to live together as husband and wife from the inception of the relationship. Some states recognize common law marriages and consider the parties to be married.[418] In order for a common law marriage to be valid for immigration purposes:

- The parties must live in that jurisdiction; and
- The parties must meet the qualifications for common law marriage for that jurisdiction.

Other states may recognize a common law marriage contracted in another state even if the recognizing state does not accept common law marriage as a means for its own residents to contract marriage.

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[412] See AFM Chapter 21.3(a)(2)(J), Transgender Issues and Marriage. See AFM Chapter 10.22, Document Issuance Involving Status and Identity for Transgender Individuals.
[413] See *Matter of Luna*, 18 I&N Dec. 385 (BIA 1983). See *Matter of Ma,* 15 I&N Dec. 70 (BIA 1974).
[414] See *Matter of Ma*, 15 I&N Dec. 70, 71 (BIA 1974). See *Matter of Miraldo*, 14 I&N Dec. 704 (BIA 1974).
[415] For example, law requires both parties to be domiciled in the country at the time of divorce, but that was not the case. See *Matter of Hosseinian*, 19 I& N Dec. 453 (BIA 1987). See *Matter of Weaver*, 16 I&N Dec. 730 (BIA 1979). See *Matter of Luna*, 18 I&N Dec. 385 (BIA 1983).
[416] See 8 CFR 319.1(b)(1).
[417] See 8 CFR 103.2(b). See 8 CFR 319.1 and 8 CFR 319.2.
[418] For purposes of determining whether a common law marriage exists, see statutes and case law for the appropriate jurisdiction.

USCIS recognizes common law marriages for purposes of naturalization if the marriage was valid and recognized by the state in which the marriage was established.[419] This applies even if the naturalization application is filed in a jurisdiction that does not recognize or has never recognized the principle of common law marriage.

The officer should review the laws of the relevant jurisdiction on common law marriages to determine whether the applicant and spouse should be considered to be married for purposes of naturalization and when the marriage commenced.

### C. U.S. Citizenship from Time of Filing until Oath

In order to take advantage of the special naturalization provisions for spouses of U.S. citizens, the applicant's spouse must be and remain a U.S. citizen from the time of filing until the time the applicant takes the Oath of Allegiance. An applicant is ineligible for naturalization under these provisions if his or her spouse is not a U.S. citizen or loses U.S. citizenship status by denaturalization or expatriation prior to the applicant taking the Oath of Allegiance.[420]

### D. Marital Union and Living in Marital Union

#### 1. Married and Living in Marital Union

In general, all naturalization applicants filing on the basis of marriage to a U.S. citizen must be the spouse of a U.S. citizen from the time of filing the Application for Naturalization until the applicant takes the Oath of Allegiance. In addition, some spousal naturalization provisions require that the applicant "live in marital union" with his or her citizen spouse prior to filing the Application for Naturalization.[421] USCIS considers an applicant to "live in marital union" with his or her citizen spouse if the applicant and the citizen actually reside together.

An applicant under the special provisions for spouses is ineligible for naturalization if:

- The applicant is not residing with his or her United States citizen spouse at the time of filing or during the time in which the applicant is required to be living in marital union with the citizen spouse; or

- If at any time prior to taking the Oath of Allegiance, the spousal relationship is terminated or altered to such an extent that neither the applicant nor the United States citizen spouse can be considered to be residing together as husband and wife.

There are limited circumstances where an applicant may be able to establish that he or she is living in marital union with his or her citizen spouse even though the applicant does not actually reside with the citizen spouse.[422]

In all cases where it is applicable, the burden is on the applicant to establish that he or she has lived in marital union with his or her U.S. citizen spouse for the required period of time.[423]

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[419] The date a common law marriage commences is determined by laws of the relevant jurisdiction.
[420] See 8 CFR 319.1(b)(2)(i) and 8 CFR 319.2(c).
[421] See INA 319(a). See 8 CFR 319.1(a)(3) and 8 CFR 319.1(b).
[422] See guidance below on "Involuntary Separation" under the paragraph "Failure to be Living in Loss of Marital Union due to Separation."

2. Loss of Marital Union due to Death, Divorce, or Expatriation

*Death of U.S. Citizen Spouse*

An applicant is ineligible to naturalize as the spouse of a U.S. citizen if the U.S. citizen dies any time prior to the applicant taking the Oath of Allegiance.[424] However, if the applicant is the surviving spouse of a U.S. citizen who died during a period of honorable service in an active-duty status in the U.S. armed forces, the applicant may be eligible for naturalization based on his or her marriage under a special provision.[425]

*Divorce or Annulment*

A person's marital status may be terminated by a judicial divorce or by an annulment. A divorce or annulment breaks the marital relationship. The applicant is no longer the spouse of a U.S. citizen if the marriage is terminated by a divorce or annulment. Accordingly, such an applicant is ineligible to naturalize as the spouse of a U.S. citizen if the divorce or annulment occurs before or after the naturalization application is filed.[426]

The result of annulment is to declare a marriage null and void from its inception. An annulment is usually retroactive, meaning that the marriage is considered to be invalid from the beginning. A court's jurisdiction to grant an annulment is set forth in the various divorce statutes and generally requires residence or domicile of the parties in that jurisdiction. When a marriage has been annulled, it is documented by a court order or decree.

In contrast, the effect of a judicial divorce is to terminate the status as of the date on which the court entered the final decree of divorce. When a marriage is terminated by divorce, the termination is entered by the court with jurisdiction and is documented by a copy of the final divorce decree. USCIS determines the validity of a divorce by examining whether the state or country which granted the divorce properly assumed jurisdiction over the divorce proceeding.[427] USCIS also determines whether the parties followed the proper legal formalities required by the state or country in which the divorce was obtained to determine if the divorce is legally binding.[428] In all cases, the divorce must be final.

An applicant's ineligibility for naturalization as the spouse of a U.S. citizen due to the death of the citizen spouse or to divorce is not cured by the subsequent marriage to another U.S. citizen.

*Expatriation of U.S. Citizen Spouse*

An applicant is ineligible to naturalize as the spouse of a U.S. citizen if the U.S. citizen has expatriated any time prior to the applicant taking the Oath of Allegiance for naturalization.[429]

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[423] See 8 CFR 319.1(b)(1).
[424] See 8 CFR 319.1(b)(2)(i). See 8 CFR 319.2(c).
[425] See INA 319(d). See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section D, Naturalization for Surviving Spouse, Child, or Parent of Service Member (INA 319(d)).
[426] See 8 CFR 319.1(b)(2)(i) and 8 CFR 319.2(c).
[427] See *Matter of Hussein*, 15 I&N Dec. 736 (BIA 1976).
[428] See *Matter of Luna*, 18 I&N Dec. 385 (BIA 1983).
[429] See 8 CFR 319.1(b)(2)(i). See 8 CFR 319.2(c). See INA 337.

3. Failure to be Living in Marital Union due to Separation

*Legal Separation*

A legal separation is a formal process by which the rights of a married couple are altered by a judicial decree but without eliminating the marital relationship.[430] In most cases, after a legal separation, the applicant will no longer be actually residing with his or her U.S. citizen spouse, and therefore will not be living in marital union with the U.S. citizen spouse.

However, if the applicant and the U.S. citizen spouse continue to reside in the same household, the marital relationship has been altered to such an extent by the legal separation that they will not be considered to be living together in marital union.

Accordingly, an applicant is not living in marital union with a U.S. citizen spouse during any period of time in which the spouses are legally separated.[431] An applicant who is legally separated from his or her spouse during the time period in which he or she must be living in marital union is ineligible to naturalize as the spouse of a U.S. citizen.

*Informal Separation*

In many instances, spouses will separate without obtaining a judicial order altering the marital relationship or formalizing the separation. An applicant who is no longer actually residing with his or her U.S. citizen spouse following an informal separation is not living in marital union with the U.S. citizen spouse.

However, if the U.S. citizen spouse and the applicant continue to reside in the same household, an officer must determine on a case-by-case basis whether an informal separation before the filing of the naturalization application renders an applicant ineligible for naturalization as the spouse of a U.S. citizen.[432] Under these circumstances, an applicant is not living in marital union with a U.S. citizen spouse during any period of time in which the spouses are informally separated if such separation suggests the possibility of marital disunity.

Factors to consider in making this determination may include:

- The length of separation;
- Whether the applicant and his or her spouse continue to support each other and their children (if any) during the separation;
- Whether the spouses intend to separate permanently; and
- Whether either spouse becomes involved in a relationship with others during the separation.[433]

*Involuntary Separation*

[430] See for example, *Nehme v. INS*, 252 F.3d 415, 422-27 (5th Cir. 2001) (Discussing legal separation for purposes of derivation of citizenship).
[431] See 8 CFR 319.1(b)(2)(ii)(A).
[432] See 8 CFR 319.1(b)(2)(ii)(B).
[433] See *U.S. v. Moses*, 94 F. 3d 182 (5th Cir. 1996).

Under very limited circumstances and where there is no indication of marital disunity, an applicant may be able to establish that he or she is living in marital union with his or her U.S. citizen spouse even though the applicant does not actually reside with citizen spouse. An applicant is not made ineligible for naturalization for not living in marital union if the separation is due to circumstances beyond his or her control, such as:[434]

- Service in the U.S. armed forces; or
- Required travel or relocation for employment.

USCIS does not consider incarceration during the time of required living in marital union to be an involuntary separation.

## Chapter 3: Spouses of U.S. Citizens Residing in the United States

### A. General Eligibility for Spouses Residing in the United States

The spouse of a U.S. citizen who resides in the United States may be eligible for naturalization on the basis of his or her marriage.[435] The spouse must have continuously resided in the United States after becoming an LPR for at least three years immediately preceding the date of filing the naturalization application and must have lived in marital union with his or her citizen spouse for at least those three years.

The spouse must establish that he or she meets the following criteria in order to qualify:

- Age 18 or older at the time of filing.
- LPR at the time of filing the naturalization application.
- Continue to be the spouse of the U.S. citizen up until the time the applicant takes the Oath of Allegiance.
- Living in marital union with the citizen spouse for at least three years preceding the time of filing the naturalization application (the citizen spouse must have been a U.S. citizen for those three years).
- Continuous residence in the United States as an LPR for at least three years immediately preceding the date of filing the application and up to the time of naturalization.
- Physically present in the United States for at least 18 months (548 days) out of the three years immediately preceding the date of filing the application.
- Living within the state or USCIS district with jurisdiction over the applicant's place of residence for at least three months prior to the date of filing.
- Demonstrate an understanding of the English language, including an ability to read, write, and speak words in ordinary usage.

[434] See 8 CFR 319.1(b)(2)(ii)(C).
[435] See INA 319(a). See 8 CFR 319.1.

- Demonstrate a knowledge and understanding of the fundamentals of the history and principles and form of government of the United States (civics).

- Demonstrate good moral character for at least three years prior to filing the application until the time of naturalization.

- Attachment to the principles of the U.S. Constitution and well-disposed to the good order and happiness of the United States during all relevant periods under the law.

The spouse of a U.S. citizen residing in the United States may also naturalize under the general naturalization provisions for applicants who have been LPRs for at least five years.[436] In addition, in some instances the spouse of a member of the U.S. armed forces applying pursuant to INA 319(a) or INA 316(a) may be eligible for any naturalization proceeding abroad, to include interviews, filings, oaths, ceremonies, or other proceedings relating to naturalization.[437]

**B. Living in Marital Union for Spouses Residing in the United States**

The spouse of a U.S. citizen residing in the United States must have been living in marital union with his or her citizen spouse for at least three years immediately preceding the time of filing the naturalization application. This provision requires that the spouse live in marital union with the citizen spouse during the entire period of three years before filing.

However, the statute does not require living in marital union for the period between the date of filing the application and the date of naturalization (date applicant takes the Oath of Allegiance). The corresponding regulation conflicts with the statute in stating that the spouse must have been married with his or her citizen spouse for at least three years at the time of the examination on the application, and not at the time of filing.

USCIS follows the language of the statute in requiring marital union only up until the time of filing.[438] Accordingly, only the existence of a legally valid marriage is required from the date of filing the application until the time of the applicant's naturalization.[439]

A person who was a spouse subjected to battering or extreme cruelty by their citizen spouse is exempt from the marital union requirement.[440]

**C. Three Years of Continuous Residence**

The spouse of a U.S. citizen residing in the United States must have continuously resided in the United States as an LPR for at least three years immediately preceding the date of the filing the application and up to the time of the Oath of Allegiance. Continuous residence involves the applicant maintaining a permanent dwelling place in

[436] See INA 316(a). See Part D, General Naturalization Requirements.
[437] See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits.
[438] See 8 CFR 319.1(a)(3). See *Ali v. Smith*, 39 F. Supp. 2d 1254. (W.D. Wash. 1999).
[439] See INA 319(a). See *In re Petition of Olan*, 257 F. Supp. 884 (1966). See *Petition of Yao Quinn Lee*, 480 F.2d 673 (C.A. 2, 1973). See Chapter 2, Marriage and Marital Union for Naturalization.
[440] See INA 319(a). See Section F, Eligibility for Persons Subjected to Battering or Extreme Cruelty.

the United States for the required period of time. The residence is the applicant's actual dwelling place regardless of his or her intentions to claim it as his or her residence.[441]

**D. Eighteen Months of Physical Presence**

The spouse must have been physically present in the United States for at least 18 months (548 days) out of the 3 years immediately preceding the date of filing the application.[442] Physical presence refers to the number of days the applicant must physically be present in the United States during the statutory period up to the date of filing for naturalization.[443]

**E. 90-Day Early Filing Provision (INA 334)**

The spouse of a U.S. citizen filing for naturalization on the basis of his or her marriage may file the naturalization application up to 90 days before the date he or she would first meet the required three-year period of continuous residence.[444] Although an applicant may file early and may be interviewed during that period, the applicant is not eligible for naturalization until he or she has satisfied the required three-year period of residence. All other requirements for naturalization must be met at the time of filing.

USCIS calculates the early filing period by counting back 90 days from the day before the applicant would have first satisfied the continuous residence requirement for naturalization. For example, if the day the applicant would satisfy the three-year continuous residence requirement for the first time is on June 10, 2010, USCIS will begin to calculate the 90-day early filing period from June 9, 2010.

In cases where an applicant has filed early and the required three-month period of residence in a state or Service District falls within the required three-year period of continuous residence, jurisdiction is based on the three-month period immediately preceding the examination on the application (interview).[445]

**F. Eligibility for Persons Subjected to Battering or Extreme Cruelty**

1. General Eligibility for Persons Subjected to Battering or Extreme Cruelty

On October 28, 2000, Congress expanded the naturalization provision on the basis of marriage to a U.S. citizen for persons who reside in the United States. The amendments added that spouses, former spouses, intended spouses,[446] and children of U.S. citizens may naturalize under this provision if they obtained LPR status on the basis of having been battered or subjected to extreme cruelty by their citizen spouse or parent.[447]

Specifically, the person must have obtained LPR status on the basis of:

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[441] See Part D, General Naturalization Requirements, Chapter 3, Continuous Residence. See 8 CFR 316.5(a).
[442] See 8 CFR 319.1(a)(2) and (4). See Part D, General Naturalization Requirements, Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence.
[443] See 8 CFR 319.1(a)(2) and 8 CFR 319.1(a)(4). See Part D, General Naturalization Requirements, Chapter 4, Physical Presence.
[444] See INA 334(a). See 8 CFR 334.2(b).
[445] See 8 CFR 316.2(a)(5).
[446] See INA 101(a)(50) (Definition of intended spouse).
[447] See INA 319(a). See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386 (October 28, 2000). See Part H, Children of U.S. Citizens, Chapter 6, Special Provisions for the Naturalization of Children.

- An approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) as the spouse or child of a U.S. citizen;

- An approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) as the spouse or child of an LPR if the abusive spouse or parent naturalizes after the petition has been approved;[448]

- Cancellation of removal in cases where the applicant was the spouse, child, or intended spouse of a United States citizen who subjected him or her to battering or extreme cruelty;[449] or

- An approved waiver of the joint filing requirement for petitions to remove conditions for conditional LPRs, if the marriage was entered into in good faith and the spouse or child was subjected to battering or extreme cruelty by the citizen or LPR spouse or parent.[450]

2. Exception to Marital Union and U.S. Citizenship Requirements for Spouses

A person who was a spouse subjected to battering or extreme cruelty by their citizen spouse is exempt from the following naturalization requirements:

- Living in marital union with the citizen spouse for at least three years at the time of filing the naturalization application; and

- U.S. citizenship status of applicant's spouse from the time of filing until the time the applicant takes the Oath of Allegiance. [451]

The spouse must meet all other eligibility requirements for naturalization on the basis of marriage to a U.S. citizen.[452]

**G. Application and Evidence**

1. Application for Naturalization (Form N-400)

To apply for naturalization, the applicant must submit an Application for Naturalization (Form N-400) in accordance with the form instructions and with the required fee.[453] The applicant should check the appropriate eligibility option on the naturalization application to indicate that he or she is applying on the basis of marriage to a U.S. citizen.

2. Evidence of Spouse's United States Citizenship

[448] See INA 204(a)(1)(B)(ii) or INA 204(a)(1)(B)(iii).
[449] See INA 240A(b)(2)(A)(i)(I) or INA 240A(b)(2)(A)(i)(III).
[450] See INA 216(c)(4)(C).
[451] See 8 CFR 319.1(b)(2)(i) and 8 CFR 319.2(c).
[452] See INA 319(a). See 8 CFR 319.2.
[453] See 8 CFR 319.11(a). See 8 CFR 103.7(b)(1).

Under this provision, the burden is on the applicant to establish that he or she is married and living in marital union with a U.S. citizen.[454] A spouse of a U.S. citizen must submit with the application evidence to establish the U.S. citizenship of his or her spouse.[455]

Evidence of U.S. citizenship may include:

- Certificate of birth in the United States;
- Department of State Consular Report of Birth Abroad (FS-240);
- Certificate of Citizenship;
- Certificate of Naturalization; and
- Valid and unexpired United States Passport.

If an official civil record cannot be produced, secondary evidence may be accepted on a case-by-case basis. An officer has the right to request an original record if there is doubt as to the authenticity of the record.[456]

## Chapter 4: Spouses of U.S. Citizens Employed Abroad

### A. General Eligibility for Spouses of U.S. Citizens Employed Abroad

The spouse of a U.S. citizen who is "regularly stationed abroad" in qualifying employment may be eligible for naturalization on the basis of their marriage.[457] Spouses otherwise eligible under this provision are exempt from the continuous residence and physical presence requirements for naturalization.[458]

The spouse must establish that he or she meets the following criteria in order to qualify:

- Age 18 or older at the time of filing.
- LPR at the time of filing the naturalization application.
- Continue to be the spouse of the U.S. citizen up until the time the applicant takes the Oath of Allegiance.
- Married to a U.S. citizen spouse regularly stationed abroad in qualifying employment for at least one year.
- Has a good faith intent to reside abroad with the U.S. citizen spouse upon naturalization and to reside in the United States immediately upon the citizen spouse's termination of employment abroad.
- Establish that he or she will depart to join the citizen spouse within 30 to 45 days after the date of naturalization.[459]

[454] See Chapter 2, Marriage and Marital Union for Naturalization.
[455] See INA 319(a). See 8 CFR 319.1(a).
[456] See 8 CFR 103.2(b)(5). See 8 CFR 319.1 and 8 CFR 319.2.
[457] See INA 319(b). See 8 CFR 319.2. See Section C, Qualifying Employment Abroad.
[458] See INA 319(b). See 8 CFR 319.2(a)(6).
[459] See 8 CFR 319.2(b).

- Understanding of basic English, including the ability to read, write, and speak.
- Knowledge of basic U.S. history and government.
- Demonstrate good moral character for at least three years prior to filing the application until the time of naturalization.[460]
- Attachment to the principles of the U.S. Constitution and well-disposed to the good order and happiness of the U.S. during all relevant periods under the law.

The period for showing good moral character (GMC) for spouses employed abroad is not specifically stated in the corresponding statute and regulation.[461] USCIS follows the statutory three-year GMC period preceding filing (until naturalization) specified for spouses of U.S. citizens residing in the United States.[462]

In general, the spouse is required to be present in the United States after admission as an LPR for his or her naturalization examination and for taking the Oath of Allegiance for naturalization.[463]

A spouse of a member of the U.S. military applying under this provision may also qualify for naturalization under INA 316(a) or INA 319(a), which could permit him or her to be eligible for overseas processing of the naturalization application, to include interviews, filings, oaths, ceremonies, or other proceedings relating to naturalization.[464]

**B. Marital Union for Spouses Employed Abroad**

The spouse of a U.S. citizen employed abroad is not required to have lived in marital union with his or her citizen spouse.[465] The spouse only needs to show that he or she is in a legally valid marriage with a U.S. citizen from the date of filing the application until the time of the Oath of Allegiance.[466] Such spouses who are not living in marital union still have to show intent to reside abroad with the U.S. citizen spouse abroad and take up residence in the United States upon termination of the qualifying employment abroad.[467]

**C. Qualifying Employment Abroad**

Qualifying employment abroad means to be under employment contract or orders and to assume the duties of employment in any of following entities or positions:[468]

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[460] See INA 319(a). See 8 CFR 319.1(a)(7) and 8 CFR 319.2(a)(5).
[461] See INA 319(b). See 8 CFR 319.2(a)(5).
[462] See INA 319(a). See 8 CFR 319.1(a)(7).
[463] See INA 319(b). See 8 CFR 319.2.
[464] See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section B, Spouses of Military Members. See INA 319(e). See 8 U.S.C. 1443a.
[465] See INA 319(b). See 8 CFR 319.1(b)(1). See Chapter 2, Marriage and Marital Union for Naturalization.
[466] See Chapter 2, Marriage and Marital Union for Naturalization, Section A, Validity of Marriage.
[467] See 8 CFR 319.2(a)(4).
[468] See INA 319(b)(1)(B).

- Government of the United States (including the U.S. armed forces);
- American institution of research recognized as such by the Attorney General;[469]
- American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof;
- Public international organization in which the United States participates by treaty or statute;[470]
- Authorized to perform the ministerial or priestly functions of a religious denomination having a bona fide organization within the United States; or
- Engaged solely as a missionary by a religious denomination or by an interdenominational mission organization having a bona fide organization within the United States.

**D. Calculating Period "Regularly Stationed Abroad"**

A person applying for naturalization based on marriage to a U.S. citizen employed abroad must establish that his or her citizen spouse is regularly stationed abroad. A citizen spouse is regularly stationed abroad if he or she engages in qualifying employment abroad for at least one year.[471] Both the statute and its corresponding regulation are silent on when to begin calculating the specified period regularly stationed abroad.[472]

As a matter of policy, USCIS calculates the period of qualifying employment abroad from the time the applicant spouse properly files for naturalization.[473] However, this policy does not alter the requirement that the applicant must intend to reside abroad with the U.S. citizen spouse after naturalization.[474]

Accordingly, the spouse of the U.S. citizen employed abroad may naturalize if his or her U.S. citizen's qualifying employment abroad is scheduled to last for at least one year at the time of filing, even if less than one year of such employment remains at the time of the naturalization interview or Oath of Allegiance provided that the spouse remains employed abroad at the time of naturalization.

The burden is on the applicant to establish that his or her U.S. citizen's qualifying employment abroad is scheduled to last for at least one year from the time of filing.

