
NATURALIZATION & CITIZENSHIP



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AN INDIVIDUAL BECOMES A USC BY:

- Operation of Law

- Generally no affirmative action necessary
- e.g. birth in United States, birth abroad to USC parents

-OR-

- Naturalization

- Affirmative application required
- Must meet several statutory requirements

REQUIREMENTS FOR NATURALIZATION – INA § 316.2

- At least 18 years old;
 - some limited exceptions, e.g. those who have served in the military, minor children whose parents are naturalizing
- Lawfully admitted as a Permanent Resident (“LPR”) to the U.S.;
- Continuous residency in U.S. for at least 5 years after admission as LPR;
 - 3 years if married to and residing with USC spouse;
- Physical presence in the U.S. for at least 30 months of the 5 years immediately preceding the filing of the application;
- Residence in the jurisdiction in which the application is filed for at least 3 months immediately preceding the filing;
- Continuous residence in U.S. from the time of filing to the time of admission to citizenship;
- Good moral character (“GMC”);
- Demonstrate attachment to the principles and ideals of the U.S. Constitution;
- Have a basic understanding of U.S. civics; and
- Be able to read, write, and speak basic English.

LAWFULLY ADMITTED FOR PERMANENT RESIDENCE – INA § 318

- “Lawfully admitted for permanent residence” means:
 - “the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.” INA §101(a)(20).
- Having LPR status alone is not enough; the applicant must be entitled to it (e.g., not obtained through fraud):
 - Increased review of consistency of information previously submitted to immigration authorities in LPR or other applications.

RESIDENCY REQUIREMENTS – INA § 316

- Physical presence
 - Typically need 30 months in the U.S. during statutory period (50% of qualifying residency period)
 - 18 months for spouse of a USC
 - Exceptions apply to certain religious missionaries and people serving in the armed forces abroad
- Continuous residence
 - Residence = abode, dwelling place, regardless of intent
 - 3 years for spouses of USCs; 5 years for other applicants
 - Absences of six months or less do not interrupt CR
 - Absences of more than six months result in a rebuttable presumption of abandonment
 - Absences of more than one year break CR unless applicant meets criteria for an Application to Preserve Residence (Form N-470)
 - Re-entry permits
- Residence in service district or state *for 3 months preceding the filing of the application*

GOOD MORAL CHARACTER REQUIREMENT

INA §§ 101(f), 316(a)

- No statutory definition of GMC!
- Standard = moral character of average citizen of the community in which the applicant resides
- Negative factors USCIS considers *include*:
 - Criminal history:
 - Crimes Involving Moral Turpitude (CIMTs)
 - Aggravated felonies
 - Drug and smuggling offenses
 - Offenses resulting in 180 days + in jail;
 - Giving false testimony under oath;
 - Making false claims to U.S. citizenship;
 - Unlawful voting;
 - Prostitution, gambling, or being a habitual drunkard;
 - Refusal or failure to register for Selective Service (men 18-26 and men 26-31);
 - Not paying income taxes; and
 - Failure to support dependents.
- GMC for Naturalization is higher standard than for other immigration benefits, may be subjective, and is constantly evolving (including recent decisions on CIMTS and aggravated felonies).

GOOD MORAL CHARACTER REQUIREMENT – CONT'D

Practice pointers:

- Make sure to thoroughly screen your client (before filing) for any criminal history to make sure he or she is not deportable.
- Avoid triggering removal proceedings! Do not file an N-400 application on behalf of a client who is removable.
 - Increasingly important given recent USCIS policy memorandum on Notice to Appear Issuance
- Even if your client's arrest did not result in a conviction for immigration purposes, be prepared to argue that your client is not inadmissible or removable.
- Know that state court expungements do not avoid immigration consequences!
- Consult a colleague who is an expert in immigration law for assistance with evaluating a naturalization case for a client with a criminal record.
- Provide evidence of reformation or rehabilitation if your client has a negative history.
- Help your client make arrangements to pay back taxes or establish a plan for coming current on child support payments.
 - If client was not obligated to pay taxes and did not file, there may be no failure to pay.
- Have your client gather evidence of strong ties to the U.S. and proof of positive involvement in the community, such as volunteer service.

