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.[1] 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).[2]

- 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.[3]

- 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.[4]

- 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.[5]

- 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.[6]

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.[7]

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[1] See INA 316. See 8 CFR 316. See Part D, General Naturalization Requirements.
[2] See INA 316(a). See Part D, General Naturalization Requirements.
[3] See INA 319(a). See Chapter 3, Spouses of U.S. Citizens Residing in the United States.
[4] See INA 319(b). See Chapter 4, Spouses of U.S. Citizens Employed Abroad.
[5] 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.
[6] 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.
[7] See INA 319(a). See Chapter 3, Spouses of U.S. Citizens Residing in the United States.

B. Background

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.[8] 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

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

- 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

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.[9] 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.[10]

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

- Relationships involving bigamy, polygamy, or incest;[11]
- 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;[12] or
- Relationships between two persons of the same sex.[13]

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;[14]

[9] The principle of "comity" requires one state to recognize the legal acts of another state so long as they do not violate public policy.
[10] See 8 CFR 319.1(b)(1).
[11] 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).
[12] 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).
[13] 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.
[14] 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.

- The state or local jurisdiction in which the marriage took place recognizes the marriage as a heterosexual marriage;[15] and

- The law where the marriage took place does not bar a marriage between a transgender person and person of the other gender.[16]

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.[17] If the divorce is not final under the foreign law, remarriage to a U.S. citizen is not valid for immigration purposes.[18]

An officer should ensure that the court issuing the divorce had jurisdiction to do so.[19] 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.[20] 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.[21]

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.[22] In order for a common law marriage to be valid for immigration purposes:

- The parties must live in that jurisdiction; and

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[15] See *Matter of Lovo-Lara*, 23 I&N Dec. 746 (BIA 2005).
[16] 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.
[17] See *Matter of Luna*, 18 I&N Dec. 385 (BIA 1983). See *Matter of Ma,* 15 I&N Dec. 70 (BIA 1974).
[18] See *Matter of Ma*, 15 I&N Dec. 70, 71 (BIA 1974). See *Matter of Miraldo*, 14 I&N Dec. 704 (BIA 1974).
[19] 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).
[20] See 8 CFR 319.1(b)(1).
[21] See 8 CFR 103.2(b). See 8 CFR 319.1 and 8 CFR 319.2.
[22] For purposes of determining whether a common law marriage exists, see statutes and case law for the appropriate jurisdiction.

- 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.

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.[23] 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.[24]

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.[25] 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.

[23] The date a common law marriage commences is determined by laws of the relevant jurisdiction.
[24] See 8 CFR 319.1(b)(2)(i) and 8 CFR 319.2(c).
[25] See INA 319(a). See 8 CFR 319.1(a)(3) and 8 CFR 319.1(b).

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.[26]

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.[27]

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.[28] 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.[29]

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.[30]

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.[31] 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.[32] In all cases, the divorce must be final.

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[26] See guidance below on "Involuntary Separation" under the paragraph "Failure to be Living in Loss of Marital Union due to Separation."
[27] See 8 CFR 319.1(b)(1).
[28] See 8 CFR 319.1(b)(2)(i). See 8 CFR 319.2(c).
[29] 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)).
[30] See 8 CFR 319.1(b)(2)(i) and 8 CFR 319.2(c).
[31] See *Matter of Hussein*, 15 I&N Dec. 736 (BIA 1976).
[32] See *Matter of Luna*, 18 I&N Dec. 385 (BIA 1983).

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.[33]

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.[34] 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.[35] 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.[36] 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:

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[33] See 8 CFR 319.1(b)(2)(i). See 8 CFR 319.2(c). See INA 337.
[34] See for example, *Nehme v. INS*, 252 F.3d 415, 422-27 (5th Cir. 2001) (Discussing legal separation for purposes of derivation of citizenship).
[35] See 8 CFR 319.1(b)(2)(ii)(A).
[36] See 8 CFR 319.1(b)(2)(ii)(B).

- 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.[37]

Involuntary Separation

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:[38]

- 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.[39] 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).

[37] See *U.S. v. Moses*, 94 F. 3d 182 (5th Cir. 1996).
[38] See 8 CFR 319.1(b)(2)(ii)(C).
[39] See INA 319(a). See 8 CFR 319.1.

- 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.

- 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.[40] 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.[41]

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.

[40] See INA 316(a). See Part D, General Naturalization Requirements.
[41] See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits.

USCIS follows the language of the statute in requiring marital union only up until the time of filing.[42] 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.[43]

A person who was a spouse subjected to battering or extreme cruelty by their citizen spouse is exempt from the marital union requirement.[44]

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 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.[45]

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.[46] 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.[47]

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.[48] 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.

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[42] See 8 CFR 319.1(a)(3). See *Ali v. Smith*, 39 F. Supp. 2d 1254. (W.D. Wash. 1999).
[43] 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.
[44] See INA 319(a). See Section F, Eligibility for Persons Subjected to Battering or Extreme Cruelty.
[45] See Part D, General Naturalization Requirements, Chapter 3, Continuous Residence. See 8 CFR 316.5(a).
[46] 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.
[47] See 8 CFR 319.1(a)(2) and 8 CFR 319.1(a)(4). See Part D, General Naturalization Requirements, Chapter 4, Physical Presence.
[48] See INA 334(a). See 8 CFR 334.2(b).

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).[49]

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,[50] 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.[51]

Specifically, the person must have obtained LPR status on the basis of:

- 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;[52]
- 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;[53] 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.[54]

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

[49] See 8 CFR 316.2(a)(5).
[50] See INA 101(a)(50) (Definition of intended spouse).
[51] 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.
[52] See INA 204(a)(1)(B)(ii) or INA 204(a)(1)(B)(iii).
[53] See INA 240A(b)(2)(A)(i)(I) or INA 240A(b)(2)(A)(i)(III).
[54] See INA 216(c)(4)(C).