**E. Exception to Continuous Residence and Physical Presence Requirements**

Spouses of U.S. citizens who are regularly stationed abroad under qualifying employment may be eligible to file for naturalization immediately after obtaining LPR status in the United States. Such spouses are not required to

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[469] See 8 CFR 316.20(a). See www.uscis.gov/AIR lists of recognized organizations.
[470] See 8 CFR 319.5 and 8 CFR 316.20(b).
[471] See INA 319(b)(1)(B) and INA 319(b)(1)(C). See 8 CFR 319.2(a)(1). See Section G, Application and Evidence.
[472] See INA 319(b)(1)(B) and INA 319(b)(1)(C). See 8 CFR 319.2(a)(1).
[473] This policy is effective as of January 22, 2013, effective date of first publication of the USCIS Policy Manual and will not be applied retroactively.
[474] See 8 CFR 319.2(a)(4).

have any prior period of residence or specified period of physical presence within the United States in order to qualify for naturalization.[475]

**F. In the United States for Examination and Oath of Allegiance**

A spouse of a U.S. citizen who is regularly stationed abroad under qualifying employment is required to be in the United States pursuant to an admission as an LPR for the naturalization examination and the Oath of Allegiance for naturalization.[476]

**G. Application and Evidence**

*Application for Naturalization (Form N-400)*

To apply for naturalization, the spouse of a U.S. citizen employed abroad must submit an Application for Naturalization (Form N-400) in accordance with the form instructions and with the required fee.[477] The applicant should check the "other" eligibility option on the naturalization application and indicate that he or she is applying pursuant to INA 319(b) on the basis of marriage to a U.S. citizen who is or will be regularly stationed abroad.

*Evidence of Spouse's United States Citizenship*

Under this provision, the burden is on the applicant to establish that he or she is married to a U.S. citizen.[478] A spouse of a U.S. citizen must submit with the application evidence to establish the U.S. citizenship of his or her spouse.[479]

Evidence of U.S. citizenship may include:

- Certificate of birth in the United States;
- Department of State Consular Report of Birth Abroad (FS-240);
- Certificate of Citizenship;
- Certificate of Naturalization; and
- Valid and unexpired United States Passport.

If an official civil record cannot be produced, secondary evidence may be accepted on a case-by-case basis. An officer has the right to request an original record if there is doubt as to the authenticity of the record.[480]

*Evidence of Citizen Spouse's Employment Abroad*

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[475] See INA 319(b)(3). See 8 CFR 319.2(a)(6). See Part D, General Naturalization Requirements, Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence.
[476] See INA 319(b). See 8 CFR 319.2. Spouses of members of the U.S. armed forces may be eligible for overseas processing. See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section B, Spouses of Military Members.
[477] See 8 CFR 319.11(a). See 8 CFR 103.7(b)(1).
[478] See Chapter 2, Marriage and Marital Union for Naturalization.
[479] See INA 319(b). See 8 CFR 319.2(a).
[480] See 8 CFR 103.2(b)(5). See 8 CFR 319.1 and 8 CFR 319.2.

Along with his or her naturalization application, the applicant must submit evidence demonstrating the spouse's qualifying employment abroad.[481]

Such evidence may include:

- The name of the employer and either the nature of the employer's business or the ministerial, religious, or missionary activity in which the employer is engaged;
- Whether the employing entity is owned in whole or in part by United States interests;
- Whether the employing entity is engaged in whole or in part in the development of the foreign trade and commerce of the United States;
- The nature of the activity in which the citizen spouse is engaged; and
- The anticipated period of employment abroad.

*Evidence of Applicant's Intent to Reside Abroad with Citizen Spouse and Return to the United States Upon Termination of Qualifying Employment*

Along with his or her naturalization application, an applicant for naturalization under INA 319(b) must submit a statement describing his or her intent to reside abroad with the citizen spouse and his or her intent to take up residence within the United States immediately upon the termination of such employment abroad of the citizen spouse.[482]

## Chapter 5: Conditional Permanent Resident Spouses and Naturalization

### A. General Requirements for Conditional Permanent Residents

Since 1986, certain spouses of U.S. citizens have been admitted to the United States as LPRs on a conditional basis for a period of two years.[483] In general, a conditional permanent resident (CPR) must jointly file with his or her petitioning spouse a Petition to Remove Conditions on Residence (Form I-751) with USCIS during the 90-day period immediately preceding the second anniversary of his or her admission as a CPR in order to remove the conditions.[484] An approval of a petition to remove conditions demonstrates the bona fides of the marital relationship.

In order for USCIS to approve the petition to remove conditions, the CPR must establish that:

- The marriage upon which the CPR admitted to the United States was valid;

[481] See INA 319(b). See 8 CFR 319.11(a).
[482] See 8 CFR 319.2(a)(4).
[483] See INA 216. See Immigration Marriage Fraud Amendments of 1986, Pub. L. 99-639 (November 10, 1986). The time period spent as a CPR counts toward the satisfaction of the continuous residence and physical presence requirements for naturalization. See INA 216(e).
[484] See INA 216(c), INA 216(d), and INA 216(e). See H.R. REP. 99-906, 1986 U.S.C.C.A.N. 5978.

- The marriage has not been terminated; and
- The marriage was not entered into for purposes of evading the immigration laws of the United States.[485]

In general, USCIS requires that an applicant for naturalization must have an approved petition to remove conditions before an officer adjudicates the naturalization application. However, certain CPRs may be eligible for naturalization without filing a petition or having the conditions removed if applying for naturalization on the basis of:

- Marriage to a U.S. citizen employed abroad; or
- Qualifying military service.[486]

**B. Spouses who Must Have an Approved Petition Prior to Naturalization**

In all cases, a CPR applying for naturalization on the basis of marriage must have an approved petition prior to naturalization if the CPR:

- Has a pending petition to remove conditions at the time of filing the Application for Naturalization; or

- Reaches the 90-day period to file the petition to remove conditions prior to taking the Oath of Allegiance.[487]

1. Spouses who Reach Petition Filing Period Prior to Naturalization

In most cases, the 90-day period for filing the petition to remove conditions will have passed prior to an applicant becoming eligible to apply for naturalization. However, in some cases involving applicants whose citizen spouse is employed abroad and in cases in which a late filing of the petition to remove conditions is permitted, the 90-day filing period will start after filing for naturalization.

Under these circumstances, the applicant must file the petition to remove conditions and the petition must be adjudicated prior to or concurrently with the naturalization application.

2. Spouses with Pending Petitions and Naturalization Applications

An application for naturalization may not be approved if there is a pending petition for removal of conditions. If an applicant's petition to remove conditions is pending at the time of filing or is filed prior to the interview, USCIS will adjudicate the petition to remove conditions prior to or concurrently with the adjudication of the naturalization application.[488]

3. Failure to File or Denial of the Petition to Remove Conditions

[485] See INA 216(d)(1).
[486] See Section C, Spouses Eligible to Naturalize without Filing Petition to Remove Conditions.
[487] See INA 216(d)(2).
[488] An officer should conduct the naturalization examination even if the petition to remove conditions is not in the CPR spouse's A-file. The officer should follow internal procedures to request the petition. The officer must not approve the CPR spouse's naturalization application until the officer has reviewed and approved the petition to remove conditions.

The CPR status of an applicant is terminated and he or she must be placed into removal proceedings if:

- The applicant fails to file the petition to remove conditions; or
- If the petition to remove conditions is filed, but the petition is denied.[489]

**C. Spouses Eligible to Naturalize without Filing Petition to Remove Conditions**

1. Conditional Residents Filing on the Basis of Qualifying Military Service

Applicants for naturalization who qualify on the basis of honorable military service in periods of hostilities may be naturalized whether or not they have been lawfully admitted for permanent residence.[490] For this reason, such applicants are not required to comply with all of the requirements for admission to the United States, including the requirements for removal of conditions.

Accordingly, CPRs who are filing on the basis of such qualifying military service are not required to file a petition to remove conditions and may be naturalized without the removal of conditions from their permanent resident status.

2. Conditional Residents Filing as the Spouse of a U.S. Citizen Employed Abroad

A spouse of a U.S. citizen employed abroad based on authorized employment is not required to have any specific period of residence or physical presence in order to naturalize.[491] Consequently, a CPR spouse is not required to file the petition to remove conditions if the spouse files his or her naturalization application before he or she reaches the 90-day filing period to remove the conditions on residence.[492]

A CPR spouse of a U.S. citizen employed abroad may naturalize without filing a petition to remove conditions if:

- The CPR spouse has been a CPR for less than one year and nine months; and

- The CPR spouse does not reach the 90-day filing period for the petition to remove conditions prior to the final adjudication of his or her naturalization application or the time of the Oath of Allegiance.[493]

Even though the CPR spouse is not required to file the petition to remove conditions, he or she must satisfy the substantive requirements for removal of the conditions.[494] Therefore, the CPR spouse must establish that:

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[489] See INA 216(c)(2) and INA 216(c)(3).
[490] See INA 329. See Part I, Military Members and their Families, Chapter 3, Military Service during Hostilities (INA 329), Section F, Conditional Permanent Residence and Naturalization during Hostilities.
[491] See INA 319(b). See 8 CFR 319.2.
[492] See INA 216(d)(2). Additionally, any conditional permanent resident who is otherwise eligible for naturalization under INA 329 (based on military service), and who is not required to be an LPR as provided for in INA 329, is exempt from all of the requirements of INA 216. See Part I, Military Members and their Families, Chapter 3, Military Service during Hostilities (INA 329).
[493] If the CPR spouse reaches the 90-day filing period prior to taking the Oath of Allegiance, the applicant must file the petition to remove conditions and it must be adjudicated prior to the taking of the Oath of Allegiance. See INA 319(b).
[494] See INA 319(b) and INA 318. An applicant must satisfy all naturalization requirements, including establishing he or she has been lawfully admitted for permanent residence in accordance with all applicable provisions of the INA.

- The marriage was entered into in accordance with the laws of the place where the marriage occurred;
- The marriage has not been judicially annulled or terminated;
- The marriage was not entered into for the purpose of procuring an alien's admission as an immigrant; and
- No fee or other consideration was given (other than attorney's fees) for filing the immigrant or fiancé(e) visa petition that forms the basis for admission to the United States.[495]

An officer must not approve a CPR spouse's naturalization application unless the spouse meets these requirements.[496]

**D. Conditional Permanent Residents Admitted as Entrepreneurs**

If a CPR spouse is admitted as alien entrepreneur,[497] USCIS will make a determination on the CPR's petition to remove conditions before approving the CPR's naturalization application.

[495] See INA 216. See 8 CFR 216.4(c).
[496] See INA 319(b) and INA 318. An applicant must satisfy all naturalization requirements, including establishing he or she has been lawfully admitted for permanent residence in accordance with all applicable provisions.
[497] See INA 216A (EB-5 alien entrepreneurs).

# PART H – CHILDREN OF U.S. CITIZENS

## Chapter 1: Purpose and Background

### A. Purpose

United States laws allow for children to acquire U.S. citizenship other than through birth in the United States.[498] Persons who were born outside of the United States to a U.S. citizen parent or parents may acquire or derive U.S. citizenship at birth. Persons may also acquire citizenship after birth, but before the age of 18, through their U.S. citizen parents.

Previously, acquisition of citizenship generally related to those persons who became U.S. citizens at the time of birth, and derivation of citizenship to those who became U.S. citizens after birth due to the naturalization of a parent.

In general, current nationality laws only refer to acquisition of citizenship for persons who automatically become U.S. citizens either at the time of birth or after. In general, a person must meet the applicable definition of child at the time he or she acquires citizenship and must be under 18 years of age.

### B. Background

The law in effect at the time of birth determines whether someone born outside the United States to a U.S. citizen parent or parents is a U.S. citizen at birth. In general, these laws require a combination of at least one parent being a U.S. citizen when the child was born and having lived in the United States for a period of time. In addition, children born abroad may become U.S. citizens after birth. Citizenship laws have changed extensively over time with two major changes coming into effect in 1978 and 2001.

Prior to the Act of October 10, 1978, U.S. citizens who had acquired citizenship through birth abroad to one citizen parent had to meet certain physical presence requirements in order to retain citizenship.[499] This legislation removed all retention requirements. Prior to the Child Citizenship Act of 2000 (CCA), effective February 27, 2001, the INA had two provisions for derivation of citizenship.[500] The CCA removed one provision and revised the other making it the only method for children under 18 years of age in the United States to automatically acquire citizenship after birth.[501]

### C. Table of General Provisions

[498] See INA 301, INA 320, and INA 322.
[499] See Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046.
[500] See the Child Citizenship Act of 2000, Sec. 101, Pub. L. 106-395, 114 Stat 1631, October 30, 2000 (Effective February 27, 2001).
[501] The CCA amended INA 320 and removed INA 321 to create only one statutory provision and method for children in the United States to automatically acquire citizenship after birth. See INA 320. See Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320).

A child born outside of the United States may acquire U.S. citizenship through various ways. The table below serves as a quick reference guide to the acquisition of citizenship provisions.[502] The chapters that follow the table provide further guidance.

| General Provisions for Acquisition of Citizenship for Children Born Abroad | | | |
|---|---|---|---|
| **INA Section** | **Status of Parents** | **Residence or Physical Presence Requirements** | **Child is a U.S. Citizen** |
| 301(c) | Both parents are U.S. citizens | At least one U.S. citizen parent has resided in the United States or outlying possession prior to child's birth | At Birth |
| 301(d) | One parent is a U.S. citizen; other parent is U.S. national | U.S. citizen parent was physically present in the United States or its outlying possession for one year prior to child's birth | At Birth |
| 301(f) | Unknown parentage | Child is found in the United States while under 5 years of age | At Birth |
| 301(g) | One parent is a U.S. citizen; other parent is a foreign national | U.S. citizen parent was physically present in United States or its outlying possessions for at least 5 years (2 after age 14) prior to child's birth | At Birth |
| 301(h) | Mother is a U.S. citizen and father is a foreign national | U.S. citizen mother resided in the United States prior to child's birth | At Birth (only applies to birth prior to 1934) |
| 309(a) | Out of wedlock birth, claiming citizenship through father | Requirements depend on applicable provision: INA 301(c), (d), (e), or (g) | At Birth (Out of wedlock) |
| 309(c) | Out of wedlock birth, claiming citizenship through mother | U.S. citizen mother physically present in the U.S. or its outlying possessions for one year prior to the child's birth | At Birth (for birth after December 23, 1952) |
| 320 | At least one parent is a U.S. citizen (through birth or naturalization) | Child resides in the United States as a lawful permanent resident | At Time Criteria is Met |
| 321 Repealed by CCA | Both parents naturalize, or in certain cases, one parent naturalizes | Child resides in the United States as a lawful permanent resident | At Time Criteria is Met |

[502] Except for the reference to INA 321, the references in the table are to the current statutory requirements for citizenship. Previous versions of the law may apply.

| General Provisions for Acquisition of Citizenship for Children Born Abroad | | | |
|---|---|---|---|
| **INA Section** | **Status of Parents** | **Residence or Physical Presence Requirements** | **Child is a U.S. Citizen** |
| 322 | At least one parent is a U.S. citizen (through birth or naturalization) | Child resides outside of the United States and child's parent (or grandparent) was physically present in the U.S. or its outlying possessions for at least 5 years (2 after age 14) | At Time Oath is Administered |

**D. Legal Authorities**

- INA 101(c) – Definition of child for citizenship and naturalization
- INA 301 – Nationals and citizens of the United States at birth
- INA 309 – Children born out of wedlock
- INA 320; 8 CFR 320 – Children residing permanently in the United States
- INA 322; 8 CFR 322 – Children residing outside the United States

## Chapter 2: Definition of Child for Citizenship and Naturalization

### A. Definition of Child

The definition of "child" for citizenship and naturalization differs from the definition used for other parts of the INA.[503] The INA provides two different definitions of "child."

- One definition of child applies to approval of visa petitions, issuance of visas, and similar issues.[504]
- The other definition of child applies to citizenship and naturalization.[505]

The most significant difference between the two definitions of child is that a stepchild is not included in the definition relating to citizenship and naturalization. Although a stepchild may be the stepparent's "child" for purposes of visa issuance, the stepchild is not the stepparent's "child" for purposes of citizenship and naturalization. A stepchild is ineligible for citizenship or naturalization through the U.S. citizen stepparent, unless the stepchild is adopted and the adoption meets certain requirements.[506]

In general, a child for the citizenship and naturalization provisions is:

- An unmarried person under 21 years of age; and
- The biological, legitimated,[507] or adopted son or daughter of a U.S. citizen.

[503] See INA 101(b) and INA 101(c).
[504] See INA 101(b).
[505] See INA 101(c).
[506] See Section C, Adopted Child.
[507] A child can be legitimated under the laws of the child's residence or domicile, or under the law of the father's residence or domicile. See INA 101(c). A person's "residence" is his or her place of general abode and principal, actual dwelling place without regard to

In addition to meeting the definition of child, the child must also meet the particular requirements of the specific citizenship or naturalization provision, which may include references to birth in wedlock or out of wedlock, and which may require that certain conditions be met by 18 years of age, instead of 21.[508]

**B. Legitimated Child[509]**

The law of the child's residence or domicile, or the law of the father's residence or domicile, is the relevant law to determine whether a child has been legitimated. If the father or child had various residences before the child reached 18 or 21 years of age (depending on the applicable provision), then all the relevant laws of the places of residence must be considered.

A child is considered the legitimated child of his or her parent if:

- The child is legitimated in the United States or abroad under the law of the child's residence or domicile, or under the law of the child's father's residence or domicile;[510]
- The child is legitimated as such before he or she reaches 16 years of age (except for certain cases where the child may be legitimated before reaching 18 years of age);[511] and
- The child is in the legal custody of the legitimating parent or parents at the time of the legitimation.[512]

An officer reviews the specific facts of a case when determining whether a child has been legitimated accordingly and to determine the appropriate citizenship provision.

**C. Adopted Child**

An adopted child means that the child has been adopted through a full, final, and complete adoption.[513] This includes certain siblings of adopted children who are permitted to be adopted while under 18 years of age.[514]

A child is an adopted son or daughter of his or her U.S. citizen parent if the following conditions are met:

- The child is adopted in the United States or abroad;

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intent. A person's "domicile" refers to a person's legal permanent home and principal establishment, to include an intent to return if absent. In most cases, a person's residence is the same as a person's domicile.

[508] See Chapter 3, United States Citizens at Birth (INA 301 and 309). See Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320). See Chapter 5, Child Residing Outside of the United States (INA 322).

[509] See INA 101(c).

[510] See INA 101(a)(33), which defines the term "residence" as the "place of general abode." The place of general abode of a person means his or her "principal, actual dwelling place in fact, without regard to intent."

[511] See INA 309. See INA 101(b)(1)(E)(ii) and INA 101(b)(1)(F)(ii).

[512] See INA 101(c)(1).

[513] See 8 CFR 320.1. See 8 CFR 322.1.

[514] See INA 101(b)(1)(E)(ii).

- The child is adopted before he or she reaches 16 years of age (except for certain cases where the child may be adopted before reaching 18 years of age);[515] and

- The child is in the legal custody of the adopting parent or parents at the time of the adoption.[516]

In general, the adoption must:

- Be valid under the law of the country or place granting the adoption;

- Create a legal permanent parent-child relationship between a child and someone who is not already the child's legal parent; and

- Terminate the legal parent-child relationship with the prior legal parent(s).[517]

**D. Orphan[518]**

In general, the definition for adopted children applies to adopted orphans. USCIS, however, does not consider an orphan adopted if any of the following conditions apply:

- The foreign adoption was not full and final;

- The foreign adoption was defective; or

- An unmarried U.S. citizen parent or a U.S. citizen parent and spouse jointly did not see and observe the child in person prior to or during the foreign adoption proceedings.[519]

If the orphan is not considered adopted:

- The child must be must be readopted in the United States; or
- The child must be adopted while under 16 years of age and must have been residing in the legal custody of the adopting parent or parents for at least two years.[520]

In all cases, the condition that the child must have been residing in the legal custody of the adopting parent or parents is not required if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household.

## Chapter 3: United States Citizens at Birth (INA 301 and 309)

[515] See INA 101(b)(1)(E)(ii) and INA 101(b)(1)(F)(ii).
[516] See INA 101(c)(1).
[517] See Adjudicator's Field Manual, Chapter 21.15, Adoption as a Basis for Immigration Benefits.
[518] See INA 101(b)(1).
[519] See 8 CFR 320.1. See 8 CFR 322.1.
[520] See INA 101(b)(1)(E).

### A. General Requirements for Acquisition of Citizenship at Birth

A person born in the United States who is subject to the jurisdiction of the United States is a U.S. citizen at birth, to include a person born to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe.[521]

In general, a person born outside of the United States may acquire citizenship at birth if:

- One parent is a U.S. citizen; and
- The U.S. citizen parent meets certain residence or physical presence requirements in the United States or an outlying possession prior to the person's birth in accordance with the pertinent provision.[522]

Until the Act of October 10, 1978, persons who had acquired U.S. citizenship through birth outside of the United States to one U.S. citizen parent had to meet certain physical presence requirements to retain their citizenship. This legislation eliminated retention requirements for persons who were born after October 10, 1952. There may be cases where a person who was born before that date, and therefore subject to the retention requirements, may have failed to retain citizenship.[523]

An officer should determine whether a person acquired citizenship at birth by referring to the applicable statutory provisions and conditions that existed at the time of the person's birth. These provisions have been modified extensively over the years.[524] The following sections provide the current law.

### B. Child Born in Wedlock[525]

1. Child of Two U.S. Citizen Parents[526]

A child born outside of the United States and its outlying possessions acquires citizenship at birth if at the time of birth:

- Both of the child's parents are U.S. citizens; and
- At least one parent had resided in the United States or one of its outlying possessions.

2. Child of U.S. Citizen Parent and U.S. National[527]

A child born outside of the United States and its outlying possessions acquires citizenship at birth if at the time of birth:

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[521] See INA 301(a) and INA 301(b). Children of certain diplomats who are born in the United States are not U.S. citizens at birth because they are not subject to the jurisdiction of the United States. See 8 CFR 101.3.
[522] Any time spent abroad in the U.S. armed forces or other qualifying organizations counts towards that physical presence requirement. See INA 301(g).
[523] The Act of October 10, 1978, Pub. L. 95-432, repealed the retention requirements of former INA 301(b). The amending legislation was prospective only and did not restore citizenship to anyone who, prior to its enactment, had lost citizenship for failing to meet the retention requirements.
[524] Officers should use the Nationality Charts to assist with the adjudication of these applications.
[525] See INA 301. See Nationality Chart 1.
[526] See INA 301(c).
[527] See INA 301(d).

- One parent is a U.S. citizen and the other parent is a U.S. national; and
- The U.S. citizen parent was physically present in the United States or one of its outlying possessions for a continuous period of at least one year.

3. Child of U.S. Citizen Parent and Foreign National Parent[528]

A child born outside of the United States and its outlying possessions acquires citizenship at birth if at the time of birth:

- One parent is a foreign national and the other parent is a U.S. citizen; and
- The U.S. citizen parent was physically present in the United States for at least 5 years, including at least 2 years after 14 years of age.

Time abroad counts as physical presence in the United States if the time abroad was:

- As a member of the U.S. armed forces in honorable status;
- Under the employment of the U.S. government or other qualifying organizations; or
- As a dependent unmarried son or daughter of such persons.

4. Child of a U.S. Citizen Mother and Foreign National Father[529]

A child born outside of the United States and its outlying possessions acquires citizenship at birth if:

- The child was born before noon (Eastern Standard Time) May 24, 1934;
- The child's father is a foreign national;
- The child's mother was a U.S. citizen at the time of the child's birth; and
- The child's U.S. citizen mother resided in the United States prior to the child's birth.

**C. Child Born Out of Wedlock[530]**

*Child of a U.S. Citizen Father*

The provisions listed above[531] for a child born in wedlock apply to a child born out of wedlock outside of the United States claiming citizenship through a U.S. citizen father if:

- A blood relationship between the child and the father is established by clear and convincing evidence;

- The child's father was a U.S. citizen at the time of the child's birth;

- The child's father (unless deceased) has agreed in writing to provide financial support for the child until the child reaches 18 years of age; and

[528] See INA 301(g).
[529] See INA 301(h).
[530] See INA 309. See Nationality Chart 2.
[531] See INA 301 (c), INA 301(d), INA 301(e), and INA 301(g).

