Chapter 2 - Lawful Permanent Resident Admission for Naturalization

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A. Lawful Permanent Resident at Time of Filing and Naturalization

1. Lawful Admission for Permanent Residence

Section 318 of the Immigration and Nationality Act (INA) requires a naturalization applicant to show that they have been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of the INA in effect at the time of admission or adjustment.[1] This requirement applies to the applicant's initial admission as a lawful permanent resident (LPR) or adjustment to LPR status. Officers do not review subsequent reentries in determining whether there was a lawful admission.[2] The applicant generally must make this showing at the time they file the naturalization application. If the LPR status was not lawfully obtained for any reason, regardless of whether there was any fraud or willful misrepresentation by the applicant, the applicant is ineligible for naturalization even if the applicant was admitted as an LPR and possesses a Permanent Resident Card (PRC) (Form I-551).[3]

In order for the applicant to establish that he or she was lawfully admitted for permanent residence, the applicant must have met all the requirements for admission as an immigrant for adjustment of status.[4] An applicant is not lawfully admitted for permanent residence in accordance with all applicable provisions of the INA if his or her LPR status was obtained by fraud, willful misrepresentation, or if the admission was otherwise not in compliance with the law.[5] Any such applicant is ineligible for naturalization in accordance with INA 318.

2. Conditional Permanent Residents

A conditional permanent resident (CPR) filing for naturalization on the basis of his or her permanent resident status for 5 years (or 3 years for spouses of U.S. citizens) must have met all of the applicable requirements of the conditional residence provisions. CPRs are generally not eligible for naturalization unless the conditions on their permanent resident status have been removed because such CPRs have not been lawfully admitted for permanent residence in accordance with all applicable provisions of the INA.[6] However, there are certain exceptions,[7] and under certain circumstances, an officer may adjudicate a Petition to Remove Conditions on Residence (Form I-751) during a naturalization proceeding.[8]

If the record indicates that the noncitizen spouse was admitted or adjusted as a spouse of a U.S. citizen married less than 2 years at the time of admission (CR-1 or CR-6), but should have been admitted or adjusted as a spouse of a U.S. citizen married more than 2 years at the time of admission (IR-1 or IR-6), the officer may update his or her spouse's class of admission code accordingly. The erroneous classification of the noncitizen spouse as a CR-1 or CR-6 instead of an IR-1 or IR-6 does not render this or her admission or adjustment unlawful. In addition, the applicant would be eligible for naturalization even if a Form I-751 was not filed or approved.

If the record indicates that the noncitizen spouse was admitted or adjusted as a spouse of a U.S. citizen married more than 2 years at the time of admission (IR-1 or IR-6), but should have been admitted or adjusted as a spouse of a U.S. citizen married less than 2 years at the time of admission (CR-1 or CR-6), the officer should request the submission of Form I-751 and adjudicate Form I-751 before adjudicating the Application for Naturalization (Form N-400). The fact that the applicant was admitted or adjusted under the wrong code of admission does not render the adjustment unlawful, and the applicant is still eligible for naturalization, if otherwise qualified, upon the approval of Form I-751.

3. Effective Date of Permanent Residence

A person is generally considered an LPR at the time USCIS approves the applicant's adjustment application or at the time the applicant is admitted into the United States with an immigrant visa.[9] Most applicants applying for adjustment of status become LPRs on the date USCIS approves the application.[10]

For certain classifications, however, the effective date of becoming an LPR may be a date that is earlier than the actual approval of the status (commonly referred to as a "rollback" date). For example:

- A noncitizen admitted under the Cuban Adjustment Act (CAA) is generally an LPR as of the date of his or her last arrival and admission into the United States or 30 months before the filing of the adjustment application, whichever is later.[11]
- A refugee is generally considered an LPR as of the date of entry into the United States.[12]
- An asylee is generally considered an LPR 1 year before the date USCIS approves the adjustment application.[13]
- A parolee granted adjustment of status under the Lautenberg Amendment is considered an LPR as of the date of inspection and parole into the United States.[14]
- A principal applicant granted adjustment of status based on the Liberian Refugee Immigration Fairness (LRIF) provision of the Fiscal Year 2020 National Defense Authorization Act is an LPR as of the date of his or her earliest arrival into the United States or as of November 20, 2014 (if the principal applicant cannot establish residence earlier). An eligible family member granted adjustment of status under LRIF is an LPR

as of the date of his or her earliest arrival in the United States or the receipt date of his or her adjustment application (if the eligible family member cannot establish residence earlier).[15]

4. Evidence of LPR Status

USCIS issues a PRC to each noncitizen who has been admitted for lawful permanent residence as evidence of their LPR status. LPRs 18 years of age and over are required to have their PRC in their possession as evidence of their status.[16] The PRC contains the date and the classification under which the noncitizen was accorded LPR status.

If the PRC is expired or the LPR has lost the card, or the card has been stolen, LPRs generally must file an Application to Replace Permanent Resident Card (Form I-90) to replace the PRC.[17] A naturalization applicant who properly files Form N-400 on or after December 12, 2022 receives a Form N-400 receipt notice that, when presented with their PRC, automatically extends the validity of the PRC for 24 months from the "Card Expires" date on the PRC. If the applicant loses the Form N-400 receipt notice extending the validity of the PRC, and the "Card Expires" date on the PRC has passed, then the applicant may seek an Alien Documentation, Identification and Telecommunication (ADIT) stamp or file Form I-90 with fee to obtain evidence of status. In the event that the applicant's Form N-400 is not adjudicated before the 24-month extension of the PRC's validity has expired, then the applicant may request that USCIS provide an ADIT stamp to demonstrate their LPR status by contacting the Contact Center.[18]

A PRC alone is insufficient to establish that the applicant has been lawfully admitted for permanent residence in accordance with all applicable provisions of the INA.

5. U.S. Government Error

An applicant is ineligible for naturalization under INA 318 if his or her LPR status was obtained in error, even in the absence of fraud or willful misrepresentation. Some examples of errors in the process of obtaining LPR status that generally render the applicant ineligible for naturalization include:

- The U.S. Department of State (DOS) incorrectly approved the applicant's immigrant visa application and issued a visa;
- USCIS incorrectly approved the applicant's adjustment application; or
- The applicant was otherwise mistakenly admitted as an LPR.[19]

The applicant is generally ineligible for naturalization under such circumstances, even if he or she did not commit any fraud in obtaining the immigrant visa, admission to the United States, or LPR status.[20]

B. Abandonment of Lawful Permanent Residence

An applicant who has abandoned their LPR status is not eligible for naturalization.[21] To naturalize under most provisions of the immigration laws,[22] an applicant must be lawfully admitted for permanent residence and have maintained LPR status through the naturalization process.[23] USCIS may consider any relevant evidence of abandonment to assess whether the applicant is eligible for naturalization.

Abandonment of LPR status occurs when the LPR demonstrates his or her intent to no longer reside in the United States as an LPR after departing the United States.[24] In addition, abandonment of LPR status by a

parent is imputed to a minor child who is in the parent's custody and control.[25] While LPRs are permitted to travel outside the United States,[26] depending on the length and circumstances of the trip abroad, the trip may lead to a determination that the LPR abandoned his or her LPR status.[27]

If the evidence suggests that an applicant abandoned their LPR status and was subsequently erroneously permitted to enter as a returning LPR, the applicant is ineligible for naturalization. This is because the applicant failed to meet the continuous residence requirement for naturalization.[28]

If the officer determines that the naturalization applicant has failed to meet the burden of establishing that he or she maintained LPR status, DHS places the applicant in removal proceedings by issuing a Notice to Appear (NTA) (Form I-862), where issuance would be in accordance with established guidance.[29] USCIS then denies the naturalization application.[30] An immigration judge (IJ) makes a final determination as to whether the applicant has abandoned his or her LPR status. The applicant does not lose his or her LPR status unless and until the IJ issues an order of removal and the order becomes final.[31]

1. Factors in Determining Abandonment of LPR Status

During the review of a naturalization application and interview, USCIS may determine that the applicant has failed to establish that he or she is an LPR due to abandoning his or her LPR status. The applicant may not be able to establish LPR status even if permitted to return to the United States as an LPR at a port of entry.[32] In order to demonstrate that an applicant did not abandon LPR status, an applicant must establish that he or she did not objectively intend to abandon LPR status.[33]

USCIS reviews multiple factors when assessing whether an applicant objectively intended to abandon his or her LPR status,[34] including:

- Length of absence from the United States;
- Purpose of travel outside the United States;
- Intent to return to the United States as an LPR; and
- Continued ties to the United States.

Length of Absences from the United States

While an extended absence from the United States alone is not conclusive evidence of abandonment of LPR status, the length of an extended absence is an important factor. The longer an LPR spends outside the United States, the more difficult for the LPR to show an intent to return to the United States to live permanently in the United States as an LPR.[35] The LPR's visit outside the United States should terminate within a relatively short period.[36] If unforeseen circumstances cause an unavoidable delay in returning, the trip retains its temporary character, so long as the LPR continued to intend to return as soon as his or her original purpose of the visit was completed. A single visit every year to the United States, for those residing outside of the United States, does not preserve LPR status.[37]

An officer must review extended or frequent absences from the United States to determine whether an applicant has met the burden of establishing that he or she has maintained LPR status. This applies regardless of length of time or if the applicant was permitted to return to the United States as an LPR at the port of entry after the absence.[38]

Purpose of Travel Outside the United States[39]

The applicant's purpose for traveling outside the United States is another factor in determining whether the applicant abandoned his or her LPR status. An LPR should ordinarily "have a definite reason for proceeding abroad temporarily."[40] For example, an applicant may have traveled for a short vacation or may have traveled to visit an ill family member.

