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U.S. Citizen and Immig Services

Print Manual

Policy Manual

Current as of
October 20, 2025

The USCIS Policy Manual is the agency's centralized online repository for USCIS' immigration policies. The USCIS Policy Manual will ultimately replace the Adjudicator's Field Manual (AFM), the USCIS Immigration Policy Memoranda site, and other policy repositories.

About the Policy Manual

The USCIS Policy Manual is the agency's centralized online repository for USCIS' immigration policies. The Policy Manual is replacing the Adjudicator's Field Manual (AFM), the USCIS Immigration Policy Memoranda site, and other USCIS policy repositories. The Policy Manual contains separate volumes pertaining to different areas of immigration benefits administered by the agency, such as citizenship and naturalization, adjustment of status, and nonimmigrants. The content is organized into different volumes, parts, and chapters.

The Policy Manual provides transparency of immigration policies and furthers consistency, quality, and efficiency consistent with the USCIS mission. The Policy Manual provides all the latest policy updates; an expanded table of contents; keyword search function; and links to the Immigration and Nationality Act and Code of Federal Regulations, as well as public use forms. The Policy Manual contains tables and charts to facilitate understanding of complex topics. The Policy Manual also contains all historical policy updates.

The Policy Manual contains the official policies of USCIS and assists immigration officers in rendering decisions. The Policy Manual is to be followed by all USCIS officers in the performance of their duties but it does not remove their discretion in making adjudicatory decisions. The Policy Manual does not create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

How to use the USCIS Policy Manual website.

Adjudicator's Field Manual Transition

USCIS is retiring its Adjudicator's Field Manual (AFM), a collection of our immigration policies and procedures. We are working to update and incorporate all AFM content into the USCIS Policy Manual. Until then, we have moved any remaining AFM content in PDF format to its corresponding Policy Manual Part. To the extent that a provision in the Policy Manual conflicts with remaining AFM content or Policy Memoranda, the updated information in the Policy Manual prevails. If you have questions or concerns about any discrepancies among these resources, contact PolicyFeedback@uscis.dhs.gov.

To find remaining AFM content, see the crosswalk (PDF, 304.67 KB) between the AFM and the Policy Manual.

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An officer responsible for overseeing applicant fingerprinting may grant the waiver in the following situations:

- The officer has met with the applicant in person;
- The officer or authorized technician has attempted to fingerprint the applicant; and
- The officer determines that the applicant is unable to be fingerprinted at all or is unable to provide a single legible fingerprint.

An applicant who is granted a fingerprint waiver must bring local police clearance letters covering the relevant period of good moral character to his or her naturalization interview. All clearance letters become part of the record. In cases where the applicant is granted a fingerprint waiver or has two unclassifiable fingerprint results, the officer must take a sworn statement from the applicant covering the period of good moral character.

An officer should not grant a waiver if the waiver is solely based on:

- The applicant has fewer than 10 fingers;
- The officer considers that the applicant's fingerprints are unclassifiable; or
- The applicant's condition preventing the fingerprint capturing is temporary.

An officer's decision to deny a fingerprint waiver is final and may not be appealed.

C. FBI Name Checks

The FBI conducts "name checks" on all naturalization applicants, and disseminates the information contained in the FBI's files to USCIS in response to the name check requests. The FBI's National Name Check Program (NNCP) includes a search against the FBI's Universal Index (UNI), which contains personnel, administrative, applicant, and criminal files compiled for law enforcement purposes. The FBI disseminates the information contained in the FBI's files to USCIS in response to the name check requests.

The FBI name check must be completed and cleared before an applicant for naturalization is scheduled for his or her naturalization interview. A definitive FBI name check response of "NR" (No Record) or "PR" (Positive Response) is valid for the duration of the application for which they were conducted. Definitive responses used to support other applications are valid for 15 months from the FBI process date. A new name check is required in cases where the final adjudication and naturalization have not occurred within that timeframe or the name check was processed incorrectly.

Footnotes

[^ 1] See INA 335. See 8 CFR 335.1.

[^ 2] See 8 CFR 335.2(b).

[^ 3] See 8 CFR 103.2(b)(9), 8 CFR 335.1, and 8 CFR 335.2. See Part I, Military Members and their Families, Chapter 6, Required Background Checks [12 USCIS-PM I.6], for guidance on the background and security check procedures for members or veterans of the U.S. armed forces.

[^ 4] See 8 CFR 103.2(a).

[^ 5] See 8 CFR 103.2(b)(13)(ii). See Chapter 4, Results of the Naturalization Examination [12 USCIS-PM B.4].

[^ 6] See INA 335. See 8 CFR 335.1.

[^ 7] See 8 CFR 335.2(b).

[^ 8] See USCIS web pages on Homebound Processing and How to Request Special Accommodation.

Chapter 3 - Naturalization Interview

A. Roles and Responsibilities

1. USCIS Officers

Authority to Conduct Examination

USCIS officers have authority to conduct the investigation and examination, to include the naturalization interview.[1] The officer should introduce him or herself and explain the purpose of the naturalization examination and place the applicant under oath at the start of the interview.

USCIS' authority includes the legal authority for officers to:

- Place an applicant under oath;
- Obtain oral and written testimony during an in-person interview;
- Subpoena witnesses;
- Request evidence; and
- Administer the Oath of Allegiance (when delegated by the Field Office Director).

Questions on Eligibility

An officer's questioning of an applicant during the applicant's naturalization interview must cover all of the requirements for naturalization.[2] In general, the officer's questions focus on the information in the naturalization application. The officer may ask any questions that are pertinent to the eligibility determination. The officer should provide the applicant with suitable opportunities to respond to questions in all instances.

In general, the officer's questions may include, but are not limited to, the following questions:

- Biographical information, to include marital history and military service;
- Admission and length of time as a lawful permanent resident (LPR);
- Absences from the United States after becoming an LPR;
- Places of residence and employment history;
- Knowledge of English and of U.S. history and government (civics);
- Moral character and any criminal history;
- Attachment to the principles of the U.S. Constitution;
- Affiliations or memberships in certain organizations;
- Willingness to take an Oath of Allegiance to the United States; and
- Any other topic pertinent to the eligibility determination.

In most cases, the officer conducting the naturalization interview administers the required tests relating to the applicant's ability to read and write English, and his or her knowledge of U.S. history and government (civics), unless the applicant is exempt.[3] The officer who conducts the naturalization interview and who determines the applicant's ability to speak and understand English is not required to also administer the English reading and writing, and civics tests. Accordingly, a different officer may administer the tests.

Grounding Decisions on Applicable Laws

An officer must analyze the facts of each case to make a legally sound decision on the naturalization application. The officer must base his or her decision to approve or deny the application on the relevant laws, regulations, precedent decisions, and agency guidance:

- The Immigration and Nationality Act (INA) is the primary source of pertinent statutory law.[4]
- The corresponding regulations explain the statutes further and provide guidance on how the statutes are applied.[5]
- Precedent decisions have the force of law and are binding on cases within the jurisdiction of the court or appellate body making the decision.[6]
- USCIS guidance provides the agency's policies and procedures supporting the laws and regulations. The USCIS Policy Manual is the primary source for agency guidance.[7]

2. Authorized Representatives

An applicant may request the presence and counsel of a representative, to include attorneys or other representatives, at the applicant's in-person interview. The representative must submit to USCIS a properly completed notice of entry of appearance.[8]

In cases where an applicant requests to proceed without the assistance of a representative, the applicant must sign a waiver of representation. If the applicant does not want to proceed with the interview without his or her representative, the officer must reschedule the interview. Officers should consult with a supervisor if the representative fails to appear for multiple scheduled interviews.

The representative's role is to ensure that the applicant's legal rights are protected. A representative may advise his or her client on points of law but should not respond to questions the officer has directed to the applicant.

An applicant may be represented by any of the following:

- Attorneys in the United States;[9]
- Certain law students and law graduates not yet admitted to the bar;[10]
- Certain reputable individuals who are of good moral character, have a pre-existing relationship with the applicant and are not receiving any payment for the representation;[11]
- Accredited representatives from organizations accredited by the Board of Immigration Appeals (BIA);[12]
- Accredited officials of the government to which a person owes allegiance;[13] or
- Attorneys outside the United States.[14]

No other person may represent an applicant.[15]

3. Interpreters

An interpreter may be selected either by the applicant or by USCIS in cases where the applicant is permitted to use an interpreter. The interpreter must:

- Translate what the officer and the applicant say word for word to the best of his or her ability without providing the interpreter's own opinion, commentary, or answer; and
- Complete an interpreter's oath and privacy release statement and submit a copy of his or her government-issued identification at the naturalization interview.

A disinterested party should be used as an interpreter. If the USCIS officer is fluent in the applicant's native language, the officer may conduct the examination in the applicant's language of choice.

USCIS reserves the right to disqualify an interpreter provided by the applicant if an officer considers that the integrity of the examination is compromised by the interpreter's participation.

B. Preliminary Review of Application

A USCIS officer who is designated to conduct the naturalization interview should review the applicant's "A-file" and naturalization application before the interview. The A-file is the applicant's record of his or her interaction with USCIS, legacy Immigration and Naturalization Service (INS), and other governmental organizations with which the applicant has had proceedings pertinent to his or her immigration record. The officer addresses all pertinent issues during the naturalization interview.

1. General Contents of A-File

The applicant's A-file may include the following information along with his or her naturalization application:

- Documents that show how the applicant became an LPR;
- Other applications or forms for immigration benefits submitted by the applicant;
- Correspondence between USCIS and the applicant;
- Memoranda and forms from officers that may be pertinent to the applicant's eligibility;
- Materials such as any criminal records,[16] correspondence from other agencies, and investigative reports and enforcement actions from DHS or other agencies.

2. Jurisdiction for Application[17]

In most cases, the USCIS office having jurisdiction over the applicant's residence at the time of filing has the responsibility for processing and adjudicating the naturalization application.[18] An officer should review whether the jurisdiction of a case has changed because the applicant has moved after filing his or her naturalization application. The USCIS office may transfer the application to the appropriate office with jurisdiction when appropriate.[19] In addition, an applicant for naturalization as a battered spouse of a U.S. citizen[20] or child may use a different address for safety which does not affect the jurisdiction requirements.

In cases where an officer becomes aware of a change in jurisdiction during the naturalization interview, the officer may complete the interview and then forward the applicant's A-file with the pending application to the office having jurisdiction. The officer informs the applicant that the application's jurisdiction has changed. The applicant will receive a new appointment notice from the current office with jurisdiction.

3. Results of Background and Security Checks[21]

An officer should ensure that all of the appropriate background and security checks have been conducted on the naturalization applicant. The results of the background and security checks should be included as part of the record.

4. Other Documents or Requests in the Record

Requests for Accommodations or Disability Exceptions

USCIS accommodates applicants with disabilities by making modifications to the naturalization examination process.[22] An officer reviews the application for any accommodations request, any oath waiver request, or for a medical disability exception from the educational requirements for naturalization.[23]

Previous Notice to Appear, Order to Show Cause, or Removal Order

An officer reviews an applicant's record and relevant databases to identify any current removal proceedings or previous proceedings resulting in a final order of removal from the United States. If an applicant is in removal proceedings, a Notice to Appear or the previously issued "Order to Show Cause" may appear in the applicant's record.[24] USCIS denies any naturalization application from an applicant who is in removal proceedings, except for certain cases involving naturalization based on military service.[25]

The officer should deny the naturalization application if the applicant has already received a final order of removal from an immigration judge, unless:

- The applicant was removed from the United States and later reentered with the proper documentation and authorization; or
- The applicant is filing for naturalization under the military naturalization provisions.[26]

C. Initial Naturalization Examination

All naturalization applicants must appear for an in-person examination before a USCIS officer after filing an Application for Naturalization (Form N-400).[27] The applicant's examination includes both the interview and the administration of the English and civics tests. The applicant's interview is a central part of the naturalization examination. The officer conducts the interview with the applicant to review and examine all factors relating to the applicant's eligibility.

The officer places the applicant under oath and interviews the applicant on the questions and responses in the applicant's naturalization application.[28] The initial naturalization examination includes:

- An officer's review of information provided in the applicant's naturalization application;
- The administration of tests on the educational requirements for naturalization;[29] and
- An officer's questions relating to the applicant's eligibility for naturalization.[30]

The applicant's written responses to questions on his or her naturalization application are part of the documentary record signed under penalty of perjury. The written record includes any amendments to the responses in the application that the officer makes in the course of the naturalization interview as a result of the applicant's testimony. The amendments, sworn affidavits, and oral statements and answers document the applicant's testimony and representations during the naturalization interview(s).

At the officer's discretion, he or she may record the interview by a mechanical, electronic, or videotaped device, may have a transcript made, or may prepare an affidavit covering the testimony of the applicant.[31] The applicant or his or her authorized attorney or representative may request a copy of the record of proceedings through the Freedom of Information Act (FOIA).[32]

The officer provides the applicant with a notice of results at the end of the examination regardless of the outcome.[33] The notice provides the outcome of the examination and should explain what the next steps are in cases that are continued.[34]

D. Subsequent Re-examination

USCIS may schedule an applicant for a subsequent examination (re-examination) to determine the applicant's eligibility.[35] During the re-examination:

- The officer reviews any evidence provided by the applicant in a response to a Request for Evidence issued during or after the initial interview.
- The officer considers new oral and written testimony and determines whether the applicant meets all of the naturalization eligibility requirements, to include re-testing the applicant on the educational requirements (if necessary).

