


UPDATES
2013-01-07 - [Comprehensive Citizenship and Naturalization Policy Guidance \(PDF\)](#)

Search USCIS Policy Manual...

Volume 12: CITIZENSHIP & NATURALIZATION, Part G: SPOUSES OF U.S. CITIZENS
Effective January 22, 2013

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.^[1] The spouse must have continuously resided in the United States after becoming an LPR for at least three years immediately preceding the date of filing the naturalization application and must have lived in marital union with his or her citizen spouse for at least those three years.

The spouse must establish that he or she meets the following criteria in order to qualify:

- Age 18 or older at the time of filing.
- LPR at the time of filing the naturalization application.
- Continue to be the spouse of the U.S. citizen up until the time the applicant takes the Oath of Allegiance.
- Living in marital union with the citizen spouse for at least three years preceding the time of filing the naturalization application (the citizen spouse must have been a U.S. citizen for those three years).
- Continuous residence in the United States as an LPR for at least three years immediately preceding the date of filing the application and up to the time of naturalization.
- Physically present in the United States for at least 18 months (548 days) out of the three years immediately preceding the date of filing the application.
- Living within the state or USCIS district with jurisdiction over the applicant's place of residence for at least three months prior to the date of filing.
- Demonstrate an understanding of the English language, including an ability to read, write, and speak words in ordinary usage.
- 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.^[2] 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

Chapter 3 Outline

- A. [General Eligibility for Spouses Residing in the United States](#)
- B. [Living in Marital Union for Spouses Residing in the United States](#)
- C. [Three Years of Continuous Residence](#)
- D. [Eighteen Months of Physical Presence](#)
- E. [90-Day Early Filing Provision \(INA 334\)](#)
- F. [Eligibility for Persons Subjected to Battering or Extreme Cruelty](#)
 - 1. [General Eligibility for Persons Subjected to Battering or Extreme Cruelty](#)
 - 2. [Exception to Marital Union and U.S. Citizenship Requirements for Spouses](#)
- G. [Application and Evidence](#)
 - 1. [Application for Naturalization \(Form N-400\)](#)
 - 2. [Evidence of Spouse's United States Citizenship](#)

Resources

[Legal Authorities](#)

The spouse of a U.S. citizen residing in the United States must have been living in marital union with his or her citizen spouse for at least three years immediately preceding the time of filing the naturalization application. This provision requires that the spouse live in marital union with the citizen spouse during the entire period of three years before filing.

However, the statute does not require living in marital union for the period between the date of filing the application and the date of naturalization (date applicant takes the Oath of Allegiance). The corresponding regulation conflicts with the statute in stating that the spouse must have been married with his or her citizen spouse for at least three years at the time of the examination on the application, and not at the time of filing.

USCIS follows the language of the statute in requiring marital union only up until the time of filing.^[4] 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.^[5]

A person who was a spouse subjected to battering or extreme cruelty by their citizen spouse is exempt from the marital union requirement.^[6]

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.^[7]

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.^[8] 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.^[9]

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.^[10] Although an applicant may file early and may be interviewed during that period, the applicant is not eligible for naturalization until he or she has satisfied the required three-year period of residence. All other requirements for naturalization must be met at the time of filing.

USCIS calculates the early filing period by counting back 90 days from the day before the applicant would have first satisfied the continuous residence requirement for naturalization. For example, if the day the applicant would satisfy the three-year continuous residence requirement for the first time is on June 10, 2010, USCIS will begin to calculate the 90-day early filing period from June 9, 2010.

In cases where an applicant has filed early and the required three-month period of residence in a state or Service District falls within the required three-year period of continuous residence, jurisdiction is based on the three-month period immediately preceding the examination on the application (interview).^[11]

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,^[12] 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.^[13]

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;^[14]
- 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;^[15] 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.^[16]

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

The spouse must meet all other eligibility requirements for naturalization on the basis of marriage to a U.S. citizen.^[18]

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.^[19] 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.^[20] A spouse of a U.S. citizen must submit with the application evidence to establish the U.S. citizenship of his or her spouse.^[21]

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.^[22]

Chapter 2

Top of Page

Chapter 4

Footnotes

- [^] See INA 319(a). See 8 CFR 319.1.
- [^] See INA 316(a). See Part D, General Naturalization Requirements.
- [^] See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits.
- [^] See 8 CFR 319.1(a)(3). See *Ali v. Smith*, 39 F. Supp. 2d 1254. (W.D. Wash. 1999).
- [^] 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.
- [^] See INA 319(a). See Section F, Eligibility for Persons Subjected to Battering or Extreme Cruelty.
- [^] See Part D, General Naturalization Requirements, Chapter 3, Continuous Residence. See 8 CFR 316.5(a).
- [^] 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.
- [^] See 8 CFR 319.1(a)(2) and 8 CFR 319.1(a)(4). See Part D, General Naturalization Requirements, Chapter 4, Physical Presence.
- [^] See INA 334(a). See 8 CFR 334.2(b).
- [^] See 8 CFR 316.2(a)(5).
- [^] See INA 101(a)(50) (Definition of intended spouse).
- [^] 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.
- [^] See INA 204(a)(1)(B)(ii) or INA 204(a)(1)(B)(iii).
- [^] See INA 240A(b)(2)(A)(i)(I) or INA 240A(b)(2)(A)(i)(III).

- 18. [^] See [INA 319\(a\)](#). See [8 CFR 319.2](#).
- 19. [^] See [8 CFR 319.11\(a\)](#). See [8 CFR 103.7\(b\)\(1\)](#).
- 20. [^] See [Chapter 2, Marriage and Marital Union for Naturalization](#).
- 21. [^] See [INA 319\(a\)](#). See [8 CFR 319.1\(a\)](#).
- 22. [^] See [8 CFR 103.2\(b\)\(5\)](#). See [8 CFR 319.1](#) and [8 CFR 319.2](#).

Resources

Legal Authorities

- [8 CFR 316.5\(b\)\(6\)](#) - Residence for certain spouses of military personnel
- [8 CFR 316.6](#) - Physical presence for certain spouses of military personnel
- [INA 319\(e\)](#) - Residence, physical presence, and overseas naturalization for certain spouses of military personnel
- [INA 319, 8 CFR 319](#) - Spouses of U.S. citizens

[← Chapter 2](#)

[Top of Page](#)

[Chapter 4 →](#)

Current as of January 7, 2013

- | | | | |
|-----------------------------------|-------------------------------------|--|--|
| InfoPass | Citizenship | U.S. Department of Homeland Security | USCIS Freedom of Information Act and Privacy Act |
| My Case Status | Green Card | U.S. Customs & Border Protection | No FEAR Act |
| Change of Address | Family | U.S. Immigration & Customs Enforcement | Website Policies |
| Visa Bulletin | Working in the U.S. | White House | Social Media Policy |
| Passports | Humanitarian | U.S. Department of State | Privacy and Legal Disclaimers |
| E-Verify | Adoption | USA.gov | Accessibility |
| Careers at USCIS | Military | | Plug-ins |
| Site Map (Index) | Avoid Scams | | Adobe Reader |
| Contact Us | Genealogy | | Windows Media Player |
| USCIS ELIS | Visit the U.S. | | Archive |