Intent to Return to the United States as an LPR[41]

The key factor in determining if an applicant abandoned his or her LPR status is the applicant's intent to reside permanently in the United States. The focus is on the intent (as demonstrated by the applicant's actions and objective circumstances) rather than the length of time spent abroad.[42] The applicant must have intended to return to the United States as a place of employment or business or as an actual home.[43] The applicant must not only possess the intent to return to the United States at the time of his or her departure, but must maintain the intent during the course of the visit outside the United States.[44]

An applicant's activities should be consistent with an intent to return to the United States as soon as it is practicable.[45] If there is an absence of intent coupled with objective circumstances, the applicant may have abandoned his or her status even if the applicant returns to the United States often. For example, one common but mistaken assumption is that a single visit every year to the United States preserves LPR status for those residing outside of the United States. However, even though an LPR only needs a PRC[46] to reenter the United States after an absence of less than 1 year, the PRC alone is not sufficient to indicate the intention to reside permanently in the United States.[47]

In addition, a reentry permit does not automatically preserve LPR status or guarantee reentry into the United States.[48] A reentry permit may demonstrate that the LPR intended to return to the United States. However, failure to obtain a reentry permit, alone, is not evidence that an applicant intended to abandon his or her LPR status. As in any abandonment case, USCIS considers this factor in the totality of the circumstances.

Continued Ties to the United States

An applicant should have multiple connections[49] to the United States that establish an intent to reside permanently in the United States, such as:

- Filing federal and state income tax returns as a resident of the United States;[50]
- Maintaining property and business affiliations in the United States;
- Maintaining a driver's license with a U.S. address of record; and
- Immediate family members residing in the United States who are U.S. citizens, LPRs, or are seeking citizenship or LPR status.

USCIS also reviews whether the applicant maintains connections outside the United States including:

- Immediate family members residing outside of the United States;
- Property and business ties in a foreign country;
- Employment by a foreign employer or foreign government;
- Voting in foreign elections;
- Running for political office in a foreign country; and
- Frequent and extended trips outside of the United States.

An applicant who voluntarily claims "nonresident alien" status to qualify for special exemptions from income tax liability, or fails to file either federal or state income tax returns because he or she considers himself or herself to be a "nonresident alien," raises a rebuttable presumption that the applicant has abandoned his or her LPR status.[51] The applicant may overcome that presumption with acceptable evidence establishing that he or she did not abandon LPR status.

To establish a continued intent to maintain permanent residence, an applicant may provide evidence of the following:

- Family ties, including children attending school and a spouse or other relatives residing lawfully in the United States;
- Real and personal property holdings or rentals in the United States; and
- Current or recent employment or education in the United States.

To assess maintenance of LPR status, USCIS reviews the information provided as part of the naturalization application and other available documentation. If needed, USCIS may issue a Request for Evidence (RFE) for residences, travel, and employment information, and other relevant evidence since the time of the adjustment of status. Failure to timely respond to an RFE will result in a denial of the naturalization application for failure to meet the burden of proof.

2. Preserving Residence

Certain applicants[52] may seek to preserve their residence for naturalization if they leave the United States for 1 year or more to engage in qualifying employment outside the United States.[53] Preservation of residence may permit an applicant to avoid breaking the continuity of his or her residence for purposes of the continuous residence requirement and, in some cases, the physical presence requirement. However, approval of an application to preserve residence does not guarantee that the applicant (or any family members) will not be found, upon returning to the United States, to have lost LPR status through abandonment.

For example, USCIS presumes an applicant who claimed special tax exemptions as a "nonresident alien" has lost LPR status through abandonment.[54] The applicant may overcome that presumption with acceptable evidence establishing that he or she did not abandon his or her LPR status.

3. Record of Abandonment

Some LPRs may choose to record the abandonment of their LPR status by filing a Record of Abandonment of Lawful Permanent Resident Status (Form I-407). If an applicant has a completed Form I-407, and subsequently seeks naturalization, USCIS places the applicant in removal proceedings and denies the naturalization application. However, LPRs who seek to abandon LPR status are not required to record such abandonment by executing Form I-407.[55] Therefore, an applicant may still have abandoned LPR status despite the absence of a Form I-407 in their immigration record.

C. Effect of Change in Law

In general, USCIS still considers a noncitizen who was lawfully admitted for permanent residence according to the applicable laws at the time of their initial admission or adjustment, but who would be ineligible for LPR

status today based on a change in law, to have been lawfully admitted for permanent residence for purposes of INA 318. This does not apply if the controlling law specifically states otherwise.

1. Illegal Immigration Reform and Immigrant Responsibility Act

Effective September 30, 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) added new or amended grounds of inadmissibility.[56] If the applicant was admitted as an LPR or adjusted status to that of an LPR before the effective date of a particular provision of IIRIRA, the applicant was not subject to the new or amended inadmissibility grounds in that provision. In general, if the applicant became an LPR before September 30, 1996, the applicant would still be considered lawfully admitted for permanent residence even if he or she would have been found inadmissible under IIRIRA.

Some of the classes of inadmissible noncitizens and grounds of inadmissibility added or amended by IIRIRA include:

- "Certain aliens previously removed;"[57]
- "Aliens unlawfully present,"[58] including those unlawfully present after previous immigration violations;[59]
- "Aliens present without admission or parole;"[60]
- "Failure to attend removal proceeding;"[61]
- "Falsely claiming U.S. citizenship;"[62] and
- "Student visa abusers."[63]

2. Case Law

New case law may change how the law is applied between the time an applicant is lawfully admitted for permanent residence and the time USCIS adjudicates his or her naturalization application. The interpretation and applicability of new case law may vary. In some cases, new case law may result in an applicant being considered lawfully admitted even if his or her admission would have been considered unlawful at the time of the adjudication (before the new case law). Officers should consult with USCIS counsel regarding the interpretation and application of new case law in a naturalization proceeding.

For example, in 2015, the Supreme Court held that a drug paraphernalia conviction was not a conviction “relating to a controlled substance” unless an element of the conviction could be connected to a federally controlled substance.[64] This decision overturned an earlier Board of Immigration Appeals (BIA) interpretation that held that a drug paraphernalia conviction “relates to” any and all controlled substances with which the drug paraphernalia can be used.[65]

Therefore, if an applicant adjusted status and applied for naturalization before 2015 and had a conviction for possession of drug paraphernalia under the applicable state law at that time, the conviction would likely have qualified as a violation of a law relating to a controlled substance, and rendered the applicant inadmissible at the time of adjustment, as outlined in the earlier BIA interpretation. The applicant in this scenario would therefore have been ineligible for naturalization under INA 318 prior to the Supreme Court decision.[66]

However, if the same applicant applied for naturalization after 2015, his or her conviction would be analyzed under the Supreme Court decision. Under the case law, the conviction would not qualify as a violation of a law relating to a controlled substance unless an element of the conviction could be connected to a federally

controlled substance. Therefore, even though the applicant's adjustment would have been considered unlawful before 2015, because of the new case law, the applicant is now likely considered to have been lawfully admitted for permanent residence for the purposes of INA 318.

Temporary Protected Status and Admission or Parole into the United States for Adjustment of Status [Reserved] [67]

ALERT: USCIS has updated Volume 7 of the Policy Manual to reflect developments in case law and USCIS policy regarding TPS beneficiaries and their eligibility for adjustment of status under INA 245(a). See Temporary Protected Status and Eligibility for Adjustment of Status under Section 245(a) of the Immigration and Nationality Act, PA-2022-16, issued July 1, 2022.

D. Underlying Basis of Admission

To adjust status to that of an LPR or be admitted as an LPR, an applicant must first be eligible for one of the immigrant visa categories established under the law. During a naturalization proceeding, the officer must verify the underlying immigrant visa petition or other basis for immigrating[73] that formed the basis of the adjustment of status or admission as an immigrant to the United States.[74]

1. Ineligible for Underlying Immigrant Petition

Even after the applicant is admitted for permanent residence on an immigrant visa or USCIS approves the applicant's adjustment application, USCIS may find that the applicant was not lawfully admitted to the United States for permanent residence. This may apply in cases where the underlying petition that formed the basis of the LPR status was approved in error, was incorrect, or was approved unlawfully. Officers must review the underlying family and employment-based petitions or other immigration benefits.

