



HQ DOMO 70/34.5
70/34.6
AFM Update 09-23

April 15, 2009

Memorandum

TO: Distribution List

FROM: Donald Neufeld /s/
Acting Associate Director

SUBJECT: Processing N-400s Filed Under INA 328 and 329 When Applicant Fails to Respond to a Request for Evidence or for Appearance

Revisions to *Adjudicator's Field Manual* Chapters 15 and 72 (AFM Update 09-23)

I. Purpose

This memorandum provides guidance on adjudicating Form N-400s, Application for Naturalization, filed by applicants seeking naturalization under section 328 or 329 of the Immigration and Nationality Act (INA) who fail to appear for their naturalization interview or fail to respond to a request for evidence. This guidance supports USCIS compliance efforts relating to the requirement in the Military Personnel Citizenship Processing Act to adjudicate such applications within six months of filing.¹

II. Background

Naturalization applicants who are in the U.S. Armed Forces move often due to official military orders, including overseas tours of duty.² USCIS provides suitable resources and efforts to locate such applicants who have failed to appear for a scheduled interview or to respond to a request for evidence since their failure to respond is often because of such circumstances. USCIS seeks to standardize the adjudication procedures and tracking of those efforts.

III. Policy Guidance

The following guidance will enhance the efficiency of military naturalization processing within USCIS domestic offices. USCIS will continue to make all actions and notations as required by Naturalization Quality Procedures (NQP).

A. Initial Processing at the Nebraska Service Center (NSC)

¹ See The Military Personnel Citizenship Processing Act of 2008, Pub. L. No. 110-382, 122 Stat. 4087.

² Namely, "Permanent Change of Station" orders ("PCS" orders).

Upon receipt of the military applicant's Form N-400 application packet, the NSC will perform all initial processing and annotate the "Record of Action for Military Form N-400," (see Attachment A) located on the non-record side of the A-file beneath the NQP processing sheets. When the NSC experiences a delay in initial processing due the applicant's inactions, the NSC will follow this guidance and document all actions taken to communicate the deficiencies of the application packet on the Record of Action. Initial processing includes the following actions:

- Review the naturalization packet for deficiencies, such as photographs, signatures, Form N-426, Request for Certification of Military or Naval Service, Form G-325B, Biographic Information, and a copy of the permanent resident card, if applicable;
 - If deficiencies exist, create a request for evidence (RFE) as described in part A, number 2 of this memorandum,
- Initiate the FBI fingerprint check as described in part A, number 1 of this memorandum;
- Complete initial data entry into the Computer Linked Application Information Management System version 4 (CLAIMS-4);
- Generate and send receipt notice;
- Request the relevant A-file(s);³
- Initiate all required security checks, including:
 - FBI name check
 - Defense Clearance and Investigations Index (DCII) check
- Place Form N-400 and supporting documents into the correct Record of Proceeding (ROP) order in compliance with NQP;
- Contact the appropriate Field Office to advise NSC is sending the A-file; and
- Forward the A-file with Form N-400 to the Field Office.

The NSC will retain any cases with a positive DCII check until NSC receives the corresponding dossier. The NSC will send cases to the Field Office after receipt of the FBI fingerprint and name check results.

1) Fingerprints:

The fingerprint requirement in 8 CFR 335.2(b) may be met in any of the following ways:

- The applicant may appear at any domestic USCIS Application Support Center (ASC) for fingerprint capture, regardless of whether he or she has an appointment;
- USCIS may use any fingerprints they already have on file for the applicant, and will re-submit these fingerprints to the FBI;

³ Where reference is made to the A-file, this may include a T-file after the required requests have been made in CIS for the A-file in compliance with NQP.

- USCIS may acquire and use the fingerprints taken at the time of enlistment into the military;⁴
- The applicant may have his or her fingerprints taken at a U.S. military installation overseas or at a U.S. embassy or consulate using the FD-258 fingerprint card; or
- The applicant may have his or her fingerprints taken at select military installations in the United States by USCIS personnel using mobile fingerprinting equipment.

The Kendell Frederick Citizenship Assistance Act⁵ mandates USCIS use enlistment fingerprints or previously submitted USCIS fingerprints to satisfy naturalization background check requirements unless a more efficient method is available. The NSC will complete the following actions to comply with the legislation and document those actions on the Record of Action in the A-file.

