




U.S. Citizenship
and Immigration
Services

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Memorandum

TO: Field Leadership

FROM: Donald Neufeld 
Acting Associate Director, Domestic Operations

DATE:

SUBJECT: Guidance on the Continuous Residence Exception for Naturalization Applicants
Who Worked as Translators or Interpreters in Iraq or Afghanistan

Revision to *Adjudicator's Field Manual* (AFM) Chapter 73.3(f)
(AFM Update AD09-12)

1. Purpose

This memorandum provides field guidance for the adjudication of Applications for Naturalization, Form N-400, that include a claim to benefits under section 1059(e) of the National Defense Authorization Act for Fiscal Year 2006 (NDAA FY06), as amended.

2. Background

Generally, applicants for naturalization must establish continuous residence and physical presence in the United States for a certain amount of time. See, e.g., INA § 316(a), 319(a). Section 316(b) of the Immigration and Nationality Act (INA) generally presumes that applicants for naturalization who remained outside the United States for more than 6 months but less than 1 year during the period for which continuity of residence is required have broken that continuity of residence, unless they establish that they did not abandon residence during that absence. Section 316(b) of the INA further provides that applicants who remained continuously abroad for more than 1 year cannot establish the requisite continuity of residence unless they have first been physically present in the United States for an uninterrupted period of at least 1 year and subsequently employed abroad by the U.S. Government or other qualifying employer.

Although NDAA FY06 originally had no provisions concerning naturalization, it was later amended by Public Law 110-36 to include a new section 1059(e) which provides a limited benefit to qualified naturalization applicants. Amended section 1059(e) (hereafter referred to as section 1059(e)), created an exception to what is considered an absence that may break the continuity of residence for those naturalization applicants who have engaged in qualifying employment as translators or interpreters in Iraq or Afghanistan. Such applicants are presumed **not** to have broken their continuity of residence during the time they were performing those services. Section 1059(e) took effect on June 15, 2007, but its benefits extend to applicants who performed the qualifying employment prior to that date as well. It is important to note that section 1059(e) only addresses the continuous residence requirement for naturalization for qualifying applicants; it does not in any way modify the physical presence requirements for naturalization for those applicants.

3. Field Guidance

All United States Citizenship and Immigration Services (USCIS) offices are directed to comply with the following guidance, including the detailed instructions of the accompanying update to the Adjudicator's Field Manual.

- Basic Eligibility Requirements for Continuous Residence Credit under Section 1059(e)

Section 1059(e) provides as follows:

e) Naturalization. ...

(1) In general.--An absence from the United States described in paragraph (2) shall not be considered to break any period for which continuous residence in the United States is required for naturalization under title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.).

(2) Absence described.--An absence described in this paragraph is an absence from the United States due to a person's employment by the Chief of Mission or United States Armed Forces, under contract with the Chief of Mission or United States Armed Forces, or by a firm or corporation under contract with the Chief of Mission or United States Armed Forces, if --

- (A) such employment involved working with the Chief of Mission or United States Armed Forces as a translator or interpreter; and
- (B) the person spent at least a portion of the time outside of the United States working directly with the Chief of Mission or United States Armed Forces as a translator or interpreter in Iraq or Afghanistan.

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Accordingly, to be eligible for the continuous residence benefit of section 1059(e) for an absence, an applicant must:

- Be employed by the Chief of Mission or United States Armed Forces, or employed by a firm or corporation under contract with the Chief of Mission of United States Armed Forces;
- The employment must be as an interpreter or translator; and
- The employment in the qualifying position must take place in Iraq or Afghanistan

Section 1059(e) provides a benefit even if only a portion of the qualifying employment occurred in Iraq or Afghanistan; however, to receive credit for the period overseas, the applicant must have been employed as an interpreter or translator. In other words, if during an applicant's entire absence, he or she was employed abroad as a translator or interpreter by the Department of State's Chief of Mission or by the U.S. Armed Forces, or under contract with those entities, and spent only one day in Iraq or Afghanistan as an interpreter or translator, the applicant will receive credit for the entire time abroad. However, if the applicant spent part of the time abroad in a position other than an interpreter or translator, the applicant will not receive credit for that time abroad.

Additionally, unlike the Special Immigrant benefits in the original Pub L. 109-163 that are restricted to nationals of Iraq or Afghanistan, the benefits of section 1059(e) are available to qualified naturalization applicants of any nationality.

- Limited Scope of the Section 1059(e) Benefit

To qualify for the benefits of section 1059(e), an applicant must first meet all other threshold eligibility requirements for naturalization itself. Performance of the requisite service described in section 1059(e) does not in itself make someone eligible for naturalization.

The benefits of section 1059(e) are limited to the continuous residence requirements for naturalization. Applicants remain subject to the regular physical presence requirements for naturalization, depending on the section of law under which they are applying, because section 1059(e) did not provide any benefit for applicants regarding the physical presence requirement. For a more detailed explanation see subchapter (f)(8)(C) of AFM Chapter 73.3, attached below. Note that while applicants who qualify for the benefit of section 1059(e) are not required to file a Form N-470, Application to Preserve Residence for Naturalization Purposes, applicants who do have an approved N-470, may benefit from the physical presence credit provided by section 316(c) of the INA.

The section 1059(e) continuous residence exception applies only to the principal applicant and does not extend to members of that applicant's family.

- The Burden of Proof to Document Eligible Periods of Absence

An applicant for this benefit has the responsibility to submit to USCIS the requisite documentation, issued under authority of the Chief of Mission or of a branch of the U.S. Armed Forces, affirming that the qualifying services were performed in Iraq or Afghanistan, either in the direct employment

of the Chief of Mission or the U.S. Armed Forces, or in the employment of a firm or corporation under contract with one of those entities. Details concerning the required evidence are discussed in the AFM Chapter 73.3(f)(8)(B) referenced below.