- One of the following criteria is met before the child reaches 18 years of age:
  - The child is legitimated under the law of his or her residence or domicile;
  - The father acknowledges in writing and under oath the paternity of the child; or
  - The paternity of the child is established by adjudication of a competent court.

In addition, the residence or physical presence requirements contained in the relevant paragraph of INA 301 continue to apply to children born out of wedlock claiming citizenship through their fathers.

*Child of a U.S. Citizen Mother*

A child born out of wedlock outside of the United States and its outlying possessions acquires citizenship at birth if:

- The child was born after December 23, 1952;
- The child's mother was a U.S. citizen at the time of the child's birth; and
- The child's U.S. citizen mother was physically present in the United States or outlying possession for one continuous year prior to the child's birth.[532]

**D. Application for Certificate of Citizenship (Form N-600)**

A person born abroad who acquires U.S. citizenship at birth is not required to file an Application for Certificate of Citizenship (Form N-600). A person who seeks documentation of such status, however, must submit an application to obtain a Certificate of Citizenship from USCIS. A person may also apply for a U.S. Passport with the Department of State to serve as evidence of his or her U.S. citizenship.[533]

A person who is at least 18 years of age may submit the Application for Certificate of Citizenship on his or her own behalf. If the application is for a child who has not reached 18 years of age, the child's U.S. citizen parent or legal guardian must submit the application.[534]

USCIS will issue a proof of U.S. citizenship in the form of a Certificate of Citizenship if the Application for Certificate of Citizenship is approved and the person takes the Oath of Allegiance, if required to do so.[535]

**E. Citizenship Interview and Waiver**

In general, an applicant must appear in person for an interview before a USCIS officer after filing an Application for Certificate of Citizenship. This includes the U.S. citizen parent or legal guardian if the application is filed on behalf of a child under 18 years of age.[536] USCIS, however, may waive the interview requirement if all the

[532] See INA 309(c).
[533] See 8 CFR 341.1.
[534] See 8 CFR 341.1.
[535] See Section F, Decision and Oath of Allegiance. See 8 CFR 341.5(b).
[536] See 8 CFR 341.2(a)(2).

required documentation necessary to establish the applicant's eligibility is already included in USCIS administrative records, or if the application is accompanied by one of the following:

- Department of State Form FS-240 (Consular Report of Birth Abroad of a U.S. Citizen);
- Applicant's unexpired U.S. Passport issued initially for a full five or ten-year period; or
- Certificate of Naturalization of the applicant's parent or parents.[537]

**F. Decision and Oath of Allegiance**

1. Approval of Application, Oath of Allegiance, and Waiver for Children under 14 Years of Age

If an officer approves the Application for Certificate of Citizenship, USCIS administers the Oath of Allegiance before issuing a Certificate of Citizenship.[538]

However, the INA permits USCIS to waive the taking of the Oath of Allegiance if USCIS determines the person is unable to understand its meaning.[539] USCIS has determined that children under the age of 14 are generally unable to understand the meaning of the oath.

Accordingly, USCIS waives the oath requirement for a child younger than 14 years of age. If USCIS waives the oath requirement, USCIS issues a Certificate of Citizenship after the officer approves the application.

2. Denial of Application

If an officer denies the Certificate of Citizenship application, the officer must notify the applicant in writing of the reasons for denial and include information on the right to appeal in the notice.[540] An applicant may file an appeal within 30 calendar days after service of the decision (33 days if the decision was mailed).

## Chapter 4: Automatic Acquisition of Citizenship after Birth (INA 320)

### A. General Requirements: Biological, Legitimated, or Adopted Child Automatically Acquiring Citizenship after Birth[541]

A child born outside of the United States automatically becomes a U.S. citizen when all of the following conditions have been met on or after February 27, 2001:[542]

- The child has at least one parent, including an adoptive parent[543] who is a U.S. citizen by birth or through naturalization;

- The child is under 18 years of age;

[537] See 8 CFR 341.2(a).
[538] See INA 337(a). See 8 CFR 341.5(b). See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance.
[539] See INA 337(a). See 8 CFR 341.5(b).
[540] See 8 CFR 341.5(d) and 8 CFR 103.3(a).
[541] See INA 320. See Nationality Chart 3.
[542] February 27, 2001 is the effective date for these CCA amendments.
[543] If the requirements of INA 101(b)(1)(E), or INA 101(b)(1)(F), or INA 101(b)(1)(G) are met.

- The child is an LPR; and
- The child is residing in the United States in the legal and physical custody of the U.S. citizen parent.[544]

A stepchild who has not been adopted does not qualify for citizenship under this provision.

**B. Legal and Physical Custody of U.S. Citizen Parent**

Legal custody refers to the responsibility for and authority over a child. For purposes of this provision, USCIS presumes that a U.S. citizen parent has legal custody of a child and recognizes that the parent has lawful authority over the child, absent evidence to the contrary, in all of the following scenarios:[545]

- A biological child who currently resides with both biological parents who are married to each other, living in marital union, and not separated;
- A biological child who currently resides with a surviving biological parent, if the other parent is deceased;
- A biological child born out of wedlock who has been legitimated and currently resides with the parent;
- An adopted child with a final adoption decree who currently resides with the adoptive U.S. citizen parent;[546]
- A child of divorced or legally separated parents where a court of law or other appropriate government entity has awarded primary care, control, and maintenance of the child to a parent under the laws of the state or country of residence.

USCIS considers a U.S. citizen parent who has been awarded "joint custody" to have legal custody of a child. There may be other factual circumstances under which USCIS may find the U.S. citizen parent to have legal custody to be determined on a case-by-case basis.

**C. Acquisition of Citizenship Prior to Child Citizenship Act of 2000**

The CCA applies only to those children born on or after February 27, 2001, or those who were under 18 years of age as of that date. Persons who were 18 years of age or older on February 27, 2001, do not qualify for citizenship under INA 320. For such persons, the law in effect at the time the last condition was met before reaching 18 years of age is the relevant law to determine whether they acquired citizenship.[547]

In general, former INA 321 applies to children who were already 18 years of age on February 27, 2001, but who were under 18 years of age in 1952, when the current Immigration and Nationality Act became effective.

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[544] See INA 320. See 8 CFR 320.2.
[545] See 8 CFR 320.1.
[546] If the requirements of INA 101(b)(1)(E), or INA 101(b)(1)(F), or INA 101(b)(1)(G) are met.
[547] See Chapter 3, United States Citizens at Birth (INA 301 and 309).

In general, a child born outside of the United States to two foreign national parents, or one foreign national parent and one U.S. citizen parent who subsequently lost U.S. citizenship, acquires citizenship under former INA 321 if:

- The child's parent(s) meet one of the following conditions:
  - Both parents naturalize;
  - One surviving parent naturalizes if the other parent is deceased;
  - One parent naturalizes who has legal custody of the child if there is a legal separation of the parents; or
  - The child's mother naturalizes if the child was born out of wedlock and paternity has not been established by legitimation

- The child is under 18 years of age when his or her parent(s) naturalize; and

- The child is residing in the United States pursuant to a lawful admission for permanent residence at the time the parent(s) naturalized or thereafter begins to reside permanently in the United States.

As originally enacted in 1952, this section did not apply to adopted children of naturalized citizens.[548] Beginning on October 5, 1978, however, INA 321 became generally applicable to an adopted child if the child was residing in the United States at the time the adoptive parent or parents naturalized and the child was in the custody of his or her adoptive parents pursuant to a lawful admission for permanent residence.[549]

**D. Application for Certificate of Citizenship (Form N-600)**

A person who automatically obtains citizenship is not required to file an Application for Certificate of Citizenship (Form N-600). A person who seeks documentation of such status, however, must submit an application to obtain a Certificate of Citizenship from USCIS. A person may also apply for a U.S. Passport with the Department of State to serve as evidence of his or her U.S. citizenship.

A person who is at least 18 years of age may submit the Application for Certificate of Citizenship on his or her own behalf. If the application is for a child who has not reached 18 years of age, the child's U.S. citizen biological parent, adoptive parent, or legal guardian must submit the application.[550]

USCIS will issue proof of U.S. citizenship in the form of a Certificate of Citizenship if the Application for Certificate of Citizenship is approved and the person takes the Oath of Allegiance, if required to do so.[551]

**E. Documentation and Evidence**

The applicant must submit the following required documents unless such documents are already contained in USCIS administrative record or do not apply:[552]

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[548] See INA of 1952, Sec. 321(b), 66 Stat. at 245.
[549] See Sec. 5 of the Act of October 5, 1978, Pub. L. 95-417. The 1978 amendment limited this benefit to a child adopted while under 16 years of age. This restriction was removed in 1981 by the Act of December 21, 1981 (Pub. L. 97-116) but is also included in the definition of "child" in INA 101(c).
[550] See 8 CFR 320.3(a).
[551] See Section G, Decision and Oath of Allegiance. See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance.
[552] See 8 CFR 320.3(b).

- The child's birth certificate or record.

- Marriage certificate of child's parents, if applicable.

- Proof of termination of any previous marriage of each parent if either parent was previously married and divorced or widowed, for example:
  - Divorce Decree, or
  - Death Certificate.

- Evidence of United States citizenship of parent:
  - Birth Certificate,
  - Naturalization Certificate,
  - FS-240, Consular Report of Birth Abroad,
  - A valid unexpired United States Passport, or
  - Certificate of Citizenship.

- Documents verifying legitimation according to the laws of the child's residence or domicile or father's residence or domicile if the child was born out of wedlock.

- Documentation of legal custody in the case of divorce, legal separation, or adoption.

- Copy of Permanent Resident Card or Alien Registration Receipt Card or other evidence of lawful permanent resident status, such as an I-551 stamp in a valid foreign passport or travel document issued by USCIS.

- Copy of the full, final adoption decree, if applicable:

  - For an adopted child (not orphans or Hague Convention adoptees), evidence that the adoption took place before the age of 16 (or 18, as appropriate) and that the adoptive parent(s) had custody of, and lived with, the child for at least two years.[553]

  - For an adopted orphan, a copy of notice of approval of the orphan petition and supporting documentation for such petition (except the home study) or evidence that the child has been admitted for lawful permanent residence in the United States with the immigrant classification of IR-3 (Orphan adopted abroad by a U.S. citizen) or IR-4 (Orphan to be adopted by a U.S. citizen).[554]

  - For a Hague Convention adoptee, a copy of the notice of approval of Convention adoptee petition and its supporting documentation, or evidence that the child has been admitted for

[553] See INA 101(b)(1)(E). See Chapter 2, Definition of Child for Citizenship and Naturalization, Section C, Adopted Child.

[554] If admitted as an IR-4 because there was no adoption abroad, the parent(s) must have completed the adoption in the United States. If admitted as an IR-4 because the parent(s) obtained the foreign adoption without having seen the child, the parent(s) must establish that they have either "readopted" the child or obtained recognition of the foreign adoption in the State of residence (this requirement can be waived if there is a statute or precedent decision that clearly shows that the foreign adoption is recognized in the State of residence). See 8 CFR 320.1.

lawful permanent residence in the United States with the immigrant classification of IH-3 (Hague Convention Orphan adopted abroad by a U.S. citizen) or IH-4 (Hague Convention Orphan to be adopted by a U.S. citizen).[555]

– If the child was admitted as an LPR as an orphan or Hague Convention adoption[556] (this evidence may already be in the child's A-file).

- Evidence of all legal name changes, if applicable, for the child and U.S. citizen parent.

An applicant does not need to submit documents that were submitted in connection with:

- An immigrant visa application retained by the American Consulate for inclusion in the immigrant visa package; or

- An immigrant petition or application and included in a USCIS administrative file.

If necessary, an officer may continue the application to request additional documentation to make a decision on the application.

**F. Citizenship Interview and Waiver**

In general, an applicant must appear in person for an interview before a USCIS officer after filing an Application for Certificate of Citizenship. This includes the U.S. citizen parent or parents if the application is filed on behalf of a child under 18 years of age.[557] USCIS, however, may waive the interview requirement if all the required documentation necessary to establish the applicant's eligibility is already included in USCIS administrative records or if the required documentation is submitted along with the application.[558]

**G. Decision and Oath of Allegiance**

1. Approval of Application, Oath of Allegiance, and Waiver for Children under 14 Years of Age

If an officer approves the Application for Certificate of Citizenship, USCIS administers the Oath of Allegiance before issuing a Certificate of Citizenship.[559]

However, the INA permits USCIS to waive the taking of the Oath of Allegiance if USCIS determines the person is unable to understand its meaning.[560] USCIS has determined that children under the age of 14 are generally unable to understand the meaning of the oath.

Accordingly, USCIS waives the oath requirement for a child younger than 14 years of age. If USCIS waives the oath requirement, USCIS issues a Certificate of Citizenship after the officer approves the application.

[555] If admitted as an IH-4, the parent(s) must have completed the adoption in the United States.
[556] See INA 101(b)(1).
[557] See 8 CFR 320.4.
[558] See 8 CFR 341.2. See Section E, Documentation and Evidence.
[559] See 8 CFR 320.5(a) and 8 CFR 337.1. See INA 337. See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance.
[560] See INA 337(a). See 8 CFR 341.5(b).

2. Denial of Application

If an officer denies the Certificate of Citizenship application, the officer must notify the applicant in writing of the reasons for denial and include information on the right to appeal in the notice.[561] An applicant may file an appeal within 30 calendar days after service of the decision (33 days if the decision was mailed).

## Chapter 5: Child Residing Outside of the United States (INA 322)

### A. General Requirements: Biological, Legitimated, or Adopted Child Residing Outside the United States[562]

The CCA amended the INA to cover foreign-born children who did not automatically acquire citizenship under INA 320 and who reside outside the United States with a U.S. citizen parent.[563]
A biological, legitimated, or adopted child who regularly resides outside of the United States is eligible for naturalization if all of the following conditions have been met:

- The child has at least one U.S. citizen parent by birth or through naturalization, (including an adoptive parent).[564]
- The child's U.S. citizen parent or citizen grandparent meets certain physical presence requirements.[565]
- The child is under 18 years of age.
- The child is residing outside of the United States in the legal and physical custody of the U.S. citizen parent, or a person who does not object to the application if the U.S. citizen parent is deceased.
- The child is lawfully admitted, physically present, and maintaining a lawful status in the United States at the time the application is approved and time of naturalization.

There are certain exceptions to these requirements for children of U.S. citizens in the U.S. armed forces accompanying their parent abroad on official orders.

### B. Eligibility to Apply on the Child's Behalf

Typically, a child's U.S. citizen parent files a Certificate of Citizenship application on the child's behalf. If the U.S. citizen parent has died, the child's citizen grandparent or the child's U.S. citizen legal guardian may file the application on the child's behalf within five years of the parent's death.[566]

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[561] See 8 CFR 320.5(b) and 8 CFR 103.3(a).
[562] See Nationality Chart 4.
[563] See INA 322.
[564] Adoptive parent must meet requirements of either INA 101(b)(1)(E), INA 101(b)(1)(F), or INA 101(b)(1)(G).
[565] See Section C, Physical Presence of U.S. Citizen Parent or Grandparent.
[566] As of November 2, 2002, a U.S. citizen grandparent or U.S. citizen legal guardian became eligible to apply for naturalization under this provision on behalf of a child. See the 21st Century Department of Justice Appropriations Authorization Act for Fiscal 2002, Pub. L. 107-273 (November 2, 2002), which amended INA 322 to permit U.S. citizen grandparents or U.S. citizen legal guardians to apply for naturalization on behalf of a child if the child's U.S. citizen parent has died.

### C. Physical Presence of the U.S. Citizen Parent or Grandparent[567]

1. Physical Presence of Child's U.S. Citizen Parent

A child's U.S. citizen parent must meet the following physical presence requirements:

- The parent has been physically present in the United States or its outlying possessions for at least five years; and
- The parent met such physical presence for at least 2 years after he or she reached 14 years of age.

A parent's physical presence is calculated in the aggregate and includes time accrued in the United States during periods when the parent was not a U.S. citizen.

2. Exception for U.S. Citizen Member of the U.S. Armed Forces

The child's U.S. citizen service member parent may count any period of time he or she has resided abroad on official orders as physical presence in the United States.[568]

3. Reliance on Physical Presence of Child's U.S. Citizen Grandparent

If the child's parent does not meet the physical presence requirement, the child may rely on the physical presence of the child's U.S. citizen grandparent to meet the requirement. In such cases, the officer first must verify that the citizen grandparent, the citizen parent's mother or father, is a U.S. citizen at the time of filing. If the grandparent has died, the grandparent must have been a U.S. citizen and met the physical presence requirements at the time of his or her death.

Like in the case of the citizen parent, the officer also must ensure that:

- The U.S. citizen grandparent has been physically present in the United States or its outlying possessions for at least five years; and
- The U.S. citizen grandparent met such physical presence for at least 2 years after he or she reached 14 years of age.

Like the citizen parent, a grandparent's physical presence is calculated in the aggregate and includes time accrued in the United States during periods when the grandparent was not a U.S. citizen.

### D. Temporary Presence by Lawful Admission and Status in United States

[567] See INA 322(a)(2). See 8 CFR 322.2(a)(2).
[568] See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section C, Children of Military Members. See INA 322(d). See 8 CFR 322.2(c).

1. Temporary Presence and Status Requirements

In most cases, the citizenship process for a child residing abroad cannot take place solely overseas.

- The child is required to be lawfully admitted to United States, in any status, and be physically present in the United States;[569]
- The child is required to maintain the lawful status that he or she was admitted under while in the United States;[570] and
- The child is required to take the Oath of Allegiance in the United States unless the oath requirement is waived.[571]

2. Exception for Child of U.S. Citizen Service Member of the U.S. Armed Forces

Certain children of U.S. citizen members of the U.S. armed forces are not required to be lawfully admitted to or physically present in the United States.[572]

**E. Application for Citizenship and Issuance of Certificate under Section 322 (Form N-600K)**

A U.S. citizen parent of a biological, legitimated, or adopted child born outside of the United States who did not acquire citizenship automatically may file an Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K) for the child to become a U.S. citizen and obtain a Certificate of Citizenship. The application may be filed from outside of the United States.

If the U.S. citizen parent has died, the child's U.S. citizen grandparent or U.S. citizen legal guardian may submit the application, provided the application is filed not more than five years after the death of the U.S. citizen parent.[573]

The child of a U.S. citizen member of the U.S. armed forces accompanying his or her parent abroad on official orders may be eligible to complete all aspects of the naturalization proceedings abroad. This includes interviews, filings, oaths, ceremonies, or other proceedings relating to citizenship and naturalization.

**F. Documentation and Evidence**

The applicant must submit the following required documents unless such documents are already contained in USCIS administrative record or do not apply.[574]

- The child's birth certificate or record.

[569] See INA 322(a)(5). See 8 CFR 322.2(a)(5).
[570] See INA 322(a)(5).
[571] See INA 322(b). See Section G, Decision and Oath of Allegiance.
[572] See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits. See INA 322(d). See 8 CFR 322.2(c).
[573] See 8 CFR 322.3(a).
[574] See 8 CFR 322.3(b).

- Marriage certificate of child's parents, if applicable.

- Proof of termination of any previous marriage of each parent if either parent was previously married and divorced or widowed, for example:
  - Divorce Decree, or
  - Death Certificate.

- Evidence of United States citizenship of parent:
  - Birth Certificate,
  - Naturalization Certificate,
  - FS-240, Consular Report of Birth Abroad,
  - A valid unexpired United States Passport, or
  - Certificate of Citizenship.

- Documents verifying legitimation according to the laws of the child's residence or domicile or father's residence or domicile if the child was born out of wedlock.

- Documentation of legal custody in the case of divorce, legal separation, or adoption.

- Documentation establishing that the U.S. citizen parent or U.S. citizen grandparent meets the required physical presence requirements, such as school records, military records, utility bills, medical records, deeds, mortgages, contracts, insurance policies, receipts, or attestations by churches, unions, or other organizations.

- Evidence that the child is present in the United States pursuant to a lawful admission and is maintaining such lawful status or evidence establishing that the child qualifies for an exception to these requirements as provided for children of members of the U.S. armed forces.[575] Such evidence may be presented at the time of interview when appropriate.

- Copy of the full, final adoption decree, if applicable

  - For an adopted child (not orphans or Hague Convention adoptees), evidence that the adoption took place before the age of 16 (or 18, as appropriate) and that the adoptive parents have had custody of, and lived with, the child for at least two years.[576]

  - For an adopted orphan, a copy of notice of approval of the orphan petition and supporting documentation for such petition (except the home study) or evidence that the child has been admitted for lawful permanent residence in the United States with the immigrant classification of IR-3 (Orphan adopted abroad by a U.S. citizen) or IR-4 (Orphan to be adopted by a U.S. citizen).[577]

[575] See INA 322(d)(2).
[576] See INA 101(b)(1)(E). See Chapter 2, Definition of Child for Citizenship and Naturalization, Section C, Adopted Child.
[577] If admitted as an IR-4 because there was no adoption abroad, the parent(s) must have completed the adoption in the United States. If admitted as an IR-4 because the parent(s) obtained the foreign adoption without having seen the child, the parent(s) must establish that they have either “readopted” the child or obtained recognition of the foreign adoption in the State of residence (this requirement

  - For a Hague Convention adoptee applying under INA 322, a copy of the notice of approval of Convention adoptee petition and its supporting documentation, or evidence that the child has been admitted for lawful permanent residence in the United States with the immigrant classification of IH-3 (Hague Convention Orphan adopted abroad by a U.S. citizen) or IH-4 (Hague Convention Orphan to be adopted by a U.S. citizen).[578]

- Evidence of all legal name changes, if applicable, for the child, U.S. citizen parent, U.S. citizen grandparent or U.S. citizen legal guardian.

An applicant does not need to submit documents that were submitted in connection with:

- An immigrant visa application retained by the American Consulate for inclusion in the immigrant visa package, or

- An immigrant petition or application and included in a USCIS administrative file.

If necessary, an officer may continue the application to request additional documentation to make a decision on the application.

**G. Citizenship Interview and Waiver**

In general, an applicant must appear in person for an interview before a USCIS officer after filing an Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K). This includes the U.S. citizen parent or parents if the application is filed on behalf of a child under 18 years of age.[579] USCIS, however, waives the interview requirement if all the required documentation necessary to establish the applicant's eligibility is already included in USCIS administrative records or if any of the following documentation is submitted along with the application.[580]

**H. Decision and Oath of Allegiance**

1. Approval of Application, Oath of Allegiance, and Waiver for Children under 14 Years of Age

If an officer approves the Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K), USCIS administers the Oath of Allegiance before issuing a Certificate of Citizenship.[581]

However, the INA permits USCIS to waive the taking of the Oath of Allegiance if USCIS determines the person is unable to understand its meaning.[582] USCIS has determined that children under the age of 14 are generally unable to understand the meaning of the oath.

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can be waived if there is a statute or precedent decision that clearly shows that the foreign adoption is recognized in the State of residence). See 8 CFR 320.1.

[578] If admitted as an IH-4, the parent(s) must have completed the adoption in the United States.

[579] See 8 CFR 320.4.

[580] See 8 CFR 341.2. See Section F, Documentation and Evidence.

[581] See 8 CFR 322.5(a) and 8 CFR 337.1. See INA 337. See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance.

[582] See INA 337(a). See 8 CFR 341.5(b).

Accordingly, USCIS waives the oath requirement for a child younger than 14 years of age. If USCIS waives the oath requirement, USCIS issues a Certificate of Citizenship after the officer approves the application.