When the NSC receives the N-400 application packet, the NSC will determine if the military applicant is on active duty and where he or she is stationed (overseas or domestic) to establish the most efficient method of fingerprinting for the military applicant.

IF	AND	THEN
USCIS prints exist and have been retained	Military member is overseas or domestic	NSC requests a copy of the USCIS prints ⁶
USCIS prints do not exist, are not located or are unclassifiable ⁷	Military member is overseas	NSC requests a copy of the enlistment prints
USCIS prints do not exist, are not located or are unclassifiable	Military member is domestic	NSC schedules an ASC appointment
Enlistment prints are not located or are unclassifiable	Military member is overseas	NSC requests the applicant complete FD-258 fingerprint cards
Enlistment prints are not located or are unclassifiable	Military member is domestic	NSC schedules an ASC appointment

⁴ The NSC requests that the USCIS Fingerprint Liaison to the FBI, obtain enlistment prints. After receiving the enlistment prints, the ASC Program resubmits the prints to the FBI through BBSS and results are returned in BBSS, CLAIMS-4 and FBIQUERY.

⁵ See The Kendell Frederick Citizenship Assistance Act of 2008, Pub. L. No. 110-251, 122 Stat. 2319.

⁶ NSC requests both previous USCIS prints and enlistment prints from the Headquarters Application Support Center (ASC), Security and Office of FBI Liaison Branch (ASC Branch).

⁷ Fingerprints are labeled as unclassifiable if the prints are illegible for classification purposes.

When the NSC sends an initial ASC Appointment Notice to a military applicant, the NSC will also enclose the Fingerprint Notification Letter (see Attachment B), informing the applicant that USCIS is unable to use the enlistment or previous USCIS prints or that it is most expeditious for him or her to report for fingerprinting at an ASC.

If 3 days have elapsed from the last day of the time period allotted for the applicant to appear for fingerprinting as stated on the initial ASC Appointment Notice, the NSC will perform the following actions and document them on the Record of Action in the A-file:

- Search all available databases and correspondence for a change of address in an attempt to locate the applicant and advise him or her of the fingerprint requirement;
- Contact the military applicant by telephone, by letter and e-mail, if available, to alert the applicant of the fingerprint requirement, the methods to fulfill this requirement and confirm that he or she is stationed domestically and is otherwise able to report to an ASC;
- If unsuccessful in contacting the applicant directly, contact the military installation's designated liaison with USCIS⁸ to assist in locating the military applicant, and;
- If new contact information for the military applicant is provided by the USCIS liaison, document this information in the A-file;
- Upon contacting the applicant, send a second ASC Appointment Notice providing 10 business days to appear at the ASC.

NSC will consider the application abandoned and deny it according to 8 CFR 103.2(b)(13)(ii) if:

- NSC is unable to locate the applicant or 3 days have elapsed from the date of 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 domestically and is otherwise able to report to an ASC;
- The applicant has not fulfilled the fingerprinting requirement; and
- USCIS has determined the enlistment prints are not located or are unclassifiable.

After issuing a denial, NSC will retain the A-file for one year before sending it to the National Records Center (NRC). When a military applicant is denied pursuant to 8 CFR 103.2(b)(13)(ii) for failure to appear for fingerprinting, any future correspondence from the applicant will be considered a Service motion to reopen

⁸ See *Memorandum: Military Outreach: Bringing Immigration Services to the Troops* dated June 10, 2008, which directs USCIS Field Office Directors to maintain contact with the designated USCIS liaison at each military installation.

under 8 CFR 103.5(a)(5). The motion will be granted by USCIS, and USCIS will continue with the naturalization proceedings.

USCIS will not deny an application for abandonment for failure to provide fingerprints if USCIS has evidence that the applicant is deployed inside the United States and unable to be fingerprinted or is deployed overseas. The corresponding A-file will be retained at the NSC until notification that the service member is no longer deployed is received, at which time processing of the case can resume in accordance with this memorandum.

