Chapter 3 - Continuous Residence

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 non-resident 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, 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; or
- 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.[32]

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 will include 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.[33]

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.[34]

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.[35] 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.[36] 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.[37]

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.[38] 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 noncitizens, 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.[39]

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[40] 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).

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

[^ 32] See INA 316(b). See 8 CFR 316.20.

[^ 33] See INA 316(c). See Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence [12 USCIS-PM D.5].

[^ 34] 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.

[^ 35] See INA 212(a)(7)(A).

[^ 36] See 8 CFR 211.1(a)(2).

[^ 37] See 8 CFR 223.2(b)(1).

[^ 38] 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).

[^ 39] 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).

[^ 40] See 8 CFR 211.5.

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