2. Denial of Application

If an officer denies the Certificate of Citizenship application, the officer must notify the applicant in writing of the reasons for denial and include information on the right to appeal in the notice.[583] An applicant may file an appeal within 30 days of service of the decision.

## Chapter 6: Special Provisions for the Naturalization of Children

### A. Battered Children

The child of a U.S. citizen may naturalize if he or she obtained LPR status on the basis of having been battered or subjected to extreme cruelty by their citizen spouse or parent.[584]

### B. Surviving Child of Members of the Armed Forces

The surviving child of a member of the U.S. armed forces may naturalize if his or her citizen parent dies during a period of honorable military service.[585]

[583] See 8 CFR 320.5(b) and 8 CFR 103.3(a).
[584] For a more thorough discussion of this provision, see Part G, Spouses of U.S. Citizens, Chapter 3, Spouses of U.S. Citizens Residing in the United States, Section F, Eligibility for Persons Subjected to Battering or Extreme Cruelty.
[585] For a more detailed discussion of this provision, see Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section D, Naturalization for Surviving Spouse, Child, or Parent of Service Member (INA 319(d)).

# PART I – MILITARY MEMBERS AND THEIR FAMILIES

## Chapter 1: Purpose and Background

### A. Purpose

Service members, certain veterans of the U.S. armed forces, and certain military family members may be eligible to become citizens of the United States[586] under special provisions of the Immigration and Nationality Act (INA), to include expedited and overseas processing.

There are general requirements and qualifications that an applicant for naturalization must meet in order to become a U.S. citizen. These general requirements include:

- Good Moral Character (GMC)
- Residence and physical presence in the U.S.
- Knowledge of the English language
- Knowledge of U.S. government and history
- Attachment to the principles of the U.S. Constitution

The periods of residence and physical presence in the United States normally required for naturalization may not apply to military members and certain military family members. In addition, qualifying children of military members may not need to be present in the United States to acquire citizenship. Finally, qualifying members of the military and their family members may be able to complete the entire process from overseas.

### B. Background

Special naturalization provisions for members of the U.S. armed forces date back at least to the Civil War.[587] Currently, the special naturalization provisions provide for expedited naturalization through military service during peacetime[588] or during designated periods of hostilities.[589] In addition, some provisions benefit certain relatives of members of the U.S. armed forces.

As of March 6, 1990, citizenship may be granted posthumously to service members who died as a direct result of a combat-related injury or disease.[590] Before this legislation, posthumous citizenship could only be granted through the enactment of private legislation for specific individuals.

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[586] The "United States" means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. See INA 101(a)(38).
[587] See Appendix 1 for a table listing legislation affecting military members and their families.
[588] See Chapter 2, One Year of Military Service during Peacetime (INA 328).
[589] See Chapter 3, Military Service during Hostilities (INA 329).
[590] See INA 329A. See the Posthumous Citizenship for Active-Duty Service Act of 1989, Pub. L. 101-249, 104 Stat. 94. Posthumous citizenship under INA 329A was not initiated until 2004 through subsequent legislation, thereby providing substantive benefits to survivors (the amendments were retroactive to 2001). See the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108-136, 117 Stat. 1392.

Congress and the President have continued to express interest in legislation to expand the citizenship benefits of non-U.S. citizens serving in the military since the events of September 11, 2001. Legislation to benefit service members and their family members has increased considerably since 2003.

1. Executive Order Designating Period since September 11, 2001 as a Period of Hostility

On July 3, 2002, then President, George W. Bush, officially designated by Executive Order the period beginning on September 11, 2001 as a "period of hostilities." The Executive Order triggered immediate naturalization eligibility for qualifying service members.[591]

At the time of the designation, the Department of Defense (DOD) and legacy INS announced that they would work together to ensure that military naturalization applications would be processed expeditiously. USCIS adjudication procedures for military naturalization applications reflect that commitment.

2. Legislation Affecting Service Period, Overseas Naturalization, and Benefits for Relatives

On November 24, 2003, Congress enacted legislation[592] to:

- Reduce the period of service required for military naturalization based on peacetime service from three years to one year.[593]
- Add service in the Selected Reserve of the Ready Reserve during periods of hostilities as a basis to qualify for naturalization.[594]
- Expand the immigration benefits available to the spouses, children, and parents of U.S. citizens who die from injuries or illnesses resulting from or aggravated by serving in combat. These benefits extend to such relatives of service members who were granted citizenship posthumously.
- Waive fees for naturalization applications based on military service during peacetime or during periods of hostilities.[595]
- Permit naturalization processing overseas in U.S. embassies, consulates, and military bases for members of the U.S. armed forces.[596]

Efforts since the 2003 legislation have focused on further streamlining procedures or extending immigration benefits to immediate relatives of service members.

3. Legislation Affecting Residence, Physical Presence, and Naturalization while Abroad for Spouses and Children

[591] See Executive Order 13269 signed on July 3, 2002 (67 FR 45287, July 8, 2002). See INA 329.
[592] See the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108-136, 117 Stat. 1392.
[593] See INA 328(a).
[594] See INA 329(a).
[595] See INA 328(b) and INA 329(b) (Fee exemptions)
[596] See 8 U.S.C. 1443a (Permitting overseas proceedings).

On January 28, 2008, Congress amended existing statutes to allow residence abroad to qualify as "continuous residence" and "physical presence" in the United States for a spouse or child of a service member who is authorized to accompany the service member by official orders and is residing abroad with the service member.[597]

Under certain conditions, a spouse or child of a service member may count any period of time that he or she is residing (or has resided) abroad with the service member as residence and physical presence in the United States. This legislation also prescribes that such a spouse or child may be eligible to have any or all of their naturalization proceedings conducted abroad. Before this legislation, the law only permitted eligible service members to participate in naturalization proceedings abroad.

- INA 284(b) limits the circumstances under which the LPR spouse or child is considered to be seeking admission to the United States. This means that the spouse or child will not be deemed to have abandoned or relinquished his or her LPR status while residing abroad with the service member. The provision ensures reentry into the United States by LPR spouses and children whose presence abroad might otherwise be deemed as abandonment of LPR status.

- INA 319(e) allows certain LPR spouses to count any qualifying time abroad as continuous residence and physical presence in the United States and permits eligible spouses to naturalize overseas.

- INA 322(d) allows the U.S. citizen parent of a child filing for naturalization to count time abroad as physical presence and allows the child to naturalize overseas.

4. Fingerprint Requirement (Kendell Frederick Citizenship Assistance Act)

On June 26, 2008, Congress mandated that USCIS use enlistment fingerprints or previously submitted USCIS fingerprints to satisfy the naturalization background check requirements unless a more efficient method is available.[598]

5. Expedited Application Processing (Military Personnel Citizenship Processing Act)

On October 9, 2008, Congress amended existing statutes to mandate USCIS to process and adjudicate naturalization applications filed under certain military-related provisions within six months of the receipt date or provide the applicant with an explanation for why his or her application is still pending and an estimated adjudication completion date.[599]

**C. Legal Authorities**

- INA 319; 8 CFR 319 – Spouses of U.S. Citizens

[597] See the National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181, 122 Stat. 3, which amended INA 284, INA 319, and INA 322.

[598] See Chapter 6, Required Background Checks. See the Kendell Frederick Citizenship Assistance Act of 2008, Pub. L. 110-251, 122 Stat. 2319.

[599] This legislation affects naturalization applications under INA 328(a), INA 329(a), INA 329A, INA 329(b), and surviving spouses and children who qualify under INA 319(b), or INA 319(d). See the Military Personnel Citizenship Processing Act of 2008, Pub. L. 110-382, 122 Stat. 4087.

- INA 322; 8 CFR 322 – Children born outside of the United States
- INA 328; 8 CFR 328 – Naturalization through peacetime military service for one year
- INA 329; 8 CFR 329 – Naturalization through military Service during hostilities
- INA 329A; 8 CFR 392 – Posthumous citizenship
- 8 U.S.C. 1443a – Overseas naturalization for service members and their qualifying spouses and children

## Chapter 2: One Year of Military Service during Peacetime (INA 328)

### A. General Eligibility through One Year of Military Service during Peacetime

A person who has served honorably in the U.S. armed forces for one year at any time may be eligible to apply for naturalization, which is sometimes referred to as "peacetime naturalization."[600] While some of the general naturalization requirements apply to qualifying members or veterans of the U.S. armed forces seeking to naturalize based on one year of service,[601] other requirements may not apply or are reduced.

The applicant must establish that he or she meets all of the following criteria in order to qualify:

- The applicant must be 18 years of age or older.
- The applicant must have served honorably in the U.S. armed forces for at least one year.
- The applicant must be a lawful permanent resident (LPR) at the time of examination on the naturalization application.
- The applicant must meet certain residence and physical presence requirements.
- The applicant must demonstrate an ability to understand English including an ability to read, write, and speak English.
- The applicant must demonstrate knowledge of U.S. history and government.
- The applicant must demonstrate good moral character for at least five years prior to filing the application until the time of his or her naturalization.
- The applicant must have an attachment to the principles of the U.S. Constitution and be well disposed to the good order and happiness of the U.S. during all relevant periods under the law.

### B. Honorable Service

Qualifying military service is honorable active or reserve service in the U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, or service in a National Guard unit. Honorable service means only service in the U.S. armed forces that is designated as honorable service by the executive department under which the applicant performed that military service.

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[600] See INA 328.
[601] See INA 316(a) for the general naturalization requirements. See Part D, General Naturalization Requirements.

Both "Honorable" and "General-Under Honorable Conditions" discharge types qualify as honorable service for immigration purposes. Other discharge types, such as "Other Than Honorable," do not qualify as honorable service.

### C. National Guard Service

Honorable service as a member of the National Guard is limited to service in a National Guard unit during such time as the unit is federally recognized as a reserve component of the U.S. armed forces. This applies to applicants for naturalization on the basis of one year of military service.[602]

### D. Continuous Residence and Physical Presence Requirements

An applicant who files on the basis of one year of military service while he or she is still serving in the U.S. armed forces or within six months of an honorable discharge is exempt from the residence and physical presence requirements for naturalization.[603]

An applicant who files six months or more from his or her separation from the U.S. armed forces must have continuously resided in the United States for at least five years. In addition, the applicant must have been physically present in the United States for at least 30 months out of the five years immediately preceding the date of filing the application.[604] However, any honorable service within the five years immediately preceding the date of filing the application will be considered towards residence and physical presence within the United States.[605]

An applicant with military service who does not qualify on the basis of one year of military service[606] may be eligible under another non-military naturalization provision. The period that the applicant has resided outside of the United States on official military orders does not break his or her continuous residence. USCIS will treat such time abroad as time in the United States.[607]

## Chapter 3: Military Service during Hostilities (INA 329)

### A. General Eligibility through Military Service during Hostilities

Members of the U.S. armed forces who serve honorably for any period of time during specifically designated periods of hostilities may be eligible to naturalize.[608] One day of qualifying service is sufficient in establishing eligibility.

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[602] See INA 328. The National Guard and Reserve service requirements under INA 329 differ from those under INA 328. See Chapter 3, Military Service during Hostilities (INA 329), Section C, National Guard Service.
[603] See INA 328. See 8 CFR 328.2.
[604] See INA 316(a) and INA 328(d). See Part D, General Naturalization Requirements.
[605] See INA 328(d).
[606] See INA 328.
[607] Special provisions also exist regarding the "place of residence" for applicants who are serving in the U.S. armed forces but who do not qualify for naturalization through the military provisions. See 8 CFR 316.5(b). See Part D, General Naturalization Requirements, Chapter 6, Jurisdiction, Place of Residence, and Early Filing.
[608] See INA 329. In 2009, the DOD authorized the Military Accessions Vital to the National Interest (MAVNI) pilot program as a recruitment pilot to enlist certain foreign nationals with skills considered to be "vital to national interest." The pilot program applies to

The applicant must establish that he or she meets all of the following criteria in order to qualify:

- The applicant may be of any age.
- The applicant must have served honorably in the U.S. armed forces during a designated period of hostility.
- The applicant must either be an LPR **or** have been physically present at the time of enlistment, reenlistment, or extension of service or induction into the U.S. armed forces:
  - In the United States or its outlying possessions, including the Canal Zone, American Samoa, or Swains Island, or
  - On board a public vessel owned or operated by the United States for noncommercial service.
- The applicant must be able to read, write, and speak basic English.
- The applicant must demonstrate knowledge of U.S. history and government.
- The applicant must demonstrate good moral character for at least one year prior to filing the application until the time of his or her naturalization.
- The applicant must have an attachment to the principles of the U.S. Constitution and be well disposed to the good order and happiness of the U.S. during all relevant periods under the law.

An applicant who files on the basis of military service during hostilities is exempt from the general naturalization requirements of continuous residence and physical presence.[609]

**B. Honorable Service**

Qualifying military service is honorable service in the Selected Reserve of the Ready Reserve or active duty service in the U.S. Army, Navy, Marine Corps, Air Force, or Coast Guard. Service in a National Guard Unit may also qualify.[610]

Honorable service means only service in the U.S. armed forces that is designated as honorable service by the executive department under which the applicant performed that military service.

Both "Honorable" and "General-Under Honorable Conditions" discharge types qualify as honorable service for immigration purposes. Other discharge types, such as "Other Than Honorable," do not qualify as honorable service.

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certain health care professionals and individuals fluent in certain foreign languages. A MAVNI enlistee may apply for naturalization upon enlistment. See the DOD MAVNI program fact sheet for further details.

[609] See INA 329(b). See 8 CFR 329.2(e).

[610] See Section C, National Guard Service.

### C. National Guard Service

An applicant filing on the basis of military service during hostilities[611] who has National Guard service may qualify if he or she has honorable service in either the U.S. armed forces or in the Selected Reserve of the Ready Reserve.[612] USCIS does not require proof of federal activation for a National Guard applicant if the applicant served in the Selected Reserve of the Ready Reserve during a designated period of hostility.[613]

### D. Designated Periods of Hostilities

The INA and Presidential Executive Orders have designated the following military engagements and ranges of dates as periods of hostilities.

| Designated Periods of Hostilities | | | |
|---|---|---|---|
| **World War I** | April 6, 1917 | → | November 11, 1918 |
| **World War II** | September 1, 1939 | → | December 31, 1946 |
| **Korea** | June 25, 1950 | → | July 1, 1955 |
| **Vietnam** | February 28, 1961 | → | October 15, 1978 |
| **Persian Gulf** | August 2, 1990 | → | April 11, 1991 |
| **Enduring Freedom** | September 11, 2001 | → | **Present** |

The current period starting on September 11, 2001 will continue to be considered a designated period of hostilities until the President issues an Executive Order to terminate the designation.

### E. Eligibility as Permanent Resident or if Present in United States at Induction or Enlistment

In general, an applicant who files on the basis of military service during hostilities[614] is not required to be an LPR if he or she was physically present at the time of induction, enlistment, reenlistment, or extension of service in the U.S. armed forces:

- In the United States, the Canal Zone, American Samoa, or Swains Island; or
- On board a public vessel owned or operated by the United States for noncommercial service.

[611] See INA 329.
[612] See 8 CFR 329.1. See 10 U.S.C. 10143 for more information on Selected Reserve of the Ready Reserve.
[613] The National Guard and Reserve service requirements under INA 329 differ from those under INA 328. See Chapter 2, One Year of Military Service during Peacetime (INA 328), Section C, National Guard Service.
[614] See INA 329.

In addition, an applicant who is lawfully admitted for permanent residence after enlistment or induction is also eligible for naturalization under this provision regardless of the place of enlistment or induction.

### F. Conditional Permanent Residence and Naturalization during Hostilities

If the applicant is a conditional permanent resident and is eligible to naturalize on the basis of military service during hostilities[615] without being an LPR based on being in the United States during enlistment or induction, the applicant is not required to file or have an approved Petition to Remove the Conditions on Residence (Form I-751) before his or her Application for Naturalization (Form N-400) may be approved.

## Chapter 4: Permanent Bars to Naturalization

### A. Exemption or Discharge from Military Service Because of Foreign Nationality

#### 1. Permanent Bar for Exemption or Discharge from Military Service

An applicant who requested, applied for, and obtained a discharge or exemption from military service from the U.S. armed forces on the ground that he or she is an alien or foreign national ("alienage discharge") is permanently ineligible for naturalization unless he or she qualifies for an exception (discussed below).[616]

An exemption from military service is either a permanent exemption from induction into the U.S. armed services or the release or discharge from military training or service in the U.S. armed forces.[617] Induction means compulsory entrance into military service of the United States by conscription or by enlistment after being notified of a pending conscription.

Until 1975, applicants were required to register for the military draft. The failure to register for the draft or to comply with an induction notice is relevant to the determination of whether the applicant was liable for military service, especially in cases where an exemption was based on foreign nationality.

Certain persons were granted exemptions from the draft for reasons other than foreign nationality, including medical disability and conscientious objector. An applicant may present a draft registration card with an exempt classification under circumstances that do not relate to foreign nationality.

#### 2. Exceptions to Permanent Bar

There are exceptions to the permanent bar to naturalization for obtaining a discharge or exemption from military service on the ground of alienage.[618]

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[615] See INA 329.
[616] See INA 315. See 8 CFR 315.2.
[617] See 8 CFR 315.1. The Ninth Circuit has found that an exemption from voluntary military service is not a permanent bar under INA 315. See *Gallarde v. I.N.S.*, 486 F.3d 1136 (9th Cir 2007). INA 329 has similar language about exemptions, and that language has been found to cover discharges based on alienage even in cases of voluntary enlistment. See *Sakarapanee v. USCIS,* 616 F.3d 595, (6th Cir 2010). Officers should consult with local OCC counsel in handling discharges based on alienage.
[618] See 8 CFR 315.2(b).

The permanent bar does not apply to the applicant if he or she establishes by clear and convincing evidence that:

- The applicant had no liability for military service (even in the absence of an exemption) at the time he or she requested an exemption from military service;
- The applicant did not request or apply for the exemption from military service, but such exemption was automatically granted by the U.S. Government;[619]
- The exemption from military service was based upon a ground other than the applicant's alienage;
- The applicant was unable to make an intelligent choice between an exemption from military service and citizenship because he or she was misled by an authority from the U.S. Government or from the government of his or her country of nationality;
- The applicant applied for and received an exemption from military service on the basis of alienage, but was subsequently inducted into the U.S. armed forces or the National Security Training Corps;[620]
- Prior to requesting the exemption from military service, the applicant served a minimum of eighteen months in the armed forces of a nation that was a member of the North Atlantic Treaty Organization at the time of his or her service, or the applicant served a minimum of twelve months and applied for registration with the Selective Service Administration after September 28, 1971; or
- Prior to requesting the exemption from military service, the applicant was a "treaty national"[621] who had served in the armed forces of the country of which he or she was a national.[622]

3. Countries with Treaties Providing Reciprocal Exemption from Military Service

The tables below provide lists of countries that currently have (or previously had) effective treaties providing reciprocal exemption from military service.[623]

| Countries with Effective Treaties Providing Reciprocal Exemption from Military Service | |
|---|---|
| **Argentina** | Art. X, 10 Stat. 1005, 1009, effective 1853 |
| **Austria** | Art. VI, 47 Stat. 1876, 1880, effective 1928 |

[619] See *In re Watson*, 502 F. Supp. 145 (D.C. 1980).
[620] However, an applicant who voluntarily enlists in and serves in the U.S. armed forces after applying for and receiving an exemption from military service on the basis of alienage is not exempt from the permanent bar.
[621] "Treaty national" means a person who is a national of a country with which the United States has a treaty relating to the reciprocal exemption of aliens from military training or military service.
[622] See 8 CFR 315.2(b).
[623] See 8 CFR 315.4.

| Countries with Effective Treaties Providing Reciprocal Exemption from Military Service | |
|---|---|
| **China** | Art. XIV, 63 Stat. 1299, 1311, effective 1946 |
| **Costa Rica** | Art. IX, 10 Stat. 916, 921, effective 1851 |
| **Estonia** | Art. VI, 44 Stat. 2379, 2381, effective 1925 |
| **Honduras** | Art. VI, 45 Stat. 2618, 2622, effective 1927 |
| **Ireland** | Art. III, 1 US 785, 789, effective 1950 |
| **Italy** | Art. XIII, 63 Stat. 2255, 2272, effective 1948 |
| **Latvia** | Art. VI, 45 Stat. 2641, 2643, effective 1928 |
| **Liberia** | Art. VI, 54 Stat. 1739, 1742, effective 1938 |
| **Norway** | Art. VI, 47 Stat. 2135, 2139, effective 1928 |
| **Paraguay** | Art. XI, 12 Stat. 1091, 1096, effective 1859 |
| **Spain** | Art. V, 33 Stat. 2105, 2108, effective 1902 |
| **Switzerland** | Art. II, 11 Stat. 587, 589, effective 1850 |
| **Yugoslavia Serbia** | Art. IV, 22 Stat. 963, 964, effective 1881 |

| Countries with Expired Treaties Providing Reciprocal Exemption from Military Service | |
|---|---|
| **El Salvador** | Art. VI, 46 Stat. 2817, 2821 (effective 1926 to February 8, 1958) |
| **Germany** | Art. VI, 44 Stat. 2132, 2136 (effective 1923 to June 2, 1954) |
| **Hungary** | Art. VI, 44 Stat, 2441, 2445 (effective 1925 to July 5, 1952) |
| **Thailand (Siam)** | Art. 1, 53 Stat. 1731, 1732 (effective 1937 to June 8, 1968) |

4. Documentation and Evidence

The Application for Naturalization (Form N-400) and Request for Certification of Military or Naval Service (Form N-426) contain questions pertaining to discharge due to alienage or foreign nationality. The fact that an applicant is exempted or discharged from service in the U.S. armed forces on the grounds that he or she is a foreign national (alien) may impact the applicant's eligibility for naturalization.

Selective Service and military department records are conclusive evidence of service and discharge.[624] Proof of an applicant's request and approval for an exemption or discharge from military service because the applicant is a foreign national may be grounds for denial of the naturalization application.[625]

**B. Deserters or Persons Absent Without Official Leave (AWOL)**

An applicant who is convicted by court martial as a deserter may be permanently barred from naturalization.[626] A person not ultimately court martialed for being a deserter or for being Absent without Official Leave (AWOL), however, is not permanently barred from naturalization.

An applicant who deserted or was AWOL during the relevant period for good moral character may be ineligible for naturalization under the "unlawful acts" provision.[627]

## Chapter 5: Application and Filing for Service Members (INA 328 and 329)

This section provides relevant information for applying for naturalization on the basis of military service.[628] Service members should file their applications in accordance with the instructions for the Application for Naturalization (Form N-400) and other required forms.

**A. Required Forms**

An applicant filing for naturalization based on one year of honorable military service during peacetime[629] or honorable service during a designated period of hostility[630] must complete and submit all of the following to USCIS:

*Form N-400, Application for Naturalization*

The applicant should check the appropriate eligibility option on the Application for Naturalization to indicate that he or she is applying on the basis of qualifying military service. The applicant should file the application in accordance with the form instructions.

*Form N-426, Request for Certification of Military or Naval Service*

[624] See 8 CFR 315.3.
[625] See INA 315. See 8 CFR 315.2.
[626] See INA 314.
[627] See Part F, Good Moral Character, Chapter 5, Conditional Bars for Acts in Statutory Period, Section M, Unlawful Acts.
[628] See INA 328 and INA 329.
[629] See INA 328.
[630] See INA 329.

The Request for Certification of Military or Naval Service confirms whether the applicant served honorably in an active duty status or in the Selected Reserve of the Ready Reserve. The form may also establish whether the applicant has ever been released from military service on the grounds that he or she is an alien or foreign national. Only those applicants applying under INA 328 or INA 329 are required to submit the form. An applicant applying under a different naturalization provision is not required to submit the form, even if the applicant has prior military service.