In instances where the applicant has already fulfilled the fingerprinting requirement and the fingerprints expire before the initial interview or any other time before final adjudication of the N-400, the Field Office should mail or hand deliver the military applicant an ASC Appointment Notice with instructions to go to the closest ASC as soon as possible. If the military applicant is unable to go to the closest ASC within a reasonable period of time, the Field Office should e-mail the NSC military naturalization unit at Nebraska.military@dhs.gov and request resubmission of the applicant's enlistment or USCIS fingerprints.

2) Initial Requests for Evidence (RFE) by the NSC:

8 CFR 328.4 and 329.4 require military applicants to submit Form N-426 and Form G-325B in order to fulfill the naturalization requirements. 8 CFR 103.2(b)(8) requires all naturalization applicants to comply with requests for initial evidence or evidence to establish eligibility.

Upon receipt of the military applicant's Form N-400, if the naturalization packet is missing initial evidence, the NSC will request submission of the missing evidence and provide 30 days to comply with the request. When the NSC is unable to complete the initial processing because of a military applicant's failure to provide a properly certified Form N-426, a completed Form G-325B, or requested evidence in response to the RFE, NSC will perform the following actions and document them on the Record of Action for Military Form N-400:

- Search all available databases and correspondence for a change of address or request for extension;
- If a search reveals a change of address, re-issue the RFE to the military applicant's current address of record and provide 30 days for receipt of evidence;
- If search reveals a request for extension, the NSC may grant the applicant an additional 30 days; or
- If USCIS can find no change of address or request for extension, contact the military installation's designated liaison with USCIS or certifying official, if known, to get an updated mailing address and then re-issue the 30 day RFE.

If 30 days have elapsed from the date the RFE was addressed to the applicant, and NSC is unable to complete the initial processing because of the military member's failure to comply with the RFE, NSC will follow these procedures and document all actions on the Record of Action:

1. Label with coversheet "Open RFE - for interview";
2. Determine interview jurisdiction;
3. Transfer A-file out in CIS and NFTS to Field Office.

B. Field Office Operational Guidance

Once initial processing has been completed, the USCIS Field Office with jurisdiction over the military member's address of record will receive the A-file to schedule the initial naturalization interview. When the Field Office receives the A-file, the Field Office must handle the naturalization process in an expeditious manner. Within five days of receipt of the A-file, the Field Office must schedule the naturalization interview in CLAIMS-4 including "forcing" the scheduling of the case in CLAIMS-4, if applicable.⁹ The interview must take place within 30 days of receipt of the A-file. In addition to sending the interview notice to the military member, the Field Office should attempt to contact the service member directly via telephone or e-mail in order to schedule the naturalization interview. The Field Office must document all actions taken to notify the military member of the request for appearance on the "Record of Action for Military Form N-400" (see Attachment A) located on the non-record side of the A-file beneath the NQP processing sheets.

1) Expired Fingerprints:

In instances where the military applicant has already fulfilled the fingerprinting requirement and the fingerprints expire before the initial interview or after the initial interview but before final adjudication of the N-400, the Field Office should mail or hand deliver the military applicant an ASC Appointment Notice with instructions to go to the nearest ASC as soon as possible. If the military applicant is unable to go to the nearest ASC within a reasonable period of time, the Field Office should e-mail the NSC military naturalization unit at Nebraska.military@dhs.gov and request resubmission of the applicant's enlistment or USCIS fingerprints.

2) Failure to Respond to Initial RFEs by NSC:

If the NSC issued an RFE for initial evidence, the applicant failed to respond to the NSC and the NSC sent the A-file to the Field Office, the Field Office will perform the following actions and document all actions on the Record of Action before scheduling the interview.

- Contact the service member via e-mail or phone in order to schedule the initial interview;

⁹ The NSC will make appropriate updates to CLAIMS-4, including removing the military hold, to allow the Field Office to schedule the interview.

- Search all available databases and correspondence for a change of address;
- If USCIS can find no change of address or request for extension, contact the USCIS liaison at the applicant's last known military installation¹⁰ in attempt to locate the service member and notify him or her of USCIS' inability to locate the service member for interview.

In addition, the Field Office will issue a new RFE describing the initial evidence requested with the instructions to bring the requested evidence to the naturalization interview. The Field Office will print the interview notice locally and enclose the new RFE with the interview notice. If the service member fails to appear for the interview, the Field Office will follow the instructions in part B, number 3 of this memorandum.