In general, the re-examination provides the applicant with an opportunity to overcome deficiencies in his or her naturalization application. Where the re-examination is scheduled for failure to meet the educational requirements for naturalization during the initial examination, the subsequent re-examination is scheduled between 60 and 90 days from the initial examination.[36]

If the applicant is unable to overcome the deficiencies in his or her naturalization application, the officer denies the naturalization application. An applicant or his or her authorized representative may request a USCIS hearing before an officer on the denial of the applicant's naturalization application.[37]

E. Expediting Applications from Certain SSI Beneficiaries

USCIS will expedite naturalization applications filed by applicants:

- Who are within 1 year or less of having their Supplemental Security Income (SSI) benefits terminated by the Social Security Administration (SSA); and
- Whose naturalization application has been pending for 4 months or more from the date of receipt by USCIS.

Although USCIS will prioritize processing of these applications, each applicant is still required to meet all eligibility requirements for naturalization at the time of filing. Applicants, who have pending applications, must inform USCIS of the approaching termination of benefits by InfoPass appointment or by United States postal mail or other courier service by providing:

- A cover letter or cover sheet to explain that SSI benefits will be terminated within 1 year or less and that their naturalization application has been pending for 4 months or more from the date of receipt by USCIS; and
- A copy of the applicant's most recent SSA letter indicating the termination of their SSI benefits. (The USCIS A-number must be written at the top right of the SSA letter).

Applicants who have not filed their naturalization application may write "SSI" at the top of page one of the application. Applicants should include a cover letter or cover sheet along with their application to explain that their SSI benefits will be terminated within 1 year or less.

Footnotes

[^ 1] See INA 335(b). See 8 CFR 335.2.

[^ 2] See Part D, General Naturalization Requirements [12 USCIS-PM D].

[^ 3] See Part E, English and Civics Testing and Exceptions [12 USCIS-PM E].

[^ 4] See Pub. L. 82-414 (June 27, 1952), as amended.

[^ 5] See Title 8 of the Code of Federal Regulations (8 CFR). Most of the corresponding regulations have been promulgated by legacy INS or USCIS.

[^ 6] Precedent decisions are judicial decisions that serve as an authority for deciding an immigration matter. Precedent decisions are decisions designated as such by the Board of Immigration Appeals (BIA), Administrative Appeals Office (AAO), and appellate court decisions. Decisions from district courts are not precedent decisions in other cases.

[^ 7] The Adjudicator's Field Manual (AFM) and policy memoranda also serve as key sources for guidance on topics that are not covered in the Policy Manual.

[^ 8] See 8 CFR 335.2(a). The representative must use the Notice of Entry of Appearance as Attorney or Representative (Form G-28).

[^ 9] See 8 CFR 292.1(a)(1).

[^ 10] See 8 CFR 292.1(a)(2).

[^ 11] See 8 CFR 292.1(a)(3).

[^ 12] See 8 CFR 292.1(a)(4). See 8 CFR 292.2.

[^ 13] See 8 CFR 292.1(a)(5).

[^ 14] See 8 CFR 292.1(a)(6). In naturalization cases, attorneys licensed only outside the United States may represent an applicant only when the naturalization proceeding can occur overseas and where DHS allows the representation as a matter of discretion. Attorneys licensed only outside the United States cannot represent an applicant whose naturalization application is processed solely within the United States unless the attorney also qualifies under another representation category.

[^ 15] See 8 CFR 292.1(e).

[^ 16] For example, a Record of Arrest and Prosecution ("RAP" sheet).

[^ 17] See Part D, General Naturalization Requirements, Chapter 6, Jurisdiction, Place of Residence, and Early Filing [12 USCIS-PM D.6].

[^ 18] An applicant who is a student or a member of the U.S. armed forces may have different places of residence that may affect the jurisdiction requirement. See 8 CFR 316.5(b).

[^ 19] See 8 CFR 335.9.

[^ 20] See INA 319(a).

[^ 21] See Chapter 2, Background and Security Checks [12 USCIS-PM B.2].

[^ 22] See Part C, Accommodations [12 USCIS-PM C].

[^ 23] See Part E, English and Civics Testing and Exceptions, Chapter 3, Medical Disability Exception (N-648) [12 USCIS-PM E.3]. See Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers [12 USCIS-PM J.3].

[^ 24] An Order to Show Cause was the notice used prior to enactment of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104–208 (PDF), 110 Stat. 3009 (September 30, 1996).

[^ 25] 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 D, General Naturalization Requirements, Chapter 2, Lawful Permanent Resident Admission for Naturalization [12 USCIS-PM D.2].

[^ 26] See INA 328(b)(2). See INA 329(b)(1).

[^ 27] See 8 CFR 335.2(a).

[^ 28] If an applicant is unable to undergo any part of the naturalization examination because of a physical or developmental disability or mental impairment, a legal guardian, surrogate or an eligible designated representative completes the naturalization process for the applicant. See Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers [12 USCIS-PM J.3].

[^ 29] See Part E, English and Civics Testing and Exceptions [12 USCIS-PM E]. USCIS may administer the test separately from the interview.

[^ 30] See the relevant Volume 12 [12 USCIS-PM] part for the specific eligibility requirements for each naturalization provision.

[^ 31] See 8 CFR 335.2(c).

[^ 32] The applicant or authorized attorney or representative may request a copy of the record of proceedings by filing a Freedom of Information/Privacy Act Request (Form G-639).

[^ 33] The officer must use the Naturalization Interview Results (Form N-652).

[^ 34] See Chapter 4, Results of the Naturalization Examination [12 USCIS-PM B.4].

[^ 35] A USCIS field office may allow the applicant to provide documentation by mail in order to overcome any deficiencies without scheduling the applicant to come in person for another interview.

[^ 36] See 8 CFR 335.3(b) (Re-examination no earlier than 60 days from initial examination). See 8 CFR 312.5(a) (Re-examination for educational requirements scheduled no later than 90 days from initial examination). In cases where an applicant does not meet the educational requirements for naturalization during the re-examination, USCIS denies the application. See Part E, English and Civics Testing and Exceptions, Chapter 2, English and Civics Testing [12 USCIS-PM E.2].

[^ 37] See Chapter 6, USCIS Hearing and Judicial Review [12 USCIS-PM B.6]. See Section A, Roles and Responsibilities [12 USCIS-PM B.3(A)], for a list of authorized representatives. See 8 CFR 292.1.

Chapter 4 - Results of the Naturalization Examination

USCIS has 120 days from the date of the initial naturalization interview to issue a decision. If the decision is not issued within 120 days of the interview, an applicant may request judicial review of his or her application in district court. The officer must base his or her decision on the laws, regulations, precedent decisions, and governing policies.

The officer may:

- Approve the application;
- Continue the examination without making a decision (if more information is needed), if the applicant needs to be rescheduled, or for other relevant reasons; or
- Deny the application.

The officer must provide the applicant with a notice of results at the end of the interview regardless of the outcome. The notice should address the outcome of the interview and the next steps involved for continued cases.[1]

A. Approval of Naturalization Application

If an officer approves a naturalization application, the application goes through the appropriate internal procedures before the USCIS office schedules the applicant to appear at a ceremony for the administration of the Oath of Allegiance.[2] The internal procedures include a “re-verification” procedure where all approved applications are reviewed for quality. The officer who conducts the re-verification is not the same officer who conducts the interview. While the officer conducting the re-verification process does not adjudicate the application once again, the officer may raise any substantive eligibility issues.

USCIS does not schedule an applicant for the Oath of Allegiance in cases where USCIS receives or identifies potentially disqualifying information about the applicant after approval of his or her application.[3] If USCIS cannot resolve the disqualifying information and the adjudicating officer finds the applicant ineligible for naturalization, USCIS then issues a motion to reopen and re-adjudicates the naturalization application.

B. Continuation of Examination

1. Continuation to Request Evidence

An officer issues the applicant a written Request for Evidence if additional information is needed to make an accurate determination on the naturalization application.[4] In general, USCIS permits a period of 30 days for the applicant to respond to a Request for Evidence.[5]

The Request for Evidence should include:

- The specific documentation or information that the officer is requesting;
- The ways in which the applicant may respond; and
- The date by which the applicant has to reply.

The applicant must respond to the Request for Evidence within the timeframe specified by the officer. If the applicant timely submits the evidence as requested, the officer makes a decision on the applicant's eligibility. If the applicant fails to submit the evidence as requested, the officer may adjudicate the application based on the available evidence.[6]

2. Scheduling Subsequent Re-examination

If an applicant fails any portion of the naturalization test, an officer must provide the applicant a second opportunity to pass the test within 60 to 90 days after the initial examination unless the applicant is statutorily ineligible for naturalization based on other grounds.[7] An officer should also schedule a re-examination in order to resolve any issues on eligibility.

The outcome of the re-examination determines whether the officer conducting the second interview continues, approves, or denies the naturalization application.[8]]

If the applicant fails to appear for the re-examination and USCIS does not receive a timely or reasonable request to reschedule, the officer should deny the application based on the applicant's failure to meet the educational requirements for naturalization. The officer also should include any other areas of ineligibility within the denial notice.

C. Denial of Naturalization Application

USCIS must deny a naturalization application when an applicant does not meet all eligibility requirements under the law. Furthermore, USCIS cannot consider the naturalization application of an applicant who is in removal proceedings. Therefore, effective November 18, 2020, when a removal proceeding is pending against a naturalization applicant, USCIS denies the naturalization application under INA 318, except for certain cases involving naturalizations based on military service.[9]

The officer should deny the naturalization application if the applicant has already received a final order of removal from an immigration judge, unless:

- The applicant was removed from the United States and later reentered with the proper documentation and authorization; or
- The applicant is filing for naturalization under the military naturalization provisions.[10]

If an officer denies a naturalization application, the officer must issue the applicant and his or her attorney or representative a written denial notice no later than 120 days after the initial interview on the application.[11] The written denial notice should include:

- A clear and concise statement of the facts in support of the decision;
- Citation of the specific eligibility requirements the applicant failed to demonstrate; and
- Information on how the applicant may request a hearing on the denial.[12]

The table below provides certain general grounds for denial of the naturalization application. An officer should review the pertinent parts of this volume that correspond to each ground for denial and its related eligibility requirement for further guidance.

General Grounds for Denial of Naturalization Application (Form N-400)

Failure to Establish…	Citation
Lawful Admission for Permanent Residence	• INA 316(a)(1) • INA 318 • 8 CFR 316.2(a)(2)
Continuous Residence	• INA 316(a)(2) • INA 316(b) • 8 CFR 316.2(a)(3) • 8 CFR 316.5(c)
Physical Presence	• INA 316(a) • 8 CFR 316.2(a)(4)

3 Months of Residence in State or Service District	• INA 316(a) • 8 CFR 316.2(a)(5)
Good Moral Character	• INA 316(a)(3) • INA 316(e) • INA 101(f) • 8 CFR 316.10
Attachment and Favorable Disposition to the Good Order and Happiness of the United States	• INA 316(a)(3) • 8 CFR 316.11
Understanding of English (Including Reading, Writing, and Speaking)	• INA 312(a)(1) • 8 CFR 312.1
Knowledge of U.S. History and Government	• INA 312(a)(2) • 8 CFR 312.2
Lack of Prosecution	• INA 335(e) • 8 CFR 335.7

D. Administrative Closure, Lack of Prosecution, Withdrawal, and Applications Not Held in Abeyance

1. Administrative Closure for Failing to Appear at Initial Interview

An applicant abandons their application if the applicant fails to appear for their initial naturalization examination without good cause and without notifying USCIS of the reason for non-appearance within 30 days of the scheduled appointment. In the absence of timely notification by the applicant, an officer may administratively close the application without making a decision on the merits.[13]

An applicant may request to reopen an administratively closed application without fee by submitting a written request to USCIS within 1 year from the date the application was closed.[14] The date of the applicant's request to reopen an application becomes the date of filing the naturalization application for purposes of determining eligibility for naturalization.[15]

If the applicant does not request reopening of an administratively closed application within 1 year from the date the application was closed, USCIS:

- Considers the naturalization application abandoned; and
- Dismisses the application without further notice to the applicant.[16]

2. Failing to Appear for Subsequent Re-examination or to Respond to Request for Evidence

If the applicant fails to appear at the subsequent re-examination or fails to respond to a Request for Evidence within 30 days, the officer must adjudicate the application on the merits.[17] This includes cases where the applicant fails to appear at a re-examination or to provide evidence as requested.

An officer should consider any good cause exceptions provided by the applicant for failing to respond or appear for an examination in adjudicating a subsequent motion to reopen.

3. Withdrawal of Application

The applicant may request, in writing, to withdraw his or her application. The officer must inform the applicant that the withdrawal by the applicant constitutes a waiver of any future hearing on the application. If USCIS accepts the withdrawal, the applicant may submit another application without prejudice. USCIS does not send any further notice regarding the application.

If the District Director does not consent to the withdrawal, the officer makes a decision on the merits of the application.[18]

4. Applications Not Held in Abeyance if Applicant is in Removal Proceedings

USCIS cannot consider the naturalization application of an applicant who is in removal proceedings. Effective November 18, 2020, when a removal proceeding is pending against a naturalization applicant, USCIS denies the naturalization application under INA 318 and the naturalization application is not held in abeyance, except for certain applications for naturalization based on military service.[19]

Footnotes

[^ 1] The officer issues a Notice of Examination Results (Form N-652).