K-1 Fiancé(e) Requirements Not Met

For an applicant to be admitted to the United States on a K-1 fiancé(e) nonimmigrant visa and later adjust his or her status to an LPR, the applicant must have established that:

- He or she was free to marry, and intended to marry, his or her U.S. citizen fiancé(e) within 90 days of admission to the United States as a K nonimmigrant; and
- He or she and his or her U.S. citizen fiancé(e) met each other in person within the 2 years immediately preceding the date of filing Petition for Alien Fiancé(e) (Form I-129F), unless the requirement to meet in person was waived because it:
  - Would have violated long-established customs of the applicant's foreign culture or social practice, and all aspects of traditional arrangements were met in accordance with the custom or practice; or
  - Would have resulted in extreme hardship to the U.S. citizen fiancé(e).[75]

If an applicant entered the United States with a K-1 fiancé(e) nonimmigrant visa after the petition was granted when one of these requirements had not been met, the applicant is not eligible for naturalization in accordance with INA 318.[76]

2. Inadmissible at Time of Admission or Adjustment

An applicant who was admitted as an LPR may have been inadmissible to the United States if he or she fell into any of the classes of inadmissible noncitizens.[77] As such, the applicant is ineligible to be admitted as an LPR or for adjustment of status.[78] Applicants who are inadmissible to the United States may also be eligible to apply for a waiver of the ground(s) of inadmissibility in certain instances.[79]

If an inadmissible applicant was required to obtain a waiver of inadmissibility and no waiver request was approved, or he or she was inadmissible under a ground for which no waiver was available, the applicant was not lawfully admitted for permanent residence.[80] Grounds for which an applicant may be inadmissible are listed in the following table.

Overview of Inadmissibility Grounds	
INA 212(a)(1)	Health-Related Grounds
INA 212(a)(2)	Criminal and Related Grounds
INA 212(a)(3)	Security and Related Grounds
INA 212(a)(4)	Public Charge
INA 212(a)(5)	Labor Certification and Qualifications for Certain Immigrants
INA 212(a)(6)	Illegal Entrants and Immigration Violators
INA 212(a)(7)	Documentation Requirements
INA 212(a)(8)	Ineligible for Citizenship
INA 212(a)(9)	Aliens Previously Removed
INA 212(a)(10)	Miscellaneous (Including Practicing Polygamists, International Child Abductors, Unlawful Voters, and Tax Evaders)

Officers may encounter some naturalization cases where the applicant was inadmissible at the time of admission as an LPR or adjustment of status and was not granted a waiver of inadmissibility or other relief. Evidence of such inadmissibility may be available at the time of the initial review of eligibility for LPR status or may be discovered after admission or adjustment as an LPR, including during a naturalization proceeding. An LPR admission or adjustment of status that was unlawful when it occurred cannot be cured by an applicant's submission of an Application for Waiver of Grounds of Inadmissibility (Form I-601) or an Application by Refugee for Waiver of Inadmissibility Grounds (Form I-602) during a naturalization proceeding.

Terrorism-Related Inadmissibility Grounds[81]

In general, a naturalization applicant who, before obtaining LPR status, committed an act that would have rendered him or her inadmissible under one or more of the terrorism-related inadmissibility grounds (TRIG) at the time of adjustment or admission as an LPR, may not be considered lawfully admitted for permanent residence for purposes of INA 318.[82] This is the case even if the conduct upon which the inadmissibility is based on occurred before the inadmissibility ground existed.[83]

Some examples of activities pertaining to TRIG that could result in denial of the applicant's naturalization application under INA 318 if occurring before obtaining LPR status may include:

- An applicant who engaged in terrorist activity, including providing material support to a person who committed or plans to commit a terrorist activity, or to a terrorist organization;[84]
- An applicant who is a representative of a terrorist organization or other group that endorses or espouses terrorist activity;[85]
- An applicant who is a member of a terrorist organization at the time of adjustment or admission for LPR status, including a Foreign Terrorist Organization (Tier I) as designated by the Secretary of State or a terrorist organization designated by the Secretary of State and listed on the Terrorist Exclusion List (Tier II),[86] or an undesignated terrorist organization (Tier III);[87]
- Certain spouses and children of noncitizens who were inadmissible on terrorism-related grounds;[88] and
- An applicant who received military-type training from or on behalf of a terrorist organization.[89]

3. Public Charge Inadmissibility [Reserved]

[Reserved]

4. Fraud and Willful Misrepresentation

An applicant was not lawfully admitted for permanent residence if he or she "obtained [his or her] permanent resident status by fraud, or had otherwise not been entitled to it."[90] Therefore, an applicant was not lawfully admitted for permanent residence for purposes of INA 318 if the applicant:

- Procured or sought to procure a visa or other documentation, admission, or other benefit provided under the INA by fraud or willful misrepresentation of a material fact before his or her adjustment or admission as an LPR; and
- The applicant did not obtain a waiver of that inadmissibility.[91]

Some examples of fraud and willful misrepresentation for which the applicant is not lawfully admitted for permanent residence and is therefore not eligible for naturalization, include, but are not limited to cases where:

- The applicant consciously concealed or made a willful misrepresentation of a material fact regarding a previous immigration record (A-file number) or previous final order of removal before adjusting.[92]
- The applicant presented fraudulent identity documentation, or valid identity documentation obtained by fraud, to a U.S. official in order to procure, or attempt to procure, an immigration benefit before DHS admitted him or her as an LPR.[93]
- The applicant obtained LPR status based on an employment-based immigrant petition that contained material misrepresentations related to his or her employment or qualifications such that the applicant

would have been otherwise ineligible for adjustment of status. In many instances, the underlying employment-based immigrant petition is filed by the U.S. employer on behalf of the noncitizen worker. Nonetheless, the applicant makes a willful misrepresentation of a material fact when he or she knows of or authorizes false statements submitted on his or her behalf.[94]

- The applicant applied for adjustment of status or an immigrant visa in the family-sponsored preference category based on being the unmarried son or daughter of a U.S. citizen or LPR (unmarried son or daughter of a U.S. citizen) and misrepresented his or her marital status[95] on an application or during an interview by indicating he or she was single (even though the applicant was married at that time).[96]
- The applicant obtained a divorce solely for immigration purposes.[97]
- The applicant misrepresented material facts to obtain asylum or refugee status.[98]
- The applicant misrepresented material facts in order to conceal any group memberships that would have made him or her ineligible for LPR status.[99]
- The applicant misrepresented material facts, at the time of his or her application for adjustment of status or an immigrant visa, in order to conceal that he or she was inadmissible for engaging or having engaged in terrorist activity.[100]

5. Underlying Marriage[101]

Where an applicant's LPR status was based on a marriage, an officer in a naturalization proceeding may review conduct pertaining to the intent of the parties at the time they married.[102] Evidence discovered during or after the adjudication of the Petition to Remove the Conditions on Residence (Form I-751) may also raise questions about whether the underlying admission or adjustment to permanent residence was proper.

Marriage Entered into in Good Faith

A naturalization applicant was not lawfully admitted for permanent residence where he or she obtained LPR status through a marriage that was not entered into in good faith. The key issue in determining whether a marriage was entered into in good faith is whether the parties intended to establish a life together at inception of the marriage.[103]

If there is an issue as to whether the marriage was entered into in good faith, the applicant must present sufficient evidence to show that the marriage was bona fide in that it was "not a sham or fraudulent from its inception."[104] If the applicant fails to provide sufficient evidence, USCIS should issue a Notice of Intent to Deny (NOID) under INA 318. In notifying the applicant of the intent to deny the naturalization application, the officer must explain the basis for the intent to deny and afford the applicant a meaningful opportunity to respond.[105]

Validity of the Underlying Marriage

In cases where an applicant's LPR status was based on his or her marriage (or his or her parent's marriage) to a U.S. citizen or LPR, an officer in a naturalization proceeding may also review whether the marriage was valid at the time the LPR status was granted.

In general, an applicant would have already established a valid marriage before being granted LPR status. However, there may be instances where additional information is available after the applicant is granted LPR status that may lead to a determination that the applicant's marriage was not valid at the time the LPR status was granted, even when there was no fraud or misrepresentation.[106] For example, this may include evidence

that the applicant or the applicant's spouse had a prior marriage that was not terminated before they entered into their current marriage, rendering the current marriage invalid due to bigamy.

Where an officer determines that a naturalization applicant's marriage was invalid, and the applicant's LPR status was based on the marriage, the officer should deny the naturalization application under INA 318.

6. LPR Status Obtained through Cuban Adjustment Act

Cuban Adjustment Act and Lawful Presence in the United States

To be eligible for LPR status under the CAA, an applicant must have accrued at least 1 year of physical presence in the United States.[107] While the CAA does not stipulate when this 1-year physical presence requirement must be met,[108] regulations generally require that an applicant is eligible for the benefit sought at the time of filing the benefit request.[109] Additionally, USCIS guidance specifies that this 1-year physical presence requirement must be met at the time of filing of the adjustment of status application.[110]

Therefore, USCIS denies naturalization applications under INA 318 if, after November 18, 2020, the applicant obtained LPR status under the CAA and the applicant did not accrue 1 year of physical presence in the United States before filing his or her adjustment application.

Cuban Adjustment Act and Proof of Cuban Citizenship for Applicants Born Outside of Cuba to Cuban Parent[111]

An officer may find that a naturalization applicant who was granted LPR status under the CAA and provided a consular certificate documenting birth outside of Cuba to a Cuban parent as proof of Cuban citizenship failed to meet his or her burden of proof in establishing Cuban citizenship. A consular certificate alone is not legally sufficient to demonstrate Cuban citizenship for persons born outside of Cuba to at least one Cuban parent.[112] Therefore, naturalization applicants who became LPRs under the CAA by virtue of birth outside of Cuba to a Cuban parent, and who provided only a consular certificate as proof of Cuban citizenship, may be required to provide additional proof of Cuban citizenship. An officer may issue an RFE to request documentation of Cuban citizenship.