3) Failure to Appear for Initial Interview:

If USCIS schedules the military applicant for an initial naturalization interview, but he or she fails to comply with the request for appearance, the Field Office will perform the following actions and document all actions on the Record of Action.

- Search all available databases and correspondence for a change of address or request to reschedule in an attempt to locate the applicant and advise him or her of the requirement to appear for the interview pursuant to 8 CFR 335.2(a);
- If USCIS finds a change of address or a request to reschedule the interview, the Field Office will document this information in the A-file and mail a second interview notice to the service member;
- If USCIS can find no change of address or request to reschedule the interview, contact the USCIS liaison at the applicant's last known military installation in attempt to locate the service member and notify him or her of USCIS' inability to locate the service member for interview;
- If the USCIS liaison provides new contact information for the service member, the Field Office will document this information in the A-file and mail a second interview notice to the service member.

The Field Office will consider the military applicant to have abandoned his or her Form N-400 if:

- A military applicant fails to comply with a request for appearance at the initial interview;
- USCIS documents the above actions on the Record of Action; and

¹⁰ See *Memorandum: Military Outreach: Bringing Immigration Services to the Troops* dated June 10, 2008, which directs USCIS Field Office Directors to maintain contacts with the designated USCIS liaison at each military installation. Each Field Office should be maintaining contact with the designated USCIS liaison at each military installation within their jurisdiction.

- The applicant fails to notify USCIS of the reason for nonappearance within 30 days of the scheduled interview.

Once 30 days have elapsed from the date of the initial interview, in accordance with 8 CFR 335.6(a), the Field Office will administratively close Form N-400 and make the necessary updates in CLAIMS-4. The Field Office will issue the military applicant a Notice of Administratively Closed Application (see Attachment C) and then transfer the A-file to the NSC where it will be held for 1 year before sending it to the NRC.

When USCIS administratively closes Form N-400 pursuant to 8 CFR 335.6(a), any future correspondence from the service member to USCIS within one year of the closure will be considered a request to reopen the application under 8 CFR 335.6(b). Any future correspondence from the applicant to USCIS received by USCIS after one year from the closure will be considered a Service motion to reopen under 8 CFR 103.5(a)(5). The motion will be granted by USCIS, and USCIS will continue with the naturalization proceedings.

If the military applicant notifies¹¹ USCIS that he or she deployed and is unable to attend the interview and cannot or does not wish to be naturalized overseas at that time, USCIS will follow the administrative closure procedures as described above. The Field Office will forward the A-file to the NSC where it will be held until the military applicant requests to continue processing overseas or inside the United States.

4) Failure to Appear for Subsequently Scheduled Interviews and/or Failure to Respond to Subsequent RFEs:

If the military member appears for the initial interview, but fails to appear for any subsequently scheduled interviews or fails to provide evidence requested after the initial interview, the Field Office will perform the following actions and document all actions on the Record of Action.

- Search all available databases and correspondence for a change of address or a request to reschedule or extension;
- If USCIS finds a change of address, a request to reschedule the interview, or a request for an extension of time, the Field Office will document this information in the A-file and mail a second interview notice to the applicant or provide the applicant with an additional 30 days to respond to the RFE.
- If USCIS can find no change of address, request to reschedule or for an extension, contact the USCIS liaison at the applicant's last known military installation in attempt to locate the service member and notify him or her of

¹¹ Family members or the USCIS liaison at the military installation may notify USCIS that the military applicant is deployed.

USCIS' inability to locate the service member for interview or failure to respond to the request for evidence; and,

- If the USCIS liaison provides new contact information for the applicant, the Field Office will document this information on the Record of Action and mail a second notice to appear for an interview to the military applicant or mail a second copy of the request for evidence.

USCIS will consider the military applicant to have failed to prosecute his or her application under 8 CFR 335.7 and the Field Office will adjudicate the application on the merits pursuant to 8 CFR 336.1 if:

- A military applicant fails to comply with a request for appearance at a second interview or for evidence;
- USCIS documents the above actions on the Record of Action;
- The applicant fails to notify USCIS of the reason for nonappearance within 30 days of the scheduled interview; or
- Fails to request an extension to provide requested evidence.