[^ 2] See Part J, Oath of Allegiance [12 USCIS-PM J].

[^ 3] See 8 CFR 335.5. See Chapter 5, Motion to Reopen [12 USCIS-PM B.5].

[^ 4] The officer issues a Request for Evidence on Form N-14.

[^ 5] See 8 CFR 335.7. The applicant has up to three more days after the 30-day period for responding to an RFE in cases where USCIS has mailed the request. See 8 CFR 103.8(b). For more information on timeframes and responses to Requests for Evidence, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)].

[^ 6] See 8 CFR 335.7.

[^ 7] See 8 CFR 312.5(a). See 8 CFR 335.3(b).

[^ 8] See Part E, English and Civics Testing and Exceptions, Chapter 2, English and Civics Testing [12 USCIS-PM E.2].

[^ 9] 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 D, General Naturalization Requirements, Chapter 2, Lawful Permanent Resident Admission for Naturalization [12 USCIS-PM D.2].

[^ 10] See INA 328(b)(2). See INA 329(b)(1).

[^ 11] See INA 335(d). See 8 CFR 336.1(a). See 8 CFR 335.7.

[^ 12] See 8 CFR 336.1(b). See Chapter 6, USCIS Hearing and Judicial Review [12 USCIS-PM B.6].

[^ 13] See 8 CFR 103.2(b)(13)(ii), 8 CFR 335.6(a), and 8 CFR 335.6(b). For more information on timeframes and responses, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)]. Military applicants, however, generally may file a motion to reopen at any time. See Part I, Military Members and their Families [12 USCIS-PM I].

[^ 14] See 8 CFR 335.6(b). See Chapter 5, Motion to Reopen [12 USCIS-PM B.5]. For more information on filing timeframes, see Volume 1, General Policies and Procedures, Part B, Submission of Benefit Requests, Chapter 6, Submitting Requests, Section D, Filing Periods Ending on Weekends or Federal Holidays [1 USCIS-PM B.6(D)].

[^ 15] See 8 CFR 335.6(b).

[^ 16] See 8 CFR 335.6(c).

[^ 17] See INA 335(e). See 8 CFR 335.7. For more information on timeframes and responses to Requests for Evidence, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)].

[^ 18] See INA 335(e). See 8 CFR 335.10.

[^ 19] 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 D, General Naturalization Requirements, Chapter 2, Lawful Permanent Resident Admission for Naturalization [12 USCIS-PM D.2].

Chapter 5 - Motion to Reopen

A. USCIS Motion to Reopen

An officer must execute a motion to reopen a previously approved naturalization application if:

- USCIS receives or identifies disqualifying derogatory information about the applicant after approval of his or her application prior to the administration of the Oath of Allegiance;[1] or
- An applicant fails to appear for at least two ceremonies to take the Oath of Allegiance without good cause.[2]

USCIS notifies the applicant in writing about the receipt of derogatory information or multiple failures to appear through the motion to reopen. The applicant has 15 days to respond to the motion to reopen and overcome the derogatory information or provide good cause for failing to appear at the Oath ceremony.[3]

If the applicant overcomes the derogatory information and qualifies for naturalization, the officer denies the motion to reopen and schedules the applicant for the Oath of Allegiance. If the applicant is unable to overcome the derogatory information, the officer grants the motion to reopen and denies the application on its merits.[4]

USCIS must not schedule an applicant for the administration of the Oath of Allegiance if USCIS receives or identifies disqualifying derogatory information. USCIS must not administer the Oath of Allegiance to the applicant until the matter is resolved favorably.

An applicant who fails to appear for at least two ceremonies to administer the Oath of Allegiance without good cause abandons his or her intent to be naturalized. USCIS considers multiple failures to appear to be equivalent to receipt of derogatory information after the approval of a naturalization application.[5]

B. Motion to Reopen Administratively Closed Application

An applicant may request to reopen an administratively closed naturalization application with USCIS by submitting a written request to USCIS within one year of the date the applicant's application was administratively closed.[6] The applicant is not required to pay any additional fees. USCIS considers the date of the applicant's request to reopen an application as the filing date of the naturalization application for purposes of determining eligibility for naturalization.[7] USCIS sends the applicant a notice approving or denying the motion to reopen.

Footnotes

[^ 1] See 8 CFR 335.5.

[^ 2] See 8 CFR 337.10.

[^ 3] See 8 CFR 335.5. For more information on timeframes and responses, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)].

[^ 4] See 8 CFR 336.1.

[^ 5] See 8 CFR 337.10.

[^ 6] Generally, military applicants may file a motion to reopen at any time. See Part I, Military Members and their Families, Chapter 6, Required Background Checks, Section C, Ways Service Members may Meet Fingerprint Requirement [12 USCIS-PM I.6(C)].

[^ 7] See 8 CFR 335.6(b). For more information on timeframes and responses, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)].

Chapter 6 - USCIS Hearing and Judicial Review

A. Hearing Request

An applicant or his or her authorized representative[1] may request a USCIS hearing before an officer on the denial of the applicant's naturalization application. The applicant or authorized representative must file the request with USCIS within 30 days after the applicant receives the notice of denial.[2]

B. Review of Timely Filed Hearing Request

1. Hearing Scheduled within 180 Days

Upon receipt of a timely hearing request, USCIS schedules the hearing within 180 days. The hearing should be conducted by an officer other than the officer who conducted the original examination or the officer who denied the application. The officer conducting the hearing must be classified at a grade level equal to or higher than the grade of the examining officer.[3]

2. Review of Application

An officer may conduct a de novo review of the applicant's naturalization application or may utilize a less formal review procedure based on:

- The complexity of the issues to be reviewed or determined; and
- The necessity of conducting further examinations essential to the naturalization requirements.[4]

A de novo review means that the officer makes a new and full review of the naturalization application.[5]

An officer conducting the hearing has the authority and discretion to:

- Review all aspects of the naturalization application and examine the applicant anew;
- Review any record, file or report created as part of the examination;
- Receive new evidence and testimony relevant to the applicant's eligibility; and
- Affirm the previous officer's denial or re-determine the decision in whole or in part.

The officer conducting the hearing:

- Affirms the findings in the denial and sustains the original decision to deny;
- Re-determines the original decision but denies the application on newly discovered grounds of ineligibility;[6] or
- Re-determines the original decision and reverses the original decision to deny, and approves the naturalization application.

3. English and Civics Testing at Hearing

In hearings involving naturalization applications denied on the basis of failing to meet the educational requirements (English and civics),[7] officers must administer any portion of the English or civics tests that the applicant previously failed. Officers provide only one opportunity to pass the failed portion of the tests at the hearing.

C. Improperly Filed Hearing Request

1. Untimely Filed Request

If an applicant files a hearing request over 30 days after receiving the denial notice (33 days if notice was mailed by USCIS[8]), USCIS considers the request improperly filed. If an applicant's untimely hearing request meets either the motion to reopen or motion to reconsider requirements, USCIS will treat the hearing request as a motion.[9] USCIS renders a decision on the merits of the case in such instances. If the request does not meet the motion requirements, USCIS rejects the request without refund of filing fee.[10]

Hearing Request Treated as a Motion to Reopen

USCIS treats an untimely request for a hearing as a motion to reopen if the applicant presents new facts and evidence. If the application or petition was denied due to abandonment, the request must be filed with evidence that the decision was in error because:

- The requested evidence leading to the denial was not material to the issue of eligibility;
- The required initial evidence was submitted with the application, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or
- USCIS sent the relevant correspondence to the wrong address or the applicant filed a timely change of address before USCIS sent the correspondence.[11]

Hearing Request Treated as a Motion to Reconsider

USCIS handles an untimely hearing request for a hearing as a motion to reconsider if:

- The applicant explains the reasons for reconsideration;
- Pertinent precedent decisions establish that the decision to deny was based on an incorrect application of law or USCIS policy; and
- The applicant establishes that the decision to deny was incorrect based on the evidence of record at the time of the decision.[12]

2. Requests Improperly Filed by Unauthorized Persons or Entities

USCIS considers a hearing request improperly filed if an unauthorized person or entity files the request.[13] USCIS rejects these requests without refund of filing fee.[14]

3. Requests Improperly Filed by Attorneys or Authorized Representatives

USCIS considers a hearing request improperly filed if an attorney or representative files the request without properly filing a notice of entry of appearance entitling that person to represent the applicant. The officer must ask the attorney or representative to submit a proper filed notice within 15 days.[15]

If the attorney or representative replies with a properly executed notice within 15 days, the officer should handle the hearing request as properly filed. If the attorney or representative fails to do so, the officer may nevertheless make a new decision favorable to the applicant through the officer's own motion to reopen without notifying the attorney or representative.[16]

D. Judicial Review

A naturalization applicant may request judicial review before a United States district court of his or her denied naturalization application after USCIS issues the decision following the hearing with a USCIS officer.[17] The applicant must file the request before the United States District Court having jurisdiction over the applicant's place of residence. The district court reviews the case de novo and makes its own findings of fact and conclusions of law.

Footnotes

[^ 1] See Chapter 3, Naturalization Interview, Section A, Roles and Responsibilities [12 USCIS-PM B.3(A)], for a list of authorized representatives. See 8 CFR 292.1.

[^ 2] See INA 336(a). See 8 CFR 336.2. See the Request for Hearing on a Decision in Naturalization Proceedings under Section 336 of the INA (Form N-336).

[^ 3] See 8 CFR 336.2(b).

[^ 4] See 8 CFR 336.2(b).

[^ 5] The term "de novo" is Latin for "anew." In this context, it means the starting over of the application's review.

[^ 6] In re-determining the decision, the officer may take any action necessary, including issuing a Request for Evidence (RFE) or a Notice of Intent to Deny (NOID).

[^ 7] See INA 312. See 8 CFR 312. See Part E, English and Civics Testing and Exceptions [12 USCIS-PM E].

[^ 8] See 8 CFR 103.8(b). For more information on filing timeframes, see Volume 1, General Policies and Procedures, Part B, Submission of Benefit Requests, Chapter 6, Submitting Requests, Section D, Filing Periods Ending on Weekends or Federal Holidays [1 USCIS-PM B.6(D)].

[^ 9] See 8 CFR 336.2(c)(2)(ii).

[^ 10] See 8 CFR 336.2(c)(2)(i).

[^ 11] See 8 CFR 103.5(a)(2).

[^ 12] See 8 CFR 103.5(a)(3).

[^ 13] See Chapter 3, Naturalization Interview, Section A, Roles and Responsibilities [12 USCIS-PM B.3(A)], for a list of authorized representatives. See 8 CFR 292.1.

[^ 14] See 8 CFR 336.2(c)(1)(i).

[^ 15] See 8 CFR 336.2(c)(1)(ii). See Form G-28.

[^ 16] See 8 CFR 336.2(c)(1)(ii) and 8 CFR 103.5(a)(5)(i).

[^ 17] See INA 310(c). See INA 336(a).

Part C - Accommodations

Chapter 1 - Purpose and Background

A. Purpose

USCIS accommodates naturalization applicants with disabilities by making modifications to the naturalization process.[1] USCIS aims to provide applicants with disabilities an equal opportunity to successfully complete the process. While USCIS is not required to make major modifications that would result in a fundamental change to the naturalization process or an undue burden for the agency, USCIS makes every effort to provide accommodations to naturalization applicants with disabilities.[2]

- USCIS evaluates disability accommodation requests on a case-by-case basis as accommodations vary according to the nature of the applicant's disability. In determining what type of accommodation is necessary, USCIS gives primary consideration to the requests of the person with a disability.
- USCIS provides applicants with the requested accommodation or an effective alternative that addresses the unique needs of the applicant where appropriate.[3]

Applicants may request an accommodation at the time of filing their naturalization application or at any other time during the naturalization process.[4]

B. Background

The Rehabilitation Act requires all federal agencies to provide reasonable accommodations to persons with disabilities in the administration of their programs and benefits.[5] USCIS does not exclude persons with disabilities from its programs or activities based on their disability. The Rehabilitation Act and the implemented DHS regulations[6] require USCIS to provide accommodations that assist an applicant with a disability to have an equal opportunity to participate in its programs, to include the naturalization process.

C. Difference between Accommodations and Waivers

Accommodations are different from statutory waivers or exceptions. For example, if an officer grants an applicant a waiver for a naturalization educational requirement, the applicant is exempt from meeting that educational requirement. An accommodation is a modification of an existing practice or procedure that will enable an applicant with a disability to participate in the naturalization process.

The accommodation does not exempt the applicant from the obligation to satisfy any applicable requirement for naturalization. The accommodation is a modification to the way in which the applicant may establish that he or she meets the requirement.[7]

D. Legal Authorities

- Section 504 of the Rehabilitation Act of 1973 – Nondiscrimination under federal grants[8]
- 29 U.S.C. 794 – Nondiscrimination under federal grants and programs
- 6 CFR 15 – Enforcement of nondiscrimination on the basis of disability in programs or activities conducted by DHS
- 8 CFR 334.4 – Investigation and report if applicant is sick or disabled

Footnotes

[^ 1] See 6 CFR 15.3 for the applicable definitions relating to enforcement of nondiscrimination on the basis of disability in programs or activities conducted by DHS.

[^ 2] See A Guide to Interacting with People Who Have Disabilities (PDF).

[^ 3] See, for example, 6 CFR 15.50 and 6 CFR 15.60.