- U.S. citizenship status of applicant's spouse from the time of filing until the time the applicant takes the Oath of Allegiance.[55]

The spouse must meet all other eligibility requirements for naturalization on the basis of marriage to a U.S. citizen.[56]

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.[57] 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

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.[58] A spouse of a U.S. citizen must submit with the application evidence to establish the U.S. citizenship of his or her spouse.[59]

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.[60]

Chapter 4: Spouses of U.S. Citizens Employed Abroad

A. General Eligibility for Spouses of U.S. Citizens Employed Abroad

[55] See 8 CFR 319.1(b)(2)(i) and 8 CFR 319.2(c).
[56] See INA 319(a). See 8 CFR 319.2.
[57] See 8 CFR 319.11(a). See 8 CFR 103.7(b)(1).
[58] See Chapter 2, Marriage and Marital Union for Naturalization.
[59] See INA 319(a). See 8 CFR 319.1(a).
[60] See 8 CFR 103.2(b)(5). See 8 CFR 319.1 and 8 CFR 319.2.

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.[61] Spouses otherwise eligible under this provision are exempt from the continuous residence and physical presence requirements for naturalization.[62]

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.[63]
- 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.[64]
- 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.[65] USCIS follows the statutory three-year GMC period preceding filing (until naturalization) specified for spouses of U.S. citizens residing in the United States.[66]

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.[67]

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[61] See INA 319(b). See 8 CFR 319.2. See Section C, Qualifying Employment Abroad.
[62] See INA 319(b). See 8 CFR 319.2(a)(6).
[63] See 8 CFR 319.2(b).
[64] See INA 319(a). See 8 CFR 319.1(a)(7) and 8 CFR 319.2(a)(5).
[65] See INA 319(b). See 8 CFR 319.2(a)(5).
[66] See INA 319(a). See 8 CFR 319.1(a)(7).
[67] See INA 319(b). See 8 CFR 319.2.

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.[68]

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.[69] 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.[70] 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.[71]

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:[72]

- Government of the United States (including the U.S. armed forces);
- American institution of research recognized as such by the Attorney General;[73]
- 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;[74]
- 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"

[68] 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.
[69] See INA 319(b). See 8 CFR 319.1(b)(1). See Chapter 2, Marriage and Marital Union for Naturalization.
[70] See Chapter 2, Marriage and Marital Union for Naturalization, Section A, Validity of Marriage.
[71] See 8 CFR 319.2(a)(4).
[72] See INA 319(b)(1)(B).
[73] See 8 CFR 316.20(a). See www.uscis.gov/AIR lists of recognized organizations.
[74] See 8 CFR 319.5 and 8 CFR 316.20(b).

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.[75] Both the statute and its corresponding regulation are silent on when to begin calculating the specified period regularly stationed abroad.[76]

As a matter of policy, USCIS calculates the period of qualifying employment abroad from the time the applicant spouse properly files for naturalization.[77] However, this policy does not alter the requirement that the applicant must intend to reside abroad with the U.S. citizen spouse after naturalization.[78]

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 have any prior period of residence or specified period of physical presence within the United States in order to qualify for naturalization.[79]

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.[80]

G. Application and Evidence

Application for Naturalization (Form N-400)

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[75] 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.
[76] See INA 319(b)(1)(B) and INA 319(b)(1)(C). See 8 CFR 319.2(a)(1).
[77] 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.
[78] See 8 CFR 319.2(a)(4).
[79] 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.
[80] 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.

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.[81] 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.[82] A spouse of a U.S. citizen must submit with the application evidence to establish the U.S. citizenship of his or her spouse.[83]

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.[84]

Evidence of Citizen Spouse's Employment Abroad

Along with his or her naturalization application, the applicant must submit evidence demonstrating the spouse's qualifying employment abroad.[85]

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

[81] See 8 CFR 319.11(a). See 8 CFR 103.7(b)(1).
[82] See Chapter 2, Marriage and Marital Union for Naturalization.
[83] See INA 319(b). See 8 CFR 319.2(a).
[84] See 8 CFR 103.2(b)(5). See 8 CFR 319.1 and 8 CFR 319.2.
[85] See INA 319(b). See 8 CFR 319.11(a).

- 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.[86]

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.[87] 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.[88] 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;
- The marriage has not been terminated; and
- The marriage was not entered into for purposes of evading the immigration laws of the United States.[89]

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.[90]

B. Spouses who Must Have an Approved Petition Prior to Naturalization

[86] See 8 CFR 319.2(a)(4).
[87] 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).
[88] 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.
[89] See INA 216(d)(1).
[90] See Section C, Spouses Eligible to Naturalize without Filing Petition to Remove Conditions.

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.[91]

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.[92]

3. Failure to File or Denial of 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.[93]

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.[94] For this reason,

[91] See INA 216(d)(2).
[92] 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.
[93] See INA 216(c)(2) and INA 216(c)(3).

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.[95] 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.[96]

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.[97]

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.[98] Therefore, the CPR spouse must establish that:

- 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.[99]

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[94] 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.
[95] See INA 319(b). See 8 CFR 319.2.
[96] 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).
[97] 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).
[98] 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.
[99] See INA 216. See 8 CFR 216.4(c).

An officer must not approve a CPR spouse's naturalization application unless the spouse meets these requirements.[100]

D. Conditional Permanent Residents Admitted as Entrepreneurs

If a CPR spouse is admitted as alien entrepreneur,[101] USCIS will make a determination on the CPR's petition to remove conditions before approving the CPR's naturalization application.

[100] 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.
[101] See INA 216A (EB-5 alien entrepreneurs).