4. Adjudicator's Field Manual (AFM) Update

The Adjudicator's Field Manual (AFM) Chapter 73.3 entitled "Continuity of Residence" is amended accordingly by adding new paragraph (8) to subchapter (f)(1). The revisions read as follows:

73.3 Continuity of Residence.

(f) Classes of Applicants Eligible for Constructive Continuous Residence While Outside the United States.

* * * * *

(8) Qualified Service as a Translator or Interpreter in Iraq or Afghanistan.

Section 1059(e) of the National Defense Authorization Act for Fiscal Year 2006, as amended (hereafter cited as sec. 1059(e)), provides that any period of absence abroad by an otherwise eligible naturalization applicant of any nationality will not break the applicant's continuous residence for purposes of naturalization, and the total period of such time abroad should be considered as continuous residence in the United States, as long as the applicant establishes that the absence met all of the following criteria:

- the applicant's absence was due to employment as a translator or interpreter by the U.S. Chief of Mission (of the Department of State) or by the U.S. Armed Forces, or in the employment of a firm or corporation under contract with one of those entities; **and**
- the qualifying employment took place in Iraq or Afghanistan during any part of that period of absence (even 1 day), to include any continuation of that same employment in another foreign country other than Iraq or Afghanistan.

Note that service in Iraq or Afghanistan that includes **no** employment as a translator or interpreter, or service in Iraq or Afghanistan as a translator or interpreter for an entity **other** than the U.S. Chief of Mission, the U.S. Armed Forces or a contractor for one of them, does **not** qualify for the sec. 1059(e) exception.

See Section 1059(e) of the National Defense Authorization Act for Fiscal Year 2006, Pub L. 109-163, 119 Stat. 3136, 3443, as amended by Pub. L. 110-36, 121 Stat. 227 (8 U.S.C.A. § 1101 note).

(A) Preliminary Review of Form N-400 Application that Includes a Section 1059(e) Continuous Residence Exception.

When first evaluating naturalization applications that include a claim to benefits under section 1059(e), the adjudicator should first review the applicant's trips recorded on Form N-400 as well as the applicant's travel documents, including passports, to determine whether any period of continuous absence abroad exceeded 6 months. If no period of absence exceeded 6 months, then the question of the applicant's eligibility for the section 1059(e) benefits is moot and no further inquiry on that point is necessary.

If any period of absence did exceed 6 months, determine whether any part of that particular absence included employment as a translator or interpreter in Iraq or Afghanistan that meets the section 1059(e) eligibility criteria. If such a case applies, the adjudicator must annotate the relevant line(s) on Form N-400 to show what portion of the absence was covered by the section 1059(e) exception.

(B) Documenting Eligible Periods of Absence.

The adjudicator must ensure that a claim for sec. 1059(e) continuity of residence benefits is supported by evidence demonstrating:

- the identity of the applicant;
- confirmation whether the applicant performed the services of a translator or interpreter in Iraq or Afghanistan directly for the Chief of Mission, a branch of the U.S. Armed Forces, or under contract with those entities. An applicant who was not employed directly by the office of the Chief of Mission or a branch of the U.S. Armed Forces should explain the connection between his or her actual employer and either of those authorities;
- the dates during which the applicant was employed in Iraq or Afghanistan as a translator or interpreter by or under contract with the certifying Chief of Mission or branch of the Armed Forces, or under contract with one of those authorities, together with a description of the qualifying employment and the place(s) where it was performed; and, if applicable,

- the dates during which the applicant performed the qualifying services as a translator or an interpreter for or under contract with the certifying authority in foreign countries **other than** Iraq or Afghanistan

Ideally, this evidence will consist of a letter of certification issued by the employing authority, such as the office of the Chief of Mission of the Department of State in Iraq or Afghanistan, by a branch of the U.S. Armed Forces, or by an entity under contract the Chief of Mission or Armed Forces. However, there are cases where an applicant no longer has direct access to those authorities, such as when the employment has terminated and the applicant is no longer abroad. In such instances, the adjudicator may accept other evidence of their eligibility, such as travel orders, employment contracts, or similar evidence.

Any claimant to sec. 1059(e) benefits who has not already submitted all of the necessary evidence with the original Form N-400 application should be instructed in writing to do so as early in the process as possible, so as to minimize delay in completing the adjudication.

If the applicant should fail to provide satisfactory evidence of the qualifying section 1059(e) employment in Iraq or Afghanistan, that absence abroad is subject to all the normal requirements and penalties of section 316(b) of the Act.

(C) The scope of qualified continuity of residence under sec. 1059(e).

Section 1059(e) provides that as long as the applicant's employment as a translator or interpreter by the U.S. Chief of Mission or the U.S. Armed Forces or by a contractor for one of those entities includes service in Iraq or Afghanistan during **any** part of that period of absence (even 1 day), any continuation of that same employment in **another** foreign country is also deemed a continuity of residence for the purposes of INA section 316(b). However, sec. 1059(e) coverage extends **only** to employment as a translator or interpreter by one of the prescribed entities.

There may be cases where a portion of the absence abroad is covered by section 1059(e), but another part of that same absence is not. For example, an applicant might work in qualifying employment as a translator or interpreter in Iraq or Afghanistan for a certain period of time, but then take a different kind of employment for the balance of that absence. In such cases, only that portion of time in which the applicant was engaged in the qualifying employment as a translator or interpreter under authority of the Chief of Mission or U.S. Armed Forces would be covered by section 1059(e).

If the part of the absence not covered by the section 1059(e) provisions exceeds 6 months, the applicant may, in certain instances, fail to meet the continuous residence requirements for naturalization.