[^ 4] In some cases, applicants with physical impairments such as blindness or low vision or hearing loss may have submitted a medical disability exception form (Form N-648) along with their naturalization application to request an exception from the English and civics tests as they may be unable to take the tests, even with an accommodation. See Part E, English and Civics Testing and Exceptions, Chapter 3, Medical Disability Exception (Form N-648) [12 USCIS-PM E.3].

[^ 5] See Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (PDF), 87 Stat. 355, 394 (September 26, 1973). See 29 U.S.C. 794(a). The Act prohibits qualified persons with a disability from being excluded from participation in, denied the benefits of, or being subjected to discrimination under any programs or activities conducted by federal agencies solely on the basis of their disability.

[^ 6] See 6 CFR 15.

[^ 7] The accommodations discussed in this part are distinguished from the oath waiver process by which the applicant's complete examination is conducted by a legal guardian or surrogate appointed by a court of law, or an eligible designated representative. See Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers [12 USCIS-PM J.3].

[^ 8] See Pub. L. 93-112 (PDF), 87 Stat. 355, 394 (September 26, 1973).

Chapter 2 - Accommodation Policies and Procedures

USCIS has established policies and procedures for handling and processing accommodation requests, which include:

- Providing information locally as needed on how to request accommodations;
- Designating a point-of-contact to handle accommodation requests whenever possible;
- Responding to inquiries and reviewing accommodation requests timely;
- Establishing internal processes for receiving and for properly filing requests; and
- Processing requests and providing accommodations whenever appropriate.

A. Requesting an Accommodation

1. Submitting the Request

It is the applicant's responsibility to request an accommodation in advance, each time an accommodation is needed. Generally, the applicant, his or her attorney or accredited representative, or legal guardian should request an accommodation concurrently with the filing of the naturalization application. However, an applicant may also call the USCIS Contact Center at 1-800-375-5283 (TTY: 1-800-767-1833), use the online accommodations request form in order to request an accommodation, or request an accommodation with the field office at any time during the naturalization process.

2. Timeliness of Request

The field office's ability to provide an accommodation on the date that it is needed may be affected by the timeliness of the accommodation request. Some types of accommodations do not require advance notice and can be immediately provided. This may include a USCIS employee speaking loudly or slowly to an applicant, or allowing additional time for an applicant to answer during the examination. Other types of accommodations may be difficult to provide without advance planning. This may include providing a sign language interpreter, additional time for the examination, or scheduling an applicant for an off-site examination.

B. Documentation and Evidence

USCIS evaluates each request for an accommodation on a case-by-case basis. While an applicant is not required to include documentation of his or her medical condition, there may be rare cases where documentation is needed to evaluate the request.[1]

C. Providing Accommodations as Requested

If an accommodation is warranted, a field office should provide the accommodation on the date and time the applicant is scheduled for his or her appearance. The field office should aim to provide the requested accommodation without having to reschedule the applicant's appointment. If an accommodation cannot be provided for the scheduled appointment, the applicant and his or her attorney or accredited representative should be notified as soon as possible. The applicant's appointment should be rescheduled within a reasonable period of time.

Footnote

[^ 1] Officers should contact local USCIS counsel prior to contacting the applicant and his or her attorney or accredited representative for further information.

Chapter 3 - Types of Accommodations

There are many types of accommodations that USCIS provides for applicants with disabilities.[1] Accommodations typically relate to the following:

- Naturalization interview;
- Naturalization test; and
- Oath of Allegiance.

Each accommodation may apply to any aspect of the naturalization process as needed, to include any pre-examination procedures.

USCIS recognizes that some applicants may only require one accommodation, while others may need more. Some applicants may need one accommodation at a particular stage of the naturalization process and may require the same or another type of accommodation at a later date.

A. Accommodations for the Naturalization Examination

Field offices are able to make modifications to provide accommodations during the naturalization examination to applicants with disabilities. The table below serves as a quick reference guide listing common examples of accommodations to the naturalization examination for applicants with disabilities. The paragraphs that follow the table provide further guidance on each accommodation example.

Accommodations for the Naturalization Examination

Accommodation	Explanation
Extending examination time and breaks	Some applicants with disabilities may need more time than is regularly scheduled for the examination
Providing sign language interpreters or other aids for deaf or hard of hearing applicants	Deaf or hard of hearing applicants may need a sign language interpreter, or other accommodation, to complete the examination
Allowing relatives to attend the examination and assist in signing forms	Presence of a relative may have a calming effect, and such persons may assist applicants who are unable to sign or make any kind of mark
Legal guardian, surrogate, or designated representative at examination	Some applicants are unable to undergo an examination because of a physical or developmental disability or mental impairment
Allowing nonverbal communication	Applicants may be unable to speak sufficiently to respond to questions but may be able to communicate in nonverbal ways
Off-site examination	Some applicants may be unable to appear at the field office because of their disability

1. Extending Examination Time and Breaks

An officer may provide additional time for the examination and allow breaks if necessary for applicants with disabilities who have requested that type of accommodation. USCIS recognizes that some applicants may need more time than is regularly scheduled.

2. Providing Accommodations for Deaf or Hard of Hearing Applicants

In determining what type of auxiliary aid is necessary for deaf or hard of hearing applicants, USCIS gives primary consideration to the requests of the person with a disability.

Unless the applicant chooses to bring his or her own sign language interpreter, the field office must provide a sign language interpreter for a deaf or hard of hearing applicant upon his or her request.[2]

The Rehabilitation Act requires USCIS to make an effective accommodation for the person's disability, and USCIS cannot transfer the accommodation burden back to the person. For example, if the person uses the sign language Pidgin English, USCIS must provide an interpreter who uses Pidgin English if one is reasonably available. USCIS cannot tell the person it will provide an American Sign Language (ASL) interpreter and require the person to provide an interpreter to translate between Pidgin English and ASL.[3]

The officer should use any communication aids for the deaf or hard of hearing where available, permit the applicant to read lips, and allow the applicant to answer the officer's questions in writing, as needed.

3. Allowing Relatives and Others to Attend Examinations and Assist in Signing Forms

In cases where an applicant has a disability, the officer may allow an applicant's family member, legal guardian, or other person to attend the examination with the applicant. The presence of such a person or persons may help the applicant to remain calm and responsive during the examination. However, if the presence of such person or persons becomes disruptive to the examination, the officer may at any time remove the person from the examination and reschedule the examination if the applicant is unable to proceed at that time.

An officer may allow the person accompanying the applicant to repeat the officer's questions in cases where such repetition facilitates the applicant's responsiveness. An applicant's mark is acceptable as the applicant's signature on the naturalization application or documents relating to the application when an applicant is unable to sign. A family member may assist an applicant to sign, initial, or make a mark when completing the attestation on the naturalization application. Except as provided below, a family member or other person may not sign the naturalization application for the applicant.

4. Legal Guardian, Surrogate, or Designated Representative at Examinations

Currently, all applicants for naturalization are required to appear in person and give testimony under oath as to their eligibility for naturalization.[4] When an applicant is unable to undergo an examination because of a physical, developmental disability, or mental impairment, a legal guardian, surrogate, or an eligible designated representative completes the naturalization process for the applicant. USCIS waives the Oath of Allegiance and the legal guardian, surrogate, or designated representative attests to the applicant's eligibility for naturalization. In addition to oath waiver, this process may require accommodations including off-site examinations.[5]

Persons eligible to act on behalf of the applicant include:

- A person who a proper court has designated as the applicant's legal guardian or surrogate and who is authorized to exercise legal authority over the applicant's affairs; or
- In the absence of a legal guardian or surrogate, a U.S. citizen, spouse, parent, adult son or daughter, or adult brother or sister who is the primary custodial caregiver and who takes responsibility for the applicant.

USCIS will only recognize one designated representative in the following order of priority:

- Legal guardian or surrogate (highest priority);
- U.S. citizen spouse;
- U.S. citizen parent;
- U.S. citizen adult son or daughter;
- U.S. citizen adult brother or sister (lowest priority).

If there is a priority conflict between the persons seeking to represent the applicant and the persons share the same degree of familial relationship, USCIS gives priority to the party with seniority in age.

The person acting on behalf of the applicant must provide proof of legal guardianship, or documentation to establish the familial relationship, such as a birth certificate, marriage certificate, or adoption decree. In addition, the person must provide documentation to establish that he or she has the primary custodial care and responsibility for the applicant (for example, income tax returns, Social Security Administration documents, and affidavits from other relatives). A spouse, parent, adult son or daughter, or adult brother or sister who is not the legal guardian or surrogate must provide evidence of U.S. citizenship.

5. Allowing Nonverbal Communication

An officer may accept forms of nonverbal communication, such as blinking, head shaking or nodding, tapping, or other effective forms of nonverbal communication during the naturalization examination. The officer should also allow the applicant to point to answers on the application and allow the applicant to write out the answers to the civics test if the applicant is not able to communicate verbally. Prior to the start of the naturalization examination, the officer, the applicant, and the applicant's representative (if any) should agree to the form of communication.

6. Off-Site Examination

An officer may conduct a naturalization examination in an applicant's home or other residence such as a nursing home, hospice, hospital, or senior citizens center when appropriate.[6] This applies to cases where the applicant's illness or disability makes it medically unsuitable for him or her to appear at the field office in person.

B. Accommodations for the Naturalization Test

An applicant with a disability may require an accommodation to take the English and civics tests. The officer should use the appropriate accommodation to meet the applicant's particular needs. In addition, some applicants with disabilities may qualify for an exception to these requirements for naturalization.[7]

The table below serves as a quick reference guide listing common examples of accommodations to the naturalization test for applicants with disabilities. The paragraphs that follow the table provide further guidance on each accommodation.[8]

Accommodations for the Naturalization Test

Accommodation	Explanation
Providing reading tests in large print or braille	Applicants who have low vision or are blind or deafblind may need large print or braille in order to be able to read the test.
Oral writing test	Applicants with physical impairments or with limited use of their hands may be able to complete the writing test orally if they cannot write the sentences.
Allowing nonverbal communication	Applicants may be able to communicate in nonverbal ways if they cannot respond verbally to questions.[9]
Providing sign language interpreters	Deaf or hard of hearing applicants may need a sign language interpreter to complete the tests.

1. Providing Reading Test in Large Print or Braille

An officer should provide the current reading naturalization test version in large print or braille for applicants who have low vision or are blind or deafblind.[10] To request large print or braille-related or other accommodations, applicants should call the USCIS Contact Center at 1-800-375-5283 (TTY: 800-767-1833), use the online accommodations request form in order to request an accommodation, or request an accommodation with the field office at any time during the naturalization process.

2. Oral Writing Test

An officer should administer the writing portion of the naturalization test orally for applicants with physical impairments, which cause limited or no use of their hands in a way as to preclude the applicant's ability to write. The applicant may satisfy the writing requirements by spelling out the words from the writing test.

3. Allowing Nonverbal Communication

An officer may accept forms of nonverbal communication, such as blinking, head shaking or nodding, tapping, or other effective forms of nonverbal communication during the naturalization examination. The officer should also allow the applicant to point to answers on the application and allow the applicant to write out the answers to the civics test if the applicant is not able to communicate verbally. Prior to the start of the naturalization examination, the officer, the applicant, and the applicant's representative (if any) should agree to the form of communication.

4. Providing Sign Language Interpreters

In determining what type of accommodation is necessary for deaf or hard of hearing applicants, USCIS gives primary consideration to the requests of the person with a disability.

The field office must provide a sign language interpreter for a deaf or hard of hearing applicant upon his or her request.[11] An applicant may bring an interpreter of his or her choosing. To request a sign language interpreter, applicants should call the USCIS Contact Center at 1-800-375-5283 (TTY: 800-767-1833), use the online accommodations request form in order to request an accommodation, or request an accommodation with the field office at any time during the naturalization process.

The officer should use any communication aids for the deaf or hard of hearing where available, permit the applicant to read lips, and allow the applicant to answer the officer's questions in writing, as needed.

C. Accommodations for the Oath of Allegiance

A disability or medical impairment may make it difficult for some applicants to take the Oath of Allegiance at the oath ceremony. The table below lists examples of accommodations to the Oath of Allegiance. The paragraphs that follow the table provide further guidance on each accommodation. Some applicants may qualify for a waiver of the Oath of Allegiance.[12]

Accommodations for the Oath of Allegiance

Accommodation	Explanation
Simplifying language for assent to the oath	Applicants with disabilities may need simpler language to show they assent to the oath
Expedited scheduling for oath	Applicants with disabilities may be unable to attend a later ceremony because of their condition
Providing sign language interpreter at oath	Deaf or hard of hearing applicants may need a sign language interpreter to participate in the ceremony

Off-site administration of oath	Applicants with disabilities may be unable to attend the court or field office ceremony because of their condition

1. Simplifying Language for Assent to the Oath

An officer may question the applicant about the Oath of Allegiance in a clear, slow manner and in simplified language if the applicant presents difficulty understanding questions regarding the oath. This approach allows the applicant to understand and assent to the Oath of Allegiance and understand that he or she is becoming a U.S. citizen.

2. Expedited Scheduling for Oath

A field office should expedite administration of the Oath of Allegiance for an applicant who is unable to attend a ceremony at a later time because of his or her medical impairment. The expedited process may include a ceremony on the same day or an off-site visit.

3. Providing Sign Language Interpreter at Oath

A field office should provide a sign language interpreter for an applicant who is deaf or hard of hearing or permit the applicant to use his or her own interpreter during an administrative oath ceremony or for a judicial ceremony where a court is unable to provide a sign language interpreter.