SPECIAL PROVISIONS FOR MEMBERS OF THE MILITARY, VETERANS, AND FAMILIES

- No age requirement for certain members of the military who served during designated periods;
- Not required to be admitted as LPR if s/he:
 - served honorably in the U.S. armed forces in times of war or other declared hostilities (World War I, World War II, Korean War, Vietnam, or designated period);
 - if separated, was separated from service under honorable conditions; and
 - enlisted or was inducted while in the U.S., the Canal Zone, American Samoa, Swains Island, or on board a public vessel owned or operated by the United States for noncommercial service;
 - or at any time subsequent to enlistment or induction such person shall have been lawfully admitted for permanent residence.
- §329A allows for grant of posthumous citizenship to persons who honorably served during a designated period of hostility, whose death was a result of injury or disease incurred in or aggravated by that service.
- A surviving spouse, child, or parent of a USC member of the armed forces who dies during a period of honorable service in an active duty status and who, in the case of a surviving spouse, was living in marital union with the citizen spouse is eligible to apply for naturalization benefits under INA §319(d) if the family member meets the naturalization requirements other than residence and physical presence.

ADDITIONAL MILITARY CONSIDERATIONS

- Discharge Status (Form DD-214):
 - Must not be a deserter during war time who was convicted by court martial or civil court (INA § 314, 8 U.S.C. § 1425), unless he or she received a pardon or general amnesty.
- Selective Service:
 - Male applicants must have registered for Selective Service if resided in U.S. between ages of 18 and 26;
 - If applicant did not register due to ignorance of obligation, a statement may be submitted.
- Military Accessions Vital to the National Interest (MAVNI):
 - Permitted certain asylees, refugees, holders of Temporary Protected Status (TPS), beneficiaries of the Deferred Action for Childhood Arrivals (DACA) policy, and other nonimmigrants to enlist
 - Suspended in 2016

LANGUAGE AND CIVICS REQUIREMENTS

- Applicants are tested on English literacy and understanding of U.S. government and history during the naturalization interview.
 - Should be able to answer officer's questions regarding the application in English
 - Will be tested on reading and writing skills
 - Must respond to questions about the government and history
- Exceptions:
 - Your client may request that the interview be conducted in his or her native language if s/he is:
 - Over 50 years old and has been an LPRs for 20 years; or
 - Over 55 years old and has been an LPR for 15 years.
 - Your client may request a modified civics test if s/he is:
 - At least 65 years old and has been an LPR for 20 years.
 - Your client may also be eligible for accommodations or exemptions if s/he has a disability and meets requirements for a medical certification (Form N-648).
- If your client cannot speak with you in English during your appointments, this is a good indicator that they are not yet prepared to meet the language requirement. See if they qualify for an exception.

PROS OF NATURALIZATION

- Eligibility to vote;
- Can travel and live abroad and return to U.S. at will;
- U.S. Passport (allows greater global mobility);
- Transmit citizenship to natural born children;
- Easier to petition for/sponsor relatives;
- Right to hold public office;
- Eligibility for certain government jobs;
- Eligibility for public benefits;
- Protection/assistance of U.S. Embassy while abroad; and
- Protection from deportation barring Denaturalization via Federal District Court Proceeding.

CONS OF NATURALIZATION

- U.S. does not formally recognize dual citizenship, though it does not require other citizenships be relinquished;
- Home country may require prior citizenship to be relinquished; may require visa for future travel;
- Additional tax obligations (e.g., HEART Act);
- Filing of Naturalization application will trigger thorough vetting that could result in deportation:
 - June 28, 2018, USCIS memorandum of Notice to Appear issuance: initiation of removal proceedings for any Naturalization applicant denied on GMC grounds;
 - Violations (including tax) or crimes committed prior to Naturalization for which applicant was not yet charged or convicted could later result in Denaturalization.