The following are examples of acceptable documents to prove Cuban citizenship:[113]

- An unexpired Cuban passport ("Pasaporte de la Republica Cuba");
- Nationality certificate ("Certificado de Nacionalidad"); and
- Citizenship letter ("Carta de Ciudadania").

USCIS may deny a naturalization application under INA 318 if an applicant who was born to a Cuban parent outside of Cuba and granted LPR status under the CAA was in fact not a Cuban citizen at the time of adjustment to permanent residence.

An applicant for naturalization who was granted LPR status under the Violence Against Women Act (VAWA) amendments to the CAA[114] as a battered or abused spouse or child of a qualifying Cuban principal need only provide sufficient information to enable USCIS to verify the qualifying Cuban principal's Cuban citizenship or nationality.[115] Such information may include the Cuban principal's full name, date of birth, place of birth, parents' names, A-number, Form I-94, Social Security number, or other identifying information. Failure to provide such information may result in denial of the naturalization application under INA 318.

7. Asylee and Refugee Adjustment

In order to adjust to lawful permanent residence status, refugees and asylees must accrue 1 year of physical presence in the United States as a refugee[116] or asylee.[117]

If at the time of filing the adjustment of status application, the applicant had not accrued 1 year of physical presence, but USCIS approved the adjustment of status application, USCIS considers the refugee or asylee lawfully admitted for permanent residence if the admission was otherwise lawful.[118] USCIS does not deny the naturalization application on INA 318 grounds based solely on the early filing. The applicant must still have accrued the 1 year at the time of approval of the adjustment of status of application.

8. Other Factors to Consider

Otherwise Ineligible for Adjustment of Status

If an applicant was ineligible for adjustment of status, the applicant was not lawfully admitted for permanent residence and therefore is ineligible for naturalization.[119] The following are examples of ineligibility for adjustment of status:

- A crewman is ineligible for adjustment of status under INA 245.[120]
- An exchange visitor who did not fulfill the 2-year foreign residence requirement or did not obtain a waiver of the requirement is ineligible for adjustment of status or an immigrant visa.[121]

Disqualifying Material Facts Unknown at Time of Filing for Admission or Adjustment

After a noncitizen files an application for LPR status (either adjustment of status or an immigrant visa) but before he or she is granted adjustment of status or admitted to the United States as an LPR, he or she may experience new or additional circumstances that render him or her ineligible or inadmissible for LPR status. In such situations, the officer may not have considered the new or additional facts in approving the adjustment application or admission to the United States on an immigrant visa. Therefore, for purposes of INA 318, USCIS does not consider a naturalization applicant to be lawfully admitted for permanent residence where facts arising after the date of filing of the application for LPR status show that he or she was inadmissible or otherwise ineligible for LPR status.

Derivative Applicants

Derivatives who do not have their own underlying immigrant petition may only be admitted as an LPR or adjust status under INA 245 based on the principal's adjustment of status. In general, a derivative applicant must have the requisite relationship to the principal both at the time of filing the immigration petition or filing the adjustment application and at the time of final adjudication.[122]

There are certain circumstances in which a derivative may not have obtained lawful permanent residence based on the principal's status and therefore would not be eligible for naturalization, including:

- A derivative was admitted as an immigrant or adjusted to LPR status under INA 245 before the principal was admitted as an immigrant or adjusted to LPR status.[123]
- A derivative adjusted to LPR status after the principal applicant naturalizes. A derivative is only eligible for classification as an accompanying or following-to-join family member of the principal so long as the

principal applicant remains an LPR. Once the principal applicant naturalizes, the derivative is no longer eligible to adjust status based on the principal applicant.[124]

- A principal applicant's LPR status was rescinded which establishes that the principal applicant was not lawfully admitted or did not lawfully adjust status. Therefore, if the principal's LPR status was rescinded, at any time, even after the derivative is admitted or adjusts, the derivative would have been ineligible to adjust to LPR status based on the principal.[125]
- A principal applicant was denaturalized[126] because he or she was not lawfully admitted or lawfully adjusted as an LPR. Depending on the circumstances, the principal's denaturalization may be evidence that the dependent's LPR status is not lawful.[127]
- The principal applicant committed fraud in order to obtain the LPR status. For example, this may occur in instances where:
  - A derivative was granted LPR status based on a parent's asylee status that was obtained through fraud or misrepresentation;[128] or
  - A stepchild obtained LPR status based on a parent's marriage to the stepparent that was fraudulently entered into for the purpose of an immigration benefit.[129]

E. Applicants Considered Lawfully Admitted

Under certain circumstances, USCIS may consider an applicant lawfully admitted for permanent residence, despite errors, for INA 318 purposes.

1. Availability of Immigrant Visa at Time of Filing for Adjustment of Status

In order for an applicant to be eligible for adjustment of status under INA 245(a), an immigrant visa must be immediately available to the applicant at the time of filing and at the time of final adjudication.[130] An officer may not approve an application for adjustment of status as a preference immigrant until an immigrant visa number has been allocated by DOS.[131]

If at the time of adjustment an officer did not request the visa number from DOS, or DOS had not yet allocated a visa number, but a visa was available at the time of filing and decision and the officer approved the adjustment of status application, USCIS considers the applicant to have been lawfully admitted for permanent residence, despite the error.[132]

If at the time of adjustment, the officer annotated the wrong class of admission code, but there was still an immigrant visa immediately available to the applicant, and there was no misrepresentation by the applicant, USCIS still considers the applicant to have been lawfully admitted permanent residence. In this case, the officer should correct the class of admission code.

2. INA 245(i) Statutory Sum

To qualify for adjustment of status under INA 245(a), an applicant must prove that he or she has been inspected and admitted or paroled into the United States and he or she is not barred from adjustment of status under INA 245(c). The adjustment bars in INA 245(c) may apply to applicants who either entered the United States in a particular status or manner or committed a particular act or violation of immigration law.[133]

However, an applicant who entered the United States without inspection and admission or parole or is barred from adjusting status by INA 245(c) may qualify for adjustment of status under INA 245(i). To qualify under INA 245(i):

- The applicant must be the beneficiary (or derivative beneficiary) of an immigrant petition or labor certification application filed on or before April 30, 2001, that was approvable when filed;
- If such immigrant petition or labor certification was filed after January 14, 1998, the principal beneficiary must have been physically present in the United States on December 21, 2000; and
- The applicant must pay a statutorily required sum, unless exempt from paying the sum.[134]

Where a naturalization applicant's sole ground of ineligibility is that he or she was not lawfully admitted for permanent residence because the applicant failed to pay the statutory sum prescribed by INA 245(i) at the time of adjustment, USCIS, in its discretion, may allow the applicant to submit the statutory sum with Supplement A to Form I-485, Adjustment of Status under Section 245(i) (Form I-485 Supplement A).

If the statutory sum is paid and all other eligibility requirements are met, USCIS approves the naturalization application. However, USCIS does not accept the payment of the statutory sum at the time of the naturalization proceeding if the naturalization applicant is ineligible to naturalize for any other reason.

F. Removal Proceedings

USCIS may not consider the merits of any application for naturalization for an applicant in removal proceedings,[135] except for certain applications for naturalization based on military service.[136] Furthermore, an applicant subject to an order of deportation or removal is not eligible for naturalization, and the naturalization application is denied, except for certain applications for naturalization based on military service.[137]

Upon resolution of the removal proceeding, the applicant may timely file a Request for a Hearing on a Decision in Naturalization Proceedings Under Section 336 (Form N-336) or file a new naturalization application if otherwise eligible for naturalization.[138]

1. Final Order of Removal

USCIS denies a naturalization application if the applicant is or has been subject to a final order of removal from an IJ,[139] unless:

- The order has been vacated;
- The applicant is eligible for naturalization under INA 329(a) for certain honorable service in the U.S. armed forces, or is currently in the U.S. armed forces and is eligible for naturalization under INA 328(a) based upon honorable service in the U.S. armed forces;[140] or
- The applicant departed the United States and later was lawfully admitted for permanent residence under a different visa from the one under which the applicant was previously admitted and then ordered removed.

2. Pending Removal Proceedings

Except for certain applications for naturalization based on military service,[141] USCIS lacks the authority to grant naturalization to an applicant against whom there is a pending removal proceeding initiated by a warrant of arrest.[142] An NTA is a warrant of arrest for purposes of INA 318,[143] except in the 9th Circuit.[144] Officers should consult with USCIS counsel on any INA 318 cases in the 9th Circuit involving pending removal proceedings.

Effective November 18, 2020, where a removal proceeding is pending against a naturalization applicant, USCIS denies the naturalization application under INA 318 based solely on the existence of pending removal proceedings against the applicant.[145] The officer may not issue a decision based on the merits of the naturalization application.[146]

Therefore, if an NTA is issued and a removal proceeding is pending against a naturalization applicant on or before the date of the decision on the naturalization application, the officer should deny the naturalization application under INA 318,[147] even if the removal proceeding was administratively closed.[148]

3. Rescission

A naturalization applicant who was ineligible for adjustment of status to that of an LPR may have his or her LPR status rescinded or be placed in removal proceedings.[149] Upon the rescission of the adjustment of status, or if an administratively final order of removal[150] is entered against the applicant, the officer must deny the naturalization application under INA 318 and INA 316(a)(1).