4. Off-Site Administration of Oath

A field office should administer the Oath of Allegiance immediately following the off-site examination for an applicant who is unable to attend because of his or her medical condition. Some applicants may have appeared at the field office for the examination, but due to a deteriorating condition are unable to attend the oath ceremony. In such cases, an off-site visit may be scheduled to administer the Oath of Allegiance.

Footnotes

[^ 1] The lists of accommodations in this chapter are not exhaustive. USCIS determines and provides accommodations on a case-by-case basis.

[^ 2] If an applicant qualifies for an exception to the English requirement, the sign language interpreter does not need to sign in English. See Part E, English and Civics Testing and Exceptions, Chapter 2, English and Civics Testing [12 USCIS-PM E.2].

[^ 3] Contact the Registry of Interpreters for the Deaf (RID) at 703-838-0030 (voice), 703-838-0459 (TTY), or use RID's searchable interpreter agency referral database.

[^ 4] See 8 CFR 335.2.

[^ 5] See Part J, Oath of Allegiance [12 USCIS-PM J].

[^ 6] See INA 335(b).

[^ 7] See Part E, English and Civics Testing and Exceptions, Chapter 2, English and Civics Testing [12 USCIS-PM E.2]. See INA 312(b). See 8 CFR 312.1(b) and 8 CFR 312.2(b).

[^ 8] For additional information on how USCIS evaluates each request for a reasonable accommodation, see Volume 1, General Policies and Procedures, Part A, Public Services, Chapter 6, Disability Accommodation Requests, Section C, Requesting Accommodation, Subsection 3, USCIS Review [1 USCIS-PM A.6(C)(3)].

[^ 9] While the inability to speak is considered a disability under the Rehabilitation Act, the inability to speak in the English language alone (while being able to speak in a foreign language) is not considered a disability under the Act. Therefore, no accommodation is required, and USCIS does not provide accommodations solely on the basis of the requestor being unable to speak English. See INA 312. See 8 CFR 312.1. In addition, a request for an interpreter is not approved unless the requestor is otherwise eligible. See 8 CFR 312.4.

[^ 10] Officers may photocopy the current versions of the test into larger print or increase the font electronically.

[^ 11] If an applicant qualifies for an exception to the English requirement, the sign language interpreter does not need to sign in English. See Part E, English and Civics Testing and Exceptions, Chapter 2, English and Civics Testing [12 USCIS-PM E.2].

[^ 12] See Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers [12 USCIS-PM J.3].

Part D - General Naturalization Requirements

Chapter 1 - Purpose and Background

A. Purpose

Naturalization is the conferring of U.S. citizenship after birth by any means whatsoever.[1] There are various ways to become a U.S. citizen through the process of naturalization. This chapter addresses the general naturalization requirements.[2]

The applicant has the burden of establishing by a preponderance of the evidence that he or she meets the requirements for naturalization.

B. General Eligibility Requirements

The following are the general naturalization requirements that an applicant must meet in order to become a U.S. citizen:[3]

General Eligibility Requirements for Naturalization

The applicant must be age 18 or older at the time of filing for naturalization

The applicant must be a lawful permanent resident (LPR) for at least five years before being eligible for naturalization

The applicant must have continuous residence in the United States as an LPR for at least five years immediately preceding the date of filing the application and up to the time of admission to citizenship

The applicant must be physically present in the United States for at least 30 months out of the five years immediately preceding the date of filing the application

The applicant must have lived 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

The applicant must demonstrate good moral character for five years prior to filing for naturalization, and during the period leading up to the administration of the Oath of Allegiance

The applicant must have an attachment to the principles of the U.S. Constitution and be well disposed to the good order and happiness of the United States during all relevant periods under the law

The applicant must be able to read, write, and speak and understand English and have knowledge and an understanding of U.S. history and government

C. Legal Authorities

- INA 312; 8 CFR 312 – Educational requirements for naturalization
- INA 316; 8 CFR 316 – General requirements for naturalization
- INA 318 – Prerequisite to naturalization, burden of proof

Footnotes

[^ 1] See INA 101(a)(23).

[^ 2] See INA 316. See relevant parts in Volume 12 [12 USCIS-PM] for other naturalization provisions and requirements.

[^ 3] See INA 316.

Chapter 2 - Lawful Permanent Resident Admission for Naturalization

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 alien 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 alien 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 alien 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:

- An alien 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 alien 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 alien 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 an alien 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 aliens 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 aliens.[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 aliens 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 alien 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 an alien 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 Aliens

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 nationals, but not citizens, 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 nationals, but not citizens, of the United States.[153]

A national, but not citizen, 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 alien 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 an alien. 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) (alien 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 alien 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 alien'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, Aliens Unlawfully Present [8 USCIS-PM O].

[^ 59] See INA 212(a)(9)(C). See Volume 8, Admissibility, Part P, Aliens 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 an alien made a false claim to U.S. citizenship before IIRIRA's enactment (that is, September 30, 1996), then the officer must analyze whether the alien 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 alien 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] An alien 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 an alien), 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 aliens 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 an alien 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 alien 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 Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens, PM-602-0187, issued February 28, 2025. 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. Nationals, but not citizens, 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].

A. Continuous Residence Requirement

An applicant for naturalization under the general provision[1] must have resided continuously in the United States after his or her lawful permanent resident (LPR) admission for at least 5 years prior to filing the naturalization application and up to the time of naturalization. An applicant must also establish that he or she has resided in the state or service district having jurisdiction over the application for 3 months prior to filing.[2]

The concept of continuous residence involves the applicant maintaining a permanent dwelling place in the United States over the period of time required by the statute. The residence in question "is the same as that alien's domicile, or principal actual dwelling place, without regard to the alien's intent, and the duration of an alien's residence in a particular location measured from the moment the alien first establishes residence in that location."[3] Accordingly, the applicant's residence is generally the applicant's actual physical location regardless of his or her intentions to claim it as his or her residence.

Certain classes of applicants may be eligible for a reduced period of continuous residence, for constructive continuous residence while outside the United States, or for an exemption from the continuous residence requirement altogether.[4] These classes of applicants include certain military members and certain spouses of U.S. citizens.[5]

The requirements of "continuous residence" and "physical presence" are interrelated but are different requirements. Each requirement must be satisfied (unless otherwise specified) in order for the applicant to be eligible for naturalization.[6]

B. Maintenance of Continuous Residence for Lawful Permanent Residents

USCIS will consider the entire period from the LPR admission until the present when determining an applicant's compliance with the continuous residence requirement.

An order of removal terminates the applicant's status as an LPR and therefore disrupts the continuity of residence for purposes of naturalization. However, an applicant who has been readmitted as an LPR after a deferred inspection or by an immigration judge in removal proceedings can satisfy the residence and physical presence requirements in the same manner as any other applicant for naturalization.[7]

Other examples that may raise a rebuttable presumption that an applicant has abandoned his or her LPR status include cases where there is evidence that the applicant voluntarily claimed "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."[8]

C. Breaks in Continuous Residence

An applicant for naturalization has the burden of establishing that he or she has complied with the continuous residence requirement, if applicable. Generally, there are two ways outlined in the statute in which the continuity of residence can be broken:[9]

- The applicant is absent from the United States for more than 6 months but less than 1 year; or
- The applicant is absent from the United States for 1 year or more.

An officer may also review whether an applicant with multiple absences of less than 6 months each will be able to satisfy the continuous residence requirement. In some of these cases, an applicant may not be able to establish that his or her principal actual dwelling place is in the United States or establish residence within the United States for the statutorily required period of time.[10]

An LPR's lengthy or frequent absences from the U.S. can also result in a denial of naturalization due to abandonment of permanent residence.

An applicant who has an approved Application to Preserve Residence for Naturalization Purposes (Form N-470) maintains his or her continuous residence in the United States.[11]

1. Absence of More than 6 Months (but Less than 1 Year)

An absence of more than 6 months (more than 180 days) but less than 1 year (less than 365 days) during the period for which continuous residence is required (also called "the statutory period") is presumed to break the continuity of such residence.[12] This includes any absence that takes place during the statutory period before the applicant files the naturalization application and any absence between the filing of the application and the applicant's admission to citizenship.[13]

An applicant's intent is not relevant in determining the location of his or her residence. The length of the period of absence from the United States is the defining factor in determining whether the applicant is presumed to have disrupted the continuity of his or her residence.

However, an applicant may overcome the presumption of a break in the continuity of residence by providing evidence to establish that the applicant did not disrupt the continuity of his or her residence. Such evidence may include, but is not limited to, documentation that during the absence:[14]

- The applicant did not terminate his or her employment in the United States or obtain employment while abroad;
- The applicant's immediate family members remained in the United States; and
- The applicant retained full access to or continued to own or lease a home in the United States.

Eligibility After Break in Residence

An applicant who USCIS determines to have broken the continuity of residence must establish a new period of continuous residence in order to become eligible for naturalization.[15] The requisite duration of that period depends on the basis upon which the applicant seeks to naturalize.[16] In general, such an applicant may become eligible and may apply for naturalization at least 6 months before reaching the end of the pertinent statutory period.[17]

Example

An applicant who is subject to a 5-year statutory period for naturalization is absent from the United States for 8 months, returning on August 1, 2018. The applicant has been absent from the United States for more than 6 months (180 days) but less than 1 year (365 days). As such, the applicant must be able to rebut the presumption of a break in the continuity of residence in order to meet the continuous residence requirement for naturalization.

If the applicant is unable to rebut the presumption, he or she must wait until at least 6 months from reaching the 5-year anniversary of the newly established statutory period

following the applicant's return to the United States. In this example, the newly established statutory period began on August 1, 2018, when the applicant returned to the United States. Therefore, the earliest the applicant may re-apply for naturalization is February 1, 2023, which is at least 6 months from the 5-year anniversary of the pertinent statutory period.[18]

2. Absence of 1 Year or More

An absence from the United States for a continuous period of 1 year or more (365 days or more) during the period for which continuous residence is required will automatically break the continuity of residence. This applies whether the absence takes place before or after the applicant files the naturalization application.[19]

Unless an applicant has an approved Application to Preserve Residence for Naturalization Purposes (Form N-470), USCIS must deny a naturalization application for failure to meet the continuous residence requirement if the applicant has been continuously absent for a period of 1 year or more during the statutory period. Form N-470 preserves residence for LPRs engaged in qualifying employment abroad with the U.S. government, private sector, or a religious organization.[20]

Eligibility After Break in Residence

An applicant applying for naturalization under INA 316, which requires 5 years of continuous residence, must then wait at least 4 years and 1 day after returning to the United States (whenever 364 days or less of the absence remains within the statutory period), to have the requisite continuous residence to apply for naturalization.[21] The statutory period preceding the filing of the application is calculated from the date of filing.

Once 4 years and 1 day have elapsed from the date of the applicant's return to the United States, the period of absence from the United States that occurred within the past 5 years is now less than 1 year. Since the period of absence is still more than 6 months, an applicant for naturalization in these circumstances must also overcome the presumption of a break in the continuity of residence.[22]

If the same applicant reapplies for naturalization at least 4 years and 6 months after reestablishing residence in the United States, he or she would not be subject to the presumption of a break in residence because the period of absence immediately preceding the application date is now less than 6 months.[23]

Example

An applicant for naturalization under INA 316 departs the United States on January 1, 2010, and returns January 2, 2011.[24] The applicant has been outside the United States for exactly 1 year (365 days) and has therefore broken the continuity of his or her residence in the United States. The applicant must wait until at least January 3, 2015, to apply for naturalization, when the 5-year statutory period[25] immediately preceding the application will date back to January 3, 2010. At that time, although the applicant will have been absent from the United States for less than 1 year during the statutory period, the applicant will still have been absent from the United States for more than 6 months (180 days) during the statutory period and may be eligible for naturalization if he or she successfully rebuts the presumption that he or she has broken the continuity of her residence.

If the applicant cannot overcome the presumption of a break in the continuity of his or her residence, the applicant must wait until at least July 6, 2015, to apply for naturalization, when the 5-year statutory period immediately preceding the application will date back to July 6, 2010. During the 5-year period of July 6, 2010 to July 6, 2015, assuming the applicant did not make any additional trips outside the United States that would cause USCIS to presume a break in continuity of residence, the applicant was only absent from the United States between July 6, 2010 and January 2, 2011, a period that is not more than 6 months. Therefore, no presumption of a break in continuous residence applies.

3. Summary

The following table provides a summary of how an applicant's absence from the United States may impact his or her eligibility to naturalize.

Impact of Absence from the United States During Statutory Period on Naturalization Eligibility

Duration of Absence	Must Applicant Overcome Presumption of a Break in the Continuity of Residence?	Eligible to Naturalize?
6 months or less	No[26]	Yes
More than 6 months but less than 1 year	Yes	Yes
1 year or more (without USCIS approval via N-470 process)	Not eligible to apply	No

The following table illustrates the length of time needed to re-establish eligibility and residence in the United States following an absence of 1 year or more from the United States.

Filing Under Specific Provisions After Break in Continuous Residence

Provision	Absence During Statutory Period	May Apply After…
INA 316 5-year statutory period	More than 1 year	• 4 years and 6 months, or • 4 years and 1 day (but must overcome presumption of break in continuity of residence)[27]
INA 319 3-year statutory period	More than 1 year	• 2 years and 6 months, or • 2 years and 1 day (but must overcome presumption of break in continuity of residence)

D. Preserving Residence for Naturalization (Form N-470)

Certain applicants[28] may seek to preserve their residence for an absence of 1 year or more to engage in qualifying employment abroad.[29] Such applicants must file an Application to Preserve Residence for Naturalization Purposes (Form N-470) in accordance with the form instructions.