NATURALIZATION PROCESS BASICS

- Form N-400 filed with USCIS
 - Always double-check filing fees, as they can change
 - See Form M-477 for a checklist of evidence
 - Fee waivers available, but may lengthen process.
- Biometrics appointment at Application Support Center
- Interview at USCIS
 - English and civics tests
 - Review of application
- Adjudication
 - Considerable delays as of September 2018 (up to 20 months)
 - Approximately 730,000 applications were pending at the end of 2017
- Naturalization Ceremony & Oath of Allegiance
- Review
 - If denied, client can appeal and officer must schedule review hearing within 180 days
 - If no decision within 120 days of interview, if denied again after review hearing, or if no review hearing scheduled within 180 days of appeal, seek federal district court review

U.S. CITIZENSHIP

- “*Jus soli*”
 - Under the 14th Amendment, all persons born *in* the United States and subject to its jurisdiction are citizens.
 - Puerto Rico;
 - Guam;
 - U.S. Virgin Islands;
 - Commonwealth of the Northern Mariana Islands.

Citizenship by Acquisition and Derivative Citizenship

- In general, a person born outside of the United States may acquire citizenship at birth if:
 - the person has at least one parent who is a U.S. citizen; and
 - the U.S. citizen parent meets certain residence or physical presence requirements in the United States or an outlying possession prior to the person's birth in accordance with the pertinent provision.
- Depends on:
 - date of the child's birth;
 - whether one or both parents are USCs;
 - if only one parent is a USC, which one;
 - residence or physical presence of the USC parent; and
 - whether the birth was in or out of wedlock.
- All parental requirements must be met *before* the child's birth.
- No retroactive effect absent express provision by Congress. *If a person did not acquire citizenship under the law in effect at the time of birth, a subsequent change in the law will not confer citizenship unless the legislation specifically provides for retroactive effect.*
- See INA §§ 301, 309 for details.

Child Citizenship Act of 2000

- Allows certain foreign-born, biological and adopted children of American citizens to acquire American citizenship automatically. These children did not acquire American citizenship at birth, but they are granted citizenship when they enter the United States as LPRs.
- The child must meet the following requirements:
 - Have at least one American citizen parent by birth or naturalization;
 - Be under 18 years of age;
 - Live in the legal and physical custody of the American citizen parent; and
 - Be admitted as an immigrant for lawful permanent residence.
- Applies to a child adopted by a USC parent if the child was adopted while under the age of 16, if the child has been in the legal custody of, and has resided with, the adopting parent for at least two years; or if the child is an orphan on whose behalf an immediate relative petition has been filed while under the age of 16.
 - Adoption must be full and final in the United States.

Proof of US Citizenship

- U.S. Birth Certificate
- U.S. Passport
- Consular Record of Birth Abroad
- Certificate of Naturalization
- Certificate of Citizenship

Obtaining a U.S. Passport

- Department of State Form DS-11
- Evidence of citizenship:
 - Born abroad to USC parent/s
 - Client's foreign birth certificate listing parent/s;
 - Parent(s)' evidence of U.S. citizenship;
 - Parents' marriage certificate, if applicable; and
 - Statement from USC parent/s detailing all periods and places of residence or physical presence in the United States and abroad before client's birth.
 - Born abroad and acquiring citizenship through parent's naturalization
 - Client's foreign birth certificate listing parent/s;
 - Parent/s' naturalization certificate;
 - Evidence of permanent residence status;
 - Parents' marriage certificate (if married when client legally entered the U.S. and before his 18th birthday);
 - Documentation of legal custody (if parents not married when client legally entered the U.S.); and
 - Evidence of legitimation (if parents not married *at the time of birth*).

Form N-600, Application for Certificate of Citizenship

- This form is filed to obtain a Certificate of Citizenship to serve as evidence of your client's citizenship. It is used for:
 - Children born abroad, claiming U.S. citizenship at birth through parents;
 - Children automatically becoming USCs by operation of law after birth but before turning 18 years of age; and
 - Parents or guardians seeking evidence on behalf of a minor child.
- Adjudication and Review
 - Sometimes, the applicant will be interviewed.
 - If approved, applicants over the age of 14 will take an Oath of Allegiance.
 - If denied, the applicant can appeal using Form I-290B.

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