If the applicant fails to establish eligibility for naturalization, the Field Office will issue a notice of denial to the address of record and make the necessary updates to CLAIMS-4. Once the notice of denial is issued, the Field Office will hold the A-file for at least 33 days in anticipation of receiving a Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA). Once the 33 day period has elapsed and applicant did not file a Form N-336, the Field Office will transfer the A-file to the NSC. The NSC will retain the A-file for 1 year before sending it to the NRC. Any future correspondence from the applicant to USCIS will be considered a Service motion to reopen under 8 CFR 103.5(a)(5). The motion will be granted by USCIS, and USCIS will continue with the naturalization proceedings.

5) Failure to Appear for the Oath Ceremony:

Once an application has been approved, the Field Office will generally administer the Oath of Allegiance to the military applicant on the date of approval. If requested by the military applicant, the Field Office will schedule the military applicant for the next available administrative or judicial ceremony. Those military applicants who are scheduled for an oath ceremony but fail to appear will be afforded 1 additional attempt to appear for an oath ceremony before the procedures contained in 8 CFR 337.10 are followed.

If the military applicant is scheduled for an oath ceremony but fails to appear, the Field Office will perform the following actions and document all actions on the Record of Action.

- Search all available databases and correspondence for a change of address or request to reschedule in an attempt to locate the applicant and advise him or

her of the requirement to appear for the oath ceremony pursuant to 8 CFR 337.10;

- If USCIS finds a change of address or a request to reschedule the field office will document this information in the A-file and mail a second notice to appear for an oath ceremony;
- If USCIS can find no change of address or request to reschedule, contact the USCIS liaison at the applicant's last known military installation in an attempt to locate the service member and notify him or her of USCIS' inability to locate the service member for the oath ceremony;
- If NSC or the USCIS liaison provides new contact information for the service member, the field office will document this information in the A-file and mail a second notice to appear for an oath ceremony.

USCIS will consider the military applicant to have abandoned his or her intent to be naturalized and will follow the appropriate procedures as outlined in 8 CFR 335.5 if:

- A military applicant fails to comply with a request for appearance at an oath ceremony;
- USCIS documents the above actions on the Record of Action; and
- The applicant fails to notify USCIS of the reason for nonappearance within 30 days of the second scheduled oath ceremony.

If the applicant overcomes the derogatory information and the application is approved, the Field Office will schedule the military applicant to appear at the next available oath ceremony. If the application is denied, the Field Office will hold the A-file for at least 33 days in anticipation of receiving a Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA). Once the 33 day period has elapsed and the applicant did not file a Form N-336, the Field Office will transfer the A-file to the NSC where it will be held for 1 year before sending it to the NRC. Any future correspondence from the applicant to USCIS will be considered a Service motion to reopen under 8 CFR 103.5(a)(5). The motion will be granted by USCIS, and USCIS will continue with the naturalization proceedings.

6) System Updates:

Whenever an action is completed on a military applicant's Form N-400, USCIS officers are required to update CLAIMS-4 and the N-400 Adjudication Processing Worksheets with the necessary actions. Upon the issuance of Form N-550, Certificate for Naturalization, USCIS must properly close the military applicant's Form N-400 in CLAIMS-4 so an upload can occur within Central Index System (CIS). It is crucial that the military applicant's information (name, alien number, date of birth) in CLAIMS-4 **exactly matches** the record of the applicant's information (name, alien number, date of birth) in CIS. Field Offices must verify and update the record, if necessary, in CIS prior to completing the close out steps in CLAIMS-4 Case Management. If any information in CLAIMS-4 fails to match CIS

after the CLAIMS-4 Case Management module has been updated, information from CLAIMS-4 will be rejected during the CIS upload and a mismatch will occur.

IV. Contact Information

Questions regarding this memorandum may be directed through appropriate Regional Office channels to the Field Operations and Service Center Operations Divisions.

V. Field Guidance and Adjudicator's Field Manual Update

The *Adjudicator's Field Manual (AFM)* is updated accordingly and the following subchapters of the *AFM* are revised: 15.1(d)(2)(B) and 72.3.