In order to qualify, in general, the following criteria must be met:

- The applicant must have been physically present in the United States as an LPR for an uninterrupted period of at least 1 year prior to working abroad.
- The application may be filed either before or after the applicant's employment begins, but before the applicant has been abroad for a continuous period of 1 year.[30]

In addition, the applicant must have been:

- Employed with or under contract with the U.S. government or an American institution of research[31] recognized as such by the Attorney General;
- Employed by an American firm or corporation engaged in the development of U.S. foreign trade and commerce, or a subsidiary thereof if more than 50 percent of its stock is owned by an American firm or corporation;[32]
- Employed by a public international organization of which the United States is a member by a treaty or statute and by which the applicant was not employed until after becoming an LPR;[33] or
- Engaged solely for the purpose of performing the ministerial or priestly functions of a religious denomination having a bona fide organization within the United States, or engaged solely by a religious denomination or interdenominational mission organization having a bona fide organization within the United States as a missionary, brother, nun, or sister.[34]

The applicant's spouse and dependent unmarried sons and daughters are also entitled to such benefits during the period when they were residing abroad as dependent members of the principal applicant's household. The application's approval notice includes the applicant and any dependent family members who were also granted the benefit.

The approval of an application to preserve residence does not relieve an applicant (or any family members) from any applicable required period of physical presence, unless the applicant was employed by, or under contract with, the U.S. government[35] or performing religious duties.[36]

In addition, the 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. USCIS may find that an applicant who claimed special tax exemptions as a "nonresident alien" to have lost LPR status through abandonment. The applicant may overcome that presumption with acceptable evidence establishing that he or she did not abandon his or her LPR status.[37]

Approval of an application to preserve residence also does not relieve the LPR of the need to have an appropriate travel document when the LPR seeks to return to the United States.[38] A Permanent Resident Card (PRC) card, generally, is acceptable as a travel document only if the person has been absent for less than 1 year.[39] If an LPR expects to be absent for more than 1 year, the LPR should also apply for a reentry permit. The LPR must actually be in the United States when he or she applies for a reentry permit.[40]

E. Residence in the Commonwealth of the Northern Mariana Islands

As of November 28, 2009, the Commonwealth of the Northern Mariana Islands (CNMI) is defined as a state in the United States for naturalization purposes.[41] Previously, residence in the CNMI only counted as residence in the United States for naturalization purposes for an alien who was an immediate relative of a U.S. citizen residing in the CNMI.

All other aliens, including any non-immediate relative LPRs, were considered to be residing outside of the United States for immigration purposes. Therefore, some LPRs residing in the CNMI, before the Consolidated Natural Resources Act of 2008 (CNRA) was enacted, were considered to have abandoned their lawful permanent resident status if they continuously lived in the CNMI.

Under the current law, USCIS no longer considers lawful permanent residents to have abandoned their LPR status solely by residing in the CNMI. This provision is retroactive and provides for the restoration of permanent resident status. However, the provision did not provide that the residence would count towards the naturalization continuous and physical presence requirements. Therefore, USCIS will only count residence in the CNMI on or after November 28, 2009, as continuous residence within the United States for naturalization purposes.[42]

F. Documentation and Evidence

Mere possession of a PRC for the period of time required for continuous residence does not in itself establish the applicant's continuous residence for naturalization purposes. The applicant must demonstrate actual maintenance of his or her principal dwelling place, without regard to intent, in the United States through testimony and documentation.

For example, a "commuter alien" may have held and used a PRC[43] for 7 years, but would not be eligible for naturalization until he or she had actually taken up permanent residence in the United States and maintained such residence for the required statutory period.

USCIS will review all of the relevant records to determine whether the applicant has met the required period of continuous residence. The applicant's testimony will also be considered to determine whether the applicant met the required period of continuous residence.

Footnotes

[^ 1] See INA 316(a).

[^ 2] See INA 316(a). See Chapter 6, Jurisdiction, Place of Residence, and Early Filing [12 USCIS-PM D.6].

[^ 3] See 8 CFR 316.5(a).

[^ 4] See Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence [12 USCIS-PM D.5].

[^ 5] See Part I, Military Members and their Families [12 USCIS-PM I].

[^ 6] See Chapter 4, Physical Presence [12 USCIS-PM D.4].

[^ 7] See 8 CFR 316.5(c)(3) and 8 CFR 316.5(c)(4).

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

[^ 9] See INA 316(b).

[^ 10] See 8 CFR 316.5(a). See Chapter 3, Continuous Residence, Section A, Continuous Residence Requirement [12 USCIS-PM D.3(A)].

[^ 11] For more information, see Section D, Preserving Residence for Naturalization (Form N-470) [12 USCIS-PM D.3(D)].

[^ 12] See INA 316(a) and INA 316(b). See 8 CFR 316.2(a)(3), 8 CFR 316.2(a)(6), and 8 CFR 316.5(c)(1).

[^ 13] See 8 CFR 316.2(a)(3), 8 CFR 316.2(a)(6), and 8 CFR 316.5(c)(1).

[^ 14] See 8 CFR 316.5(c)(1)(i).

[^ 15] For example, this applies to applicants who were not able to overcome the presumption of the disruption of the continuity of residence after an absence of more than 6 months but less than 1 year during the pertinent statutory period.

[^ 16] For example, the pertinent statutory period under INA 316(a) is 5 years. For certain spouses of U.S. citizens, the statutory period is 3 years under INA 319(a). Under certain spousal provisions, there is no required statutory period residence (or period of physical presence) as provided under INA 319(b). See Part G, Spouses of U.S. Citizens [12 USCIS-PM G].

[^ 17] This is assuming that the applicant did not make any additional trips outside the United States that would cause USCIS to presume a break in continuity of residence after the previous disqualifying absence.

[^ 18] This is assuming that the applicant did not make any additional trips outside the United States that would cause USCIS to presume a break in the continuity of residence.

[^ 19] See INA 316(b).

[^ 20] See Section D, Preserving Residence for Naturalization (Form N-470) [12 USCIS-PM D.3(D)].

[^ 21] See 8 CFR 316.5(c)(1)(ii).

[^ 22] See Subsection 1, Absence of More than 6 Months (but Less than 1 Year) [12 USCIS-PM D.3(C)(1)].

[^ 23] Subject to certain conditions, spouses (and battered spouses and children) of U.S. citizens may apply for citizenship after 3 years of continuous residence. See INA 319. The same conditions apply to these applicants, however, the periods in question are 2 years and 1 day (eligible for naturalization if they can successfully rebut the presumption of a break in residence) and 2 years and 6 months (to avoid any presumption of a break in continuous residence).

[^ 24] For purposes of calculating time spent outside the United States, USCIS does not count the dates of travel among the dates spent outside the United States. Therefore, in this example, January 2, 2010 is the first date counted as outside the United States; January 1, 2011 is the last date counted as outside the United States.

[^ 25] In this example, the applicant is not the spouse (or battered spouse or child) of a U.S. citizen.

[^ 26] An applicant who has not been absent from the United States for any single period of greater than 6 months during the statutory period is neither considered nor presumed to have broken the continuity of his or her residence. However, there are circumstances in which an applicant who has multiple absences of less than 6 months each during the statutory period may nevertheless have broken the continuity of his or her residence even though the presumption does not apply.

[^ 27] See 8 CFR 316.5(c)(1)(ii). The applicant would still have an absence of over 6 months that occurred during the statutory period and therefore would still have a presumption of a break in continuous residence. See INA 316(b). See 8 CFR 316.2(a)(6) and 8 CFR 316.5(c)(1).

[^ 28] 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.

[^ 29] The applicant may also need to apply for a reentry permit to be permitted to enter the United States.

[^ 30] See 8 CFR 316.5(d). For more information on filing timeframes, see Volume 1, General Policies and Procedures, Part B, Submission of Benefit Requests, Chapter 6, Submitting Requests, Section D, Filing Periods Ending on Weekends or Federal Holidays [1 USCIS-PM B.6(D)].

[^ 31] See 8 CFR 316.20. See uscis.gov/AIR for lists of recognized organizations.

[^ 32] See *Matter of Chawathe (PDF)*, 25 I&N Dec. 369 (AAO 2010).

[^ 33] See INA 316(b). See 8 CFR 316.20.

[^ 34] See INA 317. In these cases, the applicant may file Form N-470 before, during, or after an absence from the United States for qualifying religious duties, even if the absence lasted for more than 1 year. Additionally, while the applicant must still establish 1 year of uninterrupted physical presence in the United States, he or she may comply with this requirement at any time before filing the naturalization application. The applicant need not comply with this physical presence requirement before filing Form N-470. See Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence, Section A, Qualifying Employment Abroad, Subsection 4, Person Performing Religious Duties [12 USCIS-PM D.5(A)(4)].

[^ 35] See INA 316(c). See Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence [12 USCIS-PM D.5].

[^ 36] As described in INA 317. While persons performing religious duties as described in INA 317 must establish 1 year of uninterrupted physical presence in the United States before filing the naturalization application, they do not need to have met this requirement before starting their religious duties outside the United States, unlike other naturalization applicants filing Form N-470 who must meet this requirement before working outside of the United States.

[^ 37] See *Matter of Huang (PDF)*, 19 I&N Dec. 749 (BIA 1988). In removal proceedings, the Department of Homeland Security bears the burden of proving abandonment by clear and convincing evidence. But if the probative evidence is sufficient to meet that standard of proof, approval of the application to preserve residence, by itself, would not preclude a finding of abandonment.

[^ 38] See INA 212(a)(7)(A).

[^ 39] See 8 CFR 211.1(a)(2).

[^ 40] See 8 CFR 223.2(b)(1).

[^ 41] See INA 101(a)(36) and INA 101(a)(38). See 48 U.S.C. 1806(a) and 48 U.S.C. 1806(f). See Section 705(b) of the Consolidated Natural Resources Act of 2008 (CNRA), Pub. L. 110-229 (PDF), 122 Stat. 754, 867 (May 8, 2008) (48 U.S.C. 1806 note).

[^ 42] See Section 705(c) of the CNRA, Pub. L. 110-229 (PDF), 122 Stat. 754, 867 (May 8, 2008) (48 U.S.C. 1806 note). See *Eche v. Holder*, 694 F.3d 1026 (9th Cir. 2012).

[^ 43] See 8 CFR 211.5.

A. Physical Presence Requirement

An applicant for naturalization is generally required to have been physically present in the United States for at least half the time for which his or her continuous residence is required. Applicants for naturalization under INA 316(a) are required to demonstrate physical presence in the United States for at least 30 months (at least 913 days) before filing the application.[1]

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. The continuous residence[2] and physical presence requirements are interrelated but each must be satisfied for naturalization.

USCIS will count the day that an applicant departs from the United States and the day he or she returns as days of physical presence within the United States for naturalization purposes.[3]

B. Documentation and Evidence

Mere possession of a Permanent Resident Card (PRC) for the period of time required for physical presence does not in itself establish the applicant's physical presence for naturalization purposes. The applicant must demonstrate actual physical presence in the United States through documentation. USCIS will review all of the relevant records to assist with the determination of whether the applicant has met the required period of physical presence. The applicant's testimony will also be considered in determining whether the applicant met the required period of physical presence.

Footnotes

[^ 1] See INA 316(a). See 8 CFR 316.2.

[^ 2] See Chapter 3, Continuous Residence [12 USCIS-PM D.3].

[^ 3] USCIS will only count residence in the Commonwealth of the Northern Mariana Islands on or after November 28, 2009, as time counted for physical presence within the United States for naturalization purposes.

Certain classes of applicants may be eligible for a reduced period of continuous residence and physical presence. Certain applicants may also be eligible to count time residing abroad as residence and physical presence in the United States for naturalization purposes.

Other applicants may be exempt from the residence or physical presence requirement, or both. Although not required in all cases, applicants are generally required to have been "physically present and residing within the United States for an uninterrupted period of at least one year" at some time after becoming a lawful permanent resident (LPR) and before filing to qualify for an exemption.

A. Qualifying Employment Abroad

The table below serves as a quick reference guide on certain continuous residence and physical presence provisions for persons residing abroad under qualifying employment. The paragraphs that follow the table provide further guidance on each class of applicant.

Continuous Residence and Physical Presence for Qualifying Employment Abroad

Employer or Vocation	Provision	Continuous Residence	Physical Presence
U.S. government or contractor	INA 316(b) INA 316(c)	Preserves residence through N-470 process	Exempt through N-470 process
American institution of research	INA 316(b) INA 316(c)	Preserves residence through N-470 process	Must meet regular statutory requirement
American firm	INA 316(b) INA 316(c)	Preserves residence through N-470 process	Must meet regular statutory requirement
Media organizations	INA 319(c)	Exempt	
Interpreter, translator, or security-related position (executive or manager)	Sec. 1059(e) of Pub. L. 109-163	Entire period abroad may count as continuous residence and physical presence in United States if engaged in qualifying employment for any portion of period abroad	
Religious duties	INA 317	Time residing abroad while performing religious duties may count as residence and physical presence in United States through N-470 process	

1. Employee of U.S. Government or Specified Entities

LPRs who have been continuously physically present in the United States for at least one year before filing an application to preserve residence and who obtain approval of the application from USCIS for employment by or contract with the U.S. government abroad will not break the continuity of their residence during such time abroad.[1] Such persons are exempt from the physical presence requirement.[2] Persons employed by or under contract with the Central Intelligence Agency can accrue the required year of continuous physical presence at any time prior to applying for naturalization and not just before filing the application to preserve residence.[3]

LPRs who have been continuously physically present in the United States for at least one year before filing an application to preserve residence and who obtain approval of the application from USCIS for employment abroad by an American institution of research recognized as such by the Attorney General (now DHS Secretary) or by an American firm[4] engaged in development of U.S. foreign trade and commerce or its subsidiary, or a public international organization, will not break the continuity of their residence during such time abroad. Such applicants are subject to the physical presence requirement.[5]

Only applicants who are employed by or under contract with the U.S. government may be exempt from the physical presence requirements. All other applicants who are eligible to preserve their residence remain subject to the physical presence requirement.