4. Deportable Noncitizens

If an officer finds that an applicant for naturalization is deportable, DHS issues an NTA where issuance would be in accordance with established guidance.[151] After the NTA is filed with an immigration court,[152] the officer should deny the naturalization application based on INA 318.

G. Exceptions to Lawful Permanent Resident Status Requirements

1. Nationals of the United States

The law provides an exception to the LPR requirement for naturalization for noncitizen nationals of the United States. Currently, persons who are born in American Samoa or Swains Island, which are outlying possessions of the United States, are considered noncitizen nationals of the United States.[153]

A noncitizen national of the United States may be naturalized without establishing lawful admission for permanent residence if he or she becomes a resident of any state[154] and complies with all other applicable requirements of the naturalization laws. These nationals are not aliens as defined in the INA and do not possess a PRC.[155]

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

Certain members of the U.S. armed forces with service under specified conditions are exempt from the LPR requirement.[156]

Footnotes

[^ 1] See INA 318 and INA 334(b). See 8 CFR 316.2(a)(2) and 8 CFR 316.2(b). See INA 101(a)(20). See 8 CFR 1.2. See *Berenyi v. Dist. Dir., Immigration & Naturalization Serv.*, 385 U.S. 630, 637 (1967) ("it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect"). For limited exceptions, see Section G, Exceptions to Lawful Permanent Resident Status Requirements [12 USCIS-PM D.2(G)].

[^ 2] See *Azumah v. USCIS*, 107 F.4th 272 (4th Cir. 2024) (the applicant satisfied statutory requirements because the applicant was lawfully admitted as an LPR on initial entry to the United States and retained their LPR status, regardless of the fact that they were not lawfully admitted as a permanent resident when they subsequently reentered the United States). The Fourth Circuit stated that "[b]ased purely on text, then, we see no basis for reading into [8 CFR] 316.2(b) a requirement of 'lawful admission,' separate and apart from Azumah's (undisputed) LPR status," and held that to read 8 CFR 316.2(b) to require a naturalization applicant to establish lawful admission "in accordance with the immigration laws in effect at the time of the applicant's initial entry or any subsequent reentry" would impose an additional requirement for naturalization not found in statute. See *Azumah v. USCIS*, 107 F.4th 272, 278 (4th Cir. 2024).

[^ 3] See INA 318. See *Estrada-Ramos v. Holder*, 611 F.3d 318 (7th Cir. 2010). See *Mejia-Orellana v. Gonzales*, 502 F.3d 13 (1st Cir. 2007). See *De La Rosa v. DHS*, 489 F.3d 551 (2nd Cir. 2007). See *Savoury v. U.S. Attorney General*, 449 F.3d 1307 (11th Cir. 2006). See *Arellano-Garcia v. Gonzales*, 429 F.3d 1183 (8th Cir. 2005). See *Monet v. INS*, 791 F.2d 752 (9th Cir. 1986). See *Matter of Longstaff*, 716 F.2d 1439, 1441 (5th Cir. 1983). See *Matter of Koloamatangi (PDF)*, 23 I&N Dec. 548, 550 (BIA 2003). See *Fedorenko v. U.S.*, 449 U.S. 490, 514-15 (1981) (denaturalizing person who obtained immigrant visa through willful misrepresentation). See *Matter of Mozeb (PDF)*, 15 I&N Dec. 430 (BIA 1975).

[^ 4] See Volume 7, Adjustment of Status [7 USCIS-PM].

[^ 5] This applies even if the applicant did not commit fraud or willful misrepresentation. See INA 318. See *Estrada-Ramos v. Holder*, 611 F.3d 318 (7th Cir. 2010). See *Mejia-Orellana v. Gonzales*, 502 F.3d 13 (1st Cir. 2007). See *De La Rosa v. DHS*, 489 F.3d 551 (2nd Cir. 2007). See *Savoury v. U.S. Attorney General*, 449 F.3d 1307 (11th Cir. 2006). See *Arellano-Garcia v. Gonzales*, 429 F.3d 1183 (8th Cir. 2005). See *Monet v. INS*, 791 F.2d 752 (9th Cir. 1986). See *Matter of Longstaff*, 716 F.2d 1439, 1441 (5th Cir. 1983). See *Matter of Koloamatangi (PDF)*, 23 I&N Dec. 548, 550 (BIA 2003). See *Fedorenko v. U.S.*, 449 U.S. 490, 514-15 (1981) (denaturalizing person who obtained immigrant visa through willful misrepresentation). See *Matter of Mozeb (PDF)*, 15 I&N Dec. 430 (BIA 1975).

[^ 6] See INA 216 and INA 216A. See INA 318.

[^ 7] See Part G, Spouses of U.S. Citizens, Chapter 5, Conditional Permanent Resident Spouses and Naturalization [12 USCIS-PM G.5] for special circumstances under which the applicant may not be required to have an approved Petition to Remove Conditions on Residence (Form I-751) prior to naturalization.

[^ 8] See Part G, Spouses of U.S. Citizens, Chapter 5, Conditional Permanent Resident Spouses and Naturalization [12 USCIS-PM G.5].

[^ 9] See INA 245(b).

[^ 10] In general, a PRC should note the correct date that the LPR status was acquired. For additional information on adjustment of status, see Volume 7, Adjustment of Status [7 USCIS-PM].

[^ 11] See Section 1 of the CAA, Pub. L. 89-732 (PDF), 80 Stat. 1161, 1161 (November 2, 1966). See *Matter of Carrillo (PDF)*, 25 I&N Dec. 99 (BIA 2009).

[^ 12] See INA 209(a)(2). See Volume 7, Adjustment of Status, Part L, Refugee Adjustment, Chapter 5, Adjudication Procedures, Section G, Decision, Subsection 1, Approvals [7 USCIS-PM L.5(G)(1)].

[^ 13] See INA 209(b). See Volume 7, Adjustment of Status, Part M, Asylee Adjustment, Chapter 5, Adjudication Procedures, Section G, Decision, Subsection 1, Approvals [7 USCIS-PM M.5(G)(1)].

[^ 14] See 8 CFR 1245.7(e).

[^ 15] See Section 7611(c)(1)(A)(ii) and Section 7611(e) of the National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92 (PDF), 113 Stat. 1198, 2310, 2311 (December 20, 2019). See Volume 7, Adjustment of Status, Part P, Other Adjustment Programs, Chapter 5, Liberian Refugee Immigration Fairness, Section E, Adjudication, Subsection 2, Approvals [7 USCIS-PM P.5(E)(2)].

[^ 16] See INA 264(e).

[^ 17] For more information, see Volume 11, Travel and Identity Documents, Part B, Permanent Resident Cards [11 USCIS-PM B].

[^ 18] For additional information on requesting an ADIT stamp, see Volume 11, Travel and Identity Documents, Part B, Permanent Resident Cards, Chapter 2, Replacement of Permanent Resident Card [11 USCIS-PM B.2].

[^ 19] See INA 318.

[^ 20] See *Turfah v. United States Citizenship and Immigration Services*, 845 F.3d 668 (6th Cir. 2017) (finding noncitizen not lawfully admitted for permanent residence where he gained LPR status due to a mistake by the government).

[^ 21] See INA 318.

[^ 22] Except for INA 329.

[^ 23] See INA 318. See INA 101(a)(20).

[^ 24] Abandonment of LPR status is different from rescission. Rescission is the process USCIS uses to remove LPR status if adjustment of status was improperly granted to a noncitizen. See INA 246. See Volume 7, Adjustment of Status, Part Q, Rescission of Lawful Permanent Residence [7 USCIS-PM Q].

[^ 25] See *Khoshfahm v. Holder*, 655 F.3d 1147 (9th Cir 2011) (approving "the imputation of a parent's abandonment of [LPR] status to the parent's unemancipated child" as "consistent with well-established authority"). See *Matter of Huang (PDF)*, 19 I&N Dec. 749, 750 n.1 (BIA 1988) ("Abandonment of lawful permanent resident status of a parent is imputed to a minor child who is subject to the parent's custody and control."). See *Matter of Zamora (PDF)*, 17 I&N Dec. 395, 396 (BIA 1980) ("We hold that this voluntary and intended abandonment by the mother is imputed to the applicant, who was an unemancipated minor . . . at the time his mother abandoned her lawful resident status.").

[^ 26] See INA 101(a)(27)(A).

[^ 27] See Chapter 3, Continuous Residence [12 USCIS-PM D.3]. See INA 316(a). See 8 CFR 316.5(a).

[^ 28] See INA 316(a)(1).

[^ 29] This does not apply in certain cases involving naturalizations based on military service. See INA 329(b)(1) (applicants eligible for military naturalization under INA 329(a)). See Section F, Removal Proceedings [12 USCIS-PM D.2(F)]. One possible basis for the NTA would be that the applicant lacked a valid entry document at the time of entry into the United States. See INA 237(a)(1)(A). See INA 212(a)(7)(A)(i).

[^ 30] See Section F, Removal Proceedings, Subsection 2, Pending Removal Proceedings [12 USCIS-PM D.2(F)(2)]. In removal proceedings, DHS has the burden of establishing by clear and convincing evidence that the applicant has abandoned his or her LPR status. See INA 240(c)(3)(4).

[^ 31] See 8 CFR 1241.1. For more information on the effect of removal proceedings on eligibility for naturalization, see Section F, Removal Proceedings [12 USCIS-PM D.2(F)].

[^ 32] See *Shyiak v. Bureau of Citizenship & Immigration Servs.*, 579 F. Supp 2d 900 (W.D. Mich. 2008).

[^ 33] See *Matter of Kane (PDF)*, 15 I&N Dec. 258 (BIA 1975).

[^ 34] See *Khodagholian v. Ashcroft*, 335 F.3d 1003 (9th Cir. 2003). See *Matter of Huang (PDF)*, 19 I&N Dec. 749 (BIA 1988).

[^ 35] See *Matter of Kane (PDF)*, 15 I&N Dec. 258 (BIA 1975) (noncitizen found to have abandoned her permanent residence in the United States after she routinely spent 11 months of each year living in her native country in which she operated a business and returned to the United States for 1 month a year).

[^ 36] See *Matter of Kane (PDF)*, 15 I&N Dec. 258, 262 (BIA 1975). See *Singh v. Reno*, 113 F.3d 1512 (9th Cir. 1997). See *Ahmed v. Ashcroft*, 286 F.3d 611, 613 (2nd Cir. 2002) (When the visit "relies upon an event with a reasonable possibility of occurring within a short period of time. . .[,] the intention of the visitor must still be to return within a period relatively short, fixed by some early event") (internal quotations omitted).

[^ 37] See *Singh v. Reno*, 113 F.3d 1512 (9th Cir. 1997). See *Shyiak v. Bureau of Citizenship and Immigration Services*, 579 F. Supp. 2d 900, 907 (W.D. Mich. 2008) (infrequent and short stays in the United States are insufficient as a matter of law to support retention of permanent resident status). See *U.S. v. Yakou*, 428 F.3d 241, 251 (D.C. Cir. 2005). See *Aleem v. Perryman*, 114 F.3d 672 (7th Cir. 1997).

[^ 38] See Chapter 3, Continuous Residence [12 USCIS-PM D.3]. See INA 316(a). See 8 CFR 316.2(a)(3).

[^ 39] See *Matter of Kane (PDF)*, 15 I&N Dec. 258 (BIA 1975).

[^ 40] See *Matter of Kane (PDF)*, 15 I&N Dec. 258, 262 (BIA 1975).

[^ 41] See *Matter of Kane (PDF)*, 15 I&N Dec. 258, 263 (BIA 1975). See *Chavez v. Ramirez*, 792 F2d 932, 937 (9th Cir. 1986).

[^ 42] See *Moin v. Ashcroft*, 335 F.3d 415 (5th Cir. 2003) (An LPR's reentry permit, in and of itself, does not prevent a finding that the noncitizen has abandoned her LPR status and is therefore inadmissible on seeking reentry). See *Hana v. Gonzales*, 400 F.3d 472 (6th Cir. 2005) (while Hana did not possess a family, property or job in the United States, she still had an intent to return to the United States upon the approval of her family member's immigrant visa petitions, which she had filed when she first obtained LPR status. The Court's decision was influenced by Hana's decision to remain in the country abroad with her family to ensure their safety in a country with an extreme regime in addition to taking care of her terminally ill mother-in-law.).

[^ 43] See *Singh v. Reno*, 113 F.3d 1512, 1514 (9th Cir. 1997).

[^ 44] See *Singh v. Reno*, 113 F.3d 1512, 1514-15 (9th Cir. 1997).

[^ 45] See *Katebi v. Ashcroft*, 396 F.3d 463 (1st Cir. 2005).

[^ 46] Also known as Form I-551.

[^ 47] See *Singh v. Reno*, 113 F.3d 1512 (9th Cir. 1997) (returning to the United States every year is not, without more, enough to indicate intent to remain an LPR).

[^ 48] See 8 CFR 223.3(d)(1).

[^ 49] See *Singh v. Reno*, 113 F.3d 1512, 1514-15 (9th Cir. 1997) (The noncitizen's few established connections to the United States, despite over 2 1/2 years of LPR status, and his extended time abroad supported a finding that he abandoned his LPR status).

[^ 50] See 8 CFR 316.5(c)(2).

[^ 51] See 8 CFR 316.5(c)(2).

[^ 52] See Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence [12 USCIS-PM D.5], for classes of applicants eligible to preserve residence.

[^ 53] The applicant may also need to apply for a reentry permit to be permitted to enter the United States.

[^ 54] See 8 CFR 316.5(d)(1)(iii).

[^ 55] See *U.S. v. Yakou*, 428 F.3d 241 (D.C. Cir. 2005).

[^ 56] See Pub. L. 104-208 (PDF), 110 Stat. 3009 (September 30, 1996). See Volume 8, Admissibility [8 USCIS-PM].

[^ 57] See INA 212(a)(9)(A).

[^ 58] See INA 212(a)(9)(B). See Volume 8, Admissibility, Part O, Noncitizens Unlawfully Present [8 USCIS-PM O].

[^ 59] See INA 212(a)(9)(C). See Volume 8, Admissibility, Part P, Noncitizens Present After Previous Immigration Violation [8 USCIS-PM P].

[^ 60] See INA 212(a)(6)(A).

[^ 61] See INA 212(a)(6)(B).

[^ 62] See INA 212(a)(6)(C)(ii). If a noncitizen made a false claim to U.S. citizenship before IIRIRA's enactment (that is, September 30, 1996), then the officer must analyze whether the noncitizen is inadmissible under the fraud and willful misrepresentation ground of inadmissibility. See Volume 8, Admissibility, Part K, False Claim to U.S. Citizenship, Chapter 1, Purpose and Background, Section B, Background [8 USCIS-PM K.1(B)].

[^ 63] See INA 212(a)(6)(G).

[^ 64] See *Mellouli v. Lynch (PDF)*, 575 U.S. 798 (2015).

[^ 65] See *Matter of Martinez Espinoza (PDF)*, 25 I&N Dec. 118 (BIA 2009). See *Mellouli v. Lynch (PDF)*, 575 U.S. 798 (2015).

[^ 66] See INA 212(a)(2)(A)(i)(II). See *Matter of Martinez Espinoza (PDF)*, 25 I&N Dec. 118 (BIA 2009).

[^ 67] Also reserving footnotes 67-72.

[^ 73] For example, refugee status or LPR status under the CAA.

[^ 74] See INA 201. See INA 203. See Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section A, Verify Underlying Basis to Adjust Status [7 USCIS-PM A.6(A)]. For immigrant visas, see 9 FAM 502, Immigrant Visa Classifications.

[^ 75] See 8 CFR 214.2(k)(2). See Instructions for Petition for Alien Fiancé(e) (Form I-129F).

[^ 76] See *Nesari v. Taylor*, 806 F. Supp. 2d 848 (E.D.Va. 2011) (finding that the applicant was not lawfully admitted for permanent residence because he entered the United States under a K-1 fiancé visa for which he was ineligible due to failure to fulfill the in-person meeting requirement prior to entry, and the applicant did not obtain a waiver of the requirement).

[^ 77] See INA 212. See Volume 8, Admissibility [8 USCIS-PM].

[^ 78] See INA 245(a)(2).

[^ 79] See Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 2, Eligibility Requirements [7 USCIS-PM A.2]. See Volume 9, Waivers [9 USCIS-PM].

[^ 80] In general, immigrant waivers for grounds of inadmissibility are requested by filing one of the following forms: Application for Waiver of Grounds of Inadmissibility (Form I-601), Application for Provisional Unlawful Presence Waiver (Form I-601A), or Application By Refugee For Waiver of Grounds of Excludability (Form I-602). However, in the case of refugee adjustment, there may be little or no documentation of a waiver request or approval, as USCIS may grant a waiver of inadmissibility without requiring the applicant to file a Form I-602. See Volume 7, Adjustment of Status, Part L, Refugee Adjustment, Chapter 3, Admissibility and Waiver Requirements [7 USCIS-PM L.3]. The terrorist-related inadmissibility grounds described in INA 212(a)(3)(B) may only be waived by application of an exercise of the Secretary's discretionary authority under INA 212(d)(3)(B)(i).

[^ 81] An applicant may not have met other requirements for naturalization, such as good moral character. If a naturalization application is deniable on grounds other than those related to TRIG, then the officer should deny the naturalization application on those grounds as well.

[^ 82] An applicant may have received an exemption that covered the terrorism-related inadmissibility ground during the adjudication of the adjustment of status application, or during the adjudication of an earlier application such as asylum or refugee status. If the relevant inadmissibility grounds were covered by the exemption, then the applicant's adjustment would have been in accordance with the law and INA 318 would not bar naturalization.

[^ 83] The relevant provision must have become effective prior to the applicant's adjustment or admission on an immigrant visa. Officers should consult with counsel for questions regarding the effect of the enactment of relevant provisions.

[^ 84] See INA 212(a)(3)(B)(i)(I) and INA 212(a)(3)(B)(iv)(VI).

[^ 85] See INA 212(a)(3)(B)(i)(IV).

[^ 86] See INA 212(a)(3)(B)(i)(V). See INA 212(a)(3)(B)(vi)(I), (II). See DOS's Foreign Terrorist Organizations webpage.

[^ 87] See INA 212(a)(3)(B)(i)(VI). See INA 212(a)(3)(B)(vi)(III). For more information about the categories of terrorist organizations, see the Terrorism-Related Inadmissibility Grounds (TRIG) webpage. Even though INA 212(a)(3)(B)(i)(V)-(VI) addresses present membership in a terrorist organization, officers should review prior activities and involvement when considering if the noncitizen has engaged in terrorist activity.

[^ 88] See INA 212(a)(3)(B)(i)(IX) and INA 212(a)(3)(B)(iii).

[^ 89] See INA 212(a)(3)(B)(i)(VIII).

[^ 90] See *Matter of Koloamatangi*, 23 I&N Dec. 548 (BIA 2003). See *Injeti v. USCIS*, 737 F.3d 311, 316 (4th Cir. 2013) (to satisfy the burden of proving lawful admission for permanent residence, an applicant "must do more than simply show that she was granted LPR status; she must further demonstrate that the grant of status was 'in substantive compliance with the immigration laws'"). See *Walker v. Holder*, 589 F.3d 12, 20 (1st Cir. 2009). See *De La Rosa v. U.S. Dep't of Homeland Sec.*, 489 F.3d 551 (2nd Cir. 2007). See *Savoury v. U.S. Att'y General*, 449 F.3d 1307, 1313 (11th Cir. 2006). See *Arellano–Garcia v. Gonzales*, 429 F.3d 1183 (8th Cir. 2005). See *Matter of Longstaff*, 716 F.2d 1439 (5th Cir. 1983). See *Kyong Ho Shin v. Holder*, 607 F.3d 1213, 1217 (9th Cir. 2010). See INA 212(a)(6)(C)(i). See Volume 8, Admissibility, Part J, Fraud and Willful Misrepresentation, Chapter 3, Adjudicating Inadmissibility [8 USCIS-PM J.3].

[^ 91] For further discussion of fraud and willful misrepresentation, see Volume 8, Admissibility, Part J, Fraud and Willful Misrepresentation, Chapter 2, Overview of Fraud and Willful Misrepresentation [8 USCIS-PM J.2].

[^ 92] See *Koszelnik v. DHS*, 828 F.3d 175 (3rd Cir. 2016). See *Gallimore v. Attorney General of U.S.*, 619 F.3d 216, 224 (3rd Cir. 2010). For information regarding applicability to derivative applicants, see Subsection 8, Other Factors to Consider [12 USCIS-PM D.2(D)(8)].

[^ 93] See *Matter of B- and P-*, 2 I&N Dec. 638, 645-46 (A.G. 1947).

[^ 94] See *Matter of A.J. Valdez*, 27 I&N Dec. 496 (BIA 2018) (noting that the applicant is presumed to know the contents of an application he or she signs).

[^ 95] See 8 CFR 204.2(d). See INA 203(a)(1) and INA 203(a)(2).

[^ 96] See INA 318. An officer reviews the information in the naturalization application regarding marital history and compares that with previous immigration benefit requests.

[^ 97] See *Matter of Aldecoaotalora (PDF)*, 18 I&N Dec. 430 (BIA 1983). Where the beneficiary was divorced for the sole purpose of obtaining immigration benefits and continued to reside with and own property jointly with her former husband in what by all appearances is a marital relationship, such a divorce is considered a sham and is not acceptable for immigration purposes.

[^ 98] See *Lucaj v. Dedvukaj*, 13 F.Supp.3d 753 (E.D.M.I. 2014) (evidence established that her asylum application was implicated in a bribery fraud scheme in which an immigration official received money for favorable

consideration of her application, resulting in the alteration of a recommendation that she be placed in removal proceedings).

[^ 99] See INA 212(a)(3)(B)(i). See INA 212(a)(3)(D)(i).

[^ 100] See INA 212(a)(3)(B)(i)(I). See INA 212(a)(3)(B)(iv).

[^ 101] Generally, if USCIS determines that a visa petition beneficiary previously entered into or sought to enter into a marriage for the purpose of evading the immigration laws of the United States, then the petition filed on behalf of the applicant must be denied. See INA 204(c). This applies even if the applicant's current marriage is bona fide. See *Matter of Kahy* (PDF), 19 I&N Dec. 803, 805 (BIA 1998).

[^ 102] See *Bark v. I.N.S.*, 511 F.2d 1200, 1202 (9th Cir. 1975).

[^ 103] See *Matter of Soriano* (PDF), 19 I&N Dec. 764 (BIA 1988). See *Matter of Phillis* (PDF), 15 I&N Dec. 385 (BIA 1975). See *Bark v. I.N.S.*, 511 F.2d 1200, 1202 (9th Cir. 1975). See *Damon v. Ashcroft*, 360 F.3d 1084, 1089 (9th Cir. 2004) ("The sole inquiry in determining whether a marriage was entered into in good faith is whether the parties intended to establish a life together at the time of marriage.").

[^ 104] See *Agyeman v. I.N.S.*, 296 F.3d 871, 883 (9th Cir. 2002) (detailing types of evidence that may prove bona fides of marriage besides spouse's testimony including joint tax returns, shared bank accounts or credit cards, or telephone bills).

[^ 105] See 8 CFR 103.2(b)(16)(i).

[^ 106] For additional information on valid marriages, see Part G, Spouses of U.S. Citizens, Chapter 2, Marriage and Marital Union for Naturalization [12 USCIS-PM G.2].

[^ 107] See CAA, Pub. L. 89-732 (PDF) (November 2, 1966), amended by the Refugee Act of 1980, Pub. L. 89-732 (PDF) (March 17, 1980).

[^ 108] See CAA, Pub. L. 89-732 (PDF) (November 2, 1966), amended by the Refugee Act of 1980, Pub. L. 89-732 (PDF) (March 17, 1980) (an applicant who is "physically present in the United States for at least one year may be adjusted by the Attorney General").

[^ 109] See 8 CFR 103.2(b)(1).

[^ 110] See instructions for Application to Register Permanent Residence or Adjust Status (Form I-485) (Additional Instructions for Applicants Filing under Special Adjustment Programs, Cuban Adjustment Act (CAA) section).

[^ 111] A noncitizen may be granted LPR status under the CAA as a Cuban native or citizen.

[^ 112] See Updated agency interpretation of Cuban citizenship law for purposes of the Cuban Adjustment Act; rescission of *Matter of Vazquez* as an Adopted Decision, PM-602-0154, issued November 21, 2017.

[^ 113] See instructions for Application to Register Permanent Residence or Adjust Status (Form I-485) (Additional Instructions for Applicants Filing under Special Adjustment Programs, Cuban Adjustment Act (CAA) section).

[^ 114] See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386 (PDF) (October 28, 2000). See Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162 (PDF)

(January 5, 2006).

[^ 115] A naturalization applicant who obtained LPR status through the VAWA amendments to the CAA must provide "any credible evidence" that the qualifying Cuban principal is a Cuban citizen or national. See INA 204(a)(1)(J) and 8 CFR 204.2(c)(2)(i). In recognition of the "any credible evidence" standard, as a matter of policy, USCIS verifies the qualifying Cuban principal's status. See 8 CFR 103.2(b)(17)(ii).

[^ 116] See INA 209(a)(1)(B). See Volume 7, Adjustment of Status, Part L, Refugee Adjustment, Chapter 2, Eligibility Requirements, Section B, Physical Presence in the United States for at Least 1 Year [7 USCIS-PM L.2(B)].

[^ 117] See INA 209(b)(2). See Volume 7, Adjustment of Status, Part M, Asylee Adjustment, Chapter 2, Eligibility Requirements, Section A, Physical Presence in the United States for at Least 1 Year [7 USCIS-PM M.2(A)].

[^ 118] USCIS' practice and policy has varied with regard to whether the 1 year of physical presence was required by the time of filing or by the time of adjudication of the adjustment of status application. See Volume 7, Adjustment of Status, Part L, Refugee Adjustment, Chapter 2, Eligibility Requirements, Section B, Physical Presence in the United States for at Least 1 Year [7 USCIS-PM L.2(B)] and Volume 7, Adjustment of Status, Part M, Asylee Adjustment, Chapter 2, Eligibility Requirements, Section A, Physical Presence in the United States for at Least 1 Year [7 USCIS-PM M.2(A)].

[^ 119] See *Reganit v. Secretary, Dept. of Homeland Sec.*, 814 F.3d 1253 (11th Cir. 2016) (naturalization applicant's adjustment to LPR status must be "in compliance with the substantive requirements of the law").

[^ 120] See INA 245(c)(1).

[^ 121] See INA 212(e). To be eligible for an immigrant visa or lawful permanent residence, certain J-1 and J-2 nonimmigrant exchange visitors must have resided and been physically present in their country of nationality or country of last foreign residence for an aggregate of at least 2 years after departing the United States. See Application for Waiver of the Foreign Residence Requirement (under Section 212(e) of the Immigration and Nationality Act, as Amended) (Form I-612). See INA 214(l).

[^ 122] See 8 CFR 103.2(b)(1). Certain exceptions may apply to this general rule, such as adjustment of status approved for a surviving relative under INA 204(l), which allows for approval of the dependent's application even though the principal passed away while the qualifying petition or application was pending and therefore never obtained LPR status. For further information on derivatives, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

[^ 123] See INA 203(d). See *Turfah v. United States Citizenship and Immigration Services*, 845 F.3d 668 (6th Cir. 2017) (USCIS properly denied a derivative son's naturalization application where the derivative son was mistakenly admitted as an LPR before his father, the principal, who was not admitted as an LPR until 1 month after the derivative son). Certain exceptions may apply to this general rule, such as adjustment of status approved for a surviving relative under INA 204(l), which allows for approval of the dependent's application even though the principal passed away while the qualifying petition or application was pending and therefore never obtained LPR status. For more information on derivatives, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

[^ 124] While a derivative would no longer be eligible to adjust status based on the principal applicant if the principal naturalizes (and is no longer a noncitizen), the principal applicant who naturalizes may file a Petition for Alien Relative (Form I-130) for any eligible family member.

[^ 125] See *Matter of Valiyee (PDF)*, 14 I&N Dec. 710 (BIA 1974).

[^ 126] See Part L, Revocation of Naturalization, Chapter 3, Effects of Revocation of Naturalization [12 USCIS-PM L.3].

[^ 127] For more information, see Part L, Revocation of Naturalization, Chapter 3, Effects of Revocation of Naturalization [12 USCIS-PM L.3].

[^ 128] See *Kadirov v. Beers*, 71 F.Supp.3d 519 (E.D.Pa. 2014).

[^ 129] See *Matter of Awwal (PDF)*, 19 I&N Dec. 617, 621 (BIA 1988) (noting that "a marriage which is a sham from the outset cannot form the basis for a step relationship" under the INA). Even if the derivative beneficiary was not involved in the fraud or misrepresentation committed by the principal, the derivative would still be ineligible for naturalization under INA 318 based on inadmissibility on a different ground at the time of adjustment to LPR status. See *Matter of Teng* (PDF), 15 I&N Dec. 516, 519 (BIA 1975) (finding that even though the beneficiary did not participate in the fraud, he or she was nonetheless deportable under INA 237(a)(1)(A) as inadmissible at the time of admission or adjustment).

[^ 130] See INA 245(a). See 8 CFR 245.1(g)(1) and 8 CFR 245.2(a)(2)(i)(A). See Volume 7, Adjustment of Status, Part B, 245(a) Adjustment [7 USCIS-PM B]. For detailed guidance on the availability of immigrant visas, including for noncitizens who file using the Dates for Filing chart of the DOS Visa Bulletin, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section B, Definition of Properly Filed, Subsection 4, Visa Availability Requirement [7 USCIS-PM A.3(B)(4)] and Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].

[^ 131] See 8 CFR 245.2(a)(5)(ii). See INA 203(a)-(c) (enumerating immigrant visa categories for which a noncitizen is considered a "preference alien").

[^ 132] See 8 CFR 245.2(a)(5)(ii), 8 CFR 245.1(g)(1), and 8 CFR 245.2(a)(2)(i)(A).

[^ 133] For more information on adjustment of status under INA 245(a), see Volume 7, Adjustment of Status Policies and Procedures, Part B, 245(a) Adjustment [7 USCIS-PM B].

[^ 134] See INA 245(i). See *Matter of Briones* (PDF), 24 I&N Dec. 355, 360-62 (BIA 2007). The sum required for INA 245(i) has changed over time. IIRIRA increased the sum to $1,000 in 1996. The increased sum applies to applications made on or after April 1, 1997. See Section 376 of IIRIRA, Pub. L. 104-208 (PDF), 110 Stat. 3009, 3009-648 (September 30, 1996). Officers should confirm what sum was required at the time an applicant applied to adjust under INA 245(i).

[^ 135] See 8 CFR 1239.1(a) (removal proceedings commence by the filing of an NTA with the immigration court). See INA 318. See *Klene v. Napolitano*, 697 F.3d 666, 669 (7th Cir. 2012)). See *Rumierz v. Gonzales*, 456 F.3d 31 (1st Cir. 2006). See *Ajlani v. Chertoff*, 545 F.3d 229 (2nd Cir. 2008). See *Zayed v. U.S.*, 368 F.3d 902 (6th Cir. 2004). See *De Lara Bellajaro v. Schiltgen*, 378 F.3d 1042, 1043 (9th Cir. 2004), as amended. See *Martinez v. Johnson*, 104 F.Supp.3d 835, 843 (W.D. Tex. 2015). See *Ka Lok Lau v. Holder*, 880 F.Supp.2d 276 (D. Mass. 2012). See *Farghaly v. Frazier*, 404 F. Supp. 2d 1125, 1127 (D. Minn. 2005).

[^ 136] See INA 328(b)(2) (applicants currently in the U.S. armed forces and eligible for military naturalization under INA 328(a)). See INA 329(b)(1) (applicants eligible for military naturalization under INA 329(a)). See 8 CFR 329.2(e)(3).

[^ 137] See INA 318. See INA 328(b)(2) (applicants currently in the U.S. armed forces and eligible for military naturalization under INA 328(a)). See INA 329(b)(1) (applicants eligible for military naturalization under INA 329(a)). See Part I, Military Members and their Families, Chapter 2, One Year of Military Service during Peacetime (INA 328) [12 USCIS-PM I.2] and Chapter 3, Military Service during Hostilities (INA 329) [12 USCIS-PM I.3].

[^ 138] See Notice of Appeal or Motion (Form I-290B).

[^ 139] Officers should consult with OCC where an applicant is subject to an order of deportation or removal or was subject to an order of deportation or removal at the time of adjustment of status.

[^ 140] See INA 328(b)(2) (applicants currently in the U.S. armed forces and eligible for military naturalization under INA 328(a)). See INA 329(b)(1) (applicants eligible for military naturalization under INA 329(a)).

[^ 141] See INA 328(b)(2) (applicants currently in the U.S. armed forces and eligible for military naturalization under INA 328(a)). See INA 329(b)(1) (applicants eligible for military naturalization under INA 329(a)).

[^ 142] See INA 318.

[^ 143] See 8 CFR 318.1.

[^ 144] See *Yith v. Nielsen*, 881 F.3d 1155 (9th Cir. 2018) (declining to give effect to 8 CFR 318.1 by holding that an NTA is not a "warrant of arrest"). A Warrant for Arrest of Alien (Form I-200) is issued by U.S. Immigration and Customs Enforcement (ICE) under to 8 CFR 236.1(b). For deportation proceedings that commenced before IIRIRA, the Warrant of Arrest may be Form I-221S, which is part of the Order to Show Cause (Form I-221).

[^ 145] This applies to naturalization applications filed on or after November 18, 2020 (effective date of policy). See INA 318. See *De Lara Bellajaro v. Schiltgen*, 378 F.3d 1042, 1043 (9th Cir. 2004), as amended (agency's denial of applicant's naturalization application on the ground that INA 318 precludes the application from being considered while removal proceedings are pending is "unquestionably correct").

[^ 146] See *Saba-Bakare v. Chertoff*, 507 F.3d 337, 340 (5th Cir. 2007) (denial of application for naturalization on the merits while applicant in removal proceedings is improper).

[^ 147] See *Zayed v. U.S.*, 368 F.3d 902, 907 (6th Cir. 2004) ("Regardless of when removal proceedings are initiated, the Attorney General may not naturalize an alien while such proceedings remain pending.").

[^ 148] The "temporary pause" of removal proceedings through administrative closure is not equivalent to the termination of removal proceedings. See 8 CFR 245.1(c)(8). Instead, administrative closure of removal proceedings is "a docket management tool that is used to temporarily pause removal proceedings." See *Matter of W-Y-U-*, 27 I&N Dec. 17, 18 (BIA 2017). Administrative closure of removal proceedings is used to "remove a case from an Immigration Judge's active calendar or from the Board's docket." See *Matter of Avetisyan (PDF)*, 25 I&N Dec. 688, 692 (BIA 2012).

[^ 149] See INA 246(a). For additional information on rescission of lawful permanent residence see Volume 7, Adjustment of Status, Part Q, Rescission of Lawful Permanent Residence [7 USCIS-PM Q].

[^ 150] An order of removal is generally considered an administratively final order when either a decision by the BIA affirms an order of removal or the period in which the noncitizen is permitted to seek review of such order by the BIA has expired, whichever date is earlier.

[^ 151] For further discussion of when USCIS issues or may issue an NTA in connection with a Form N-400, see Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens, PM-602-0050.1, issued June 28, 2018. Officers must refer to component-specific operational guidance related to the issuance of NTAs to determine if USCIS may issue the NTA or if the case must be referred to ICE.

[^ 152] See 8 CFR 1239.1(a). This does not apply in certain cases involving naturalizations based on military service. See INA 328(b)(2) (applicants currently in the U.S. armed forces and eligible for military naturalization under INA 328(a)). See INA 329(b)(1) (applicants eligible for military naturalization under INA 329(a)).

[^ 153] See INA 101(a)(29) and INA 308.

[^ 154] See INA 325. See 8 CFR 325.2. Noncitizen nationals may satisfy the residence and physical presence requirements through their residence and presence within any of the outlying possessions of the United States.

[^ 155] See INA 101(a)(20).

[^ 156] See INA 329(a) (lawful admission for permanent residence not required for applicants who are otherwise eligible for military naturalization under INA 329 and who were in the United States or certain other specified locations at the time of enlistment, reenlistment, extension of enlistment, or induction). See Part I, Military Members and their Families, Chapter 3, Military Service during Hostilities (INA 329) [12 USCIS-PM I.3].

Current as of December 12, 2024