1. Subchapter 15.1(d)(2)(B) of the *AFM* is updated by adding the following undesignated paragraph beneath (iii):

15.1 General Policies

(d) Failure of an Applicant, a Petitioner, a Sponsor, a Beneficiary, or Other Individual to Appear for a Scheduled Interview. * * *

(2) Effect of Failure to Appear for an Interview or to Respond to a Request for Appearance. * * *

(B) Applicants for Naturalization

* * *

Note: For specific processing instructions regarding Applications for Naturalization filed by members of the U.S. Armed Forces or veterans under sections 328 or 329 of the INA, please refer to Appendix 15-4, "Processing N-400s Filed under INA 328 and 329 When Applicant Fails to Respond to a Request for Evidence or for Appearance."

2. Subchapter 72.3 of the *AFM* is updated by adding the following undesignated paragraph beneath section (q):

72.3 Decision Process

(q) Decisions When Applicants Fail to Appear for the Initial Examination.

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Note: For specific processing instructions regarding Applications for Naturalization filed by members of the U.S. Armed Forces or veterans under sections 328 or 329 of the INA, please refer to Appendix 15-4, "Processing N-400s Filed under INA 328 and 329 When Applicant Fails to Respond to a Request for Evidence or for Appearance."

Distribution List: Regional Directors
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 National Benefits Center Director
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Attachments: A: Record of Action for Military Form N-400
 B: Fingerprint Notification Letter
 C: Notice of Administratively Closed Application



U.S. Citizenship
and Immigration
Services

IMPORTANT NOTICE REGARDING YOUR FORM N-400
APPLICATION FOR NATURALIZATION

Dear Applicant,

Review of your Form N-400, Application for Naturalization, indicates that valid fingerprints are required before processing on your case can continue. **Attached is an Application Support Center (ASC) Appointment Notice for fingerprinting at the ASC in the jurisdiction of your last known address.** Failure to appear for fingerprinting at this time will further delay your application for naturalization and could result in the denial of your Form N-400.

While you are scheduled for an appointment, military members may appear at any ASC for fingerprinting without an appointment; please check www.uscis.gov/asc/locator for military service walk-in hours at your local ASC. Report for fingerprinting no later than 3 days after the last day reserved for your fingerprint appointment. If you are unable to appear for fingerprinting at this time, contact this office at the address, e-mail or phone number below:

USCIS NEBRASKA SERVICE CENTER
ATTN MILITARY N400 UNIT
PO BOX 87426
LINCOLN, NE 68501-7426

Militaryinfo.nsc@dhs.gov
1-877-CIS-4MIL (247-4645)

Please report all changes of address or duty station to this office immediately at the above address, e-mail or phone number.

While you may have previously requested USCIS to use fingerprints provided at the time of enlistment into the U.S. Armed Forces, USCIS has either received no usable enlistment or USCIS fingerprints or has determined that your appearance at an ASC for fingerprinting is the most expeditious manner for processing your naturalization application. Therefore, at this time you must comply with this request for fingerprinting.

Sincerely,

A handwritten signature in cursive script that reads "F. Gerard Heinauer".

F. Gerard Heinauer
Director
NSC



ALIEN# _____

Date

APPLICANT NAME
APPLICANT ADDRESS
APPLICANT ADDRESS

NOTICE OF ADMINISTRATIVELY CLOSED APPLICATION

Dear APPLICANT:

This letter refers to your Form N-400, Application for Naturalization, filed on DATE, based on your service in the U.S. Armed Forces. USCIS scheduled you to appear for a naturalization interview on DATE. However, you did not appear for your interview and did not notify USCIS to reschedule your interview within 30 days of the scheduled interview date.

Therefore, USCIS considers that you have abandoned your Form N-400 and has administratively closed the application pursuant to 8 CFR 335.6. Because your Form N-400 is based on military service, you may contact USCIS at any time with a request for USCIS to reopen your application without fee. You should contact the Military Help Line at 1-877-CIS-4MIL (1-877-247-4645) or Militaryinfo.nsc@dhs.gov to request reopening of your Form N-400. At that time, you must provide USCIS with your current address, telephone number and e-mail address and indicate the USCIS office where you want to be interviewed for naturalization.

Once USCIS receives communication from you regarding your Form N-400, USCIS will reopen Form N-400 to continue the processing of your naturalization application.

Sincerely,

NAME
TITLE