The military must complete and certify (sign) the Request for Certification of Military or Naval Service before it is submitted to USCIS. USCIS, however, will accept a completed but uncertified form submitted by an applicant who has separated from the U.S. armed forces if:

- The applicant submitted a photocopy of his or her Certificate or Release from Active Duty (DD Form 214) or National Guard Report of Separation and Record of Service (NGB Form 22) for applicable periods of service listed on Form N-426; and

- The DD Form 214 or NGB Form 22 lists information on the type of separation and character of service. Such information is typically found on page "Member-4" of DD Form 214 or Block 24 of NGB Form 22.

Most military installations have a designated office that serves as a point-of-contact to assist service members with their naturalization application packets. Service members should inquire through their chain of command for the appropriate office to assist with preparing the naturalization packet.

**B. Fee Exemptions**

- USCIS charges no fees for filing an Application for Naturalization (Form N-400) or for biometrics capturing for applications filed under INA 328 or INA 329.

- There is no fee for filing a Request for a Hearing on a Decision in Naturalization Proceedings (Form N-336) for applicants whose naturalization application filed under INA 328 or INA 329 has been denied.[631]

- There is no filing fee for current and former service members for an Application for Certificate of Citizenship (Form N-600).[632]

**C. Filing Location and Initial Processing**

Naturalization applications filed on the basis of military service should be filed in accordance with the form instructions.[633] USCIS will permit an applicant residing abroad the option to file his or her application for naturalization with the USCIS overseas office having jurisdiction over his or her place of residence, as practicable.

[631] See USCIS Fee Schedule Final Rule (75 FR 58962, Sept. 24, 2010).
[632] See USCIS Fee Schedule Final Rule (75 FR 58962, Sept. 24, 2010).
[633] See INA 328 and INA 329.

An applicant serving abroad may complete all aspects of the naturalization process, including fingerprinting, interviews and oath ceremonies while residing abroad on official orders.[634] The applicant may request overseas processing at any time of the naturalization process.

## Chapter 6: Required Background Checks

USCIS conducts security and background checks on all applicants for naturalization. Members or former members of the U.S. armed forces applying for naturalization must comply with those requirements. This chapter provides information on specific background checks required of such applicants. This chapter also provides information on the ways service members may meet the fingerprint requirement for naturalization.

### A. Defense Clearance Investigative Index (DCII) Query

USCIS must conduct a Defense Clearance Investigative Index (DCII) query with the DOD as part of the background check process on any applicant with military service regardless of the section of law under which he or she is applying for naturalization. The DCII check is valid for 15 months from the initial response. The DCII check should show whether the applicant has any derogatory information in his or her military records.[635]

### B. Fingerprint Requirement and the Kendell Frederick Citizenship Assistance Act

USCIS must collect fingerprint records as part of the background check process on most applicants for naturalization. The Kendell Frederick Citizenship Assistance Act (KFCAA) mandates USCIS to use enlistment fingerprints or previously submitted USCIS fingerprints to satisfy the fingerprint requirement for service members unless a more efficient method is available.

If DHS determines that new biometrics would "result in more timely and effective adjudication of the individual's naturalization application," DHS must inform the applicant of this determination and provide the applicant with information on how to submit fingerprints.[636]

### C. Ways Service Members may Meet Fingerprint Requirement

The table below provides the ways in which a service member may meet the fingerprint requirement for naturalization on the basis of military service.[637] Such applicants may meet the requirement through **any** of the following ways provided in the table. These procedures aim at USCIS compliance with the KFCAA.

| Ways Service Members may meet Fingerprint Requirement for Naturalization |
| --- |
| • The service member may appear at any stateside USCIS Application Support Center (ASC) for fingerprint capture with or without an appointment |

[634] See 8 U.S.C. 1443a.
[635] Previously, a military applicant was required to submit Form G-325B, Biographic Information, which USCIS used to initiate the DCII query. USCIS determined, however, that the information collected on Form N-400 is sufficient to perform the queries and deemed Form G-325B obsolete. As of February 18, 2010, Form G-325B is no longer required for any pending naturalization application.
[636] See the Kendell Frederick Citizenship Assistance Act of 2008, Pub. L. No. 110-251, 122 Stat. 2319.
[637] See INA 328 or INA 329. See 8 CFR 335.2(b).

| Ways Service Members may meet Fingerprint Requirement for Naturalization |
|---|
| • The service member may have his or her fingerprints taken by USCIS personnel at select military installations in the United States via mobile fingerprinting equipment |
| • USCIS may re-submit the service member's fingerprints for up-to-date records if such records are on file with USCIS |
| • USCIS may acquire and use the service member's fingerprints taken at the time of enlistment into the military ("OPM fingerprints") |
| • The service member may have his or her fingerprints taken using the FD-258 fingerprint cards at a U.S. military installation (or U.S. embassy or consulate if overseas) |
| • USCIS will accept FD-258 fingerprint cards or comparable DOD fingerprint cards from domestic or overseas military installations (However, fingerprints captured electronically, either at an ASC or through a mobile fingerprinting unit, remain the more advantageous method for both the applicant and USCIS) |

USCIS will consider an applicant's naturalization application to be abandoned and will deny the application for failure to appear for biometrics capture (fingerprinting)[638] if all of the following conditions are true:

- The NSC is unable to locate the applicant or three days have elapsed from the last day of the time period allotted for the applicant to appear for fingerprinting (as stated on the second ASC appointment notice);
- The applicant is stationed stateside (and is otherwise able to report to an ASC) and has not submitted FD-258 fingerprint cards;
- The applicant has not fulfilled the fingerprint requirement; and
- USCIS has determined that the enlistment fingerprints are unavailable or are unclassifiable.

Any subsequent correspondence from an affected applicant whose application was denied for failure to appear for fingerprinting within one year is considered a Service motion to reopen.[639] USCIS grants the motion and continues with the processing of the naturalization application. USCIS does not deny an application for abandonment for failure to provide fingerprints if USCIS has evidence that the applicant is deployed inside the United States or overseas and is unable to be fingerprinted.

## Chapter 7: Revocation of Naturalization

A military member whose naturalization was granted on the basis of military service on or after November 24, 2003 may be subject to revocation of naturalization if he or she was separated from the U.S. armed forces under

[638] See 8 CFR 103.2(b)(13)(ii).
[639] See 8 CFR 103.5(a)(5).

other than honorable conditions before he or she has served honorably for a period or periods totaling at least five years.[640]

## Chapter 8: Posthumous Citizenship (INA 329A)

### A. Eligibility for Posthumous Citizenship

In general, a person who serves honorably in the U.S. armed forces during designated periods of hostilities and dies as a result of injury or disease incurred in or aggravated by that service may be eligible for posthumous citizenship.[641] Posthumous citizenship establishes that the deceased service member is considered a citizen of the United States as of the date of his or her death.[642]

The military branch under which the deceased service member served will determine whether he or she served honorably in an active-duty status during a qualified period and whether the death was combat related.

Spouses and children of U.S. citizen service members who qualify for posthumous citizenship may be eligible for immigration benefits under special provisions of the INA.[643]

### B. Application and Filing

The service member's next of kin, the Secretary of Defense, or the Secretary's designee in USCIS must submit an Application for Posthumous Citizenship (Form N-644) within two years of the service member's death and in accordance with the form instructions and with appropriate fee.[644] USCIS uses the posthumous citizenship application to verify the deceased service member's place of induction, enlistment or reenlistment; military service; and service-connected death.[645]

The following documents should be submitted along with the completed Application for Posthumous Citizenship, if available:

- DD Form 214, Certificate of Release or Discharge from Active Duty
- DD Form 1300, Report of Casualty/Military Death Certificate (or other military or State issued death certificate)
- Any other military or state issued certificate of the decedent's death

### C. Adjudication

USCIS will issue a Certificate of Citizenship (Form N-645) in the name of the deceased service member establishing posthumously that he or she was a U.S. citizen on the date of his or her death if the Application for

[640] See INA 328(f), INA 329(c), and INA 340. See Pub. L. 108-136. Such cases should be referred to U.S. Immigration and Customs Enforcement (ICE).
[641] See Chapter 3, Military Service during Hostilities (INA 329), Section D, Designated Periods of Hostilities.
[642] See INA 329A and 8 CFR 392.
[643] See Chapter 9, Spouses, Children, and Surviving Family Benefits.
[644] See 8 CFR 103.7.
[645] See 8 CFR 392.2.

Posthumous Citizenship is approved.[646] In cases where USCIS denies the Form N-644, USCIS will notify the applicant of the decision and the reason(s) for denial. There is no appeal for a denied posthumous citizenship application.[647]

## Chapter 9: Spouses, Children, and Surviving Family Benefits

### A. General Provisions for Spouses, Children, and Parents of Military Members

1. Benefits for Family Members

Spouses and children of U.S. citizen service members may be eligible for naturalization under special provisions in the INA. Certain spouses may be eligible for expedited naturalization in the United States and may not be required to establish any prior period of residence or specified period of physical presence within the United States, as generally required for naturalization.

The surviving spouse, child, or parent of a U.S. citizen who dies during a period of honorable service in an active duty status in the U.S. armed forces may be eligible for naturalization. Surviving family members seeking immigration benefits are given special consideration in the processing of their applications for permanent residence or for classification as an immediate relative.[648]

On January 28, 2008, legislation was enacted to permit a spouse or child to count any period of time that he or she is residing abroad with the service member as authorized by official orders as residence and physical presence in the United States, under certain conditions.[649] The same legislation also prescribes that such a spouse or child may be eligible for overseas proceedings relating to naturalization, as previously only permitted for an eligible member of the U.S. armed forces.

Specifically, one provision limits the circumstances under which the LPR spouse or child is considered to be seeking admission to the United States.[650] Another provision allows the LPR spouse to count any qualifying time abroad as continuous residence and physical presence in the United States and permits the spouse to naturalize overseas.[651] Another provision allows the U.S. citizen parent of a child filing for naturalization to count time abroad as physical presence and permits the child to naturalize overseas.[652]

2. Documenting "Official Orders"

In order to count any qualifying time abroad as continuous residence and physical presence in the United States, a spouse or child of a member of the U.S. armed forces must have official military orders authorizing him or her

[646] See 8 CFR 392.4. See Part K, Certificates of Citizenship and Naturalization, Chapter 2, Certificate of Citizenship.
[647] See 8 CFR 392.3(d).
[648] See forthcoming Volume 6, Immigrants.
[649] See the National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181, 122 Stat. 3, which amended INA 284, INA 319, and INA 322.
[650] See INA 284(b).
[651] See INA 319(e).
[652] See INA 322(d).

to accompany his or her service member spouse or parent abroad, and must accompany or live with that service member as provided in those orders.[653]

USCIS will only accept the following documents issued by the U.S. armed forces as "official orders:"

- Copy of Permanent Change of Station (PCS) orders issued to a service member for permanent tour of duty overseas that specifically name the spouse or child applying for naturalization; **or**
- If the submitted PCS orders do not specifically name the applicant beyond reference to "spouse," "child," or "dependent," then the applicant must submit:
  - PCS orders (copy);
  - Form DD-1278 (Certificate of Overseas Assignment to Support Application to File Petition for Naturalization); and
  - Service member's Form DD-1172 (Application for Uniformed Services Identification Card DEERS Enrollment) naming dependents.

**B. Spouses of Military Members**[654]

The table below serves as a quick reference guide to certain residence, physical presence, and overseas naturalization provisions for spouses of service members. The paragraphs that follow the table provide further guidance on each provision.

**Residence, Physical Presence, and Overseas Naturalization for Spouses of Members of the U.S. Armed Forces**

| INA Section | Residence | Physical Presence | Treatment of Time Residing Abroad | Overseas Naturalization |
|---|---|---|---|---|
| **316(a)** | LPR for 5 years | 30 months | Time residing with U.S. citizen spouse serving abroad may be treated as residence and physical presence in the United States (INA 319(e)) | May complete entire naturalization process from abroad |
| **319(a)** | LPR for 3 years | 18 months | | |
| **319(b)** | Must be LPR but no specified period of residence or physical presence is required | | | Must complete interview and oath in United States |

1. Spouses of Service Members (INA 316(a) and INA 319(a))

[653] See INA 319(e) and INA 322(d).
[654] This section describes certain benefits on residence, physical presence, and overseas naturalization for spouses of service members. See Part G, Spouses of U.S. Citizens, for guidance on the general spousal naturalization provisions.

Spouses of service members may qualify for naturalization through the general naturalization provision or on the basis of their marriage to a U.S. citizen.[655] The general provision applies to spouses who have been LPRs for five years immediately preceding the date of filing the naturalization application.[656] Naturalization on the basis of marriage applies to spouses of U.S. citizens who have been LPRs for three years immediately preceding the date of filing the naturalization application and who have lived in marital union with their citizen spouses for those three years.[657]

2. Spouses of Military Members who are or will be Stationed or Deployed Abroad (INA 319(b))

The law permits expedited naturalization in the United States for eligible spouses of U.S. citizen service members who are or will be stationed or deployed abroad.[658] This provision does not require any prior period of residence or specified period of physical presence within the United States for any LPR spouse of a U.S. citizen who is an employee of the United States Government (including a member of the U.S. armed forces) or recognized nonprofit organization who is stationed abroad in such employment for at least one year.[659]

In general, the applicant is required to be in the United States for his or her naturalization examination or interview and for taking the Oath of Allegiance for naturalization.[660]

Spouses of service members already accompanying and residing abroad with their military spouse may also qualify for naturalization through the general provision[661] or on the basis of their marriage to a U.S. citizen for three years.[662] Such spouses may be eligible for any naturalization proceeding abroad, to include interviews, filings, oaths, ceremonies, or other proceedings relating to naturalization.[663]

3. Continuous Residence and Physical Presence while Residing Abroad (INA 319(e))

Certain eligible spouses of service members may count qualifying residence abroad as residence and physical presence in the United States for purposes of naturalization.[664] This provision does not provide an independent basis for naturalization. The benefits of this provision only apply to an LPR who is eligible for naturalization through the general provision[665] or on the basis of his or her marriage to a U.S. citizen for three years.[666]

The spouse must meet all of the following conditions during such time abroad:

- The LPR is the spouse of a member of the U.S. armed forces;

[655] See INA 316(a). See Part G, Spouses of U.S. Citizens.
[656] See INA 316(a). See Part D, General Naturalization Requirements.
[657] See INA 319(a).
[658] See INA 319(b).
[659] See Part G, Spouses of U.S. Citizens, Chapter 4, Spouses of U.S. Citizens Employed Abroad.
[660] See INA 319(b). See 8 CFR 319.2.
[661] See INA 316(a).
[662] See INA 319(a).
[663] See Part G, Spouses of U.S. Citizens. See 8 U.S.C. 1443a.
[664] See INA 319(e). See 8 CFR 316.5(b)(6). See 8 CFR 316.6.
[665] See INA 316(a).
[666] See INA 319(a).

- The LPR is authorized to accompany and reside abroad with the service member pursuant to the service member's official orders;[667] and

- The LPR is accompanying and residing abroad with the service member in marital union.[668]

The spouse is not required to be abroad at the time the officer makes such determination. For example, an applicant who is currently residing in the United States, but had previously resided abroad during the statutory residency or physical presence period, may count the time abroad as continuous residence and physical presence, if he or she meets the eligibility criteria.

The spouse of a service member who has been an LPR for five years and is applying for naturalization through the general provision does not need to establish that the service member is a U.S. citizen.[669] An applicant who is no longer married to a service member at the time of filing may still meet the residence and physical presence requirements if the LPR was married to the service member and met all the conditions above during the period of time in question.

The spouse of a service member who has been an LPR for three years and who is applying on the basis of his or her marriage for three years must establish that the service member has been a U.S. citizen for the required period.[670]

4. Overseas Naturalization for Spouses of Service Members

In addition to allowing certain time abroad to count towards the residence and physical presence requirements, INA 319(e) permits eligible spouses of service members to naturalize abroad without traveling to the United States for any part of the naturalization process.

In general, to be eligible to naturalize abroad, the LPR spouse of a service member must:

- Be authorized to accompany the service member abroad per the service member's official orders;

- Be residing abroad with the service member in marital union; and

- Meet the requirements of either INA 316(a) or INA 319(a) at the time of filing the naturalization application, except for the residence and physical presence requirements.

Prior to the enactment of the overseas provisions in 2008, with some exceptions, a service member's LPR spouse residing abroad with the service member had to apply for naturalization through expedited naturalization provisions.[671] This applied to a spouse who was eligible through the general provision[672] or

[667] See Section A, General Provisions for Spouses, Children, and Parents of Military Members, for guidance on "official orders."
[668] See 8 CFR 316.5(b)(6). See 8 CFR 316.6.
[669] See INA 316.
[670] See INA 319(a).
[671] See INA 319(b).
[672] See INA 316.

through three years of marriage to a U.S. citizen[673] but whose time abroad rendered him or her unable to meet the respective continuous residence or physical presence requirements.

An LPR filing as the spouse of a service member residing abroad[674] was exempt from the continuous residence and physical presence requirements, but he or she was still required to return to the United States for his or her interview, naturalization, and any other related procedure.[675] The overseas naturalization provisions allows such an LPR spouse to apply for naturalization from abroad and complete any procedure relating to his or her application for naturalization while residing abroad.[676]

5. Application and Filing

*Form N-400, Application for Naturalization*

Eligible spouses of members of the U.S. armed forces who live abroad and want to naturalize abroad should submit an Application for Naturalization (Form N-400) in accordance with the instructions on the form and with appropriate fee.[677]

Spouses should indicate that they seek to naturalize through the general provision[678] or on the basis of their marriage to a U.S. citizen for three years[679] and to rely on INA 319(e) to meet the applicable continuous residence and physical presence requirements. Spouses should also write in: "319(e) Overseas Naturalization," if so desired. Only those eligible spouses who prefer naturalization abroad should apply for that option. Spouses who prefer to apply for naturalization in the United States may still elect to do so.

*Form DD-1278, Certificate of Overseas Assignment to Support Application to File Petition for Naturalization*

Spouses should include Form DD-1278 along with their naturalization application. Form DD-1278 must be completed and signed by the military official certifying the applicant has "concurrent travel orders" and is authorized to join their spouse military service member abroad.

*Fingerprint Cards (FD-258)*

The spouse should submit two completed fingerprint cards (FD-258). Spouses applying overseas must have their fingerprints taken at a U.S. military base, an overseas USCIS field office, or an American Embassy/Consulate. Spouses applying in the United States must have their fingerprints taken at a USCIS Application Support Center.

*Filing Location*

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[673] See INA 319(a).
[674] See INA 319(b).
[675] See Part G, Spouses of U.S. Citizens, Chapter 4, Spouses of U.S. Citizens Employed Abroad, Section F, In the United States for Examination and Oath of Allegiance.
[676] See 8 U.S.C. 1443a.
[677] See 8 CFR 103.7.
[678] See INA 316(a).
[679] See INA 319(a).

The spouse should review and submit his or her application in accordance with the form instructions. USCIS will permit spouses who are residing abroad and eligible for the provisions under INA 319(e) to file their naturalization applications with the USCIS overseas office having jurisdiction over the spouse's overseas residence.

### C. Children of Military Members[680]

The table below serves as a quick reference guide to certain residence, physical presence, and overseas naturalization provisions for children of service members. The paragraphs that follow the table provide further guidance on each provision.

| Residence, Lawful Admission, and Overseas Naturalization for Children of Members of the U.S. Armed Forces | | | | |
|---|---|---|---|---|
| **INA Section[681]** | **Place of Residence** | **Lawful Admission** | **Treatment of Time Residing Abroad** | **Automatic Citizenship or Overseas Naturalization** |
| **320** | United States or Abroad | Must be LPR | Residence with U.S. citizen parent serving is treated as residence in United States | May acquire automatic citizenship (must take oath in the United States) |
| **322** | Abroad | No lawful admission required | Must reside with U.S. citizen parent serving abroad | May complete entire naturalization process from abroad |

1. Children of Service Members Residing in the United States (INA 320)

Children of members of the U.S. armed forces residing in the United States may automatically acquire citizenship.[682] The child must be under 18 years of age and must be an LPR in order to qualify. In order to obtain a Certificate of Citizenship, a child who has automatically acquired citizenship must follow the instructions on the Application for Certificate of Citizenship (Form N-600).[683]

2. Children of Service Members Residing Abroad (INA 322)

In general, INA 322 provides that a parent who is a U.S. citizen (or, if the citizen parent has died during the preceding five years, a citizen grandparent or citizen legal guardian) may apply for naturalization on behalf of a child born and residing outside of the United States who has not acquired citizenship automatically under INA 320. The child must naturalize before he or she reaches 18 years of age.

The general criteria to qualify under INA 322 include that the child must be temporarily present in the United States pursuant to a lawful admission in order to complete the naturalization. The child's qualifying U.S. citizen

[680] This section describes certain benefits on residence, lawful admission, and overseas naturalization for children of service members. See Part H, Children of U.S. Citizens, for guidance on the general naturalization and acquisition of citizenship provisions.
[681] See 8 CFR 320.2 and 322.2.
[682] See INA 320.
[683] See Part H, Children of U.S. Citizens, Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320).

parent must also have been physically present in the United States or its outlying possessions for at least 5 years (2 of which after the age of 14).[684]

On January 28, 2008, INA 322 was amended to permit certain eligible children of members of the armed forces to become naturalized U.S. citizens without having to travel to the United States for any part of the naturalization process.[685]

The amendments benefit children of U.S. citizen members of the military who are accompanying their parent abroad on official orders.[686] Specifically, INA 322(d) provides that:

- Such children are not required to have a lawful admission or be present in the United States; and
- The U.S. citizen service member who is the child's parent may count any period of time he or she has resided abroad on official orders as physical presence in the United States.

These benefits are available only to biological, legitimated, or adopted children of U.S. citizen members of the U.S. armed forces and do not apply to step-children of the U.S. citizen parent. This is because the definition of "child" applicable to citizenship and naturalization provisions does not include step-children. The biological or legitimated child of a U.S. citizen parent (and member of the U.S. armed forces) must meet the requirements in INA 101(c)(1). An adopted child must meet the requirements for adopted children.[687]

USCIS will ensure that the child of a member of the U.S. armed forces is not already a U.S. citizen (has not acquired automatic citizenship[688]) prior to making a determination that he or she qualifies for naturalization through INA 322.

3. Lawful Admission and Maintenance Status Not Required (INA 322(d))

The child of a service member who is residing abroad with the service member per official orders is exempt from the temporary physical presence, lawful admission, and maintenance of lawful status requirements.[689]

4. Treatment of Physical Presence of U.S. Citizen Parent Residing Abroad

Any period of time the U.S. citizen service member who is the child's parent is residing or has resided abroad will be treated as physical presence in the United States if:

- The child is authorized to accompany and reside abroad with the service member per official orders;
- The child is accompanying and residing abroad with the service member; and
- The service member is residing or has resided abroad per official orders.

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[684] See Part H, Children of U.S. Citizens, Chapter 5, Child Residing Outside of the United States (INA 322), Section C, Physical Presence of the U.S. Citizen Parent or Grandparent.
[685] See the National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181, 122 Stat. 3.
[686] See Section A, General Provisions for Spouses, Children, and Parents of Military Members, for guidance on "official orders."
[687] See Part H, Children of U.S. Citizens, Chapter 2, Definition of Child for Citizenship and Naturalization. See INA 101(b)(1)(E), (F), or (G).
[688] See INA 320.
[689] See INA 322(d). See INA 322(a)(5) for the physical presence, lawful admission, and maintenance of lawful status requirements.