The applicant's spouse and dependent unmarried sons and daughters, included in the application, are entitled to the same benefits for the period during which they were residing abroad with the applicant.[6]

2. Employee of Certain Media Organizations Abroad

An applicant for naturalization employed by a U.S. incorporated nonprofit communications media organization that disseminates information significantly promoting United States interests abroad, that is so recognized by the Secretary of Homeland Security, is exempt from the continuous residence and physical presence requirements if:

- The applicant files the application for naturalization while still employed, or within six months of termination of employment;
- The applicant has been continuously employed with the organization for at least five years after becoming an LPR;
- The applicant is within the United States at the time of naturalization; and
- The applicant declares a good faith intention to take up residence within the United States immediately upon termination of employment.[7]

3. Employed as an Interpreter, Translator, or Security-Related Position (Executive or Manager)[8]

Time Abroad as Continuous Residence and Physical Presence in the United States

An applicant's time employed abroad by, or under contract with, the Chief of Mission (Department of State) or by the U.S. armed forces as an interpreter, translator, or in a security-related position in an executive or managerial capacity[9] does not break any period for which continuous residence or physical presence in the United States is required for naturalization. The period abroad under such employment is treated as a period of residence and physical presence in the United States for naturalization purposes.

This benefit commonly referred to as the "section 1059(e)" provision only applies to the continuous residence and physical presence naturalization requirements. Applicants must still meet all other requirements for naturalization. The applicant has the responsibility of providing all documentation to establish eligibility.[10]

Qualifying Employment Abroad

In order to count time abroad as continuous residence and physical presence in the United States for purposes of naturalization under the "section 1059(e)" provision, the applicant must meet all of the following requirements during such time abroad:

- The applicant must be:
  - Employed by the Chief of Mission or the U.S. armed forces;
  - Under contract with the Chief of Mission or the U.S. armed forces; or
  - Employed by a firm or corporation under contract with the Chief of Mission or the U.S. armed forces;
- The applicant must be employed as:
  - An interpreter;
  - Translator; or
  - In a security-related position in an executive or managerial capacity; and
- The applicant must have spent at least a portion of the time abroad working directly with the Chief of Mission or the U.S. armed forces.

Security-Related Position Must be in an Executive or Managerial Capacity[11]

An applicant who was in a security-related position must have been in an executive or managerial capacity under such employment to qualify for the section 1059(e) benefits. USCIS uses the same definitions and general considerations that apply to other employment-based scenarios in the immigration context when determining whether an applicant worked in an executive or managerial capacity.

In general, an executive or managerial capacity requires a high level of authority and a broad range of job responsibilities. Managers and executives plan, organize, direct, and control an organization's major functions and work through other employees to achieve the organization's goals. The duties of the security-related position must primarily be of an executive or managerial nature, and a majority of the executive's or manager's time must be spent on duties relating to policy or operational management. This does not preclude the executive or manager from regularly applying his or her professional expertise to functions that are not executive or managerial in nature.

To be employed in an "executive capacity" means an assignment within an organization in which the employee primarily:

- Directs the management of the organization or a major component or function of the organization;
- Establishes the goals and policies of the organization, component, or function;
- Exercises wide latitude in discretionary decision-making; and
- Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.[12]

To be employed in a "managerial capacity" means an assignment within an organization in which the employee primarily:

- Manages the organization, or a department, subdivision, function, or component of the organization;
- Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- If another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.[13]

USCIS does not deem an applicant to be an executive or manager simply because he or she has such a title in an organization or because the applicant periodically directs the organization as the owner or sole managerial employee. The focus is on the applicant's primary duties. In this regard, there must be sufficient staff, such as contract employees or others, to perform the day-to-day operations of the organization in order to enable the applicant to be primarily employed in an executive or managerial function.[14]

USCIS does not consider a person to be acting in a managerial or executive capacity merely on the basis of the number of employees that the person supervises. USCIS takes

into account the reasonable needs of the organization with regard to the overall purpose and stage of development of the organization in cases where staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity.[15]

Applicable Period of Absence

Section 1059(e) benefits are available for an absence from the United States when an applicant is employed in a qualifying position and has worked directly with the Chief of Mission or the U.S. armed forces for any period of time during that absence. However, if the applicant spent part of that time abroad in employment other than the specified qualifying employment, then the applicant does not receive credit for that part of the time.

Other employment abroad, or employment as an interpreter, translator, or in a security-related position (as described above) by an entity other than the Chief of Mission or the U.S. armed forces, or under contract with them, does not provide a benefit to the applicant. Such an applicant would still be required to meet the continuous residence and physical presence requirements unless the applicant qualified for the preservation of his or her residence (through the N-470 process).[16]

4. Person Performing Religious Duties

Qualifying Religious Duties

An LPR who travels outside of the United States temporarily may treat such time outside of the United States as continuous residence and physical presence in the United States for naturalization purposes in cases where the LPR was outside of the United States for the sole purpose of:

- Performing the ministerial or priestly functions of a religious denomination with a bona fide organization within the United States; or
- Serving as a missionary,[17] brother, nun, or sister who was engaged solely by a religious denomination or interdenominational mission having a bona fide organization within the United States.

Applicants must have been physically present and residing within the United States for an uninterrupted period of at least 1 year before filing the naturalization application in order to qualify for naturalization.[18] While the applicant must establish 1 year of uninterrupted physical presence, he or she may comply with this requirement at any time before filing the naturalization application, after becoming an LPR.[19]

Application to Preserve Residence

The LPR must file an Application to Preserve Residence for Naturalization Purposes (Form N-470) in order for USCIS to consider whether the LPR qualifies to preserve continuous residence and physical presence while outside of the United States.

The Form N-470 may be filed before, during, or after an absence from the United States for qualifying religious duties, even if the absence lasted for more than 1 year. The applicant need not comply with the 1-year physical presence requirement mentioned above before filing Form N-470. However, the N-470 must be approved before USCIS can approve the naturalization application.[20]

B. Qualifying Military Service

Applicants with certain types of military service may be eligible for a modification or exception to the continuous residence and physical presence requirements for naturalization.

See Part I, Military Members and their Families,[21] for modifications and exceptions for applicants with certain types of military service, to include:

- One Year of Military Service – INA 328;
- Service during Hostilities – INA 329;
- Service in WWII Certain Natives of Philippines – Section 405 of IMMACT90; and
- Members who Enlisted under Lodge Act – Act of June 30, 1950, 64 Stat. 316.

C. Spouse, Child, or Parent of Certain U.S. Citizens

The spouse, child, or parent of certain U.S. citizens may be eligible for a modification or exception to the continuous residence and physical presence requirements for naturalization.

See Part G, Spouses of U.S. Citizens,[22] for modifications and exceptions for spouses of certain U.S. citizens, to include:

- Spouse of U.S. Citizen for 3 Years – INA 319(a);
- Spouse of Military Member Serving Abroad – INA 319(e);
- Surviving Spouse of U.S. Citizen – INA 319(d); and
- Surviving Spouse Person Conducting U.S. Intelligence.[23]

See Part H, Children of U.S. Citizens,[24] for modifications and exceptions to the continuous residence and physical presence requirements for children of certain U.S. citizens.

- Child of U.S. Government Employee (Abroad) – INA 320;
- Surviving Child of U.S. Citizen – INA 319(d); and
- Surviving Child of Person Conducting U.S. Intelligence.[25]

These parts will also include information on modifications and exceptions to the continuous residence and physical presence requirements for surviving parents of certain U.S. citizens.

D. Other Special Classes of Applicants

The table below serves as a quick reference guide to certain continuous residence and physical presence provisions for special classes of applicants. The paragraphs that follow the table provide further guidance on each class of applicant.

Continuous Residence and Physical Presence for Special Classes of Applicants

Applicant	Provision	Continuous Residence	Physical Presence

Citizens who lost citizenship through foreign military service	INA 327	Exempt
Nationals, but not citizens	INA 325	Time residing in outlying possession may count as residence and physical presence in the United States
Service on certain U.S. vessels	INA 330	Time in service on certain U.S. vessels may count as residence and physical presence in the United States
Service contributing to national security	INA 316(f)	Exempt

1. Citizens who Lost U.S. Citizenship through Foreign Military Service[26]

Former citizens who lost citizenship through service during the Second World War in foreign armed forces not then at war with the United States can regain citizenship. The applicant must be admitted as an LPR. However, the applicant is exempt from the continuous residence and physical requirements for naturalization.[27]

2. Nationals, but not Citizens, of the United States

The time a national, but not citizen, of the United States spends within any of the outlying possessions of the United States counts as continuous residence and physical presence in the United States.[28]

3. Service on Certain U.S. Vessels

Any time an LPR has spent in qualifying honorable service on board a vessel operated by the United States or on board a vessel whose home port is in the United States will be considered residence and physical presence within the United States.[29] The qualifying service must take place within five years immediately preceding the date the applicant files for naturalization.

4. Service Contributing to National Security

The Director of Central Intelligence, the Attorney General, and the Director of USCIS may designate annually up to five persons who have "made an extraordinary contribution to the national security of the United States or to the conduct of United States intelligence activities." Such persons are exempted from the continuous residence and physical presence requirements.[30]

Footnotes

[^ 1] Any Peace Corps personal service contractor (PSC) who entered into a contract with the Peace Corps on or after November 21, 2011 is a U.S. government employee under the Immigration and Nationality Act (INA). See the Kate Puzey Peace Corps Volunteer Protection Act of 2011 (Puzey Act), Pub. L. 112-57 (PDF) (November 21, 2011), 22 U.S.C. 2509(a)(5), amending Section 10(a)(5) of the Peace Corps Act, Pub. L. 87-293 (PDF) (September 22, 1961), 22 U.S.C. 3901. Prior to enactment of the Puzey Act, PSCs were not considered U.S. government employees.

[^ 2] See INA 316(b) and INA 316(c).

[^ 3] See INA 316(c).

[^ 4] USCIS has adopted the AAO decision in *Matter of Chawathe (PDF)*, 25 I&N Dec. 369 (AAO 2010). The decision states that under INA 316(b), a publicly held corporation may be deemed an "American firm or corporation" if the applicant establishes that the corporation is both incorporated and trades its stock exclusively on U.S. Stock Exchange markets. If the applicant is unable to meet this qualification, then he or she must meet the requirements under *Matter of Warrach (PDF)*, 17 I&N Dec. 285, 286-287 (Reg. Comm. 1979). USCIS then determines the nationality of the corporation by reviewing whether more than 50 percent is owned by U.S. citizens. The applicant must establish this by a preponderance of the evidence.

[^ 5] See INA 316(b) and INA 316(c). See 8 CFR 316.20. See uscis.gov/AIR for a list of recognized organizations.

[^ 6] See INA 316(b)(2). See 8 CFR 316.5(d)(1)(ii).

[^ 7] See INA 319(c). See 8 CFR 319.4.

[^ 8] See Section 1059(e) of the National Defense Authorization Act of 2006, Pub. L. 109-163 (PDF) [8 U.S.C. 1101 Note] (January 6, 2006), as amended. The subsection '(e)' provision relating to naturalization was added to Section 1059 on June 15, 2007. The amendments state that certain persons do not break the continuity of their residence in the United States for naturalization purposes during time abroad if employed abroad by, or under contract with, the Chief of Mission (Department of State) or by the U.S. armed forces as an interpreter or translator in Iraq or Afghanistan. See Pub. L. 110-36 (PDF) (June 15, 2007). On December 28, 2012, Section 1059(e) was further amended by adding certain security-related positions (in an executive or managerial capacity), in addition to interpreters and translators, as types of qualifying employment. The amendments also removed the geographical limitation of qualifying employment within Iraq or Afghanistan. See Pub. L. 112-227 (PDF) (December 28, 2012).

[^ 9] See INA 101(a)(44)(A) and INA 101(a)(44)(B) for statutory definitions of the terms "managerial capacity" and "executive capacity." See 8 CFR 204.5(j)(2), 8 CFR 214.2(l)(1)(ii)(B), and 8 CFR 214.2(l)(1)(ii)(C). See Part F, Employment-Based Classifications, Chapter 4, Multinational Executive or Manager [6 USCIS-PM F.4] for further guidance on managerial and executive capacity and the evaluation of such positions.

[^ 10] Pub. L. 110-36 (PDF) added Section 1059(e) to the National Defense Authorization Act for Fiscal Year 2006, which added the interpreter and translator provisions.