The first two conditions above are the triggering events that allow any period of time abroad to count as physical presence in the United States for the U.S. citizen parent.[690]

If the child is residing abroad with his or her U.S. citizen parent per official orders at the time of filing the Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K), then any previous time the parent has resided abroad on official orders will be treated as physical presence in the United States regardless of whether the child resided with the parent.

5. Overseas Naturalization for Children Eligible under INA 322

The child of a service member who is on official orders authorizing the child to accompany and reside with that parent is not required to be an LPR or to have any other kind of lawful admission in the United States. The child may complete his or her entire naturalization process, to include filing and oath, while residing abroad.[691]

6. Application and Filing

*Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322*

To apply for citizenship for eligible children who live abroad and meet the requirements under INA 322, applicants must submit an Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K) in accordance with the instructions on the form and with appropriate fee.[692]

*Evidence of Residence Abroad*

The applicant may show that the child resides abroad on official orders with the U.S. citizen-parent service member by submitting a copy of the Permanent Change of Station (PCS) orders that include the child's name.

If the PCS orders do not specifically name the applicant beyond reference to "child" or "dependent," then also include a copy of the service member's Form DD-1172 (DEERS Enrollment), naming the child.

*Filing Location*

Applicants must submit Form N-600K in accordance with the instructions on the form. USCIS will permit such applications to be filed with the USCIS overseas office having jurisdiction over the applicant's overseas residence.[693]

**D. Naturalization for Surviving Spouse, Child, or Parent of Service Member (INA 319(d))**

The spouse, child, or parent of a deceased U.S. citizen member of the U.S. armed forces who died as the result of his or her honorable service may be eligible for naturalization as the surviving relative of the service member. This includes surviving relatives of service members who were granted posthumous citizenship.[694]

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[690] See INA 322(a)(2)(A).
[691] See INA 322(d).
[692] See 8 CFR 103.7.
[693] See 8 U.S.C. 1443a.
[694] See INA 319(d).

The surviving spouse must have been living in marital union with the U.S. citizen service member spouse and must not have been legally separated at the time of his or her death. The spouse, however, remains eligible for naturalization if the spouse has remarried since the service member's death.[695]

The surviving spouse, child, or parent must meet the general naturalization requirements, except for the residence or physical presence requirements in the United States.

[695] See 8 CFR 319.3.

**Appendix 1**

The table below provides some of the major legislative amendments that have aimed at assisting qualified military personnel and their eligible family members to become U.S. citizens or to acquire other immigration benefits, or both.

| Some Legislative Amendments Assisting Military Members and their Eligible Relatives to Become U.S. Citizens or to Acquire Other Immigration Benefits |
|---|
| **Act of May 9, 1918 (40 Stat. 512)** |
| - Accorded World War I servicemen certain exemptions from the then existing naturalization requirements<br>- First statute to provide for overseas processing; however, petitions that were filed and not acted upon by the courts were declared invalid before May 25, 1932[696] |
| **Modifications of 1918 Act[697]** |
| - Under certain circumstances resident aliens who had departed from the United States and had served honorable in the military or naval forces of an allied country during World War I were granted special naturalization |
| **Second War Powers Act of March 27, 1942 (amending Nationality Act of 1940)** |
| - Provided for the expeditious naturalization of members of the U.S. armed forces serving in the United States and abroad<br>- Provided for the naturalization of non-citizens serving during the war; the law permitted naturalization of those who did not meet requirements<br>- Section 702, authorized the actual naturalization of World War II servicemen outside the United States<br>- First time the Service had administrative authority to conduct naturalizations |
| **Legislation of December 7, 1942 (amending Nationality Act of 1940)** |
| - Addition of section 323a<br>- Granted special naturalization privileges to World War I veterans<br>- Embraced persons who served with the United States military or naval forces at any time after April 20, 1898, and before July 5, 1902 (Spanish-American War), as well as persons who served on the Mexican border between June 1916 and April 1917 as members of the Regular Army or National Guard (expired December 8, 1943) |
| **Act of June 1, 1948; Immigration and Nationality Act** |
| - Added section 324A to the Act of October 14, 1940 (Nationality Act of 1940)<br>- Revised, modified, and made permanent the earlier provisions for the expeditious |

[696] See *Application of Campbell,* 5 F.2d 247 (E.D. Wash. 1925). See *Op. Sol. of Labor*, Jan, 1926, CO file 79/9.
[697] See Acts of July 19 and November 6, 1919, May 26, 1926, March 4, 1929, May 25, 1932, June 24, 1935, August 23, 1937, June 21, 1939, December 7, 1942.

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| naturalization of persons who served honorably in the United States armed forces during either World War I or II |
| **Lodge Act, June 30, 1950 (64 Stat. 316)** |
| - Was periodically extended during the 1950s, finally expiring on July 1, 1959<br>- The Act authorized naturalization under INA 329 of an alien who enlisted or reenlisted overseas under the terms of the Act; subsequently entered the United States, American Samoa, Swains Island, or the Canal Zone pursuant to military orders; completed five years of service; and was honorably discharged |
| **Korean Hostilities; Act of June 30, 1953 (Pub. L. 86)** |
| - Provided for the expeditious judicial naturalization of aliens, upon completion of at least 90 days' active and honorable service in the United States Armed Forces during a specified period (June 25, 1950 - July 1, 1955) extending beyond the termination date of the Korean conflict<br>- Under the statute, all petitions had to be filed before January 1, 1956 |
| **Vietnam Hostilities Act of October 24, 1968 (82 Stat. 1343)** |
| - Including Vietnam Hostilities to add as qualifying, service during a period beginning February 28, 1961, and ending on the termination fixed by the President<br>- By Executive Order 12081, September 18, 1978, the President terminated the period of Vietnam hostilities as of October 15, 1978<br>- Allowed the designation by executive order such periods when the armed forces of the United States are engaged in armed conflict with a hostile foreign force |
| **Grenada 15 Executive Order 12582 (February 2, 1987)[698]** |
| - Although President Reagan designated the Grenada campaign as a period of hostilities, a federal court invalidated it entirely because, in contravention of statutory guidelines for such designations, the executive order attempted to limit the expedited naturalization benefit to persons who served in certain geographic areas and the record showed that the President would not have designated the campaign as a period of hostilities without the geographic limitations |
| **Naturalization of Natives of the Philippines (WWII Service), Sec. 405 of Pub. L. 101-649** |
| - Addressed by Congress in 1990 by amending INA 329 (IMMACT90)<br>- Such veterans were exempted from the requirement of having been admitted to lawful permanent residence to the United States or having enlisted or reenlisted in the United States<br>- Subsequent amendments enabled naturalization processing to be conducted in the Philippines<br>- Only applied to applications filed by February 2, 1995 |

[698] See Executive Order 12582 signed on February 2, 1987 (52 FR 3395, February 4, 1987). In consideration of *Matter of Reyes*, 910 F. 2d 611 (9th Cir. 1990), Executive Order 12582 was revoked by Executive Order 12913, effective February 2, 1987, (59 FR 23115, May 4, 1994).

| Hmong Veterans' Naturalization Act of 2000 |
| --- |
| - For Hmong guerilla units that aided the U.S. military during the Vietnam War era.<br>- Provided an exemption from the English language requirement and special consideration for civics testing for Laotian refugees who supported the U.S. armed forces as members of guerrilla or irregular forces in Laos during the Vietnam War period of hostilities<br>- Only applied to naturalization applications filed by a veteran or spouse, within three years after May 26, 2000, or by a veteran's widow within three years after November 1, 2000 |
| **National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136)** |
| - Pub. L. 108-136 was enacted on November 24 ,2003 and amended certain military-related immigration provisions of the INA, to include:<br>- Reduced the required period of military service from three years to one year under INA 328<br>- Exempted all fees from naturalization applications filed under INA 328 and 329 by eligible service members and certain veterans<br>- Added provision that citizenship obtained through INA 328 or 329 may be revoked if the person is separated from the U.S. armed forces under other than honorable conditions before the person has served for a period or periods aggregating five years<br>- Added under 8 U.S.C. 1443a that DHS must ensure that any filings, interviews, oath ceremonies, or other proceedings relating to naturalization of service members and certain military family members are available abroad through U.S. embassies, consulates, and U.S. military installations overseas as practical<br>- Extended benefits under INA 329(a) to those who serve or served as a member of the Selected Reserve of the Ready Reserve<br>- Extended certain immigration benefits to surviving spouses, children and parents of U.S. citizen service members (including those granted citizenship posthumously under INA 329A)[699] |
| **National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181)** |
| - Pub. L. 110-181 was enacted on January 28, 2008 and amended certain military-related immigration provisions of the INA focused on qualifying spouses or children of members of the U.S. armed forces, to include:<br>- Added INA 284(b) to make clear that the Lawful Permanent Resident status of a service member's spouse or child is not jeopardized because the spouse or child resided abroad, as authorized by official orders, with the service member. This provision clarifies that USCIS must not treat such absences as abandonment or relinquishment of the spouse or child's Lawful Permanent Resident (LPR) Status[700]<br>- Added INA 319(e) to allow the LPR spouse of a service member to count any qualifying time spent abroad on official orders as continuous residence and physical presence in the United States. Also permits the spouse to complete the naturalization process overseas<br>- Added INA 322(d) to allow the U.S. citizen parent and service member of a child filing for naturalization to count time abroad under military orders as physical presence in the |

[699] See Sec. 1703 of PL 108-136.
[700] See forthcoming Volume 7, Adjustment of Status. See Sec. 673 of PL 110-181.

| |
|---|
| United States. Also permits the child to complete the naturalization process overseas |
| **Kendell Frederick Citizenship Assistance Act (KFCAA) (Pub. L. 110-251)** |
| - The KFCAA was enacted on June 26, 2008<br>- Requires DHS to use the fingerprints provided by an individual at the time the individual enlisted in the U.S. armed forces (referred to as "OPM" or "enlistment" fingerprints) or fingerprints the applicant previously submitted to USCIS for another application to satisfy the fingerprint requirement<br>- If DHS determines that new biometrics would result in more timely and effective adjudication of the individual's naturalization application, DHS must inform the applicant of this determination and provide the applicant with information on how to submit fingerprints.<br>- Requires USCIS to adjudicate applications for naturalization filed by active-duty members of the U.S. armed forces serving abroad within 180 days of the receipt of responses to all background checks |
| **Military Personnel Citizenship Processing Act (MPCPA) (Pub. L. 110-382)** |
| - The MPCPA was enacted on October 9, 2008<br>- Requires USCIS to complete applications for naturalization filed by service members (and certain spouses) within six months of receipt or notify the applicant of the delay<br>- Six-month notification letters must include the reason for delay and an estimated adjudication date |

# PART J – OATH OF ALLEGIANCE

## Chapter 1: Purpose and Background

### A. Purpose

Before becoming a United States citizen, an eligible naturalization applicant must take an oath of renunciation and allegiance (Oath of Allegiance) in a public ceremony.[701] The applicant must establish that it is his or her intention, in good faith, to assume and discharge the obligations of the Oath of Allegiance.[702] The applicant must also establish that his or her attitude toward the Constitution and laws of the United States makes the applicant capable of fulfilling the obligations of the oath.[703]

### B. Background

During the naturalization interview, the applicant signs the naturalization application to acknowledge his or her willingness and ability to take the Oath of Allegiance and to accept certain obligations of United States citizenship. Under certain circumstances, an applicant may qualify for a modification or waiver of the oath.[704] In such cases, an officer draws a line through the designated modified portions of the oath and the applicant is not required to recite the deleted portions.[705]

Applicants must generally recite the Oath of Allegiance orally during a public ceremony. Merely signing the naturalization application and a copy of the oath does not make the applicant a U.S. citizen.

### C. Legal Authorities

- INA 310; 8 CFR 310.1 – Naturalization authority
- INA 337; 8 CFR 337 – Oath of Renunciation and Allegiance
- Public Law 106-448 – Waiver of Oath of Renunciation and Allegiance for Naturalization of Aliens having Certain Disabilities Act of 2000

## Chapter 2: The Oath of Allegiance

### A. Oath of Allegiance

In general, naturalization applicants take the following oath in order to complete the naturalization process:

"I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on

[701] See INA 337. See 8 CFR 337.1(a).
[702] See INA 337. See 8 CFR 337.1(c). Under certain circumstances, an "Affirmation of Allegiance" is the same as an Oath of Allegiance. See 8 CFR 337.1(b).
[703] See 8 CFR 337.1(c).
[704] See Chapter 3, Oath of Allegiance Modifications and Waivers.
[705] See 8 CFR 337.1(b).

behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God."[706]

The Oath of Allegiance is administered in the English language, regardless of whether the applicant was eligible for a language waiver. However, an applicant may have a translator to translate the oath during the ceremony. In addition, an applicant may request a modification to the oath because of a religious objection or an inability or unwillingness to take an oath or recite the words "under God."[707] An applicant or a designated representative may request an oath waiver when the applicant is unable to understand the meaning of the oath.

**B. Authority to Administer the Oath**

The following persons have the authority to administer the Oath of Allegiance:

- The Director;
- The Deputy Director;
- District Director;
- Field Office Director; or
- Courts.[708]

Other USCIS supervisory officers may act on behalf of the District Director or Field Office Director on a temporary basis in case of absence or if the position is vacant.[709] In addition, Immigration Judges may also administer the Oath of Allegiance in administrative ceremonies.

**C. Renunciation of Title or Order of Nobility**

Any applicant who has any titles of heredity or positions of nobility in any foreign state must renounce the title or the position. The applicant must expressly renounce the title in a public ceremony and USCIS must record the renunciation as part of the proceedings.[710] Failure to renounce the title of position shows a lack of attachment to the Constitution.

In order to renounce a title or position, the applicant must add one of the following phrases to the Oath of Allegiance:

- I further renounce the title of (give title or titles) which I have heretofore held; or
- I further renounce the order of nobility (give the order of nobility) to which I have heretofore belonged.[711]

[706] See INA 337(a). See 8 CFR 337.1(a).
[707] See Chapter 3, Oath of Allegiance Modifications and Waivers.
[708] See INA 310(b). The authority to administer the Oath of Allegiance is delegated by the Secretary of Homeland Security.
[709] See INA 310(a). See 8 CFR 310.1(b) and 8 CFR 337.2.
[710] See INA 337.
[711] See 8 CFR 337.1(d).

An applicant whose country of former nationality or origin abolished the title by law, or who no longer possesses a title, is not required to drop that portion of his or her name that originally designated such title as a part of his or her naturalization.[712]

## Chapter 3: Oath of Allegiance Modifications and Waivers

The table below serves as a quick reference guide on general requirements for oath modifications and oath waiver. The sections and paragraphs that follow the table provide further guidance on each modification and oath waiver.

| Oath of Allegiance Modifications and Waivers | | |
|---|---|---|
| **Request** | **Permitted Modifications to Oath** | **Testimony or Evidence** |
| **Modified Oath for Religious Objections** | Deletion of either or both of the following clauses:<br><br>Bearing arms on behalf of the United States if required by law [INA 337(a)(5)(A)]; and<br><br>Performing noncombatant service in the U.S. armed forces when required by law [INA 337(a)(5)(B)] | Must show opposition to clause (or clauses) based on religious training and belief (USCIS may request an attestation from the religious organization) |
| **Affirmation of Allegiance in Lieu of Oath** | Substitution of the words "solemnly affirm" for the words "on oath" and no recitation of the words "so help me God" [8 CFR 337.1(b)] | Not Required |
| **Waiver of the Oath** | Requirement to take the Oath of Allegiance may be waived | Evaluation by medical professional stating inability to understand (or communicate) the meaning of the oath due to a medical condition |

### A. Modified Oath for Religious Objections

An applicant may request a modified oath that does not contain one or both of the following clauses:

- To bear arms on behalf of the United States when required by the law; and

[712] See *Society Vinicole de Champagne v. Mumm*, 143 F. 2d 240 (1944).

- To perform noncombatant service in the U.S. armed forces when required by the law.[713]

There is no exemption from the clause "to perform work of national importance under civilian direction when required by the law."[714]

In order to modify the oath, the applicant must demonstrate, by clear and convincing evidence, that he or she is unwilling or unable to affirm to these sections of the oath based on his or her religious training and belief. USCIS may request an attestation from the religious organization explaining its beliefs and that the applicant is in good standing with the organization.

Depending on the specific modified oath, USCIS deletes the relevant clauses and the applicant recites the modified form of the oath.[715]

In order for an applicant to qualify for an exemption based on his or her "religious training and belief," the applicant must satisfy a three-part test. An applicant must establish that:

- He or she is "opposed to any type of Service";
- The objection is grounded in his or her religious principles; and
- His or her beliefs are sincere, meaningful, and deeply held.[716]

An applicant is not eligible for a modified oath when he or she is opposed to a specific war.[717] Religious training or belief does not include essentially political, sociological, or philosophical views or a merely personal moral code. In addition, qualification for the exemption is not dependent upon membership in a particular religious group nor does membership in a specific religious group provide an automatic modification to the oath.

An applicant is required to take the oath when he or she is not qualified for the modification. Otherwise, the applicant is not eligible for naturalization.

**B. Affirmation of Allegiance in Lieu of Oath**

An applicant may request an affirmation in lieu of an oath. The applicant may request this affirmation in lieu of an oath for any reason.[718] In these cases:

- The applicant substitutes the words "solemnly affirm" for the words "on oath"; and
- The applicant does not recite the words "so help me God."[719]

[713] See INA 337(a)(5)(A) and INA 337(a)(5)(B).
[714] See INA 337(a)(5)(C).
[715] See INA 337. See 8 CFR 337.1(b).
[716] See INA 337. See *Welsh v. U.S.*, 398 U.S. 333 (1970). See *U.S. v. Seeger*, 280 U.S. 163 (1965). The term "religious training and belief" is limited to a person's belief in relation to a Supreme Being involving duties superior to those arising from any human relation.
[717] See *Gillette v. U.S.*, 401 U.S. 437 (1971).
[718] The INA indicates that the affirmation is requested "by reason of religious training and belief (or individual interpretation thereof), or for other reasons of good conscience." See INA 337(a).
[719] See 8 CFR 337.1(b).

USCIS grants this modification solely upon the applicant's request. The applicant is not required to establish that the request is based solely on his or her religious training and belief. Applicants are not required to provide any documentary evidence or testimony to support a request to substitute the words "on oath" or "so help me God."

USCIS must not require the applicant to recite the deleted portions of the Oath of Allegiance at the ceremony. The officer informs the applicant that he or she is not required to recite the deleted portions and that the applicant may take the oath in the modified form.

**C. Waiver of the Oath**

1. Oath of Allegiance Waiver

*Oath Waiver Based on a Medical Disability*

USCIS may waive the Oath of Allegiance for an applicant who is unable to understand or to communicate an understanding of its meaning because of a physical or developmental disability or mental impairment.[720]

An applicant for whom USCIS granted an oath waiver is considered to have met the requirement of attachment to the principles of the Constitution of the United States, and be well disposed to the good order and happiness of the United States for the required period.

In order for USCIS to adjudicate a request for an oath waiver because of a medical condition, an applicant with the assistance of a legal guardian, surrogate, or designated representative must provide a written request and a written evaluation by a certified medical professional. An applicant is not required to submit a specific form to request an oath waiver.[721] USCIS accepts an oath waiver request at any point of the naturalization process.

*Oath Waiver for Children under 14 Years of Age*

The INA permits USCIS to waive the taking of the Oath of Allegiance if USCIS determines the person is unable to understand its meaning.[722] USCIS has determined that children under the age of 14 are generally unable to understand the meaning of the oath. Accordingly, USCIS waives the oath requirement for a child younger than 14 years of age. If USCIS waives the oath requirement, USCIS issues a Certificate of Citizenship after the officer approves the application.[723]

2. Legal Guardian, Surrogate or Designated Representative

When an applicant is unable to undergo any part of the naturalization examination because of a physical or developmental disability or mental impairment, a legal guardian, surrogate or an eligible designated representative completes the naturalization process for the applicant. USCIS waives the Oath of Allegiance and

[720] See INA 337(a). See Pub. L. 106-448 enacted on July 12, 2000.
[721] The oath waiver requirements are distinct from the requirements for the medical exception to the English and civics requirements for naturalization under INA 312(b), which requires an applicant to submit a medical exception form. See Part E, English and Civics Testing and Exceptions, Chapter 3, Medical Disability Exception (Form N-648).
[722] See INA 337(a). See 8 CFR 341.5(b).
[723] See Part H, Children of U.S. Citizens.

the legal guardian, surrogate or designated representative attests to the applicant's eligibility for naturalization.[724] In addition to oath waiver, this process may require accommodations including off-site examinations.

In order for USCIS to adjudicate a request for an oath waiver, an applicant, with the assistance of a legal guardian, surrogate, or designated representative must provide a written request and a written evaluation by a certified medical professional. USCIS accepts a request for the waiver at any point in the naturalization process until the time of the oath ceremony. As an accommodation, field offices should work with the legal guardian, surrogate or designated representative before the initial examination to obtain all the necessary documentation.

When an oath waiver is provided, a legal guardian or surrogate, or designated representative[725] signs on behalf of an applicant who is unable to understand or communicate an understanding of the Oath of Allegiance because of a disability. The guardian, surrogate, or representative acts on behalf of an applicant with a disability at every stage of the naturalization examination. The guardian, surrogate, or representative files the application on behalf of the applicant and must have knowledge of the facts supporting the applicant's eligibility for naturalization.

The guardian, surrogate, or representative addresses every requirement for naturalization and bears the burden of establishing the applicant's eligibility for naturalization.

Persons eligible to act on behalf of the applicant include:

- A person who a proper court has designated as the applicant's legal guardian or surrogate and who is authorized to exercise legal authority over the applicant's affairs;[726] or

- In the absence of a legal guardian or surrogate, a United States citizen spouse, parent, adult son or daughter, or adult brother or sister, who is the primary custodial caregiver and who takes responsibility for the applicant.

USCIS will only recognize one designated representative in the following order of priority:[727]

- Legal guardian or surrogate (highest priority)
- U.S. citizen spouse
- U.S. citizen parent
- U.S. citizen adult son or daughter
- U.S. citizen adult brother or sister (lowest priority)

The person acting on behalf of the applicant must provide proof of legal guardianship, or documentation to establish the familial relationship, such as a birth certificate, marriage certificate, or adoption decree. In

[724] See Chapter 3, Oath of Allegiance Modifications and Waivers.
[725] See Chapter 3, Oath of Allegiance Modifications and Waivers.
[726] A legal guardian or surrogate may act on behalf of an applicant regardless of the legal guardian or surrogate's immigration status or whether he or she is a family member.
[727] If there is a conflict in priority between two or more persons seeking to represent the applicant, and the individuals share the same degree of familial relationship, USCIS gives priority to the person who is older.

addition, the person must provide documentation to establish that he or she has the primary custodial care and responsibility for the applicant (for example, income tax returns, Social Security Administration documents, and affidavits from other relatives). A spouse, parent, adult son or daughter, or adult brother or sister who is not the legal guardian or surrogate must provide evidence of U.S. citizenship.

USCIS continues an application where the family member acting as a designated representative is not a U.S. citizen. USCIS explains to the family member why he or she is not qualified to act as a designated representative and offers the applicant an opportunity to bring another person who may qualify.

3. Written Evaluation

In general, USCIS requires a written evaluation to establish the applicant's inability to take the Oath of Allegiance. An applicant or designated representative requesting an oath waiver submits a written evaluation completed by a medical professional licensed to practice in the United States.

The written evaluation must:

- Be completed by the medical professional who has had the longest relationship with the applicant or is most familiar with the applicant's medical history;
- Express the applicant's medical condition and disability in terms that an officer and the designated representative can understand (except for medical definitions or terms to describe the disability);
- State why and how the applicant is unable to understand or communicate an understanding of the meaning of the Oath of Allegiance because of the disability;
- Indicate the likelihood of the applicant being able to communicate or demonstrate an understanding of the meaning of the Oath of Allegiance in the near future; and
- Be signed by the medical professional completing the written evaluation and contain his or her state license number authorizing the medical professional to practice in the United States.

USCIS will not require medical professionals to provide an explanation of how they reached their diagnosis, a listing of clinical or laboratory techniques used to reach the diagnosis, or supporting documentation to establish the claimed disability. USCIS, however, will require the medical professional to provide a thorough explanation of how the applicant's disability impairs his or her functioning so severely that the applicant is unable to demonstrate an understanding of the oath requirements or communicate an understanding of its meaning.

USCIS reserves the right to request documentation if there is a question upon examination about the applicant's disability and ability to understand the oath requirement. If USCIS approves the oath waiver, USCIS does not require the applicant to appear in a public ceremony.

## Chapter 4: General Considerations for All Oath Ceremonies

### A. USCIS Administrative Ceremony

USCIS field offices conduct administrative ceremonies at regular intervals as frequently as is necessary. USCIS must conduct ceremonies in such a manner as to preserve the dignity and significance of the occasion. In some instances, USCIS offices may conduct daily ceremonies where the examination, adjudication, and the oath take place on the same day. District Directors and Field Office Directors must ensure that administrative ceremonies conducted by USCIS in their districts comply with the USCIS "Model Plan for Naturalization Ceremonies."[728]

An applicant must appear in person at a public ceremony unless USCIS excuses the appearance. USCIS designates the time and place for the ceremony and conducts the ceremony within the proper jurisdiction. USCIS presumes an applicant to have abandoned his or her naturalization application when the applicant fails to appear for more than one oath ceremony.[729] In such cases, USCIS executes and issues a motion to reopen and may deny the application if the applicant has not responded within 15 days.[730]

### B. Derogatory Information Received before Oath or Failure to Appear

An officer must execute a motion to reopen a previously approved naturalization application if:

- USCIS receives or identifies disqualifying derogatory information about the applicant after approval of his or her application prior to the administration of the Oath of Allegiance;[731] or
- An applicant fails to appear for at least two ceremonies to take the Oath of Allegiance without good cause.[732]

USCIS notifies the applicant in writing about the receipt of derogatory information or multiple failures to appear through the motion to reopen. The applicant has 15 days to respond to the motion to reopen and overcome the derogatory information or provide good cause for failing to appear at the Oath ceremony.[733]

USCIS must not schedule an applicant for the administration of the Oath of Allegiance if USCIS receives or identifies disqualifying derogatory information. USCIS must not administer the Oath of Allegiance to the applicant until the matter is resolved favorably.

If the applicant overcomes the derogatory information and qualifies for naturalization, the officer approves the application and schedules the applicant for the Oath of Allegiance. If the applicant is unable to overcome the derogatory information, the officer grants the motion to reopen and denies the application on its merits.[734]

An applicant who fails to appear for at least two ceremonies to administer the Oath of Allegiance, without good cause, abandons his or her intent to be naturalized. USCIS considers multiple failures to appear to be equivalent to receipt of derogatory information after the approval of a naturalization application.[735]

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[728] See Chapter 5, Model Plan for Administrative Naturalization Ceremonies.
[729] See 8 CFR 337.10.
[730] See Part B, Naturalization Examination, Chapter 5, Motion to Reopen. See 8 CFR 335.3(a) and 8 CFR 337.
[731] See 8 CFR 335.5.
[732] See 8 CFR 337.10.
[733] See 8 CFR 335.5.
[734] See 8 CFR 336.1.

## Chapter 5: Model Plan for Administrative Naturalization Ceremonies

The naturalization ceremony is a pivotal milestone in the naturalization process. USCIS aims to make administrative naturalization ceremonies positive, memorable moments in the lives of the participants. The significance of the Oath of Allegiance will be honored by USCIS policies and practices that reflect the special, unique nature of the occasion.

The following guidance provides USCIS officials with the Model Plan for Administrative Naturalization Ceremonies (model plan) for conducting administrative naturalization ceremonies in a meaningful and consistent manner.[736]

### A. U.S. Citizenship Welcome Packet

#### 1. Contents of U.S. Citizenship Welcome Packet

To standardize the experience at naturalization ceremonies, USCIS created the U.S. Citizenship Welcome Packet (Form M-771) for distribution to every naturalization candidate participating in an administrative ceremony in the United States.[737]

The U.S. Citizenship Welcome Packet consists of the following:

- President's Congratulatory Letter and Envelope;
- Department of State Form DS-11, Passport Application;
- Form M-767, Important Information for New Citizens;
- Form M-789, Oath of Allegiance/The Star Spangled Banner/Pledge of Allegiance Flier;
- Certificate Holder; and
- A Voter's Guide to Federal Elections.

#### 2. Distribution of U.S. Citizenship Welcome Packet

USCIS distributes the welcome packet to each person being naturalized either during the check-in process or after the ceremony program.[738] USCIS can distribute the welcome packet before the naturalization candidate has been administered the Oath of Allegiance but only after a USCIS officer has determined that the applicant is eligible to take the Oath of Allegiance on the day of the ceremony.

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[735] See 8 CFR 337.10.

[736] This model plan applies only to administrative naturalization ceremonies involving an Application for Naturalization (Form N-400) where a USCIS designated official or an Immigration Judge administers the Oath of Allegiance. The model plan does not apply to administrative ceremonies involving children obtaining evidence of citizenship (Application for Citizenship, Form N-600, or Application for Citizenship and Issuance of Certificate Under Section 322, Form N-600K) or judicial naturalization ceremonies where a federal, state or local court administers the Oath of Allegiance.

[737] To the extent practicable, U.S. Citizenship Welcome Packet (Form M-771) will also be distributed to candidates participating in naturalization ceremonies overseas, subject to circumstances such as the location of the ceremony and the capacity of active military to carry the necessary materials in an active war zone.

[738] See Section B, Ceremony Check-in Process, and Section C, Ceremony Program.

Because the welcome packet contains information for naturalized citizens, USCIS employees must:

- Make a statement that an applicant does not become a U.S. citizen until he or she takes the Oath of Allegiance, regardless of the contents of the welcome packet, whenever distributed;
- Make a general statement about the contents of the welcome packet; and
- Answer the candidates' naturalization-related questions.

The welcome packet includes the official congratulatory letter of the President of the United States. That letter is the only congratulatory letter USCIS distributes nationwide at naturalization ceremonies. If the U.S. flag is distributed, it should be distributed exclusively to naturalization candidates.

USCIS field office leadership will determine, in consultation with the USCIS Ethics Office, whether materials and publications outside of the U.S. flag and the contents of the welcome packet are appropriate for distribution. Partisan publications, publications referencing a specific political group, and materials that contain commercial or religious solicitation or promotion of any kind must never be distributed to new citizens.

Other governmental entities and non-governmental entities must not distribute their materials and publications until after the USCIS official has concluded the administrative naturalization ceremony and has released the new citizens. Field leadership will determine, in consultation with the USCIS Ethics Office, whether outside organizations' materials are appropriate for distribution.[739]

3. Citizen's Almanac and Pocket-size Declaration of Independence and Constitution

In addition, the Citizen's Almanac (Form M-76) and the Pocket-size Declaration of Independence and Constitution of the United States (Form M-654) must be made available to all interested naturalization candidates or newly naturalized citizens at the:

- Check-in process;
- Conclusion of the oath ceremony program; or
- Conclusion of the naturalization interview.

The preferred distribution method for on-site and off-site ceremonies is during the check-in process or at the conclusion of the oath ceremony. The items may be placed on a table in an area accessible to the naturalization candidates.

**B. Ceremony Check-In Process**

USCIS officers perform the ceremony check-in process before the start of the ceremony program. A USCIS officer reviews the responses on each naturalization candidate's Notice of Naturalization Oath Ceremony (Form N-445) and updates responses as necessary. Once each candidate's eligibility for naturalization is verified, the officer collects from each candidate any and all USCIS-issued travel documents and lawful permanent resident cards.

[739] The Citizen's Almanac (Form M-76) and the Pocket-size Declaration of Independence and Constitution of the United States (Form M-654) must be made available to all interested naturalization candidates or newly naturalized citizens.

### C. Ceremony Program

To standardize the naturalization ceremony experience, unless exempted, USCIS offices will implement these steps in all administrative ceremonies:[740]

- Play "Faces of America";[741]
- Play the National Anthem, The Star Spangled Banner, instrumental or vocal version;[742]
- Opening (welcoming) remarks by Master of Ceremonies;[743]
- Announce the "call of countries";[744]
- Administer the Oath of Allegiance to the naturalization candidates;[745]
- Keynote remarks by USCIS field leadership or guest speaker;[746]
- Play Presidential Congratulatory Remarks;[747]
- Recite the Pledge of Allegiance;
- Concluding remarks by Master of Ceremonies or USCIS field leadership;[748] and
- Present the Certificate of Naturalization (Form N-550).[749]

Field offices may also enhance the ceremony program with additional appropriate elements, such as with a rendition of "America the Beautiful."

### D. Guest Speakers at Naturalization Ceremonies

USCIS welcomes participation from distinguished community members. A guest speaker may be a civic, governmental, or military leader, a Member of Congress, a judge, a DHS official, or person whom USCIS deems appropriate for the occasion.

USCIS field leadership of the USCIS office conducting the ceremony must review the qualifications of any potential guest speaker who is not a Department of Homeland Security (DHS) employee and approve of his or her role in the program before he or she speaks at an administrative naturalization ceremony. If USCIS

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[740] USCIS offices are exempt from implementing the ceremony program when conducting a home visit, or an expedited administrative naturalization ceremony. See Chapter 6, Judicial and Expedited Oath Ceremonies.
[741] See USCIS Naturalization Ceremony Video for the Faces of America segment.
[742] See USCIS Naturalization Ceremony Video for instrumental or vocal version of the National Anthem. USCIS offices may incorporate a live performance as an alternative to the version on the video.
[743] Opening (welcoming) remarks include, but are not limited to, an introduction of ceremony principals and an overview of the ceremony program.
[744] The designated official reads aloud a list of countries represented by the naturalization candidates' former nationalities.
[745] See Chapter 2, The Oath of Allegiance. See INA 337. See 8 CFR 337.1(a).
[746] Keynote remarks must be politically neutral and may include, but are not limited to, the privileges, responsibilities, and importance of U.S. citizenship; the importance of civic principles within the U.S. government; the significance of swearing allegiance to the United States; and the theme of the ceremony.
[747] See USCIS Naturalization Ceremony Video for Presidential Congratulatory Remarks.
[748] Concluding remarks may include, but are not limited to, expressing appreciation to those family and friends in attendance, acknowledging the achievement of the naturalized citizens, announcing the services of those governmental and non-governmental entities in attendance, and explaining the distribution method for the certificates of naturalization.
[749] USCIS field leadership and staff presents the Certificates of Naturalization to the naturalized U.S. citizens.

headquarters selects a person to be a guest speaker at a USCIS field office's administrative naturalization ceremony, headquarters will review the person's qualifications before making the recommendation.

It is the responsibility of field leadership of the USCIS office conducting the administrative naturalization ceremony to preserve the solemnity and dignity of the occasion. When the guest speaker is selected and scheduled, field leadership must send the speaker written notice describing USCIS's expectations that appropriate remarks will focus on:

- Importance of U.S citizenship;
- New privileges (such as the ability to travel with a U.S. Passport, apply for a position in the Federal government, and to vote in federal elections);
- Responsibilities of U.S. citizenship (such as applying for a U.S. passport and registering to vote);
- Civic principles within the U.S. government;
- Significance of swearing allegiance to the United States; or
- Theme of the ceremony.[750]

Inappropriate remarks, including political (partisan or otherwise), commercial or religious statements, are not permitted.[751]

USCIS must uphold the integrity of each administrative naturalization ceremony and ensure that it is a politically neutral event. The presence of candidates for public office at a naturalization ceremony may create a perception inconsistent with USCIS's obligation of neutrality. Accordingly, candidates for public office generally may not speak at or participate in an administrative naturalization ceremony within the three months before an election for that office, including both primary and general elections.[752]

**E. Voter Registration at Naturalization Ceremonies**

1. Voter Registration

The ability to vote in federal elections is both a right and responsibility that comes with U.S. citizenship. All newly naturalized citizens will have the opportunity to receive a voter registration application at administrative naturalization ceremonies. The mechanism for distribution may vary by ceremony location, but in every case must take place only after the conclusion of the ceremony.

The options for distribution of voter registration applications are (in preferential order):

[750] See internal USCIS guidance for further guidance on guest speakers.

[751] If a guest speaker makes inappropriate remarks during an administrative naturalization ceremony, field Leadership should inform the speaker and elevate the issue up the field leadership chain. If the guest speaker does not indicate a willingness to modify his or her remarks in the future, field leadership should not accept requests from the person to speak at future administrative naturalization ceremonies.

[752] For example, if the state primary elections are on February 7, 2012, a candidate for public office standing in those primary elections may not be a guest speaker or have another formal participatory role any time between November 7, 2011 and February 7, 2012. The three-month rule does not apply to the President or Vice President of the United States. In addition, in exceptional circumstances, the USCIS Ethics Office may authorize exceptions to the three-month rule if the candidate's participation, subject to any appropriate conditions, would not unduly compromise the ceremony's political neutrality and would serve both USCIS's and the ceremony's best interests. If any additional questions arise related to the three-month rule, Field Leadership should contact their designated Ethics Officer.

- State or local government election offices may distribute and collect voter registration applications for an Election Official to review and officially register the person to vote;

- Non-governmental organizations may distribute and collect voter registration applications for an Election Official to review and officially register the person to vote (if qualified and approved according to the criteria identified below); or

- In the absence of the above options, USCIS will provide voter registration applications to all new citizens – USCIS is not responsible for the collection of applications or any other activities related to voter registration.

If no space is available for governmental or non-governmental entities to provide on-site voter registration services, the USCIS field office will distribute voter registration applications, whenever feasible, to each newly naturalized citizen.[753]

2. Registration by Non-governmental Organizations

In-person voter registration services by the state or local election office is the optimal mechanism for distribution. If state or local election officials are unable to participate, all interested non-governmental groups may seek the privilege of offering voter registration services at the conclusion of administrative naturalization ceremonies.

Field leadership must consider requests from all interested organizations seeking to participate in the ceremony and must offer equal, non-preferential opportunities to all qualified and approved non-governmental organizations.

To qualify, non-governmental organizations must be both non-profit and non-partisan. Organizations must be deemed qualified by USCIS field leadership. All interested organizations seeking to offer voter registration services at the conclusion of a USCIS administrative naturalization ceremony must submit a request in writing to the local USCIS Field Office Director to be considered. Field leadership will provide a written response, only after consultation with the USCIS Office of Chief Counsel's Ethics Office, within 60 days from receipt of the organization's written request.[754]

When USCIS determines that an organization is qualified and is chosen to participate in voter registration services at an administrative naturalization ceremony, field leadership will send the organization a letter, listing specific selected requirements.[755] Field leadership will then contact the organization to determine its availability to participate in scheduled administrative ceremonies.

While participating, non-governmental organizations and their representatives MUST NOT:

[753] If a field office is unable to distribute voter registration forms in any of the above three (3) vehicles, field leadership must notify their chain of command within the Field Operations Directorate.
[754] Approval may be granted on a one-time or standing basis, but may be removed at any time if the participation requirements are not met.
[755] See internal USCIS guidance for further guidance on voter registration by non-governmental organizations.

- Participate in any political activity, partisan or otherwise, while participating in voter registration activities during administrative naturalization ceremonies, regardless of whether the ceremonies take place on federal or non-federal property;[756]

- Engage in commercial or religious solicitation or promotion of any kind; or

- Discriminate on the basis of race, color, gender, religion, age, sexual orientation, national or ethnic origin, disability, marital status or veteran status.

While participating, non-governmental organizations and their representatives MUST:

- Safeguard all personal information new citizens provide for voter registration and are prohibited from using this information for any purpose other than voter registration;

- Follow scheduling and logistical requirements set forth by USCIS field leadership;

- Wear professional attire and represent themselves and their organization professionally;

- Have received proper training on how to register voters;

- Receive an on-site briefing from field leadership regarding rules for that particular venue; and

- Wear name tags that include the name of the organization while registering voters (no other identification of the organization may be worn or displayed).

3. Failure to Comply with Requirements for Voter Registration by Non-governmental Organizations

If a non-governmental entity fails to comply with the above requirements for participation, field leadership, in consultation with the USCIS Ethics Office, may revoke this privilege and exclude the entity from participating in future administrative naturalization ceremonies that occur on or outside of the administrative ceremony location.

In addition, if a USCIS official receives a complaint from a newly naturalized citizen, guest or family member of a newly naturalized citizen, or the state or local election office regarding an entity's inappropriate behavior or lack of ability to properly provide voter registration services, field leadership, in consultation with the USCIS Ethics Office, may revoke the privilege upon appropriate inquiry and review of the circumstances.[757]

4. Points-of-Contact for Voting and Voter Registration

[756] Political activity includes activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group. For this purpose, political activity also includes advocacy for particular referenda or other political propositions. For example, a non-governmental group participating in voter registration activities at an administrative naturalization ceremony may not provide information for or against a state immigration law or proposition. The organization's activities while participating must also comply with the Hatch Act, 5 U.S.C. 7321-26.

[757] See internal USCIS guidance for further guidance on voter registration by non-governmental organizations.

If naturalized citizens have questions regarding voting and voter registration, USCIS should refer them to:

- The governmental or non-governmental entity offering voter registration services on-site;
- Other information resources within the local area; or
- The official U.S. government Web site www.usa.gov.

**F. Participation from Other Government Entities**

Federal, state, and local governmental entities, such as the Department of State's Passport Services Division, and the Social Security Administration, may be authorized to provide information and make services available to newly naturalized citizens and their guests at the conclusion of the administrative naturalization ceremony. Governmental entities that desire representation at administrative naturalization ceremonies must seek advance approval from field leadership of the USCIS office conducting the ceremony.

**G. Participation from Volunteers and Civic Organizations**

Field leadership may enlist individual volunteers, community-based organizations, and civic organizations to participate in various roles during the administrative naturalization ceremony. For example, Field leadership may have the U.S. armed forces Color Guard perform the presentation of colors and the national anthem or have volunteers lead the Pledge of Allegiance.

Field leadership must consider requests from all interested, qualified volunteers and organizations so that all have an equal opportunity to participate in the ceremony. Field leadership will determine the appropriate level of participation for the occasion; however, under no circumstances will any non-USCIS employee perform any USCIS function.[758]

Field leadership must review the qualifications, designate the level of participation, and oversee the participation of all volunteers and organizations during the administrative naturalization ceremony. In addition, non-USCIS participants must not engage in political, commercial, or religious activity of any kind.

**H. Offers to Donate Use of Venues for Naturalization Ceremonies**

USCIS employees must not solicit a gift (including donated use of a venue to hold an administrative naturalization ceremony) from any non-Federal entity.[759] An unsolicited gift, however, may be accepted with the concurrence of the USCIS Ethics Office and approval of the USCIS Director.[760]

## Chapter 6: Judicial and Expedited Oath Ceremonies

**A. Judicial Oath Ceremony**

[758] For example, volunteers must not perform any of the USCIS employee's duties within the ceremony check-in process.
[759] See internal USCIS guidance for further guidance on offers to donate venues for ceremonies.
[760] This process is not required when non-government entities host USCIS for conducting citizenship outreach initiatives and workshops.

An applicant may elect to have his or her Oath of Allegiance administered by the court or the court may have exclusive authority to administer the oath.[761] In these instances, USCIS must notify the clerk of court, in writing, that the Secretary of Homeland Security has determined that the applicant is eligible to naturalize.

After administering the Oath of Allegiance, the clerk of court must issue each person who appeared for the ceremony a document indicating the court administered the oath. In addition, the clerk must issue a document indicating that the court changed the applicant's name (if applicable).

**B. Expedited Oath Ceremony**

An applicant may request, with sufficient cause, that either USCIS or the court grant an expedited oath ceremony.[762] In determining whether to grant an expedited oath ceremony, the court or the USCIS District Director may consider special circumstances of a compelling or humanitarian nature. Special circumstances may include but are not limited to:

- A serious illness of the applicant or a member of the applicant's family;
- A permanent disability of the applicant sufficiently incapacitating as to prevent the applicant's personal appearance at a scheduled ceremony;
- The developmental disability or advanced age of the applicant which would make appearance at a scheduled ceremony improper; or
- An urgent or compelling circumstances relating to travel or employment determined by the court or USCIS to be sufficiently meritorious to warrant special consideration.[763]

USCIS may seek verification of the validity of the information provided in the request. If the applicant is waiting for a court ceremony, USCIS must promptly provide the court with a copy of the request without reaching a decision on whether to grant or deny the request.

Courts exercising exclusive authority may either hold an expedited oath ceremony or, if an expedited judicial oath ceremony is impractical, refer the applicant to USCIS. In addition, the court must inform the District Director, in writing, of the court's decision to grant the applicant an expedited oath ceremony and that the court has relinquished exclusive jurisdiction as to that applicant.

[761] See INA 310(b).
[762] See INA 337(c). See 8 CFR 337.3(a).
[763] See 8 CFR 337.3(c).

# PART K – CERTIFICATES OF CITIZENSHIP AND NATURALIZATION

## Chapter 1: Purpose and Background

### A. Purpose

All applicants who meet the eligibility requirements to derive or acquire citizenship or to become naturalized[764] United States citizens are eligible to receive a certificate from USCIS documenting their U.S. citizenship.[765] The burden of proof is on the applicant to establish that he or she has met all of the pertinent eligibility requirements for issuance of a certificate.

- The Certificate of Citizenship is an official record that the applicant has acquired citizenship at the time of birth or derived citizenship after birth.[766]

- The Certificate of Naturalization is the official record that the applicant is a naturalized U.S. citizen.[767]

USCIS strictly guards the physical security of the certificates to minimize the unlawful distribution and fraudulent use of certificates.

### B. Background

In general, in order to obtain either a Certificate of Citizenship or a Certificate of Naturalization from USCIS, a person must:

- File the appropriate form and supporting evidence;
- Appear for an interview before an officer, if required;
- Meet the pertinent eligibility requirements, as evidenced by USCIS approval of the form; and
- Take the Oath of Allegiance, if required.

USCIS District Directors, Field Office Directors, and other USCIS officers acting on their behalf, have delegated authority to administer the Oath of Allegiance in USCIS administrative oath ceremonies and to issue certificates.[768]

### C. Legal Authorities

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[764] The Immigration and Nationality Act (INA) defines naturalization as the "conferring of nationality of a state upon a person after birth, by any means whatsoever." See INA 101(a)(23). Accordingly, any person who obtains citizenship after birth, even if that citizenship is obtained by automatic operation of law, such as under INA 320, is a "naturalized" citizen under the law. For ease of reference, this volume uses the term naturalized citizen to refer to those persons who do not acquire automatically but instead file an Application for Naturalization (Form N-400) and proceed through the naturalization process in their own right.

[765] A person who automatically acquires citizenship may also apply for a U.S. Passport with the Department of State to serve as evidence of his or her U.S. citizenship.

[766] See Part H, Children of U.S. Citizens.

[767] See the relevant Volume 12 part for the specific eligibility requirements pertaining to the particular naturalization provision, to include Part D, General Naturalization Requirements; Part G, Spouses of U.S. Citizens; and Part I, Military Members and their Families.

[768] See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance, Section B, Authority to Administer the Oath.

- INA 310(b)(4); 8 CFR 310 – Naturalization authority and issuance of certificates
- INA 332(e); 8 CFR 332 – Issuance of Certificates of Citizenship and Naturalization
- INA 338; 8 CFR 338 – Contents and issuance of Certificate of Naturalization
- INA 340(f); 8 CFR 340 – Cancellation of certificate after revocation of naturalization
- INA 341; 8 CFR 341 – Certificates of Citizenship
- INA 342; 8 CFR 342 – Administrative cancellation of certificates, documents, or records

## Chapter 2: Certificate of Citizenship

### A. Eligibility for Certificate of Citizenship

In order to obtain a Certificate of Citizenship, an applicant submits to USCIS:

- An Application for Certificate of Citizenship (Form N-600), if the applicant is residing in the United States and automatically acquired or derived citizenship at birth or after birth;[769] or

- An Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K) for a child of a United States citizens residing outside of the United States.

The application must be submitted in accordance with the form instructions and with the appropriate fee.[770] In addition, applications must include any supporting evidence. An Application for Citizenship and Issuance of Certificate Under Section 322 may only be filed if the child is under 18 years of age. An Application for Certificate of Citizenship may be filed either before or after the child turns 18 years of age.

If the person claiming citizenship is 18 years of age or older, the person must establish that he or she has met the eligibility requirements for U.S. citizenship and issuance of the certificate. If the application is for a child under 18 years of age, the person applying on behalf of the child must establish that the child has met the pertinent eligibility requirements.[771]

### B. Contents of Certificate of Citizenship

The Certificate of Citizenship contains information identifying the person and confirming his or her U.S. citizenship. Specifically, the Certificate of Citizenship contains:

*Information about the Applicant in Certificates of Citizenship*

- USCIS Registration Number (A-number);
- Complete name;
- Marital status;
- Place of Residence;

[769] This volume uses the terms "acquired" or "derived" citizenship in cases where citizenship automatically attaches to a person regardless of any affirmative action by that person to document his or her citizenship.
[770] See 8 CFR 103.7.
[771] See Part H, Children of U.S. Citizens.

- Country of birth;[772]
- Photograph;
- Signature of applicant; and
- Other descriptors: sex, date of birth, and height.

*Additional Information in Certificates of Citizenship*

- Certificate number;
- Statement by the USCIS Director indicating that the applicant has complied with all the eligibility requirements for citizenship under the laws of the United States;
- Date on which the person became a U.S. citizen;
- Date of issuance; and
- DHS seal and Director's signature as the authority under which the certificate is issued.

### C. Issuance of Certificate of Citizenship

In general, USCIS issues a Certificate of Citizenship after an officer approves the person's application and the person has taken the Oath of Allegiance, if applicable, before a designated USCIS officer. USCIS will not issue a Certificate of Citizenship to a person who has not surrendered his or her Permanent Resident Card (PRC) or Alien Registration Card (ARC) evidencing the person's lawful permanent residence. If the person established that his or her card was lost or destroyed, USCIS may waive the requirement of surrendering the card.[773]

If USCIS waives the oath requirement for a person, USCIS issues the certificate after approval of his or her application for the certificate. In such cases, USCIS issues the certificate in person or by certified mail to the parent or guardian in cases involving children under 18 years of age, or to the person (or guardian if applicable) in cases involving persons 18 years of age or older.[774]

## Chapter 3: Certificate of Naturalization

### A. Eligibility for Certificate of Naturalization

An applicant submits to USCIS an Application for Naturalization (Form N-400) along with supporting evidence to establish eligibility for naturalization. The application must be submitted in accordance with the form instructions and with appropriate fee.[775] The applicant must establish that he or she has met all of the pertinent naturalization eligibility requirements for issuance of a Certificate of Naturalization.[776]

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[772] An applicant who was born in Taiwan may indicate Taiwan as the country of birth on their Form N-400 if he or she shows supporting evidence. Such applicants' Certificates of Citizenship are issued showing Taiwan as country of birth. USCIS does not issue certificates showing "Taiwan, PRC," "Taiwan, China," "Taiwan, Republic of China," or "Taiwan, ROC." People's Republic of China (PRC) is the country name used for applicants born in the PRC.

[773] See 8 CFR 341.4. The requirement to surrender the PRC or ARC does not apply to applicants naturalizing under INA 322.

[774] See 8 CFR 341.5. See Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers.

[775] See 8 CFR 103.7.

[776] See the relevant Volume 12 part for the specific eligibility requirements pertaining to the particular citizenship or naturalization provision, to include Part D, General Naturalization Requirements, Part G, Spouses of U.S. Citizens; and Part I, Military Members and their Families.

### B. Required Contents in Certificate of Naturalization

The Certificate of Naturalization contains certain required information identifying the person and confirming his or her U.S. citizenship through naturalization. Specifically, the Certificate of Naturalization contains:

*Information about the Applicant in Certificates of Naturalization*

- USCIS Registration Number (A-number);
- Complete name;
- Marital status;
- Place of Residence;
- Country of Former Nationality;[777]
- Photograph;
- Signature of applicant; and
- Other descriptors: sex, date of birth, and height

*Additional Information in Certificates of Naturalization*

- Certificate number;
- Statement by the USCIS Director indicating that the applicant complied with all the eligibility requirements for naturalization under the laws of the United States;
- Date of issuance, which is the date the holder became a U.S. citizen through naturalization; and
- DHS seal and Director's signature as the authority under which the certificate is issued.[778]

### C. Issuance of Certificate of Naturalization

In general, USCIS issues a Certificate of Naturalization after an officer approves the Application for Naturalization and the applicant has taken the Oath of Allegiance.[779] USCIS will not issue a Certificate of Naturalization to a person who has not surrendered his or her Permanent Resident Card (PRC) or Alien Registration Card (ARC) evidencing the person's lawful permanent residence. If the person established that his or her card was lost or destroyed, USCIS may waive the requirement of surrendering the card.[780]

An applicant is not required to take the Oath of Allegiance or appear at the oath ceremony if USCIS waives the oath requirement due to the applicant's medical disability. In these cases, USCIS issues the certificate in person or by certified mail to the person or his or her legal guardian, surrogate or designated representative.[781]

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[777] Applicants with Taiwan passports may indicate Taiwan as country of nationality on their Form N-400 (Taiwan passports show "Republic of China"). Such applicants' Certificates of Naturalization are issued showing Taiwan as country of former nationality. USCIS does not issue certificates showing "Taiwan, PRC," "Taiwan, China," "Taiwan, Republic of China," or "Taiwan, ROC." People's Republic of China (PRC) is the country name used for applicants with PRC passports.

[778] See INA 338. See 8 CFR 338.

[779] See INA 338. See 8 CFR 338.

[780] See 8 CFR 338.3. The requirement to surrender the PRC or ARC does not apply to applicants naturalizing under INA 329 who qualify for naturalization without being permanent residents.

[781] See Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers.

## Chapter 4: Replacement of Certificate of Citizenship or Naturalization

In general, an applicant submits to USCIS an Application for Replacement Naturalization/Citizenship Document (Form N-565) to request a replacement Certificate of Citizenship or Certificate of Naturalization. The application must be submitted with the appropriate fee and in accordance with the form instructions.[782]

A person may request a replacement certificate to replace a lost or mutilated certificate. A person may also request a replacement certificate, without fee, in cases where:

- USCIS issued a certificate that does not conform to the supportable facts shown on the applicant's citizenship or naturalization application; or
- USCIS committed a clerical error in preparing the certificate.[783]

Requests to update a certificate based on a name change due to marriage or divorce may also be submitted to USCIS.[784] In addition, an applicant who has legally changed his or her gender may apply for a replacement certificate reflecting the new gender.[785] A request to change the gender on a certificate may also affect the marital status already listed on the certificate. Accordingly, any request to change the gender on a certificate that may affect the validity of a marriage under the Defense of Marriage Act (DOMA)[786] is elevated to USCIS headquarters.

## Chapter 5: Cancellation of Certificate of Citizenship or Naturalization

### A. Administrative Cancellation of Certificates[787]

USCIS is authorized to cancel any Certificate of Citizenship or Certificate of Naturalization in cases where USCIS considers that the certificate was:

- Illegally or fraudulently obtained; or
- Created through illegality or by fraud.[788]

USCIS issues the person a written notice of the intention to cancel the certificate. The notice must include the reason or reasons for the intent to cancel the certificate. The person has 60 days from the date the notice was issued to respond with reasons as to why the certificate should not be cancelled or to request a hearing.[789] A cancellation of certificate under this provision only cancels the certificate and does not affect the underlying citizenship status of the person, if any, in whose name the certificate was issued.

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[782] See 8 CFR 103.7.
[783] See 8 CFR 338.5(a).
[784] See INA 343(c).
[785] See Adjudicator's Field Manual (AFM) Chapter 10.22, Document Issuance Involving Status and Identity for Transgender Individuals.
[786] The Defense of Marriage Act (DOMA), Pub. L. 104-199, 110 Stat. 2419 (Sept. 21, 1996). See 1 U.S.C. 7 and 28 U.S.C. 1738C.
[787] See Part L, Revocation of Naturalization, Chapter 3, Effects of Revocation of Naturalization. A Certificate of Naturalization issued to a person who lawfully filed an Application for Naturalization and proceeded through the naturalization process to the Oath of Allegiance cannot be canceled under INA 342. Officers should consult with local USCIS counsel in such cases.
[788] See INA 342. Under the same conditions, USCIS may also cancel any copy of a declaration of intention, or other certificate, document or record issued by USCIS or legacy INS.
[789] See 8 CFR 342.1.

When considering whether to initiate cancellation proceedings, it is important to distinguish between Certificates of Citizenship and Certificates of Naturalization. In general, USCIS issues Certificates of Citizenship to persons who automatically acquire citizenship by operation of law. If it is determined that the person in whose name the Certificate of Citizenship was issued did not lawfully acquire citizenship, USCIS can initiate cancellation proceedings.[790]

However, such a person may have an additional basis upon which to claim automatic acquisition of citizenship. Accordingly, if that person's Certificate of Citizenship is cancelled by USCIS, but the person subsequently provides evidence that he or she automatically acquired citizenship through some other basis, the cancellation of the first Certificate of Citizenship does not affect the new citizenship claim.

By contrast, a Certificate of Naturalization cannot be cancelled if issued to a person who lawfully filed an Application for Naturalization and proceeded through the entire naturalization process to the Oath of Allegiance. In such cases, the person obtained citizenship though the entire naturalization process and his or her citizenship status must first be revoked before the Certificate of Naturalization can be cancelled. However, a Certificate of Naturalization illegally or fraudulently obtained by a person who did not lawfully file an Application for Naturalization or who did not proceed through the naturalization process may be cancelled.[791]

### B. Cancellation of Certificate after Revocation of Naturalization

If a court revokes a person's U.S. citizenship obtained through naturalization, the court enters an order revoking the person's naturalization and cancelling the person's Certificate of Naturalization. In such cases, the person must surrender his or her Certificate of Naturalization. Once USCIS obtains the court's order revoking citizenship and cancelling the certificate, USCIS updates its records, including electronic records, and notifies the Department of State of the person's revocation of naturalization.[792] All cases relating to cancellation of certificates should be coordinated through the USCIS OCC office with jurisdiction.

[790] See INA 342.
[791] See INA 342.
[792] See Part L, Revocation of Naturalization, Chapter 3, Effects of Revocation of Naturalization.

# PART L – REVOCATION OF NATURALIZATION

## Chapter 1: Purpose and Background

### A. Purpose

Revocation of naturalization is sometimes referred to as "denaturalization." Unlike most other immigration proceedings that USCIS handles in an administrative setting, revocation of naturalization can only occur in federal court.

A person's naturalization can be revoked either by civil proceeding or pursuant to a criminal conviction. For civil revocation of naturalization, the United States Attorney's Office must file the revocation of naturalization actions in Federal District Court.[793] For criminal revocation of naturalization, the U.S. Attorney's Office files criminal charges in Federal District Court.[794]

The government holds a high burden of proof when attempting to revoke a person's naturalization. For civil revocation of naturalization, the burden of proof is clear, convincing, and unequivocal evidence which does not leave the issue in doubt.[795] For criminal revocation of naturalization the burden of proof is the same as for every other criminal case, proof beyond a reasonable doubt.

USCIS refers cases for civil revocation of naturalization when there is sufficient evidence to establish that the person is subject to one of the grounds of revocation.

The general grounds for civil revocation of naturalization are:

- Illegal procurement of naturalization; or
- Concealment of a material fact or willful misrepresentation.

Another ground for revocation of naturalization exists in cases where the person naturalized under the military provisions. In those cases, the person may also be subject to revocation of naturalization if he or she is discharged under other than honorable conditions before serving honorably for five years.

### B. Background

On February 14, 2001, a District Court issued a nationwide injunction based on a finding that USCIS has no statutory authority to administratively revoke naturalization.[796] A person's naturalization can only be revoked after a final order in a judicial proceeding to revoke his or her naturalization.[797] During a revocation of naturalization proceeding, all related documentation from the A-file is subject to discovery.

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[793] See INA 340(a).
[794] A criminal conviction under 18 U.S.C. 1425 results in automatic revocation of naturalization under INA 340(e).
[795] See *Kungys v. United States*, 485 U.S. 759, 767 (1988).
[796] See Order Granting Order for Permanent Injunction, *Gorbach v. Reno*, 2001 WL 34145464 (February 14, 2001) (Entering order pursuant to *Gorbach v. Reno*, 219 F.3d 1087 (9th Cir. 2000)).
[797] See INA 340(a).

### C. Difference between Revocation and Cancellation of Certificate

USCIS is authorized to cancel any Certificate of Citizenship or Certificate of Naturalization in cases where USCIS considers that the certificate itself was obtained or created illegally or fraudulently.[798] Cancellation of a certificate under this provision only cancels the certificate and does not affect the citizenship status of the person in whose name the certificate was issued.

If someone was unlawfully naturalized or misrepresented or concealed facts during the naturalization process, civil or criminal proceedings must be instituted to revoke the naturalization and the status of the person as a citizen. Once the naturalization is revoked, the court also cancels the person's Certificate of Naturalization.

The main difference between cancellation and revocation proceedings is that cancellation only affects the document, not the person's underlying status. For this reason, cancellation is only effective against persons who are not citizens, either because they have not complied with the entire naturalization process or because they did not acquire citizenship under law, but who nonetheless have evidence of citizenship which was fraudulently or illegally obtained.

Where USCIS has affirmatively granted naturalization to a person, that person is a citizen unless and until that person's citizenship is revoked.[799] Revocation, therefore, is appropriate when:

- The person filed an Application for Naturalization (Form N-400);
- The person appeared at the naturalization interview;
- The naturalization application was approved; and
- The person took the Oath of Allegiance for naturalization.

By contrast, a person who illegally obtained a Certificate of Naturalization without going through the naturalization process, and was therefore never naturalized by USCIS, is not a citizen of the United States. While the person has a certificate as evidence of U.S. citizenship, the certificate in and of itself, does not confer the status of citizenship.

In such cases, USCIS can initiate proceedings to cancel the Certificate of Naturalization.[800] Because the person holding this certificate did not obtain citizenship based on a USCIS process, the person maintains whatever immigration status he or she had.

### D. Legal Authorities

- INA 340; 8 CFR 340 – Revocation of naturalization
- INA 342; 8 CFR 342 – Administrative cancellation of certificates, documents, or records

## Chapter 2: Grounds for Revocation of Naturalization

[798] See INA 342. See Part K, Certificates of Citizenship and Naturalization, Chapter 5, Cancellation of Certificate of Citizenship or Naturalization.
[799] The revocation must have been pursuant to INA 340(e) or 18 U.S.C. 1425.
[800] See INA 342.

In general, a person is subject to revocation of naturalization on the following grounds:

**A. Person Procures Naturalization Illegally**

A person is subject to revocation of naturalization if he or she procured naturalization illegally. Procuring naturalization illegally simply means that the person was not eligible for naturalization in the first place. Accordingly, any eligibility requirement for naturalization that was not met can form the basis for an action to revoke the naturalization of a person. This includes the requirements of residence, physical presence, lawful admission for permanent residence, good moral character, and attachment to the U.S. Constitution.[801]

Discovery that a person failed to comply with any of the requirements for naturalization at the time the person became a U.S. citizen renders his or her naturalization illegally procured. This applies even if the person is innocent of any willful deception or misrepresentation.[802]

**B. Concealment of Material Fact or Willful Misrepresentation**[803]

1. Concealment of Material Fact or Willful Misrepresentation

A person is subject to revocation of naturalization if there is deliberate deceit on the part of the person in misrepresenting or failing to disclose a material fact or facts on his or her naturalization application and subsequent examination.

In general, a person is subject to revocation of naturalization on this basis if:

- The naturalized U.S. citizen misrepresented or concealed some fact;
- The misrepresentation or concealment was willful;
- The misrepresented or concealed fact or facts were material; and
- The naturalized U.S. citizen procured citizenship as a result of the misrepresentation or concealment.[804]

This ground of revocation includes omissions as well as affirmative misrepresentations. The misrepresentations can be oral testimony provided during the naturalization interview or can include information contained on the application submitted by the applicant. The courts determine whether the misrepresented or concealed fact or facts were material. The test for materiality is whether the misrepresentations or concealment had a tendency to affect the decision. It is not necessary that the information, if disclosed, would have precluded naturalization.[805]

2. Membership or Affiliation with Certain Organizations

[801] See INA 316.
[802] See INA 340(a).
[803] See INA 340(a). See *Kungys v. United States*, 485 U.S. 759, 767 (1988). See *United States v. Nunez-Garcia*, 262 F. Supp.2d 1073 (C.D. Cal. 2003) *United States v. Reve*, 241 F. Supp.2d 470 (D. N.J. 2003). See *United States v. Ekpin*, 214 F. Supp.2d 707 (S.D. Tex. 2002). See *United States v. Tarango-Pena*, 173 F. Supp.2d 588 (E.D. Tex. 2001).
[804] See *Kungys v. United States*, 485 U.S. 759, 767 (1988).
[805] See *Kungys v. United States*, 485 U.S. 759, 767 (1988).

A person is subject to revocation of naturalization if the person becomes a member of, or affiliated with, the Communist party, other totalitarian party, or terrorist organization within five years of his or her naturalization.[806] In general, a person who is involved with such organizations cannot establish the naturalization requirements of having an attachment to the Constitution and of being well-disposed to the good order and happiness of the United States.[807]

The fact that a person becomes involved with such an organization within five years after the date of naturalization is prima facie evidence that he or she concealed or willfully misrepresented material evidence that would have prevented the person's naturalization.

**C. Other than Honorable Discharge before Five Years of Honorable Service after Naturalization**

A person is subject to revocation of naturalization if:

- The person became a United States citizen through naturalization on the basis of honorable service in the U.S. armed forces;[808]
- The person subsequently separates from the U.S. armed forces under other than honorable conditions; and
- The other than honorable discharge occurs before the person has served honorably for a period or periods aggregating at least five years.[809]

## Chapter 3: Effects of Revocation of Naturalization

**A. Effective Date of Revocation of Naturalization**

The revocation of a person's U.S. citizenship obtained through naturalization is effective as of the original date of naturalization.[810] The person returns to his or her immigration status before becoming a U.S. citizen as of the date of naturalization shown on the person's Certificate of Naturalization.

**B. Cancellation of Certificate of Naturalization**

If a court revokes a person's U.S. citizenship obtained through naturalization, the court enters an order revoking the persons naturalization and cancelling the person's Certificate of Naturalization. In such cases, the person must surrender his or her Certificate of Naturalization. Once USCIS obtains the court's order revoking citizenship and cancelling the certificate, USCIS updates its records, including electronic records, and notifies the Department of State of the person's revocation of naturalization. All cases relating to cancellation of certificates should be coordinated through the USCIS OCC office with jurisdiction.[811]

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[806] See INA 313 and INA 340(c).
[807] See INA 316(a)(3). See Part D, General Naturalization Requirements.
[808] See INA 328(a). See INA 329(a). See Part I, Military Members and their Families.
[809] See INA 328(f) and INA 329(c).
[810] See INA 340(a).
[811] See Part K, Certificates of Citizenship and Naturalization, Chapter 5, Cancellation of Certificate of Citizenship or Naturalization.

## C. Effects of Revocation on Citizenship of Certain Spouses and Children[812]

1. General Effects of Person's Revocation on Citizenship of Spouse or Child

In general, certain spouses and children of persons who naturalize may become U.S. citizens through their spouses or parents' citizenship. A spouse may become a U.S. citizen through the special spousal provisions for naturalization.[813] A child residing in the United States or abroad may become a U.S. citizen through his or her parent's naturalization.[814] In general, the spouse or child of a person whose citizenship has been revoked cannot become a U.S. citizen on the basis that he or she is the spouse or child of that person.[815]

In addition, the citizen spouse or citizen child of a person whose citizenship has been revoked may lose his or her citizenship upon the parent or spouse's revocation of naturalization. This depends on the basis of the revocation, and in some cases, on whether the spouse or child resides in the United States at the time of the revocation.

For example, the citizenship of a spouse or child who became a United States citizen through the naturalization of his or her parent or spouse is not lost if the revocation was based on illegal procurement of naturalization. The spouse or child's citizenship may be lost, however, if the revocation was based on other grounds (see below).

In cases where the spouse or child loses his or her citizenship, the spouse or child loses any right or privilege of U.S. citizenship which he or she has, may have, or may acquire through the parent or spouse's naturalization. The spouse or child returns to the status that he or she had before becoming a U.S. citizen.[816]

2. Citizenship of Spouse or Child is Lost if Revocation for Concealment or Misrepresentation

The spouse or child of a person whose U.S. citizenship is revoked loses his or her U.S. citizenship at the time of revocation in cases where:

- The spouse or child became a United States citizen through the naturalization of his or her parent or spouse whose citizenship has been revoked; and

- The parent or spouse's citizenship was revoked on the ground that his or her naturalization was procured by concealment of a material fact or by willful misrepresentation.[817]

This provision applies regardless of whether the spouse or child is residing in the United States or abroad at the time of the revocation of naturalization.[818]

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[812] USCIS counsel should be contacted in all cases involving possible loss of citizenship by spouses or children of persons whose naturalization has been revoked.
[813] See INA 319(a) and INA 319(b). See Part G, Spouses of U.S. Citizens.
[814] See INA 320 and INA 322. See Part H, Children of U.S. Citizens.
[815] See *Rosenberg v. United States*, 60 F.2d 475 (3rd Cir. 1932).
[816] Officers should consult with local USCIS OCC counsel in any cases involving a spouse's or child's revocation of citizenship under this provision.
[817] See INA 340(a) and INA 340(d).
[818] See INA 340(d).

3. Citizenship of Spouse or Child Residing Abroad is Lost if Revocation on Certain Grounds

The spouse or child of a person whose U.S. citizenship is revoked may lose his or her U.S. citizenship if the spouse or child is residing outside of the United States at the time of revocation.[819] This applies if the revocation was based on becoming a member of certain organizations after naturalization or for separating from the military under less than honorable conditions before serving honorably for five years.

The spouse or child of a person whose U.S. citizenship is revoked under these sections may lose his or her U.S. citizenship at the time of revocation in cases where:

- The spouse or child became a United States citizen through the naturalization of his or her parent or spouse whose citizenship has been revoked;
- The spouse or child resided outside of the United States at the time of revocation; and
- The parent or spouse's citizenship was revoked on the basis that:
  - The person became involved with the Communist party, other totalitarian party, or terrorist organization within five years of his or her naturalization;[820] or
  - The person naturalized on the basis of service in the U.S. armed forces but separated from the military under other than honorable conditions before serving honorably for a period or periods totaling at least five years.[821]

The spouse or child's loss of citizenship under this provision does not apply if the spouse or child was residing in the United States at the time of revocation.[822]

[819] See INA 340(d).
[820] See INA 313 and INA 340(c). See Part D, General Naturalization Requirements.
[821] See INA 328(f) and INA 329(c). See Part I, Military Members and their Families.
[822] See INA 340(d).