[^ 11] See INA 101(a)(44)(A) and INA 101(a)(44)(B) for statutory definitions of the terms "managerial capacity" and "executive capacity." See 8 CFR 204.5(j)(2), 8 CFR 214.2(l)(1)(ii)(B), and 8 CFR 214.2(l)(1)(ii)(C). See Part F, Employment-Based Classifications, Chapter 4, Multinational Executive or Manager [6 USCIS-PM F.4] for further guidance on managerial and executive capacity and the evaluation of such positions. See Foreign Affairs Manual (FAM), 9 FAM 402.12, Intracompany Transferees.

[^ 12] See INA 101(a)(44)(B). See 8 CFR 204.5(j)(2). See 8 CFR 214.2(l)(1)(ii)(C).

[^ 13] See INA 101(a)(44)(A). See 8 CFR 204.5(j)(2). See 8 CFR 214.2(l)(1)(ii)(B).

[^ 14] See INA 101(a)(44)(A) and INA 101(a)(44)(B) for statutory definitions of the terms "managerial capacity" and "executive capacity." See 8 CFR 204.5(j)(2), 8 CFR 214.2(l)(1)(ii)(B), and 8 CFR 214.2(l)(1)(ii)(C). See Part F, Employment-Based Classifications, Chapter 4, Multinational Executive or Manager [6 USCIS-PM F.4] for further

guidance on managerial and executive capacity and the evaluation of such positions. See 9 FAM 402.12, Intracompany Transferees.

[^ 15] See INA 101(a)(44)(C).

[^ 16] See INA 316(b) and INA 316(c). Certain applicants who meet the requirements of INA 316(b) to preserve residence may also qualify for benefits under INA 316(c) dealing with physical presence. See Section A, Qualifying Employment Abroad [12 USCIS-PM D.5(A)].

[^ 17] See INA 317.

[^ 18] See INA 317.

[^ 19] Persons performing religious duties as described in INA 317 do not need to have met this 1-year physical presence requirement before starting their religious duties outside the United States, unlike other naturalization applicants filing Form N-470 who must meet this requirement before working outside the United States. For more information on the N-470, see Chapter 3, Continuous Residence, Section D, Preserving Residence for Naturalization (Form N-470) [12 USCIS-PM D.3(D)].

[^ 20] See 8 CFR 316.5(d)(2). For more information about Form N-470, see Chapter 3, Continuous Residence, Section D, Preserving Residence for Naturalization (Form N-470) [12 USCIS-PM D.3(D)].

[^ 21] See 12 USCIS-PM I.

[^ 22] See 12 USCIS-PM G.

[^ 23] See Section 305 of the Intelligence Authorization Act of 1997, Pub. L. 104-293 (PDF), 110 Stat. 3461, 3465 (October 11, 1996).

[^ 24] See 12 USCIS-PM H.

[^ 25] See Section 305 of the Intelligence Authorization Act of 1997, Pub. L. 104-293 (PDF), 110 Stat. 3461, 3465 (October 11, 1996).

[^ 26] See INA 327.

[^ 27] See 8 CFR 327.1(f).

[^ 28] See INA 325. See 8 CFR 325.2. Unless otherwise provided under INA 301, the following persons are nationals, but not citizens of the United States at birth: (1) a person born in an outlying possession of the United States on or after the date of formal acquisition of such possession; (2) a person born outside the United States and its outlying possessions of parents both of whom are nationals, but not citizens, of the United States, and have had a residence in the United States, or one of its outlying possessions prior to the birth of such person; (3) a person of unknown parentage found in an outlying possession of the United States while under the age of five years, until shown, prior to his attaining the age of twenty- one years, not to have been born in such outlying possession; and (4) a person born outside the United States and its outlying possessions of parents one of whom is an alien, and the other a national, but not citizen, of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than seven years in any continuous period of ten years: during which the national parent was not outside the United States or its outlying possessions for a continuous period of more than one year, and at least five years of which were after attaining the age of fourteen years. See INA 101(a)(22) and INA 308.

[^ 29] See INA 330. See 8 CFR 330.1.

[^ 30] See INA 316(f).

Chapter 6 - Jurisdiction, Place of Residence, and Early Filing

A. Three-Month Residency Requirement (in State or Service District)

In general, an applicant for naturalization must file his or her application for naturalization with the state or service district that has jurisdiction over his or her place of residence. The applicant must have resided in that location for at least three months prior to filing.

The term “state” includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands (CNMI).[1] The term “service district” is defined as the geographical area over which a USCIS office has jurisdiction.[2]

The service district that has jurisdiction over an applicant’s application may or may not be located within the state where the applicant resides. In addition, some service districts may have jurisdiction over more than one state and most states contain more than one USCIS office.

In cases where an applicant changes or plans to change his or her residence after filing the naturalization application, the applicant is required to report the change of address to USCIS so that the applicant’s A-file (with application) can be transferred to the appropriate office having jurisdiction over the applicant’s new place of residence.

B. Place of Residence

The applicant’s “residence” refers to the applicant’s principal, actual dwelling place in fact, without regard to intent.[3] The duration of an applicant’s residence in a particular location is measured from the moment the applicant first establishes residence in that location.[4]

C. Place of Residence in Certain Cases

There are special considerations regarding the place of residence for the following applicants:[5]

1. Military Member

Special provisions exist for applicants who are serving or have served in the U.S. armed forces but who do not qualify for naturalization on the basis of the military service for one year.[6]

- The service member’s place of residence may be the state or service district where he or she is physically present for at least three months immediately prior to filing (or the examination if filed early);
- The service member’s place of residence may be the location of the residence of his or her spouse or minor child, or both; or

- The service member's place of residence may be his or her home of record as declared to the U.S. armed forces at the time of enlistment and as currently reflected in the service member's military personnel file.

2. Spouse of Military Member (Residing Abroad)

The spouse of a U.S. armed forces member may be eligible to count the time he or she is residing (or has resided) abroad with the service member as continuous residence and physical presence in any state or district of the United States.[7] Such a spouse may consider his or her place of residence abroad as a place of residence in any state or district in the United States.

3. Students

An applicant who is attending an educational institution in a state or service district other than the applicant's home residence may apply for naturalization where that institution is located, or in the state of the applicant's home residence if the applicant is financially dependent upon his or her parents at the time of filing and during the naturalization process.[8]

4. Commuter

A commuter must have taken up permanent residence (principal dwelling place) in the United States for the required statutory period and must meet the residency requirements to be eligible for naturalization.[9]

5. Residence in Multiple States

If an applicant claims residence in more than one state, the residence for purposes of naturalization will be determined by the location from which the applicant's annual federal income tax returns have been and are being filed.[10]

6. Residence During Absences of Less than One Year

An applicant's residence during any absence abroad of less than one year will continue to be the state or service district where the applicant resided before departure. If the applicant returns to the same residence, he or she will have complied with the three-month jurisdictional residence requirement when at least three months have elapsed, including any part of the absence, from when the applicant first established that residence.[11]

If the applicant establishes residence in a different state or service district from where he or she last resided, the applicant must reside three months at that new residence before applying in order to meet the three-month jurisdictional residence requirement.[12]

7. Nationals, but not Citizens, of the United States

A national, but not citizen, may naturalize if he or she becomes a resident of any state and is otherwise qualified.[13] Nationals, but not citizens, will satisfy the continuous residence and physical presence requirements while residing in an outlying possession. Such applicants must reside for three months prior to filing in a state or service district to be eligible for naturalization.

D. 90-Day Early Filing Provision (INA 334)

An applicant filing under the general naturalization provision may file his or her application up to 90 days before he or she would first meet the required 5-year period of continuous residence as an LPR.[14] Although an applicant may file early according to the 90 day early filing provision, the applicant is not eligible for naturalization until he or she has reached the required five-year period of continuous residence as a lawful permanent resident (LPR).

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 applicant would satisfy the five-year continuous residence requirement for the first time on June 10, 2010 USCIS will begin to calculate the 90-day early filing period from June 9, 2010. In such a case, the earliest that the applicant is allowed to file would be March 12, 2010 (90 calendar days earlier).

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 five-year period of continuous residence, jurisdiction for filing will be based on the three-month period immediately preceding the examination on the application.[15]

E. Expediting Applications from Certain Supplemental Security Income (SSI) Beneficiaries

USCIS will expedite naturalization applications filed by applicants:

- Who are within one year or less of having their Supplemental Security Income (SSI) benefits terminated by the Social Security Administration (SSA); and
- Whose naturalization application has been pending for four months or more from the date of receipt by USCIS.

Although USCIS will prioritize processing of these applications, each applicant is still required to meet all eligibility requirements for naturalization at the time of filing. Applicants must inform USCIS of the approaching termination of benefits by InfoPass appointment or by United States postal mail or other courier service by providing:

- A cover letter or cover sheet to explain that SSI benefits will be terminated within one year or less and that their naturalization application has been pending for four months or more from the date of receipt by USCIS; and
- A copy of the applicant's most recent SSA letter indicating the termination of their SSI benefits. (The USCIS A-number must be written at the top right of the SSA letter).

Footnotes

[^ 1] See INA 101(a)(36). As of November 28, 2009, the CNMI is part of the definition of United States. See Consolidated Natural Resources Act of 2008, Pub. L. 110-229 (PDF) (May 8, 2008). See Chapter 3, Continuous Residence, Section E, Residence in the Commonwealth of the Northern Mariana Islands [12 USCIS-PM D.3(E)].

[^ 2] See 8 CFR 316.1.

[^ 3] See INA 101(a)(33). This is the same as the applicant's actual domicile.

[^ 4] See 8 CFR 316.5(a).

[^ 5] See 8 CFR 316.5(b).

[^ 6] See INA 328. See Part I, Military Members and their Families, Chapter 2, One Year of Military Service during Peacetime (INA 328) [12 USCIS-PM I.2].

[^ 7] See INA 319(e). See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section B, Spouses of Military Members [12 USCIS-PM I.9(B)]. See Part G, Spouses of U.S. Citizens, Chapter 3, Spouses of U.S. Citizens Residing in the United States [12 USCIS-PM G.3].

[^ 8] See 8 CFR 316.5(b)(2).

[^ 9] See 8 CFR 211.5. See 8 CFR 316.5(b)(3).

[^ 10] See 8 CFR 316.5(b)(4).

[^ 11] See 8 CFR 316.5(b)(5).

[^ 12] See 8 CFR 316.2(a)(5).

[^ 13] See INA 325. See Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence [12 USCIS-PM D.5].

[^ 14] See INA 334(a). See 8 CFR 334.2(b).

[^ 15] See 8 CFR 316.2(a)(5).

Chapter 7 - Attachment to the Constitution

A. Attachment to the Constitution

An applicant for naturalization must show that he or she has been and continues to be a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States during the statutorily prescribed period.[1] "Attachment" is a stronger term than "well disposed" and implies a depth of conviction, which would lead to active support of the Constitution.[2]

Attachment includes both an understanding and a mental attitude including willingness to be attached to the principles of the Constitution. An applicant who is hostile to the basic form of government of the United States, or who does not believe in the principles of the Constitution, is not eligible for naturalization.[3]

To be admitted to citizenship, naturalization applicants must take the Oath of Allegiance in a public ceremony. At that time, an applicant declares his or her attachment to the United States and its Constitution.[4] To be admitted to citizenship:

- The applicant must understand that he or she is taking the Oath freely without any mental reservation or purpose of evasion;
- The applicant must understand that he or she is sincerely and absolutely renouncing all foreign allegiance;
- The applicant must understand that he or she is giving true faith and allegiance to the United States, its Constitution and laws; and
- The applicant must understand that he or she is discharging all duties and obligations of citizenship including military and civil service when required by the law.

The applicant's true faith and allegiance to the United States includes supporting and defending the principles of the Constitution by demonstrating an acceptance of the democratic, representational process established by the U.S. Constitution, and the willingness to obey the laws which result from that process.[5]

B. Selective Service Registration

1. Males Required to Register

In general, males must register with Selective Service within 30 days of their 18th birthday but not after reaching 26 years of age. The U.S. government suspended the registration in April of 1975 and resumed it in 1980. An applicant who refused to or knowingly and willfully failed to register for Selective Service negates his disposition to the good order and happiness of the United States, attachment to the principles of the Constitution, good moral character, and willingness to bear arms on behalf of the United States.[6]

Applicants may register for Selective Service at their local post office, return a Selective Service registration card received by mail, or online at the Selective Service System website.[7] Confirmation of registration may be obtained by calling (847) 688-6888 or online at sss.gov. The officer may also accept other persuasive evidence presented by an applicant as proof of registration.

USCIS assists with the registration process by transmitting the appropriate data to the Selective Service System (SSS) for male applicants between the ages of 18 and 26 who apply for adjustment of status. After registering the eligible male, Selective Service will send an acknowledgement to the applicant that can be used as his official proof of Selective Service registration.

2. Failure to Register for Selective Service

USCIS will deny a naturalization application when the applicant refuses to register with Selective Service or has knowingly and willfully failed to register during the statutory period.[8] The officer may request for the applicant to submit a status information letter and registration acknowledgement card before concluding that he failed to register.

The status information letter will indicate whether a requirement to register existed. The applicant must show by a preponderance of the evidence that his failure to register was not a knowing or willful act.[9] Failure on the part of USCIS or SSS to complete the process on behalf of the applicant, however, will not constitute a willful failure to register on the part of the applicant.

The denial notice in cases where willful failure to register is established may also show that in addition to failing to register, the applicant is not well disposed to the good order and happiness of the United States. This determination depends on the applicant's age at the time of filing the application and up until the time of the oath: