USCIS Policy Manual

Current as of **July 21, 2015**

About the Policy Manual

U.S. Citizenship and Immigration Services (USCIS) makes decisions on benefit and service requests that not only affect foreign nationals and their future, but also the well-being of U.S. citizens, families, organizations, businesses, industries, localities, states, the nation, and international communities. Accordingly, USCIS strives to secure America's promise as a nation of immigrants by providing accurate and useful information to customers, promoting awareness and understanding of citizenship rights and responsibilities, and making adjudication decisions in a consistent and accurate manner that furthers the goals and integrity of our nation's immigration system. Our policies drive our benefit and services decisions and ensure that our guidance to USCIS officers who make those decisions reflects our agency's mission, and strategic vision. These policies also greatly affect our interaction with USCIS's diverse customer and stakeholder community.

USCIS has undertaken a comprehensive review of our adjudication and customer service policies to improve quality, transparency, and efficiency. As a result of this extensive and ongoing review, USCIS has created the USCIS Policy Manual, which is the agency's centralized online repository for USCIS's 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. The manual is structured to house several volumes pertaining to different areas of immigration benefits administered by the agency such as citizenship and naturalization, adjustment of status, admissibility, protection and parole, nonimmigrants, refugees, asylees, immigrants, waivers, and travel and employment.

The USCIS Policy Manual is organized into different volumes, parts, and chapters that present policies in a logical and sequential manner. The USCIS Policy Manual provides several user-friendly features and enhancements. These features include up-to-the-minute comprehensive policy updates, an expanded table of contents, and links to related Immigration and Nationality Act (INA) sections, Code of Federal Regulations (CFR), and public use forms. The manual is also equipped with a keyword search function, which will make locating policy and related information faster, easier, and less time consuming. Citations of statutes, regulations, case law, authoritative sources, and other explanatory references appear in footnotes rather than the body of the text. Tables and charts supplement and simplify policy information to facilitate understanding of complex topics and instructions.

The USCIS Policy Manual provides transparency to our customers, including outlining policies that are easy to understand, while also furthering consistency, quality, and efficiency in our adjudications and customer service. The USCIS Policy Manual contains the official policies of USCIS and must be followed by all USCIS officers in the performance of their duties. 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.

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Updates

POLICY ALERT – Modifications to Oath of Allegiance for Naturalization

July 21, 2015

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance to clarify the eligibility requirements for modifications to the Oath of Renunciation and Allegiance for naturalization.

Technical Update – Multiple Absences and Residence and Physical Presence

July 20, 2015

This technical update clarifies that along with reviewing for absences of more than 6 months, officers review whether an applicant for naturalization with multiple absences of less than 6 months is able establish the required residence and physical presence for naturalization.

Technical Update – Child Citizenship Act and Children of U.S.

Government Employees Residing Abroad

July 20, 2015

This technical update clarifies that the child of a U.S. government employee temporarily stationed abroad is considered to be residing in the United States for purposes of acquisition of citizenship under INA 320.

POLICY ALERT – Effect of Assisted Reproductive Technology (ART) on Immigration and Acquisition of Citizenship Under the Immigration and Nationality Act (INA)

October 28, 2014

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance relating to the use of Assisted Reproductive Technology (ART).

Technical Update – Religious Missionaries Abroad and Residence and Physical Presence

October 21, 2014

This technical update clarifies who may be considered to be a missionary of a religious group for purposes of preserving residence and physical presence for naturalization while working abroad.

Technical Update – Treating Certain Peace Corps Contractors as U.S. Government Employees

October 21, 2014

This technical update clarifies that Peace Corps personal service contractors are considered U.S. Government employees under certain circumstances for purposes of preserving their residence for naturalization while working abroad.

POLICY ALERT – Nonimmigrant Trainees (H-3)

September 09, 2014

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance on the trainees (H-3) nonimmigrant visa category.

POLICY ALERT – Customer Service

August 26, 2014

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance on its standards in customer service.

Technical Update – Validity of Same-Sex Marriages

July 01, 2014

This technical update addresses the Supreme Court ruling holding that Section 3 of the Defense of Marriage Act (DOMA) is unconstitutional.

POLICY ALERT – Changes to Dates of Birth and Names on Certificates of Citizenship

June 17, 2014

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance relating to changes of dates of birth and names per court orders.

POLICY ALERT – Validity Period of the Medical Certification on the Report of Medical Examination and Vaccination Record (Form I-693)

May 30, 2014

U.S. Citizenship and Immigration Services (USCIS) is issuing an update to policy guidance in the USCIS Policy Manual addressing the validity period of civil surgeon endorsements on the Report of Medical Examination and Vaccination Record, Form I-693.

Technical Update – Civil Surgeon Applications and Evidentiary Requirements

April 08, 2014

This technical update clarifies that an applicant for civil surgeon designation must, at a minimum, submit a copy of the medical degree to show he or she is a Medical Doctor or Doctor of Osteopathy.

POLICY ALERT – Fraud and Willful Misrepresentation Grounds of Inadmissibility

March 25, 2014

U.S. Citizenship and Immigration Services (USCIS) is issuing guidance on the fraud and willful misrepresentation grounds of inadmissibility under INA 212(a)(6)(C)(i) and the corresponding waiver under INA 212(i).

Technical Update – Vaccination Requirements for Pregnant or Immuno-Compromised Applicants

March 11, 2014

This technical update replaces the list of vaccines contraindicated for pregnant or immuno-compromised applicants with a reference to the Centers for Disease Control and Prevention (CDC)'s Vaccination Technical Instructions. This ensures the Policy Manual guidance includes the most up-to-date information.

POLICY ALERT – Refugee and Asylee-Based Adjustment of Status under Immigration and Nationality Act (INA) Section 209

March 04, 2014

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual to address adjustment of status applications filed by refugees and asylees under INA sections 209(a) and 209(b).

POLICY ALERT – Health-Related Grounds of Inadmissibility and Waivers

January 28, 2014

U.S. Citizenship and Immigration Services (USCIS) is issuing guidance in the USCIS Policy Manual on the health-related grounds of inadmissibility under INA 212(a)(1) and corresponding waivers under INA 212(g).

POLICY ALERT – Civil Surgeon Designation and Centralization of the Designation Process at the National Benefits Center

January 28, 2014

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual to centralize the civil surgeon designation process at the National Benefits Center, effective March 11, 2014.

Technical Update – Commonwealth of the Northern Mariana Islands

September 30, 2013

This technical update adds the Commonwealth of the Northern Mariana Islands to list of certain territories of the United States where, subject to certain requirements, persons may be U.S. citizens at birth.

Technical Update – Certified Court Dispositions

September 30, 2013

This technical update adds language addressing existing policy on circumstances where an applicant is required to provide a certified court disposition.

POLICY ALERT – Security-Related Positions Abroad

June 10, 2013

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual to address amendments to section 1059(e) of the National Defense Authorization Act of 2006 by Public Law 112-227.

POLICY ALERT – Comprehensive Citizenship and Naturalization Policy Guidance

January 07, 2013

USCIS is issuing updated and comprehensive citizenship and naturalization policy guidance in the new USCIS Policy Manual.

Volume 1 - General Policies and Procedures

Part A - Customer Service

Chapter 1 - Guiding Principles

A. Purpose

USCIS's customer service policy goals are to:

- Achieve excellent customer service each time USCIS interacts with its customers.

- Ensure the delivery of accurate, useful, and timely information to USCIS customers.

- Identify issues and provide solutions to enhance consistency and to increase customer confidence.

- Provide USCIS employees and contractors with clear and concise customer service guidance and standards.

USCIS will ensure its employees have the knowledge and tools needed to administer the immigration laws and policies with professionalism. USCIS will ensure educational and case-specific information is accessible, reliable, and accurate.

B. Core Principle

Meeting customer service expectations can be challenging. The performance of agency duties inevitably means that some customers will be disappointed if their cases are denied. Good customer service means that everyone USCIS affects will be treated with dignity and courtesy regardless of the outcome of the decision. USCIS will not approve a benefit unless all eligibility requirements have been met. Similarly, USCIS will not approve a benefit until all national security and public safety concerns have been appropriately addressed.

USCIS will approach each case objectively and adjudicate each case in a thorough and fair manner. USCIS will carefully administer every aspect of its immigration mission so that its customers can hold in high regard the privileges and advantages of U.S. immigration.

C. Governing Principles

The following principles will govern every action USCIS takes:

1. Respect

USCIS will demonstrate respect for its customers. USCIS will be responsive to customers' inquiries and provide information and services that demonstrate courtesy and cultural awareness. Through its service, USCIS will be an example of how to treat customers with respect, courtesy, and dignity.

2. Competency

USCIS will provide employees with the comprehensive training necessary to perform their duties. Employees will diligently seek facts through appropriate resources to ensure that customers receive thorough, accurate information and decisions.

3. Consistency

USCIS will administer the immigration laws, regulations, and policies in a consistent manner.

4. Confidentiality

USCIS will comply with all applicable federal privacy and confidentiality laws and policies. USCIS will utilize all available measures to safeguard records that may contain sensitive personal information.

Chapter 2 - Delivery of Services

A. Responding to Customer Inquiries

Inquiries to USCIS may come from different sources and in various formats, but they all have one thing in common: t he person making the inquiry has a question or concern and is reaching out to USCIS for a response or resolution.

All inquiries should be reviewed with the goal of "First Contact Resolution," that is, giving an accurate and complete answer the first time to eliminate the need for a subsequent inquiry about the same issue.

Once USCIS determines that the inquiry is not a complaint, the inquiry is resolved either through standard processing or special handling.[1] See Chapter 6, Handling Customer Complaints [1 USCIS-PM A.6].

1. Standard Processing

Most customer inquiries are routine, requesting general information or general assistance. These inquiries can be successfully resolved by regular procedures that are established for daily business operations. Such inquiries do not contain unusual circumstances which may require special handling.

2. Special Handling

Inquiries that contain unusual circumstances may require deviation from regular procedures to obtain proper results. An employee who receives such an inquiry should determine which of the following options should be used to process the inquiry:

Inquiries Not Within USCIS's Jurisdiction

In situations where USCIS receives an inquiry that falls under the jurisdiction of another agency or department, USCIS redirects the inquiry as appropriate and provides the contact information of the correct agency or department to the customer.

Expedite Processing

Urgent situations that require accelerated processing should be expedited. Expedite cases may require the use of alternate procedures to ensure a rapid resolution.

B. In-Person Contact

There are a variety of ways in which customers can communicate in person to USCIS with any questions or concerns they may have:

1. InfoPass[2] For more information on InfoPass, see Chapter 4, Infopass [1 USCIS-PM A.4].

USCIS provides a free service called InfoPass that allows customers to schedule an appointment with USCIS through the internet.[3] See the USCIS website for information on InfoPass. Whenever possible, customers or their representatives who reside in the United States (domestically) should use InfoPass to schedule appointments if they would like to discuss their cases in person at their local USCIS field office. Customers and their representatives may also use InfoPass to cancel or reschedule appointments.

Customers residing overseas should review the International Immigration Offices overview page to determine which office has jurisdiction over their country of residence and information on scheduling appointments.[4] See the USCIS website for information on International Immigration Offices.

2. Community Outreach Events

USCIS engages in community outreach programs to educate and increase public awareness, to increase dialogue and visibility, and to solicit feedback on USCIS operations. During outreach events, USCIS employees do not respond to case-specific inquiries. Customers asking case-specific questions at outreach events should be directed to submit their inquiry through appropriate channels.

C. Telephonic Inquiries

Customers may contact USCIS by phone:

1. National Customer Service Center (NCSC) Inquiries

For the convenience of its customers located within the United States (and territories), USCIS provides a toll-free telephone number answered by the National Customer Service Center (NCSC).

- NCSC: 1-800-375-5283 (TDD for the deaf or hard of hearing: 1-800-767-1833)[5] See Chapter 3, National Customer Service Center (NCSC) [1 USCIS-PM A.3].

2. International Customers

Customers located outside of the United States should contact the overseas office with jurisdiction over their place of residence. USCIS provides a complete listing of jurisdictions and overseas field offices and their phone numbers.[6] A complete listing of jurisdictions, overseas field offices and their phone numbers can be found in the USCIS website's International Immigration Offices page.

3. Military Help Line

USCIS has established a toll-free military help line exclusively for members of the military and their families. USCIS customer service specialists are available to answer calls Monday through Friday from 8 a.m. until 4:30 p.m. (CST), excluding federal holidays. After-hours callers receive an email address that they can use to contact USCIS for assistance.

- Military Help Line: 1-877-CIS-4MIL (1-877-247-4645)

4. Premium Processing Line

USCIS has established a special phone number and email address for each service center. These special communication channels are available only to Premium Processing Service customers.[7] See the USCIS website for more information on Premium Processing Service. See Form I-907, Request for Premium Processing Service.

- Premium Processing Line: 1-866-315-5718

5. Hague Adoptions Line

USCIS has established a toll-free line for questions about adoptions from Hague Convention countries.[8] See the USCIS website for more information on the Hague Process.

- Hague Adoptions Line: 1-877-424-8374

D. Correspondence

Customers may contact USCIS by mail:

1. Traditional Mail

General mailing addresses are publicly available to allow the submission of applications and petitions, responses to requests for evidence, or customer Service Requests in a hard copy format.[9] A Service Request is a tool that allows the customer to place an inquiry with USCIS for certain applications, petitions, and services. Service Requests may also be submitted through the NCSC or online. Dedicated mailing addresses are available, as appropriate, to aid specific USCIS processes. Mailing addresses are available at the Find a USCIS Office page on the USCIS website.

2. Email

USCIS Service Centers

USCIS service centers provide designated email boxes for customers to inquire about their pending or adjudicated petitions or applications. The email addresses for the Service Centers are as follows:

- California Service Center: csc-ncsc-followup@dhs.gov
- Vermont Service Center: vsc.ncscfollowup@dhs.gov
- Nebraska Service Center: ncscfollowup.nsc@dhs.gov
- Texas Service Center: tsc.ncscfollowup@dhs.gov

Prior to submitting an inquiry to one of the service centers' email addresses, the customer must have called the NCSC to submit a Service Request. If the customer has not received a response within 15 days of the call to the NCSC, then the customer may submit an inquiry to the service center where the case is pending.

Any email submitted to a service center must include the Service Request reference number provided by the NCSC at the time the Service Request was created. If the customer has not received a response within 21 days of the email to the service center, the customer may contact the USCIS Headquarters Office of Service Center Operations.[10] The customer may contact the USCIS Headquarters Office of Service Center Operations by emailing SCOPSSCATA@dhs.gov.

International USCIS Offices

Each USCIS overseas office has one or more email addresses that are accessible to the public, depending on the type

of inquiry.[11] See the USCIS website for information on International Immigration Offices. The USCIS International Operations Division has also activated a public inquiry mailbox for USCIS customers in Canada. The inquiry mailbox, USCIS.Canada@dhs.gov, is monitored and managed by the USCIS Mexico City field office whose administrative jurisdictional responsibilities include Canada.

USCIS officers should use caution when responding to email inquiries requesting case-specific information, as issues of privacy and identity may arise.

3. Facsimile

USCIS does not provide general delivery facsimile numbers.[12] The Verification Division publishes the E-Verify Photo Tool fax number for general public use. USCIS does not publish dedicated facsimile numbers but USCIS offices have the discretion to provide the facsimile number for customers to submit documentation electronically when appropriate to aid in the efficient resolution of a case or as a method to expedite delivery of requested documents or information. Customers should not submit documents via facsimile unless they are specifically asked to do so by a USCIS employee.

4. Service Request Management Tool (SRMT)

The Service Request Management Tool (SRMT) provides USCIS Customer Service staff the ability to record and transfer unresolved Service Requests from customers to the appropriate USCIS service center, domestic USCIS field o ffice, or USCIS asylum office where the customer's application or petition is pending a decision or was adjudicated.

The USCIS office receiving a Service Request should take the necessary steps to communicate directly to the customer about the inquiry or timely relocate the inquiry to another office or organization when appropriate.[13] See Chapter 8, Service Request Management Tool (SRMT) [1 USCIS-PM A.8].

Footnotes

1.

See Chapter 6, Handling Customer Complaints [1 USCIS-PM A.6].

2.

For more information on InfoPass, see Chapter 4, Infopass [1 USCIS-PM A.4].

3.

See the USCIS website for information on InfoPass.

4.

See the USCIS website for information on International Immigration Offices.

5.

See Chapter 3, National Customer Service Center (NCSC) [1 USCIS-PM A.3].

6.

A complete listing of jurisdictions, overseas field offices and their phone numbers can be found in the USCIS website's International Immigration Offices page.

7.

See the USCIS website for more information on Premium Processing Service. See Form I-907, Request for Premium Processing Service.

8.

See the USCIS website for more information on the Hague Process.

9.

A Service Request is a tool that allows the customer to place an inquiry with USCIS for certain applications, petitions, and services. Service Requests may also be submitted through the NCSC or online.

10.

The customer may contact the USCIS Headquarters Office of Service Center Operations by emailing SCOPSSCATA@dhs.gov.

11.

See the USCIS website for information on International Immigration Offices.

12.

The Verification Division publishes the E-Verify Photo Tool fax number for general public use.

13.

See Chapter 8, Service Request Management Tool (SRMT) [1 USCIS-PM A.8].

Chapter 3 - National Customer Service Center (NCSC)

A. NCSC Organization

For the convenience of its customers within the United States,[1] Customers located outside of the United States should direct their inquiries to the overseas USCIS field office with jurisdiction over their place of residence. USCIS provides a toll-free telephone number, which is answered by the NCSC. The NCSC provides escalating levels of service to handle inquiries of increasing complexity and consists of an Interactive Voice Response (IVR) system and a multi-tiered level of live assistance.

- Callers initially have the opportunity to have their questions answered directly by the IVR system. If additional assistance is needed, callers may request live assistance by selecting that option from within the IVR.

- Tier 1 Contact Center Customer Service Representatives (CSRs) offer the first level of live assistance. CSRs may be contract employees. CSRs provide basic case-specific and general non-case-specific information to customers. Information provided by Tier 1 will be limited in verbiage and format by informational response scripts that are created and provided by USCIS.

- When unable to completely resolve an inquiry, the Tier 1 CSR may transfer the call to the Tier 2 live assistance level to be answered by a USCIS officer.

- Customers may, at any time, request to have a call directed to a supervisor.

- Inquiries that may need to be resolved by a USCIS domestic field office that physically has the case file require the creation of a Service Request. The Service Request is automatically routed to the USCIS office that can best provide a resolution to the customer inquiry.

- For inquiries that may need to be resolved by a USCIS overseas field office that has the hard copy case file, the customer should be referred to the appropriate overseas field office and given that office's contact information.

B. Levels of Assistance

The following provides additional information regarding the levels of assistance available through the NCSC.

1. Interactive Voice Response (IVR)

At the start of an NCSC call, the customer interfaces with the IVR telephone system, which is a versatile key technology for automating customer access to services.

IVR enables callers to navigate a telephonic recorded menu to reach specific information or assistance.

The IVR system is available to customers 24 hours a day, 7 days a week.

2. Live Assistance - Tier 1

Live assistance is available at published times for questions not answered by the IVR system.

After interacting with the IVR, the caller has the option to be transferred to a CSR at the Tier 1 Contact Center.

When unable to completely resolve the customer's inquiry, the CSR may create a Service Request for the USCIS office that is processing the customer's case, escalate the call to a Tier 2 USCIS officer, or route the call to a supervisor, as appropriate.

3. Live Assistance - Tier 2

If the customer has spoken with the CSR at a Tier 1 Contact Center and has not been able to obtain a resolution, the call may be escalated to a Tier 2 Contact Center if applicable.

Tier 2 is staffed by USCIS officers with access to applicable USCIS systems. USCIS officers may also escalate callers to a supervisor when necessary.

4. Live Assistance - Tier 2 (Supervisor)

When appropriate, the USCIS officer may escalate the call to a supervisory USCIS officer. Calls will be routed to a supervisor when:

- Customer requests to speak to a supervisor;
- Customer is unusually upset and believes the proposed resolution is improper; or
- The matter requires urgent or expedited assistance by another office to resolve in a timely manner.

A USCIS Tier 2 supervisor has the ability to contact USCIS field offices, asylum offices, service centers, and the National Benefits Center through designated points of contact to address any issues that require immediate action or direct assistance. When appropriate for the situation, a supervisor may:

- Verify the information provided to the customer by the USCIS officer.
- Directly contact the appropriate USCIS office to determine if any additional options may be available to resolve the caller's issue (if needed).
- Create a Service Request if the issue cannot be resolved by the NCSC.
- Request that the appropriate office take action to alleviate any unnecessary additional wait times, if the caller's issue resulted from a USCIS error.

Footnotes

1.

Customers located outside of the United States should direct their inquiries to the overseas USCIS field office with jurisdiction over their place of residence.

Chapter 4 - InfoPass

A. InfoPass System

In 2004, USCIS implemented a customer-friendly appointment system called InfoPass in domestic field offices nationwide. The InfoPass system, an Internet-based application, allows customers to self-schedule an appointment to visit a USCIS public information room to speak with an officer on a day and time of their choosing within a two-week timeframe. In addition, many of the USCIS overseas field offices have also recently implemented InfoPass. InfoPass provides USCIS with an efficient and effective method of managing its workload and meeting customer demand. InfoPass is a free service USCIS offers to its customers.

B. Scheduling an InfoPass Appointment

To schedule an appointment, customers should visit the InfoPass page on the USCIS website. Customers who do not have access to a computer may visit a USCIS field office and schedule an appointment on an InfoPass kiosk. USCIS officers may assist customers with creating InfoPass appointments as needed.

The InfoPass scheduling menu provides the option of scheduling an appointment in one of twelve languages:

- Arabic;
- Chinese;
- Creole;
- English;
- French;
- Korean;
- Polish;
- Portuguese;
- Spanish;
- Tagalog;
- Russian; and
- Vietnamese.

Chapter 5 - Privacy and Confidentiality in Customer Service

A. Privacy in Customer Service

1. Background

Broadly stated, the purpose of the Privacy Act is to balance the government's need to maintain personal information with the rights and protections against unwarranted invasions of privacy stemming from federal agencies' collection, maintenance, use, and disclosure of personal information.[1] See 5 U.S.C. 552a.

Under the Privacy Act, a federal agency must provide certain protections for personally identifiable information (PII) that it collects, disseminates, uses, or maintains. In particular, the Privacy Act covers systems of records that an agency maintains and retrieves by a person's name or other personal identifier (for example, Social Security number). The Privacy Act requires that privacy information in the custody of the federal government be protected from unauthorized disclosure; violations of these requirements may result in civil and criminal penalties.

2. Application of the Privacy Act in Customer Service

DHS defines PII as any information that permits the identity of an individual to be directly or indirectly inferred, including any information which is linked or linkable to that person regardless of whether the person is a U.S. citizen, lawful permanent resident, visitor to the United States, or employee or contractor of the Department.

Sensitive PII is defined as information which, if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to a person. Some examples of PII that USCIS customer service personnel may encounter include:

- Name
- A-Number
- Address
- Date of Birth
- Social Security Number
- Naturalization or Citizenship Certificate Number

USCIS employees have a professional and legal responsibility to protect the PII the agency collects, disseminates, uses, or maintains about persons. All USCIS employees must exercise due care when handling all PII and all information encountered in the course of their work. All USCIS employees processing PII must know and follow the policies and procedures for storing, handling, and sharing PII. Specifically, USCIS employees must:

- Collect PII only when authorized;
- Limit the access and use of PII;
- Secure PII when not in use;
- Share PII, only as authorized, with persons who have a need to know; and
- Complete and remain current with all PII training mandates.

Providing information to a customer about his or her case often involves releasing information covered under the Privacy Act. It is imperative that USCIS employees and contractors verify the identity of the customer, his or her authorized representative, or both, and ensure that they are entitled to receive case information. USCIS employees and contractors should never release PII over the phone until the identity of the caller and his or her need to know the information have been confirmed.

In addition, written responses to Service Requests or other inquiries are sent to the address of record. If the customer provides an address for a response that is different than the address listed in USCIS systems or in the applicant's or petitioner's file, the response should indicate that the customer must update his or her address before USCIS is able to send any correspondence to that address.

3. Congressional and Other Third-Party Releases

Numerous laws, regulations, and policies limit the disclosure of information contained in USCIS files and USCIS data systems. While the Privacy Act is limited to the protection of information regarding a lawful permanent resident or U.S. citizen, by policy, this protection is extended to all persons. In addition, specific statutory, regulatory, and policy protections may apply to certain cases, such as Violence Against Women Act (VAWA), T, and U cases.

Information from other agencies, such as U.S. Immigration and Customs Enforcement (ICE) or the Federal Bureau of Investigation (FBI), may be located in USCIS files and systems. This information must not be released in response to an inquiry, although it may be appropriate to refer the inquiry to another agency.

Case inquiries from Congressional offices are covered by guidance provided by the USCIS Office of Legislative Affairs (OLA) and any such inquiries must be handled by OLA or a designated congressional liaison in accordance with the OLA Standard Operating Procedures.

Generally speaking, the Privacy Act prohibits the disclosure of information subject to the protections of the Act without the consent of the individual to whom the information relates. There are enumerated exceptions of the Act that may apply.

One of those exceptions authorizes disclosure to either House of Congress, or any Congressional committee or subcommittee, joint committee, or subcommittee of a joint committee if the matter is within their jurisdiction. For all other requests from members of Congress, such as constituent requests, USCIS requires that a written, signed, and notarized privacy release be obtained from the applicant or petitioner before any information is released.

Similarly, prior to responding to a non-Congressional third-party case inquiry, a written, signed, and notarized privacy release must be obtained from the applicant or petitioner.

4. Requests from Law Enforcement Agencies (LEAs)

Information may be shared with other DHS components under the existing DHS information sharing policy, which considers all DHS components one agency. Requests from LEAs outside of DHS should be referred to the Fraud Detection and National Security (FDNS) supervisor for the office. For requests from federal, state, or local government agency representatives who want to review or want copies of documents from an A-file, USCIS employees should refer to USCIS records procedures regarding outside agency requests for USCIS files.

If an Office of Personnel Management (OPM) or DHS Office of Inspector General (OIG) investigator requests information, the USCIS employee should provide the information upon verifying the requestor's identity. USCIS employees and contractors are also reminded that they must provide prompt access for auditors, inspectors, investigators, and other personnel authorized by the OIG to any files, records, reports, or other information that may be requested either orally or in writing, and this cooperation may not be impeded by supervisors.

B. Maintaining Confidentiality of VAWA, T, and U Cases

1. Background

Applicants and recipients of immigration relief under the Violence Against Women Act of 1994 (VAWA)[2] See Pub. L. 103-322 (Sept. 13, 1994). and the Victims of Trafficking and Violence Prevention Act of 2000[3] See Pub. L. 106-386 (Oct. 28, 2000). (T and U nonimmigrant status for victims of trafficking and other serious crimes) are entitled to special protections with regard to privacy and confidentiality. The governing statute prohibits the unauthorized disclosure of information about VAWA, T, and U cases to anyone other than an officer or employee of DHS, the Department of Justice (DOJ), or the Department of State (DOS) who has a need to know.[4] See 8 U.S.C. 1367.

This confidentiality provision is commonly referred to as "Section 384" because it originally became law under Section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, which protects the confidentiality of victims of domestic violence, trafficking, and other crimes who have filed for or have been granted immigration relief.

Because an unauthorized disclosure of information regarding a VAWA, T, or U case can have significant consequences, it is imperative that USCIS employees maintain confidentiality in these cases. Victims of domestic violence, victims of trafficking, and victims of crimes can be put at risk, as can their family members, if information is provided to someone who is not authorized. Anyone who willfully uses, publishes, or permits any information pertaining to such victims to be disclosed in violation of the above-referenced confidentiality provisions may face disciplinary action and be subject to a civil penalty of up to $5,000 for each violation.

2. Scope of Confidentiality

Duration of Confidentiality Requirement

By law, the confidentiality provisions apply while a VAWA, T, or U case is pending and after it is approved, and ends when the application for immigration relief is denied and all opportunities for appeal of the denial have been exhausted. However, as a matter of policy, USCIS has extended the confidentiality to include denied petitions.

Disclosure of Information

USCIS cannot release any information regarding VAWA, T, and U cases until the identity of the requestor of information is verified and that person's authorization to know or receive the protected information is verified. Such identity and eligibility verification must be done before responding to any inquiry, expedite request, referral, or other correspondence.

Exceptions for Disclosure of Information

USCIS is permitted to disclose information pertaining to VAWA, T, and U cases in certain, limited circumstances. These circumstances include:

- Census Information – Disclosure of information may be made in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce.[5] Under 13 U.S.C. 8.

- Legitimate Law Enforcement Purposes – Disclosure of information may be made to law enforcement officials to be used solely for a legitimate law enforcement purpose.

- Judicial Review – Information can be disclosed in connection with judicial review of a determination provided it is in a manner that protects the confidentiality of the information.

- Applicant Waives Confidentiality – Adults can voluntarily waive the confidentiality provision; if there are multiple victims in one case, they must all waive the restrictions.

- Public Benefits – Information may be disclosed to federal, state, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for benefits.[6] In accordance with 8 U.S.C. 1641(c).

- Congressional Oversight Authority (for example, Government Accountability Office audits) – The Attorney General and the Secretary of Homeland Security can disclose information on closed cases to the chairmen and ranking members of Congressional Committees on the Judiciary, for the exercise of Congressional oversight authority. The disclosure must be in a manner that protects the confidentiality of the information and omits

personally identifying information (including location-related information about individuals).

- Communication with Non-Governmental Organizations (NGO) – Government entities adjudicating applications for relief[7] This applies to application for relief pursuant to 8 U.S.C. 1367(a)(2). and government personnel carrying out mandated duties under the Immigration and Nationality Act (INA)[8] See INA 101(i)(1). may, with the prior written consent of the foreign national involved, communicate with nonprofit NGO victims' service providers for the sole purpose of assisting victims in obtaining victim services. Agencies receiving referrals are bound by the confidentiality provisions.

- National Security Purposes – The Secretary of Homeland Security, the Secretary of State, or the Attorney General may provide in their discretion the disclosure of information to national security officials to be used solely for a national security purpose in a manner that protects the confidentiality of such information.

3. Providing Customer Service in VAWA, T, and U Cases

When an applicant for VAWA, T, or U benefits requests customer service, USCIS employees must handle the request with care to ensure confidentiality is maintained.

Change of Address

A change of address can be made by submitting a written request with an original signature to the Vermont Service Center (VSC). Applicants with VAWA, T, or U related cases should not use change of address resources online. Instead, these applicants should submit a Change of Address (Form AR-11), or call the National Customer Service Center (NCSC) to change their address.

If the case has been transferred to a USCIS field office, the VSC transfers the change of address request to the appropriate office. A change of address in VAWA, T, or U cases that has been transferred to a field office can only be made by a supervisor.

An applicant may also appear in person at a USCIS field office to request a change of address. The applicant's identity must be verified prior to making the requested change. If the case is at the VSC, the field office must also notify the VSC of the change of address.

Telephonic Inquiries to the NCSC

As previously noted, the identity of the person inquiring about a confidential case must be verified and that person's eligibility to receive information must also be verified. Such verification cannot be effectuated telephonically.

C. Asylum, Refugees, Credible Fear Determinations, and Reasonable Fear Determinations

1. Background

Federal regulations generally prohibit the disclosure to third parties of information contained in or pertaining to asylum applications, credible fear determinations, and reasonable fear determinations.[9] See 8 CFR 208.6. This includes information contained in the Refugee and Asylum Processing System (RAPS) or the Asylum Pre-Screening System (APSS), except under certain limited circumstances. As a matter of policy, this regulation is extended to Registration for Classification as Refugee (Form I-590) as well as Refugee/Asylee Relative Petitions (Form I-730).

These regulations safeguard information that, if disclosed publicly, could subject the claimant to retaliatory measures by government authorities or non-state actors in the event the claimant is repatriated, or could endanger the security of the claimant's family members who may still be residing in the country of origin.

Moreover, public disclosure might give rise to a plausible protection claim by the claimant where one would not otherwise exist by bringing an otherwise ineligible claimant to the attention of the government authority or non-state actor against which the claimant has made allegations of mistreatment.

Confidentiality is breached when information contained in or pertaining to an asylum application (including information contained in RAPS or APSS), refugee application, or I-730 petition is disclosed to a third-party in violation of the regulations, and the unauthorized disclosure is of a nature that allows the third-party to link the identity of the applicant to:

- The fact that the applicant or petitioner has applied for asylum or refugee status;
- Specific facts or allegations pertaining to the individual asylum or refugee claim contained in an asylum or refugee application; or
- Facts or allegations that are sufficient to give rise to a reasonable inference that the applicant has applied for asylum or refugee status.

The same principles generally govern the disclosure of information related to credible fear and reasonable fear determinations, as well as to applications for withholding or deferral of removal under Article 3 of the Convention Against Torture, which are encompassed within the asylum application. As mentioned above and as a matter of policy, USCIS extends the regulatory safeguards to include refugee case information as well as Form I-730 information.

In the absence of the asylum or refugee applicant's written consent or the Secretary of Homeland Security's specific authorization, disclosure may be made only to U.S. Government officials or contractors and U.S. federal or state courts on a need-to-know basis related to certain administrative, law enforcement, and civil actions.

The release of information relating to an asylum or refugee application, credible fear determination, or reasonable fear determination (including information contained in RAPS or APSS) to an official of another government or to any entity for purposes not specifically authorized by the regulations without the written consent of the claimant requires

the express permission of the Secretary of Homeland Security.

2. Inquiries Related to an Asylum or Refugee Application or Credible or Reasonable Fear Determination

Information contained in, or pertaining to, any asylum or refugee application must not be disclosed to any third-party without the written consent of the applicant, except as permitted by regulation or at the discretion of the Secretary of Homeland Security.[10] See 8 CFR 208.6.

This includes neither confirming nor denying that a particular individual filed:

- Application for Asylum and Withholding of Removal (Form I-589);
- Registration for Classification as Refugee (Form I-590); or
- Refugee/Asylee Relative Petition (Form I-730).

USCIS employees should respond to inquiries related to Form I-589, Form I-590, and Form I-730 applications in different ways depending on the inquiry:

Request for Disability Accommodation at an Upcoming Form I-589 Interview

Tier 2 officers may create a Service Request Management Tool (SRMT) request and submit the request to the asylum office with jurisdiction over the pending asylum application. The asylum office then contact the applicant to arrange for disability accommodation at the interview. While officers must not confirm or deny the existence of a pending asylum application, those making disability accommodation requests for upcoming asylum interviews should be told that the request is being recorded and will be forwarded to the appropriate office for follow-up.

Change of Address Request

Tier 2 officers may create a Service Request and submit it to the asylum office or service center with jurisdiction over the pending asylum application or Form I-730 petition. The office then fulfills the Service Request. While officers must not confirm or deny the existence of a pending asylum application, those making address change requests should be told that the request is being recorded and will be forwarded to the appropriate office.

NCSC Status Inquiries for Form I-589 Applications and Form I-730 Petitions

NCSC personnel may not respond to any status inquiries, and may not confirm or deny the existence of an application or petition. Instead, NCSC personnel should direct the caller to the local office with jurisdiction over the application. The office with jurisdiction over the application must respond to the inquiry.

NCSC Status Inquiries for I-590 Applications

NCSC personnel may not respond to any status inquiries and may not confirm or deny the existence of an application or petition. Instead, NCSC personnel should obtain all relevant information from the inquirer and refer the inquiry to the USCIS Headquarters Refugee Affairs Division (RAD) for response.

Inquiries Regarding Subsequent Applications or Petitions Based on Underlying Form I-589, Form I-590, or Form I-730

Officers may respond to inquiries regarding subsequent applications or petitions that are based on an underlying Form I-589, Form I-590, or Form I-730 (including Application for Travel Document (Form I-131), Application for Employment Authorization (Form I-765), or Application to Register Permanent Residence or Adjust Status (Form I-485) applications or petitions). Officers may not confirm or deny the existence of the underlying application.

General Inquiries

USCIS employees may respond to general questions about the asylum program, the U.S. Refugee Admission Program (USRAP), and credible and reasonable fear screenings.[11] Examples of general inquiries include: Who can apply for asylum or refugee status, how to apply for asylum or access the USRAP, bars to protection, whether applicants are eligible for work authorization, number of days it normally takes before an interview is scheduled. However, for all specific case status questions relating to I-589 applications or I-730 petitions, the inquirers must be directed to contact the local asylum office or service center with jurisdiction over the application. For specific case status questions relating to I-590 refugee applications, the inquiry must be referred to RAD for response.

Asylum offices may accept case inquiries from the applicant or the applicant's attorney or representative with a properly completed Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) on file.

Asylum offices may receive case inquiries in a variety of ways, such as by mail, email, phone, fax, or in person. When it is possible to verify the identity of the applicant or attorney or representative inquiring, offices may respond using any of those communication channels. If it is not possible to verify the identity of the inquirer, asylum offices should respond to inquiries by providing a written response to the last address the applicant provided.

RAD does not respond to inquiries over the phone, but instead asks the inquirer to put his or her request in writing so that the signature and return address can be compared to information on file. RAD responds to an inquiry received by email only if the email address matches the information the applicant submitted to the Resettlement Support Center.

D. Temporary Protected Status (TPS)

1. Background

Like refugee and asylum cases, information pertaining to TPS cases may not be disclosed to certain third parties because unauthorized disclosure of information may put the applicant or the applicant's family at risk.[12] See INA 244(c)(6). See 8 CFR 244.16.

The law prohibits the release of information contained in the TPS application or in supporting documentation to third parties without the written consent of the applicant. A third party is defined as anyone other than:

- The TPS applicant;
- The TPS applicant's attorney or authorized representative (with a properly executed G-28 on file);
- A DOJ officer, which has also been extended to include a DHS officer following the transfer of certain immigration functions from DOJ to DHS; or
- Any federal or state law enforcement agency.

2. Inquiries Related to TPS

USCIS may not release any information contained in any TPS application and supporting documents in any form to any third party, without a court order or the written consent of the applicant.[13] See 8 CFR 244.16 for exceptions.

Status inquiries may not confirm or deny the existence of a TPS application, or whether an individual has TPS, until the identity of the inquirer has been confirmed and it has been determined the inquirer is not a third party to whom information may not be released.

USCIS employees must adhere to these same TPS confidentiality provisions regarding the disclosure of information to third parties even if the information is contained in a TPS-related form such as the Application for Employment Authorization (Form I-765), which every TPS applicant must file; a TPS-related waiver requested on Application for Waiver of Grounds of Inadmissibility (Form I-601); or a TPS-related Application for Travel Document (Form I-131). With respect to confidentiality, employees must treat these records as they do other TPS supporting documentation in the TPS application package.

USCIS employees may respond to general questions about the TPS program.[14] Examples of general inquiries include: Who can apply for TPS, how to apply for TPS, bars to TPS, whether applicants are eligible for work authorization, and the number of days it normally takes to adjudicate an application for TPS. However, for all case-specific questions relating to Form I-821 applications, identity must first be confirmed and eligibility to receive such information must first be established.

Offices must not take or respond to inquiries about the status of a TPS application made by telephone, fax, or email because it is not possible to sufficiently verify the identity of the inquirer. Offices may accept written status requests signed by the applicant (or the applicant's attorney or representative with a properly completed G-28 on file).

3. Exceptions for Disclosure

Information about TPS applications and information contained in supporting documentation can be disclosed to third parties in two instances:

- When it is mandated by a court order; or
- With the written consent of the applicant.

Since they are not considered "third parties," information about TPS cases can be disclosed to officers of DOJ, DHS, or any federal or state law enforcement agency.[15] See 8 CFR 244.16. Information disclosed pursuant to the requirements of the TPS confidentiality regulation may be used for immigration enforcement or in any criminal proceeding.

E. Legalization

1. Background

Statutory and regulatory provisions require confidentiality in legalization cases and LIFE Act legalization cases, prohibiting the publishing of any information that may be identified with a legalization applicant.[16] See 8 U.S.C. 1255a(c)(4) and 8 U.S.C. 1255a(c)(5). See 8 CFR 245a.2(t), 8 CFR 245a.3(n), and 8 CFR 245a.21. The laws also do not permit anyone other than sworn officers and employees of DHS and DOJ to examine individual applications.

Information contained in the legalization application can only be used in the following circumstances:

- To make a determination on the legalization application;
- For criminal prosecution of false statements violations;[17] See 8 U.S.C. 1255a(c)(6), or
- In preparation of certain reports to Congress.

A breach in confidentiality of legalization cases can result in a $10,000 fine.

2. Exceptions for Disclosure of Information

USCIS is permitted to disclose information pertaining to legalization cases in certain, limited circumstances. These circumstances include:

Law Enforcement Purposes

USCIS is required to disclose information to a law enforcement entity in connection with a criminal investigation or prosecution, when that information is requested in writing.

Requested by an Official Coroner

USCIS is also required to disclose information to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not the individual died as a result of a crime).

Census Information

Disclosure of information may be made in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce.[18] Under 13 U.S.C. 8.

Available from another Source

USCIS may disclose information furnished by an applicant pursuant to the legalization application, or any other information derived from the application, provided that it is available from another source (for example, another application or if the information is publicly available).

3. Inquiries Related to Legalization

Case-specific information may be provided to the applicant and the applicant's attorney or authorized representative (with a properly completed G-28 on file) after the inquirer's identity has been verified. No others are authorized to receive legalization information unless one of the enumerated exceptions to disclosure noted above applies.

F. Special Agricultural Workers (SAW)

1. Background

Material in A-files filed pursuant to the SAW program is protected by strict confidentiality provisions.[19] See INA 210. This pertains to the 1987-1988 SAW program. The statute provides that the employee who knowingly uses, publishes, or permits information to be examined in violation of the confidentiality provisions shall be fined not more

than $10,000. In general, USCIS may not use information furnished by the SAW applicant for any purpose other than to make a determination on the application, for termination of temporary residence, or for enforcement actions relating to false statements in applications.[20] See INA 210(b)(7). The applicant may not waive the confidentiality provisions and they even survive the death of the applicant.

2. Exceptions for Disclosure and Use of Information

It is appropriate for DHS and DOJ employees to have access to SAW material. The materials are subject to the above mentioned penalties for unlawful use, publication, or release. USCIS is permitted to disclose information pertaining to SAW cases in certain, limited circumstances. These circumstances include:

Law Enforcement Purposes

USCIS is required to disclose information to a law enforcement entity in connection with a criminal investigation or prosecution, when that information is requested in writing.

Requested by an Official Coroner

USCIS is also required to disclose information to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not the individual died as a result of a crime).

Criminal Convictions

Information concerning whether the SAW applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

3. Inquiries Related to Special Agricultural Workers

In general, it is permissible to disclose only that an applicant has applied for SAW and the outcome of the adjudication. Case information may be provided to the applicant and the applicant's attorney or authorized representative (with a properly completed G-28 on file) after the inquirer's identity has been verified. No others are authorized to receive SAW information unless one of the enumerated exceptions to disclosure noted above applies.

G. Nonimmigrants under "S" Visa Category

Nonimmigrants under the S visa category are foreign national witnesses or informants. An S nonimmigrant is not readily identified in USCIS systems. However, if a USCIS employee discovers that a customer is an S nonimmigrant or has applied for such status, the case must be handled carefully. Inquiries regarding an Interagency Alien Witness and Informant Record (Form I-854) as well as inquiries regarding an Application for Employment Authorization (

Form I-765) filed on the basis of being a principal nonimmigrant witness or informant in S classification, and qualified dependent family members should come from a law enforcement entity.[21] See 8 CFR 274a.12(c)(21).

If a customer makes an inquiry regarding the status of a Form I-854 or a Form I-765 filed as an S nonimmigrant, the USCIS employee must neither confirm nor deny the existence of such applications and should inform the customer that inquiries on these applications must be submitted through appropriate law enforcement channels.

Also, under no circumstances may USCIS employees ask questions about the S nonimmigrant's role in cooperating with law enforcement, the type of criminal activity for which the nonimmigrant is an informant or witness, or any specific information about the case in which the S nonimmigrant may be involved.

H. Applicants in the Witness Security Program

Applicants in the Witness Security Program (commonly known as the Witness Protection Program) are not identifiable in USCIS systems. Such applicants should not tell anyone, including USCIS employees, that they are participants in the program. Identities of foreign nationals in the program must be in separate immigration files. However, one file will have documentation of a legal name change.

If an applicant indicates that he or she is in the Witness Security Program, the applicant should be referred to the U.S. Marshals Service. Also, under no circumstances should USCIS employees ask questions about why or how the applicant was placed in the Witness Security Program or any specific information about the case which resulted in the applicant being placed in the Witness Security Program.

Footnotes

1. See 5 U.S.C. 552a.

2. See Pub. L. 103-322 (Sept. 13, 1994).

3. See Pub. L. 106-386 (Oct. 28, 2000).

4. See 8 U.S.C. 1367.

5. Under 13 U.S.C. 8.

6. In accordance with 8 U.S.C. 1641(c).

7. This applies to application for relief pursuant to 8 U.S.C. 1367(a)(2).

8.

See INA 101(i)(1).

9.

See 8 CFR 208.6.

10.

See 8 CFR 208.6.

11.

Examples of general inquiries include: Who can apply for asylum or refugee status, how to apply for asylum or access the USRAP, bars to protection, whether applicants are eligible for work authorization, number of days it normally takes before an interview is scheduled.

12.

See INA 244(c)(6). See 8 CFR 244.16.

13.

See 8 CFR 244.16 for exceptions.

14.

Examples of general inquiries include: Who can apply for TPS, how to apply for TPS, bars to TPS, whether applicants are eligible for work authorization, and the number of days it normally takes to adjudicate an application for TPS.

15.

See 8 CFR 244.16.

16.

See 8 U.S.C. 1255a(c)(4) and 8 U.S.C. 1255a(c)(5). See 8 CFR 245a.2(t), 8 CFR 245a.3(n), and 8 CFR 245a.21.

17.

See 8 U.S.C. 1255a(c)(6).

18.

Under 13 U.S.C. 8.

19.

See INA 210. This pertains to the 1987-1988 SAW program.

20.

See INA 210(b)(7).

21.

See 8 CFR 274a.12(c)(21).

Chapter 6 - Handling Customer Complaints

A. Submitting Complaints[1] This chapter specifically addresses complaints that do not involve egregious or criminal misconduct. For information on the Office of Security and Integrity's policy on reporting criminal

and egregious misconduct, see Chapter 10, Reporting Allegations of Misconduct or Other Inappropriate Behavior [1 USCIS-PM A.10].

Customers may file a complaint with USCIS in several ways:

Make a complaint while in a USCIS office by asking to speak to a supervisor

In these situations, a supervisor must be made available to the customer within a reasonable amount of time. The s upervisor should take the customer's name and information about the nature of the complaint. The supervisor should attempt to resolve the issue prior to the customer leaving the office, if possible.

Submit a written complaint by mail

Written complaints may include handwritten letters, emails, or faxes.[2] See Appendix for information on where to send complaints.

Contact the Office of Inspector General (OIG) directly[3] *See Appendix for information on how to contact the OIG.*

Contact information for the DHS OIG can be found on both the USCIS website and on the DHS website. OIG contact information must also be displayed in a public area, visible to customers, in every USCIS field office.

File a complaint with USCIS Headquarters (HQ)

HQ contact information is provided on USCIS's website. If the complaint is directed to the wrong directorate or program office, the complaint must be forwarded to the appropriate HQ entity.

Ask to speak to a call center supervisor

If a customer is unhappy with the service he or she received during a call to the National Customer Service Center (NCSC), the customer may ask to speak to a supervisor.[4] See Chapter 3, National Customer Service Center (NCSC) [1 USCIS-PM A.3]. Both Tier 1 and Tier 2 customer service representatives must transfer the call to a supervisor.

B. Complaints Received

Customers should not be expected to know where to first submit a complaint or how to elevate a complaint if they feel that their issue has not been adequately addressed. Under no circumstances should a customer's complaint be dismissed or disregarded because the customer did not follow the proper process for filing a complaint. All complaints received must be handled appropriately.

All complaints should be responded to either by providing a written response to the customer, calling the customer to address the complaint, or verbally addressing the complaint with the customer in situations where the customer submits his or her complaint in person. The response should explain steps taken to resolve the issue. In cases where the complaint cannot be resolved in a reasonable time, the response should acknowledge the receipt of the complaint, when a resolution is expected, and any additional action the customer should take.

Applicants with complaints about being victimized by a person engaged in the unauthorized practice of immigration law (UPIL) should be directed to USCIS's website where they can find state-by-state reporting information as well as information on how to report UPIL to the Federal Trade Commission (FTC).

Footnotes

1.

This chapter specifically addresses complaints that do not involve egregious or criminal misconduct. For information on the Office of Security and Integrity's policy on reporting criminal and egregious misconduct, see Chapter 10, Reporting Allegations of Misconduct or Other Inappropriate Behavior [1 USCIS-PM A.10].

2.

See Appendix for information on where to send complaints.

3.

See Appendix for information on how to contact the OIG.

4.

See Chapter 3, National Customer Service Center (NCSC) [1 USCIS-PM A.3].

Chapter 7 - Assessing Customer Satisfaction and Continuous Service Improvement

A. Introduction

Customer satisfaction is generally understood to be the sense of satisfaction that customers feel when comparing their expectations with the actual service the customer received. In order to improve customer service, USCIS conducts periodic assessments of customer satisfaction.

B. Assessing Customer Satisfaction

1. National Customer Service Center (NCSC)

USCIS conducts telephone interviews every month with customers who have called the NCSC within the past 90

days. USCIS may contract with a private company to execute this task. The interviews that are conducted represent a statistically valid sample. At least 20 percent of these interviews are conducted in the Spanish language.

Interview questions assess satisfaction with each component of the NCSC. USCIS develops the telephone interview questions in conjunction with the contracted company. These questions are reviewed annually for applicability and usefulness in assessing overall satisfaction with the services provided by the NCSC.

2. InfoPass Appointments

Field offices may provide customer satisfaction feedback forms in their waiting rooms. If such forms are provided, field offices should also provide customers a place within the office to deposit their feedback forms. Offices should not distribute legacy-INS Report of Complaint (Form I-847).

3. USCIS Website

In February 2010, USCIS, through its Office of Communications, implemented the American Customer Satisfaction Index (ACSI) Survey on the USCIS website. This recognized instrument is a randomized, pop-up, online survey offered to users of the USCIS website. By participating in this survey, USCIS became part of the E-Government Satisfaction Index and joined more than one hundred other government organizations and agencies that have already implemented this survey and are receiving feedback.

USCIS reviews the results of the survey on a quarterly basis and identifies opportunities for improvement on the USCIS website. Survey data also informs USCIS where resources might best be used to affect overall customer satisfaction.

Survey questions are designed to gauge the overall user experience and customer satisfaction with USCIS's website. Survey questions address the following USCIS website elements:

- Content;
- Functionality;
- Appearance;
- Navigation;
- Search function; and
- Performance (for example, speed).

A 10-point scale is used in survey questions. These individual scores are grouped according to the performance area,

then weighted and translated into a 100-point customer satisfaction score. The survey also contains open-ended questions. Responses to these questions are examined for specific feedback and recommendations USCIS can implement on the site.

USCIS also reviews a wide assortment of research papers and other products available from the survey administrator to help USCIS in data gathering, analysis, and site improvement activities.

Chapter 8 - Service Request Management Tool (SRMT)

A. Introduction

SRMT is used domestically to record and respond to a customer or his or her authorized representative's request for service. When the customer requests service by calling the National Customer Service Center (NCSC) toll-free telephone number, a SRMT Service Request is created by NCSC staff if the inquiry cannot be resolved during the call . Though the majority of SRMTs are created at the NCSC, SRMTs are also created by officers, often when access to an A-file is needed to properly respond to the applicant's question and the file is located elsewhere. Creating an SRMT allows the customer to receive a response without having to return to the office in most instances.

By using an online portal, customers living in the United States may create a request directly for change of address (COA) requests regarding most receipt types (excluding VAWA, T nonimmigrant, and U nonimmigrant applicants or petitioners).[1] For more information on confidentiality in VAWA, T, U, and other cases, see Chapter 5, Privacy and Confidentiality in Customer Service [1 USCIS-PM A.5]. Customers may also directly initiate SRMT inquiries online when certain pending applications or petitions are outside normal processing times.

B. Timely Response

USCIS responds to requests for service within the required timeframes. USCIS categorizes an SRMT request based upon the urgency and request type, and assigns a target completion date based on the category. USCIS completes r equests within each category on a first-in first-out basis. In general, the goal for all other SRMT referrals is 15 calendar days from the date of creation.

The following requests receive processing priority and should be responded to within 7 calendar days from the date of creation:

1. Change of Address (COA)

USCIS must process change of address requests at the earliest opportunity in order to reduce the potential for undeliverable mail and associated concerns. Address records on all open associated application or petition receipts must be updated unless instructed otherwise by the customer. Address record changes are only limited to select identified receipts when the customer explicitly requests the change of address request be restricted.

When the address listed for the applicant in a request is different from the address listed in USCIS information systems, it is considered to be an address change request regardless of whether the request was for a COA or for another reason. The address in the request is then used to change address records on all directly related receipts.

However, no address change request is inferred if the Service Request was initiated by a representative and the address listed in the request is the representative's address. Also, in these situations, a copy of the response should be mailed to the petitioner or applicant at his or her address of record.

USCIS does not accept COA requests on a VAWA, T nonimmigrant, or U nonimmigrant-related application or petition that are received through an SRMT. A hard-copy, signed COA request submitted through traditional mail is required. Offices should respond to VAWA, T nonimmigrant, and U nonimmigrant COA requests using the standard language.[2] See Chapter 5, Privacy and Confidentiality in Customer Service, Section B, Maintaining Confidentiality of VAWA, T, and U Cases, Subsection 3, Providing Customer Service in VAWA, T, and U Cases [1 USCIS-PM A.5(B)(3)].

2. Expedite Requests

Expedite service requests, including those involving Supplemental Security Income (SSI), are self-identified as urgent. The customer requesting expedited service may be required to submit evidence to support the expedite request.[3] See Chapter 12, Requests to Expedite Applications or Petitions [1 USCIS-PM A.12].

3. Reasonable Accommodation

Reasonable accommodation service requests must be responded to in accordance with the disability accommodations policy.[4] See Chapter 11, Disability Accommodation Requests [1 USCIS-PM A.11].

4. Military Referral

Military referrals have implied urgency based upon the uncertainty of reassignments and deployments.

5. Approaching Regulatory Timeframe

Approaching regulatory timeframe service requests are for an Application for Employment Authorization (Form I-765) that has been pending for more than 75 days.

USCIS considers the following in determining whether a case has been pending more than 75 days:

- If USCIS issues a request for initial evidence on either the Form I-765 application itself or the principal application (for example, Form I-485), the 90-day regulatory timeframe starts over from the date of receipt of

the initial evidence (USCIS will reset the "clock" to Day 1 upon receipt of the evidence).

- If USCIS issues a request for additional evidence, the clock stops upon issuance of the request and resume from the same point upon receipt of the additional evidence.

6. Beyond Regulatory Timeframe

Beyond regulatory timeframe service requests are for a Form I-765 that has been pending more than 90 days.[5] For information on the calculation of how long the application has been pending where a request for evidence has been issued, see Subsection 5, Approaching Regulatory Timeframe [1 USCIS-PM A.8(B)(5)].

Footnotes

1.

For more information on confidentiality in VAWA, T, U, and other cases, see Chapter 5, Privacy and Confidentiality in Customer Service [1 USCIS-PM A.5].

2.

See Chapter 5, Privacy and Confidentiality in Customer Service, Section B, Maintaining Confidentiality of VAWA, T, and U Cases, Subsection 3, Providing Customer Service in VAWA, T, and U Cases [1 USCIS-PM A.5(B)(3)].

3.

See Chapter 12, Requests to Expedite Applications or Petitions [1 USCIS-PM A.12].

4.

See Chapter 11, Disability Accommodation Requests [1 USCIS-PM A.11].

5.

For information on the calculation of how long the application has been pending where a request for evidence has been issued, see S ubsection 5, Approaching Regulatory Timeframe [1 USCIS-PM A.8(B)(5)].

Chapter 9 - Web-Based Customer Information

A. Introduction

As the web has expanded and evolved, the need to provide customers with timely information and service "where they live" has remained constant. An increasing number of customers expect to interact with institutions, not only through traditional websites, but also through social media and multimedia. Therefore, USCIS continuously strives toward a web presence that is built to fully engage its customers and meet their needs in a multi-dimensional and multi-channel format.

Social media provides an informal and compact means of communication, but also connects customers with core information and services on the USCIS website. In this way, social media complements the USCIS website and

increases USCIS's ability to communicate with customers.

B. Web-Based Customer Information Tools

The USCIS website provides customers with the following:

- Timely and accurate information on immigration and citizenship services and benefits offered by USCIS;
- Easy access to forms, form instructions, and other information required to successfully submit applications and petitions;
- The latest news and policy updates;
- Information on outreach events and efforts; and
- Information on ways customers can contact USCIS.

In addition to USCIS.gov, USCIS also hosts the following sub-sites:

- InfoPass (http://infopass.uscis.gov) – Allows customers to make appointments online
- CRIS (http://egov.uscis.gov) – Allows customers to check case status, change an address online, locate an office, and complete other tasks
- Citizenship Resource Center (www.uscis.gov/citizenship) – Hosts information and resources designed to assist prospective citizens

Social media tools have also become an integral part of USCIS's web presence. At present, these tools include:

- Official blog of USCIS, "The Beacon"
- USCIS YouTube channel
- USCIS Twitter account
- USCIS Facebook page

1. USCIS Website

Redesigned in 2009, USCIS's website provides customers with access to the most searched and visited pages as well as current news releases, alerts, and other updates. USCIS designed the website to accommodate easy navigation to highly trafficked pages directly from the homepage, as well as a logical structure and search capability for easy access to all other pages.

USCIS makes every effort to provide complete and accurate information on USCIS's website. USCIS does its best to correct errors brought to its attention as soon as possible. When the USCIS webmaster receives notification from the public about a possible error, the webmaster forward the notification to the directorate or program office responsible for the content in question.

The responsible directorate or program office reviews the content and provides corrections or clarifications, if necessary. Both the English language and Spanish language pages are updated at the same time as appropriate. USCIS directorates and program offices that submit content for posting on the USCIS website are responsible for notifying the Office of Communications (OCOMM) when there are changes to that information.

2. USCIS Blog, *The Beacon*

USCIS uses The Beacon to communicate with customers and stakeholders. OCOMM serves as the executive agent for The Beacon and controls who at USCIS has access to make changes to the blog.

The Beacon was created to foster an ongoing dialogue regarding the immigration and naturalization process in the United States. Readers are encouraged to provide USCIS with comments, ideas, concerns, and constructive criticism. USCIS appreciates and considers comments received on The Beacon, especially as to how USCIS might improve its web presence and better serve customers.

The DHS privacy policy[1] See the DHS Website Privacy Policy. and Privacy Impact Assessment (PIA)[2] See the DHS Privacy Resources for the DHS PIA "Use of Social Networking Interactions and Applications." govern USCIS's use of this blog from a privacy perspective. Any information posted on The Beacon is available to the person posting and to any and all users of The Beacon who are able to access the public-facing side of the account.

To protect privacy, readers of The Beacon who submit comments to blog posts should not include their full name, phone number, email address, Social Security number, case-number, or any other sensitive personally identifiable information (PII) in their submissions. Comments including this information will not be posted.

Further, USCIS may share information posted on The Beacon if there is a demonstrated need to know, and only posts information after it has been appropriately approved and vetted by OCOMM. The Beacon is a moderated blog. USCIS reviews all reader comments submitted before posting.

USCIS does not guarantee or warrant that any information posted by persons on this blog is correct and disclaims any liability for any loss or damage resulting from reliance on any such information. USCIS may not be able to verify, does not warrant or guarantee, and assumes no liability for any comments posted on The Beacon by any other person. The views expressed on the site by commentators do not reflect the official views of USCIS or the U.S. Government.

USCIS recognizes that the web is a "24/7" medium, and comments are welcome at any time. However, given the need to manage federal resources, USCIS moderates and posts comments during regular business hours on Monday through Friday. Comments submitted after hours, on weekends, or on federal holidays are reviewed and posted as early as possible; in most cases, these comments are posted the next business day.

3. USCIS Twitter Account

USCIS approaches its Twitter account in much the same way as the blog: USCIS's Twitter account is another electronic channel that helps USCIS make information and services more widely available to the general public, and promote transparency and accountability.

Further, Twitter is used as a tool for short, real-time communication with the public. OCOMM serves as the executive agent for the USCIS Twitter account and controls who at USCIS has access to publish tweets. Like the blog, any information posted on the USCIS Twitter account is available to the person posting and to any and all users on the USCIS Twitter account who are able to access the public side of the account.

USCIS may share information posted on the USCIS Twitter account if there is a demonstrated need to know, and only posts information after it has been appropriately approved and vetted by OCOMM.

4. USCIS YouTube Channel

Before USCIS launched its own YouTube channel, many USCIS videos published on USCIS.gov were also available on the DHS YouTube channel. As the number of videos increased, a decision was reached to start a separate USCIS YouTube channel for USCIS-specific content. The USCIS channel remains accessible and searchable through the DHS channel.

Comments and video responses posted to the USCIS YouTube channel are subject to YouTube's usage policies. C omments are public and available to anyone visiting a USCIS channel or video. To protect one's privacy and the privacy of others, users should not include their full names, phone numbers, email addresses, Social Security numbers, case numbers, or any other PII in comments or response videos.

USCIS does not moderate user comments on its channel prior to posting, but reserves the right to remove any materials that pose a security risk. Any opinions expressed on YouTube, except as specifically noted, are those of the individual commentators and do not reflect any agency policy, endorsement, or action. USCIS does not collect or retain comments in its records.

Use of YouTube, including the posting of comments on this channel, is governed by the YouTube Privacy Policy.[3] See YouTube Privacy Policy.

5. USCIS Facebook Page

USCIS social networking web pages welcome comments and postings. USCIS does not moderate comments on the USCIS Facebook page prior to posting, but reserves the right to remove any materials that pose a security or privacy risk. Only USCIS employees acting in their official capacity are authorized representatives to administer a USCIS

Facebook page. All postings and content are considered property of USCIS, and USCIS retains the authority to remove or limit its distribution.

USCIS generally uses the Facebook page for external relations (for example, communications, outreach, public dialogue) to make information and services widely available to the general public, to promote transparency and accountability, and as a service for those seeking information about or services from USCIS.

DHS OCOMM serves as the executive agent for the USCIS Facebook page and controls who has and maintains access. USCIS may share information on the USCIS Facebook page if there is a demonstrated need to know, and only posts information after it has been appropriately approved and vetted by USCIS OCOMM.

Footnotes

1.

See the DHS Website Privacy Policy.

2.

See the DHS Privacy Resources for the DHS PIA "Use of Social Networking Interactions and Applications."

3.

See YouTube Privacy Policy.

Chapter 10 - Reporting Allegations of Misconduct or Other Inappropriate Behavior

USCIS customers should report allegations of misconduct by both government and contract employees.[1] USCIS employees are also subject to mandatory reporting requirements for known or suspected misconduct by federal employees and contractors.

A. Employee Misconduct to Report

Examples of alleged employee misconduct that should be reported immediately to the USCIS Office of Security and Integrity (OSI) and the DHS Office of the Inspector General (OIG) include, but are not limited to:

- Fraud, corruption, bribery, and embezzlement;
- Sexual advances or sexual misconduct;
- Theft or misuse of funds and theft of government property;
- Perjury;
- Physical assault;[2] Physical assault may include grabbing, fondling, hitting, or shoving.
- Unauthorized release of classified information;

- Drug use or possession;
- Unauthorized use or misuse of sensitive official government databases;
- Misuse of official position for private gain;
- Misuse of a government vehicle or property;
- Failure to properly account for government fund;
- Unauthorized use or misuse of a government purchase or travel card;
- Falsification of travel documents; and
- Falsification of employment application documents.

B. How to Report Employee Misconduct

A person should report criminal and other serious misconduct allegations to the USCIS OSI Investigations Division. Customers may report employee misconduct by writing a letter to USCIS or reporting allegations directly to the DHS OIG.

USCIS Office of Security and Integrity ***Contact Information***	
Fax	**Mail**
202-233-2453	Chief, Investigations Division Office of Security and Integrity MS: 2275 U.S. Citizenship & Immigration Services 633 Third Street NW, 3rd Floor Washington, DC 20529-2275

USCIS OSI makes every effort to maintain the confidentiality of informational sources. However, be aware that for investigations in which an allegation is substantiated and disciplinary action is proposed, the subject is entitled to review documentation and evidence relied upon as the basis for the proposed action.

Depending upon the nature of any allegation included in the report, OSI may refer the matter to DHS OIG for review and investigative determination as required. If the allegation either does not meet the criteria for referral to DHS OIG or is not accepted by DHS OIG for investigation, OSI may resolve the matter by conducting an investigation; referring the matter for an official management inquiry, if appropriate; or referring the matter to the appropriate USCIS

manager for information and action as necessary.

As a matter of procedure, OSI does not provide a complainant, victim, witness, or subject of a complaint with the initial investigative determination of a complaint, since a disclosure of this nature could adversely impact the investigative process.

Any allegation may also be reported by contacting DHS OIG directly either through a local OIG field office[3] A list of OIG Office of Investigations field offices is available on the DHS OIG's website. or by one of the methods below.

DHS Office of Inspector General *Contact Information*		
Phone	**Fax**	**Mail**
Toll-free DHS Hotline at **800-323-8603**	202-254-4297	DHS Office of Inspector General/MAIL STOP 0305 Attn: Office of Investigations -- Hotline 245 Murray Lane, SW Washington, DC 20528-0305

C. Allegations of Discrimination

Customers should promptly report allegations of discrimination based on race, color, religion, sex, sexual orientation, parental status, protected genetic information, national origin, age, or disability to a USCIS supervisor or to the DHS Office for Civil Rights and Civil Liberties (CRCL).[4] See the DHS Website on how to File a Civil Rights Complaint. In addition, report allegations involving physical assault (such as grabbing, fondling, hitting, or shoving) to OSI or DHS OIG. CRCL's website also contains detailed information about avenues for filing complaints with different offices and components of DHS.[5] See the DHS CRCL document entitled "How to File a Complaint with the Department of Homeland Security."

DHS Office for Civil Rights and Civil Liberties *Contact Information*		
Email	**Fax**	**Mail**

CRCLCompliance@hq.dhs.gov	202-401-4708	Department of Homeland Security Office for Civil Rights and Civil Liberties 245 Murray Lane, SW, Building 410 Mail Stop: 0190 Washington, DC 20528

D. Employee Misconduct to Report to a Supervisor

Report other types of conduct issues that do not fall under one of the bases of prohibited discrimination (for example, race, color, gender) to a USCIS supervisor. Types of conduct issues that may be reported through the supervisory chain include:

- Dissatisfaction with an application or petition decision
- Rude behavior such as profanity in the workplace
- Insubordination or deliberate failure to comply with orders
- Performance issues
- Dress code issues

Supervisors should consult with their servicing Labor and Employee Relations Specialist to address employee performance and conduct issues.

Footnotes

1.

USCIS employees are also subject to mandatory reporting requirements for known or suspected misconduct by federal employees and contractors.

2.

Physical assault may include grabbing, fondling, hitting, or shoving.

3.

A list of OIG Office of Investigations field offices is available on the DHS OIG's website.

4.

See the DHS Website on how to File a Civil Rights Complaint.

5.

See the DHS CRCL document entitled "How to File a Complaint with the Department of Homeland Security."

Chapter 11 - Disability Accommodation Requests

A. Introduction

This chapter outlines USCIS policy for receiving and processing requests for accommodations from qualified customers and other persons with disabilities who use USCIS services and access USCIS facilities. This includes, but is not limited to, persons who:

- USCIS schedules to have in-person contact with an officer (such as for an interview);
- Wish to schedule an InfoPass appointment and are requesting an accommodation for that appointment; or
- Wish to attend a USCIS-sponsored public event.

Implementing this policy ensures that USCIS is in compliance with Section 504 of the Rehabilitation Act of 1973.[1] See Pub. L. 93-112 (September 26, 1973). This law prescribes that "[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any Executive agency."[2] See Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (September 26, 1973) codified at 29 U.S.C. 794(a). See 6 CFR 15 for applicable definitions relating to enforcement of nondiscrimination on the basis of disability in DHS federal programs or activities, which includes those conducted by USCIS.

B. Background

An applicant must satisfy all of the legal requirements to receive an immigration benefit; however, USCIS must provide reasonable accommodations to persons with a disability to afford those customers the opportunity to meet those requirements. Accommodations vary depending on the person's disability. For example, a customer who is:

- Unable to use his or her hands may be permitted to take a test orally rather than in writing;
- Deaf or hard of hearing may be provided with a sign language interpreter for a USCIS-sponsored event;[3] In this scenario, "customer" refers to any member of the public who wants to attend the event, such as a naturalization ceremony or an Enlace engagement.
- Unable to speak might be allowed to respond to questions in a previously agreed upon nonverbal manner;

- Unable to travel to a designated USCIS location for an interview due to a disabling condition may be interviewed at his or her home or a medical facility.

The essential feature of an accommodation is that it allows the customer to participate in the process or activity. While USCIS is not required to make major modifications that would result in a fundamental change to the adjudication process or cause an undue burden for the agency, USCIS makes every effort to provide accommodations to customers with disabilities.

C. Disability Accommodation Requests

All USCIS offices are required to provide reasonable accommodations to qualified customers with disabilities. Doing so ensures all USCIS customers the same level of access to all USCIS-administered programs and services. USCIS has established a standard procedure for persons with disabilities to request accommodations when they:

- Visit a USCIS field office, an Application Support Center (ASC), or asylum office;[4] Asylum offices do not handle requests for disability accommodations for asylum office customer fingerprint appointments. These requests are handled by the USCIS office that oversees the ASC that will be collecting the fingerprints.

- Are physically unable to appear for an appointment at a USCIS facility; or

- Schedule and appear for an InfoPass appointment.

The standard procedure is for customers to call the National Customer Service Center (NCSC) to request an accommodation to complete any phase of the application process. If the customer needs an accommodation for multiple interviews during the adjudication process, customers should also call the NCSC prior to each of the appointments.

Customer service representatives at the NCSC enter the information about the accommodation request into the Service Request Management Tool (SRMT) system and forward to the appropriate USCIS office that serves the customer's zip code. The adjudicating office must then contact the customer and take action on the accommodation request.

USCIS determines whether the office may reasonably comply with the accommodation within 7 calendar days of when the inquiry was received by the office, unless unusual circumstances exist (for example, USCIS is unable to reach the customer). If USCIS has a delay in the determination of the availability of the accommodation, the office explains the delay in the case notes section of the SRMT inquiry and completes its processing as soon as possible after the reason for the delay concludes. The office must provide the accommodation within a reasonable time frame.

Ideally, offices receive advance notice of the customer's accommodation needs through the NCSC so they are prepared to provide accommodations when needed. However, in the event that a customer contacts the field office, ASC, or asylum office directly to request a disability accommodation for an interview, the office creates an SRMT request, works with the customer to respond to the request, and marks the request as fulfilled when it is complete so that the request and the response are recorded.

To assure accountability, each field office, ASC, or asylum office must designate an employee(s) to be responsible for handling accommodation requests from customers. Regardless of how many employees are tasked with handling requests for accommodations, the entire office should be aware of the procedures for handling such requests.

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

Offices are encouraged to provide reasonable accommodation requests made by walk-in customers whenever practical. If the accommodation is not available, the office should inform the customer that the office is not able to provide the accommodation at that time, but will provide the accommodation for a future appointment. USCIS evaluates each request for a reasonable accommodation on a case-by-case basis. Offices are authorized to approve requests for a reasonable accommodation without consulting the Office of Equal Opportunity and Inclusion (OEOI).

While a customer is not required to include documentation of a medical condition in support of a reasonable accommodation request, an office may need documentation to evaluate the request in rare cases. In these situations, the office must consult OEOI for guidance before the USCIS office requests the customer provide medical documentation to support an accommodation request.

OEOI also provides assistance whenever a field office, ASC, or asylum office preliminarily believes that an alternative accommodation should be suggested or that an accommodation may not be required. The OEOI Disability Accommodation Manager must concur on any alternative accommodation offered or any accommodation denial before the office communicates either action to the customer.

Offices should understand that, while the inability to speak is considered a disability under the Rehabilitation Act, the inability to speak the English language (while being able to speak a foreign language) is not considered a disability under the Act. Therefore, no accommodation is required and one should not be provided if a customer is unable to speak English. No request for a translator should be approved unless the customer is otherwise eligible.[5] See, for example, 8 CFR 312.4.

D. Reconsideration Requests

To request a reconsideration of a denial of a disability accommodation request, the customer must call the NCSC. Upon receiving the request, a customer service representative creates a new SRMT inquiry.

Upon receiving the SRMT inquiry, the relevant office must review the customer's prior request and any additional information provided in the case notes section of the new SRMT inquiry. The office should contact the customer again if additional information is needed.

The USCIS employee in the office responsible for handling disability accommodations should coordinate the resolution of any reconsideration requests as necessary. The OEOI Disability Accommodation Manager must concur

on any alternative accommodation offered or any accommodation denial before the office communicates either action to the customer. All affirmed denials must be approved by the field office director, ASC manager, or asylum office director, whichever applies.

Footnotes

1.

See Pub. L. 93-112 (September 26, 1973).

2.

See Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (September 26, 1973) codified at 29 U.S.C. 794(a). See 6 CFR 15 for applicable definitions relating to enforcement of nondiscrimination on the basis of disability in DHS federal programs or activities, which includes those conducted by USCIS.

3.

In this scenario, "customer" refers to any member of the public who wants to attend the event, such as a naturalization ceremony or an Enlace engagement.

4.

Asylum offices do not handle requests for disability accommodations for asylum office customer fingerprint appointments. These requests are handled by the USCIS office that oversees the ASC that will be collecting the fingerprints.

5.

See, for example, 8 CFR 312.4.

Chapter 12 - Requests to Expedite Applications or Petitions

USCIS reviews all expedite requests on a case-by-case basis and requests are granted at the discretion of the office leadership. The burden is on the applicant or petitioner to demonstrate that one or more of the expedite criteria have been met.

A. Expedite Criteria[1] For the expedited processing of an Application for Waiver of Grounds of Inadmissibility (Form I-601), see additional information provided on the USCIS website.

USCIS may expedite a petition or application if it meets one or more of the following criteria:

- Severe financial loss to company or person;
- Emergency situation;[2] For example, the applicant is gravely ill.
- Humanitarian reasons;[3] For example, outbreak of war in the home country.
- Nonprofit organization whose request is in furtherance of the cultural and social interests of the United States;[4] For example, an organization broadcasting in regional areas to promote democratic interests.

- Department of Defense or national interest situation;[5] The request must come from an official U.S. government entity and state that delay will be detrimental to the government.

- USCIS error; or

- Compelling interest of USCIS.

B. Premium Processing

USCIS does not consider petitions and applications that have Premium Processing Service available for expedited processing. The only exception is when the petitioner is a not-for-profit organization designated by the Internal Revenue Service that is acting in furtherance of the cultural and social interests of the United States.[6] For information on premium processing, see the USCIS webpage on "How Do I Use the Premium Processing Service?"

C. Making an Expedite Request

To make a request to expedite the processing of a domestically filed application or petition, the customer should contact the National Customer Service Center (NCSC) at 1-800-375-5283. The NCSC forwards the Service Request to the office with jurisdiction over the application or petition.

Customers may also visit a local office by scheduling an InfoPass appointment or writing a letter to the field office or service center. Applicants or petitioners overseas should submit their requests directly to the USCIS office with jurisdiction over their applications or petitions; contact information for overseas USCIS offices is provided on the USCIS website.

Approval of such requests is discretionary and USCIS reserves the right to request documentation supporting the request to expedite an application or petition.

Footnotes

1.

For the expedited processing of an Application for Waiver of Grounds of Inadmissibility (Form I-601), see additional information provided on the USCIS website.

2.

For example, the applicant is gravely ill.

3.

For example, outbreak of war in the home country.

4.

For example, an organization broadcasting in regional areas to promote democratic interests.

5.

The request must come from an official U.S. government entity and state that delay will be detrimental to the government.

6.

For information on premium processing, see the USCIS webpage on "How Do I Use the Premium Processing Service?"

Chapter 13 - Cell Phone Usage in USCIS Offices

Visitors of USCIS facilities may be permitted to possess cell phones, personal digital assistants (PDAs), and tablets. However, USCIS customers receiving services in facilities not controlled by USCIS should abide by cell phone policies established by the facility.

Customers may not use camera and recording capable devices (including cell phones) at a USCIS office except when observing naturalization or citizenship ceremonies. In addition, cell phones should be silenced while in the waiting area and any conversations should be kept to a low level so as not to disrupt others. Customers must completely turn off all phones during interviews or while being served by USCIS staff at the information counter.

To ensure successful implementation of this guidance, USCIS field offices are encouraged to:

- Ensure all employees (federal and contract) are aware of the cell phone usage policies and the prohibition against using any type of device to take photographs inside USCIS common areas except during naturalization ceremonies;
- Ensure all visitors are informed of the cell phone usage policies and prohibition against using any type of device to take photographs inside USCIS common areas (for example, waiting rooms, or restrooms), unless to record naturalization ceremonies; and
- Display posters and signage regarding this guidance in common areas.

Appendix: USCIS Customer Dissatisfaction Terms and Definitions

USCIS Customer Dissatisfaction Terms and Definitions		
Category and Definition	**Examples**	**Who to Contact**
	Case-Specific Complaints	

Complaint **Any communication received from a customer expressing dissatisfaction with USCIS. Complaints can be categorized as either "case-specific" or "non-case-specific."**	• Cases outside normal processing times (ONPT) • Inaccurate or incomplete responses to case-related inquiries • Case processing errors • Confusion regarding a notice or correspondence sent by USCIS	USCIS offices, in-person or by mail. (Addresses can be found at www.uscis.gov, under the "About Us" section.) National Customer Service Center (NCSC) toll-free number: 1-800-375-5283 (TTY number: 1-800-767-1833)
Case-specific complaints directly relate to cases processed by USCIS. Non-case-specific complaints refer to any dissatisfaction with USCIS that does not relate to a specific case.	*Non-Case-Specific Complaints* • Rude treatment by USCIS employees or contractors • Facility-related issues • Difficulty understanding forms, notices, instructions, or other general information • Administration of immigration laws or USCIS policies	USCIS offices, in-person or by mail. If at a USCIS office, contact a supervisor. (Addresses can be found at www.uscis.gov, under the "About Us" section.) NCSC toll-free number: 1-800-375-5283 (TTY number: 1-800-767-1833)
Misconduct **Actions of a USCIS employee or contractor that can be considered extreme or outrageous, including, but not limited to, criminal**	• Fraud, corruption, bribery, or embezzlement • Perjury or falsification of documents or information • Physical assault or inappropriate conduct • Unauthorized release of classified information or unauthorized use or misuse of official government systems	DHS Office of Inspector General (OIG): • Phone: 1-800-323-8603; • Fax: 202-254-4297; or • Mail: DHS, OIG/MAIL STOP 0305, Attn: Office of Investigations -- Hotline, 245 Murray Lane, SW, Washington DC 20528-0305

activity.[1] **See Chapter 10, Reporting Allegations of Misconduct or Other Inappropriate Behavior [1 USCIS-PM A.10].**	• Misuse of official position for private gain • Theft or misuse of government funds, vehicles, badges, credentials, secure forms, sensitive property, or other property • Arrest of an employee or contractor by law enforcement personnel	USCIS Office of Security & Integrity (OSI): • Fax: 202-233-2453; or • Mail: Chief, Investigations Division, Office of Security and Integrity MS 2275, U.S. Citizenship & Immigration Services, 633 Third Street NW, 3rd Floor, Washington, DC 20529-2275

Footnotes

1.

See Chapter 10, Reporting Allegations of Misconduct or Other Inappropriate Behavior [1 USCIS-PM A.10].

Volume 2 - Nonimmigrants

Part J - Trainees (H-3)

Chapter 1 - Purpose and Background

A. Purpose

The H-3 nonimmigrant visa category allows foreign nationals to come temporarily to the United States as either a:

- *Trainee* who seeks to enter the United States at the invitation of an organization or person to receive training in any field of endeavor, other than graduate medical education or training;[1] See INA 101(a)(15)(H)(iii). See 8 CFR 214.2(h)(7)(i). or
- *Special Education Exchange Visitor* who seeks to participate in a structured special education exchange visitor training program that provides for practical training and experience in the education of children with physical, mental, or emotional disabilities.[2] See 8 CFR 214.2(h)(7)(iv).

The H-3 nonimmigrant classification is not intended for productive employment. Rather, the H-3 program is designed to provide a foreign national with job-related training that is not available in his or her country for work that will ultimately be performed outside the United States.

B. Background

The Immigration and Nationality Act (INA) of 1952 contained the precursor to today's H-3 nonimmigrant classification: "an alien having a residence in a foreign country which he has no intention of abandoning . . . who is coming temporarily to the United States as an industrial trainee[.]"[3] See Immigration and Nationality Act, Pub. L. 82-414, 66 Stat. 163, 168 (1952).

In 1970, Congress expanded the class of foreign nationals eligible for nonimmigrant classification by deleting the word "industrial" as a modifier of "trainee" in the statute.[4] See INA of April 7, 1970, Pub. L. 91-225, 84 Stat. 116, amending INA 101(a)(15)(H)(iii). However, Congress narrowed the H-3 classification in 1976 by inserting the following language into the statute: "other than to receive graduate medical education or training[.]"[5] See Health Professions Educational Assistance Act of 1976, Pub. L. 94-484, 90 Stat. 2243, 2301 (October 12, 1976).

Finally, the Immigration Act of 1990[6] See Immigration Act of 1990 (IMMACT 90), Pub. L. 101-649, 104 Stat. 4978 (Nov 29, 1990). both limited and expanded the H-3 classification. Congress limited the H-3 nonimmigrant classification by adding the following language to the statute: "in a training program that is not designed primarily to provide productive employment[.]"[7] See Immigration Act of 1990 (IMMACT 90), Pub. L. 101-649, 104 Stat. 5022 (Nov 29, 1990). However, Congress indirectly expanded the classification by creating the Special Education Exchange Visitor Program,[8] See Immigration Act of 1990 (IMMACT 90), Pub. L. 101-649, 104 Stat. 5028 (Nov 29, 1990), which the legacy Immigration and Naturalization Service placed within the H-3 category.[9] See 56 FR 31553, 31554 (Jul. 11, 1991) (proposed rule). See 56 FR 61111, 61119-61120 (Dec. 2, 1991) (final rule). Congress has not amended the statute since 1990.[10] See INA 101(a)(15)(H)(iii).

C. Legal Authorities

- INA 101(a)(15)(H)(iii) – H-3 definition
- 8 CFR 214.2(h)(1)(ii)(E) – H-3 definition
- 8 CFR 214.2(h)(7) – H-3 regulations
- 8 CFR 214.2(h)(8)(i)(D) – H-3 numerical limitations on special education exchange visitors
- 8 CFR 214.2(h)(9)(iii)(C) and 8 CFR 214.2(h)(9)(iv) – Validity of approved H-3 petitions and H-4 spouse and dependent(s)
- 8 CFR 214.2(h)(10) – Denial of petitions

- 8 CFR 214.2(h)(11) – Revocation of an approved H petition
- 8 CFR 214.2(h)(12) – Appeal of a denial or a revocation of a petition
- 8 CFR 214.2(h)(13) – Admission of H beneficiaries
- 8 CFR 214.2(h)(14) – Extension of H visa petition validity
- 8 CFR 214.2(h)(15)(ii)(D) – Extension of H-3 stay
- 8 CFR 214.2(h)(16)(ii) – Effect of approval of a permanent labor certification or filing of a preference petition on H classification
- 8 CFR 214.2(h)(17) – Effect of a strike

Footnotes

1.

See INA 101(a)(15)(H)(iii). See 8 CFR 214.2(h)(7)(i).

2.

See 8 CFR 214.2(h)(7)(iv).

3.

See Immigration and Nationality Act, Pub. L. 82-414, 66 Stat. 163, 168 (1952).

4.

See INA of April 7, 1970, Pub. L. 91-225, 84 Stat. 116, amending INA 101(a)(15)(H)(iii).

5.

See Health Professions Educational Assistance Act of 1976, Pub. L. 94-484, 90 Stat. 2243, 2301 (October 12, 1976).

6.

See Immigration Act of 1990 (IMMACT 90), Pub. L. 101-649, 104 Stat. 4978 (Nov 29, 1990).

7.

See Immigration Act of 1990 (IMMACT 90), Pub. L. 101-649, 104 Stat. 5022 (Nov 29, 1990).

8.

See Immigration Act of 1990 (IMMACT 90), Pub. L. 101-649, 104 Stat. 5028 (Nov 29, 1990).

9.

See 56 FR 31553, 31554 (Jul. 11, 1991) (proposed rule). See 56 FR 61111, 61119-61120 (Dec. 2, 1991) (final rule).

10.

See INA 101(a)(15)(H)(iii).

Chapter 2 - H-3 Categories

A. Trainees[1] **The H-3 nonimmigrant classification is defined in INA 101(a)(15)(H)(iii) as, "an alien having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designated primarily to provide productive employment … " The regulations impose additional requirements on the extern and nurse subcategories that do not apply to the general trainee category. See 8 CFR 214.2(h)(7)(i).**

H-3 trainees are foreign nationals who have been invited to participate in a training program in the United States by a person, a business, or an organization. The training must be unavailable in the foreign national's home country. There are no numerical limits on the number of people who can be granted H-3 visas as trainees each year.

An H-3 trainee cannot engage in productive employment in the United States unless such work is incidental and necessary to the training and must not be placed in a position which is in the petitioning entity's normal operation and in which citizens and resident workers are regularly employed. Finally, the training must benefit the foreign national pursuing a career outside the United States.

An H-3 trainee must be invited by a person or organization for the purpose of receiving training (except as a physician), in any field including:

- A purely industrial establishment
- Agriculture
- Commerce
- Communications
- Finance
- Government
- Transportation
- Other professions[2] See 8 CFR 214.2(h)(7).

1. Externs[3] **See 8 CFR 214.2(h)(7)(i)(A).**

A hospital approved by the American Medical Association (AMA) or the American Osteopathic Association (AOA) for either an internship or residency program may petition to classify a medical student attending a medical school abroad as an H-3 trainee if the student's training will be done as an extern during his or her medical school vacation. The hospital must also satisfy the H-3 trainee petition requirements.

2. Nurses[4] **See 8 CFR 214.2(h)(7)(i)(B).**

A petitioner may seek H-3 classification for a nurse if:

- The nurse-beneficiary does not have H-1 status;
- Such training is designed to benefit both the nurse-beneficiary and the overseas employer upon the nurse's return to his or her country of origin; and
- The petitioner establishes that there is a genuine need for the nurse-beneficiary to receive a brief period of training that is unavailable in his or her native country.

Additionally, the petitioner must:[5] See 8 CFR 214.2(h)(7)(i)(B)(1).

- Satisfy the H-3 trainee requirements;
- Establish that the nurse-beneficiary has a full and unrestricted license to practice professional nursing in the country where the beneficiary obtained a nursing education[6] See 8 CFR 214.2(h)(7)(i)(B)(1). or that such education was obtained in the United States or Canada;[7] See 8 CFR 214.2(h)(7)(i)(B)(1). and
- Include a statement certifying that the nurse-beneficiary is fully qualified under the laws governing the place where the training will be received and that under those laws the petitioner is authorized to give the beneficiary the desired training.[8] See 8 CFR 214.2(h)(7)(i)(B)(2).

B. Special Education Exchange Visitors[9] See 8 CFR 214.2(h)(7)(iv).

H-3 special education exchange visitors are participants in a structured special education program that provides practical training and experience in the education of physically, mentally, or emotionally disabled children. This category is limited to an 18-month period of stay and to 50 visas per fiscal year.[10] See IMMACT 90 Section 223, 104 Stat. at 5028, Pub. Law 101-649 (Nov. 29, 1990). See 8 CFR 214.2(h)(7)(iv) and 8 CFR 214.2(h)(8)(D). See 55 FR 2606, 2628 (Jan. 26, 1990).

Footnotes

1.

The H-3 nonimmigrant classification is defined in INA 101(a)(15)(H)(iii) as, "an alien having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designated primarily to provide productive employment … " The regulations impose additional requirements on the extern and nurse subcategories that do not apply to the general trainee category. See 8 CFR 214.2(h)(7)(i).

2.

See 8 CFR 214.2(h)(7).

3.

See 8 CFR 214.2(h)(7)(i)(A).

4.

See 8 CFR 214.2(h)(7)(i)(B).

5.

See 8 CFR 214.2(h)(7)(i)(B)(1).

6.

See 8 CFR 214.2(h)(7)(i)(B)(1).

7.

See 8 CFR 214.2(h)(7)(i)(B)(1).

8.

See 8 CFR 214.2(h)(7)(i)(B)(2).

9.

See 8 CFR 214.2(h)(7)(iv).

10.

See IMMACT 90 Section 223, 104 Stat. at 5028, Pub. Law 101-649 (Nov. 29, 1990). See 8 CFR 214.2(h)(7)(iv) and 8 CFR 214.2(h)(8)(D). See 55 FR 2606, 2628 (Jan. 26, 1990).

Chapter 3 - Trainee Program Requirements

A. Training Program Conditions

An H-3 petitioner is required to submit evidence demonstrating that:[1] See 8 CFR 214.2(h)(7)(ii)(A).

- The proposed training is not available in the trainee's own country;
- The trainee will not be placed in a position that is in the normal operation of the business and in which United States citizen and resident workers are regularly employed;
- The trainee will not engage in productive employment unless it is incidental and necessary to the training; and

- The training will benefit the trainee in pursuing a career outside the United States.[2] H-3 beneficiaries must also establish that they intend to return to their foreign residence upon the termination of their H-3 status. See INA 214(b) and INA 101(a)(15)(H)(iii).

B. Training Program Description

Each petition for a trainee must include a statement which:[3] See 8 CFR 214.2(h)(7)(ii)(B). See 55 FR 2628-29 (Jan 26, 1990).

- Describes the type of training and supervision to be given, and the structure of the training program;
- Sets forth the proportion of time that will be devoted to productive employment;
- Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;
- Describes the career abroad for which the training will prepare the nonimmigrant;
- Indicates the reasons why such training cannot be obtained in the trainee's country and why it is necessary for the foreign national to be trained in the United States; and
- Indicates the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training.[4] See 8 CFR 214.2(h)(7)(ii)(B).

C. Training Program Restrictions

A training program for a trainee may not be approved if it:[5] See 8 CFR 214.2(h)(7)(iii). Additionally, externs and nurses have further requirements. A hospital petitioning for an H-3 extern must also demonstrate: That it has been approved by either the American Medical Association (AMA) or the American Osteopathic Association (AOA) for either an internship or residency program; That the beneficiary is currently attending medical school abroad; and That the beneficiary will engage in employment as an extern for the petitioner during his or her medical school vacation. See 8 CFR 214.2(h)(7)(i)(A). A petitioner seeking H-3 classification for a nurse must also provide a statement certifying that the beneficiary is fully qualified under the laws governing the place where the training will be received to engage in such training, and that under those laws the petitioner is authorized to give the beneficiary the desired training. See 8 CFR 214.2(h)(7)(i).

- Deals in generalities with no fixed schedule, objectives, or means of evaluation;
- Is incompatible with the nature of the petitioner's business or enterprise;
- Is on behalf of a trainee who already possesses substantial training and expertise in the proposed field of training;[6] A trainee may already be a professional in his or her own right and possess substantial knowledge in a field; however, such person may be using a training to further his or her skills or career through company-specific training that is only available in the United States. As always, the totality of the evidence must be examined and all other requirements must be met.

- Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;
- Will result in productive employment beyond that which is incidental and necessary to the training;
- Is designed to recruit and train nonimmigrants for the ultimate staffing of domestic operations in the United States;
- Does not establish that the petitioner has the physical plant and sufficiently trained workforce to provide the training specified; or
- Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.[7] For additional information about the training program and factors to consider during adjudications, see Chapter 6, Factors to Consider [2 USCIS-PM J.6].

D. Filing

The petitioner files the H-3 petition on the Petition for a Nonimmigrant Worker (Form I-129). Multiple trainees may be requested on a single petition if the trainees will be receiving the same training for the same period of time and in the same location.[8] See 8 CFR 214.2(h)(2)(ii).

Officers will review each piece of evidence for relevance, probative value, and credibility to determine whether the petitioner submitted sufficient evidence establishing that the petition is approvable.[9] The standard of proof applied in most USCIS adjudications, including H-3 petitions, and administrative immigration proceedings is the "preponderance of the evidence" standard. Therefore, if the petitioner submits relevant, probative, and credible evidence that leads USCIS to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. See U.S. v. Cardozo-Fonesca, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the officer can articulate a material doubt, it is appropriate for the officer to either request additional evidence or, if that doubt leads the officer to believe that the claim is probably not true, deny the application or petition. See Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010) (citing Matter of E-M, 20 I&N Dec. 77, 79-80 (Comm. 1989)). The table below serves as a quick, non-exhaustive reference guide listing the forms and evidence required when filing a petition for an H-3 trainee.

Trainee (H-3) Petition Forms and Documentation
Petition for a Nonimmigrant Worker (Form I-129), Including H supplement
If the beneficiary is outside the United States, a copy of his or her passport
Application To Extend/Change Nonimmigrant Status (Form I-539) for dependents of an H-3 who are also in the U.S. dependents should fill out and sign this form, not the petitioner for the H-3 beneficiary (one Form I-539 and fee covers all dependents)
Copies of each dependent's I-94 or other proof of lawful immigration status and proof of the family relationship with the primary H-3 beneficiary (such as marriage and birth certificates)

Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) (if applicable)

All Trainees Except Special Education Exchange Visitors Must Provide:

A detailed written statement from the petitioner containing:

- The overall schedule, including the type of training and supervision;
- The structure of the training program;
- The number of hours per week which will involve productive employment, if any;
- The number of hours per week in classroom study;
- The number of hours per week in on-the-job training;
- What skills the beneficiary will acquire (and how these skills relate to pursuing a career abroad); and
- The source of any remuneration.

Evidence that the beneficiary will not be placed in a position which, in the normal operation of the business, U.S. citizen and resident workers are regularly employed.

Proof that the petitioner has the physical facility and sufficiently trained staff to provide the training described in the petition.

An explanation from the petitioner regarding benefits it will obtain by providing the training, including why it is willing to incur the cost of the training.

An explanation as to why the training must take place in the United States, instead of in the beneficiary's country along with evidence that similar training is not available in beneficiary's home country.

A summary of the beneficiary's prior relevant training and experience, such as diplomas and letters from past employers.

If the beneficiary is a nonimmigrant student, evidence that the proposed training was not designed to extend the total allowable period of practical training.

Petitioners seeking H-3 status for a nurse must also provide proof:

- That the beneficiary has a full and unrestricted nursing license to work in the country where his or her nursing education was obtained, or
- That the education took place in the United States or Canada.

In addition, petitioners seeking H-3 status for a nurse must also include a statement certifying:

- That the beneficiary is qualified under the laws governing the place where the training will be received;
- That under those laws the petitioner is authorized to provide the training;
- That there is a genuine need for the nurse to receive the training;
- That the training is designed to benefit the beneficiary upon returning to his or her country of origin; and
- That the training is designed to benefit the beneficiary's overseas employer.

Hospitals petitioning for externs must also:

- Provide proof that the hospital has been approved by the American Medical Association (AMA) or the American Osteopathic Association (AOA) for either an internship or residence program, and
- Provide proof that the extern is currently attending medical school abroad.

If Requesting Premium Processing:

Request for Premium Processing Service (Form I-907) (see USCIS website for current fees)

Footnotes

1.

See 8 CFR 214.2(h)(7)(ii)(A).

2.

H-3 beneficiaries must also establish that they intend to return to their foreign residence upon the termination of their H-3 status. See INA 214(b) and INA 101(a)(15)(H)(iii).

3.

See 8 CFR 214.2(h)(7)(ii)(B). See 55 FR 2628-29 (Jan 26, 1990).

4.

See 8 CFR 214.2(h)(7)(ii)(B).

5.

See 8 CFR 214.2(h)(7)(iii). Additionally, externs and nurses have further requirements. A hospital petitioning for an H-3 extern must also demonstrate:

- That it has been approved by either the American Medical Association (AMA) or the American Osteopathic Association (AOA) for either an internship or residency program;
- That the beneficiary is currently attending medical school abroad; and
- That the beneficiary will engage in employment as an extern for the petitioner during his or her medical school vacation. See 8 CFR 214.2(h)(7)(i)(A). A petitioner seeking H-3 classification for a nurse must also provide a statement certifying that the beneficiary is fully qualified under the laws governing the place where the training will be received to engage in such training, and that under those laws the petitioner is authorized to give the beneficiary the desired training. See 8 CFR 214.2(h)(7)(i).

6.

A trainee may already be a professional in his or her own right and possess substantial knowledge in a field; however, such person may be using a training to further his or her skills or career through company-specific training that is only available in the United States. As always, the totality of the evidence must be examined and all other requirements must be met.

7.

For additional information about the training program and factors to consider during adjudications, see Chapter 6, Factors to Consider [2 USCIS-PM J.6].

8.

See 8 CFR 214.2(h)(2)(ii).

9.

The standard of proof applied in most USCIS adjudications, including H-3 petitions, and administrative immigration proceedings is the "preponderance of the evidence" standard. Therefore, if the petitioner submits relevant, probative, and credible evidence that leads USCIS to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. See *U.S. v. Cardozo-Fonesca,* 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the officer can articulate a material doubt, it is appropriate for the officer to either request additional evidence or, if that doubt leads the officer to believe that the claim is probably not true, deny the application or petition. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M*, 20 I&N Dec. 77, 79-80 (Comm. 1989)).

Chapter 4 - Special Education Exchange Visitor Program Requirements

There are requirements for H-3 petitions involving special education exchange visitors that are distinct from H-3 trainees.[1] Requirements for trainee petitions are not applicable to petitions for special education exchange visitors. See 8 CFR 214.2(h)(7)(ii) and 8 CFR 214.2(h)(7)(iii). See 8 CFR 214.2(h)(7)(iv)(A)(3). An H-3 beneficiary in a special education training program must be coming to the United States to participate in a structured program which provides for practical training and experience in the education of children with physical, mental, or emotional disabilities. No more than 50 visas may be approved in a fiscal year,[2] See 8 CFR 214.2(h)(8)(i)(D). and participants may remain in the United States for no more than 18 months.[3] See 8 CFR 214.2(h)(13)(iv).

The petition must be filed by a facility which has: a professionally trained staff; and a structured program for providing:

- Education to children with disabilities; and
- Training and hands-on experience to participants in the special education exchange visitor program.[4] See 8 CFR 214.2(h)(7)(iv)(A)(2).

The petition should include a description of:

- The training the foreign national will receive;
- The facility's professional staff; and
- The beneficiary's participation in the training program.[5] See 8 CFR 214.2(h)(7)(iv)(B)(1).

In addition, the petition must show that the special education exchange visitor:

- Is nearing the completion of a baccalaureate or higher degree program in special education;
- Has already earned a baccalaureate or higher degree in special education; or
- Has extensive prior training and experience teaching children with physical, mental, or emotional disabilities.[6] See 8 CFR 214.2(h)(7)(iv)(B)(2).

Any custodial care of children must be incidental to the beneficiary's training.

Officers review each piece of evidence for relevance, probative value, and credibility to determine whether the petitioner submitted sufficient evidence establishing that the petition is approvable.[7] The standard of proof applied in most USCIS adjudications, including H-3 petitions, and administrative immigration proceedings is the "preponderance of the evidence" standard. The table below serves as a quick, non-exhaustive, reference guide listing the forms and evidence required when filing a petition for an H-3 special education exchange visitor.

Special Education Exchange Visitor H-3 Petition Forms and Documentation
Petition for a Nonimmigrant Worker (Form I-129), Including H supplement
If the beneficiary is in the United States, a copy of the I-94 or other proof of current lawful, unexpired immigration status (Note that Canadians who enter as a B-1 or a B-2 will not typically have an I-94)
Filing fee; see USCIS' website for current fees
Application To Extend/Change Nonimmigrant Status (Form I-539) for dependents of an H-3 who are also in the U.S. dependents should fill out and sign this form, not the petitioner for the H-3 beneficiary (one Form I-539 and fee covers all dependents)
Copies of each dependent's I-94 or other proof of lawful immigration status and proof of the family relationship with the primary H-3 beneficiary (such as marriage and birth certificates)
Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) (if applicable)
A copy of his or her passport, if the beneficiary is outside the United States
A description of the structured training program for providing education to children with disabilities and for providing hands-on experience to participants in the special education program, including noting the professionally trained staff, facilities, and how the exchange visitor will participate in the program
Evidence that any custodial care of children will be incidental to the training program
Evidence that participant has nearly completed a baccalaureate or higher degree in special education, already has a baccalaureate degree or higher degree in special education, or has extensive prior training and experience in teaching children with disabilities
If Requesting Premium Processing:
Request for Premium Processing Service (Form I-907) (see USCIS' website for current fees)

Footnotes

1.

Requirements for trainee petitions are not applicable to petitions for special education exchange visitors. See 8 CFR 214.2(h)(7)(ii) and 8 CFR 214.2(h)(7)(iii). See 8 CFR 214.2(h)(7)(iv)(A)(3).

2.

See 8 CFR 214.2(h)(8)(i)(D).

3.

See 8 CFR 214.2(h)(13)(iv).

4.

See 8 CFR 214.2(h)(7)(iv)(A)(2).

5.

See 8 CFR 214.2(h)(7)(iv)(B)(1).

6.

See 8 CFR 214.2(h)(7)(iv)(B)(2).

7.

The standard of proof applied in most USCIS adjudications, including H-3 petitions, and administrative immigration proceedings is the "preponderance of the evidence" standard.

Chapter 5 - Family Members of H-3 Beneficiaries

An H-3 nonimmigrant's spouse and unmarried minor children may accompany the H-3 nonimmigrant to the United States as H-4 nonimmigrants. H-4 dependents of H-3 nonimmigrants are not permitted to work in the United States.[1] See 8 CFR 214.2(h)(9)(iv).

Footnotes

1.

See 8 CFR 214.2(h)(9)(iv).

Chapter 6 - Adjudication

A. Adjudicative Issues

Officers must carefully review each petition for an H-3 trainee to ensure compliance with the intent of the H-3 category to train foreign nationals who will return to their home countries. Unless specifically provided otherwise, officers should apply a "preponderance of the evidence" standard when evaluating eligibility for the benefit sought.[1] See U.S. v. Cardozo-Fonseca, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). See Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010) (citing Matter of E-M, 20 I&N Dec. 77, 79-80 (Comm. 1989)). The burden of proving eligibility for the benefit sought rests entirely with the petitioner.[2] See Matter of Brantigan, 11 I&N Dec. 493 (BIA 1966).

B. Factors to Consider

1. Career Abroad

The description of the training program should include a specific explanation of the position and duties for which the training will prepare the trainee.[3] Generalized assertions that the proposed training will expand the trainee's skill set or make him or her more desirable to prospective employers are usually not sufficient to demonstrate the proposed training will prepare the beneficiary for an existing career abroad. See 8 CFR 214.2(h)(7)(iii). The trainee must demonstrate that the proposed training will prepare the beneficiary for an existing career outside the United States.

Trainings can be to prepare the trainee for something that is new and unavailable anywhere in the trainee's country. For instance, a trainee may already be a professional in his or her own right and possess knowledge in the field of proposed training, but will be using the training to further his or her skills or career through company-specific training that a corporate organization makes available in the United States. This could include cases of mid-level and senior-level employees who possess knowledge in their field, but seek to further develop their skills in the proposed field of training.[4] Even if a new employee or current employee possesses knowledge in the proposed field of training, he or she could be considered a trainee if the company or organization decides he or she needs the training, so long as all other requirements are met (for example, so long as beneficiary does not possess substantial training and expertise in the proposed field of training). As always, the totality of the evidence is evaluated for each case and all other requirements must be met.[5] Although 8 CFR 214.2(h)(7)(iii)(C) states that a training program may not be approved if it is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training, this provision does not automatically prohibit professionals from participating in a training program. It remains the petitioner's burden to demonstrate by a preponderance of the evidence that the training program is approvable.

Example: A U.S. company develops a new product for which training is unavailable in another country. The U.S. company may petition to train people to use that product, which will enable the trainees to train others to use the new product in their home country.

2. Instruction

Classroom-based Instruction

In cases where the program is entirely classroom-based, officers should review the evidence to ensure that the petitioner establishes by a preponderance of the evidence that the training cannot be made available in the beneficiary's home country.[6] See 8 CFR 214.2(h)(7)(ii)(A)(1).

If a petitioner claims that the classroom training portion of their proposed training programs will take place online, the petition must provide an explanation as to why the training cannot take place in the beneficiary's own country. Officers should also investigate whether the online training would be provided by an academic or vocational institution.[7] See 8 CFR 214.2(h)(1)(ii)(E)(1).

Online Instruction

In cases where the program is entirely online, officers must review each case and ensure that the petitioner has met their burden of proof (preponderance of the evidence) demonstrating that the training cannot be made available in the beneficiary's home country.[8] If the petitioner does not meet the burden of demonstrating that the online training cannot be made available in the beneficiary's home country, officers may consider issuing a Request for Evidence (RFE).

3. Description of the Training Program

The petitioner must specify the type of training, the level of supervision, and the structure of the training program.[9] See 8 CFR 214.2(h)(7)(ii)(B)(1). See Matter of Miyazaki Travel Agency, Inc., 10 I&N Dec. 644 (Reg. Comm. 1964) (denying petition for a trainee where the training program was deemed "unrealistic"). See Matter of Masauyama, 11 I&N Dec. 157 (Reg. Comm. 1965) (noting that the statute contemplates the training of an person rather than giving him further experience by day-to-day application of his skills). The petitioner should provide the officer with sufficient information to establish what the beneficiary will actually be doing, and should link the various tasks to specific skills that the beneficiary will gain by performing them.

On-The-Job Training Hours

The petitioner must specify the number of hours both supervised and unsupervised.[10] See 8 CFR 214.2(h)(7)(ii)(B)(3). See Matter of Frigon, 18 I&N Dec. 164, 166 (court noting that the number of hours devoted to on-the-job training without supervision is one of the factors to be considered). The unsupervised work should be minimal and the supervised work should always be oriented toward training.

Shadowing

There are limited circumstances where a proposed training program that consists largely or entirely of on-the-job training may be approved. Officers should carefully evaluate the totality of the evidence against a preponderance of the evidence standard, including whether a U.S. worker is being displaced and if the on-the-job training would allow the trainee to be placed into a position which is in the normal operation of the business and in which U.S. citizens and legal residents are regularly employed.[11] See Matter of St. Pierre, 18 I&N Dec. 308 (Reg. Comm. 1982) (holding that even though training will consist primarily of on-the-job training, the subject matter by its very nature can only be learned in that setting and since the beneficiary will not receive any payment from the petitioner, and will merely be observing field tests and not actively conducting them, he will not be engaging in productive employment which would displace a resident worker).

4. Remuneration

The petitioner must indicate the source of remuneration received by the trainee, and explain any training program benefits accrued by the petitioning company.[12] See 8 CFR 214.2(h)(7)(ii)(B)(6). See Matter of International Transportation Company, 12 I&N Dec. 389 (Reg. Comm. 1967) (even though training will be 75% on-the-job training, any "productive gain" received by the company from such work will be "offset by the time spent by employees in the training of the beneficiary"). Remuneration may come from any source, domestic or international. When assessing remuneration, the officer may consider whether the salary is in proportion to the training position.[13] See Matter of Kraus Periodicals, Inc., 11 I&N Dec. 63 (Reg. Comm. 1964) (H-3 petition was denied where the petitioner failed to set forth a training program, the specific position, duties, or skills in which the beneficiary is to be trained, and where the substantial salary the beneficiary would have received suggested that the training position was productive employment which may displace a U.S. citizen). See 8 CFR 214.2(h)(7)(ii)(B)(6).

5. Placement into Normal Operation of Business[14] See 8 CFR 214.2(h)(7)(ii)(A)(3) and 8 CFR 214.2(h)(7)(iii)(F).

Officers should consider whether the beneficiary will be placed in a position which is in the normal operations of the business, and U.S. citizens and residents are regularly employed. Factors to consider include:

- Whether training that familiarizes the beneficiary with the individual operations of the petitioning company is similar to the training that would be expected of any new employee,

- Indications that the beneficiary may remain in the United States working with the petitioner, and

- Training where the foreign national is trained alongside U.S. workers.[15] See Matter of Glencoe Press, 11 I&N Dec. 764, 766 (Reg. Comm. 1966).

6. Practical Training

Petitioners frequently assert that beneficiaries will spend a certain amount of time in "practical training." This assertion needs to be supported with a clear explanation of the type and degree of supervision that the beneficiary will receive during such periods.[16] See 8 CFR 214.2(h)(7)(ii)(B)(1) and 8 CFR 214.2(h)(7)(ii)(B)(2). If the officer determines that the "practical training" would actually be productive employment, then the petitioner must establish that it would be incidental to and necessary to the training.[17] See 8 CFR 214.2(h)(7)(ii)(A)(3) and 8 CFR 214.2(h)(7)(iii)(E).

7. Productive Employment

The proportion of time that will be devoted to productive employment must be specified.[18] If the job description and the proffered wage seem suspect, the officer may request more specific information from the petitioner as described in 8 CFR 214.2(h)(7)(ii)(B). Productive employment should be minimal because the beneficiary should be training and not performing productive work that displaces U.S. citizens or legal residents.[19] See 8 CFR 214.2(h)(7)(ii)(B)(2) and 8 CFR 214.2(h)(7)(iii)(E). A training program which devotes a significant percentage of time to productive employment should be closely scrutinized.[20] The regulations prohibit the approval of a petition involving a training program that will result in productive employment beyond that which is incidental and necessary to the training. See 8 CFR 214.2(h)(7)(iii)(E). Further, a significant percentage of time devoted to productive employment indicates that the beneficiary may be placed in a position which is in the normal operation of the business and in which U.S. workers are regularly employed. See 8 CFR 214.2(h)(7)(ii)(A)(3), 8 CFR 214.2(h)(7)(iii)(E), and 8 CFR 214.2(h)(7)(ii)(F). See Matter of Miyazaki Travel Agency, Inc., 11 I&N Dec. 424, 425 (Reg. Comm. 1964) ("An industrial trainee shall not be permitted to engage in productive employment if such employment will displace a United States resident"). See Matter of Sasano, 11 I&N Dec. 363, 364 (Reg. Comm. 1965) ("[I]t is concluded [that] the beneficiary would be involved in full-time productive employment and that any training received would be incidental thereto"). See Matter of St. Pierre, 18 I&N Dec. 308, 310 (Reg. Comm. 1982) ("The petitioner has established that the beneficiary will not be engaged in productive employment that might displace a resident worker").

8. Substantial Training and Expertise in Field of Training

In order to establish that the beneficiary does not already possess substantial training and expertise in the proposed field of training,[21] See 8 CFR 214.2(h)(7)(iii)(C). See Matter of Masauyama, 11 I&N Dec. 157, 158 (Reg. Comm. 1965) ("It is conceded that practical day-to-day experience will increase proficiency in any line of endeavor. However, the statute involved here is one that contemplates the training of an person rather than giving him further experience by day-to-day application of his skills"). See Matter of Koyama, 11 I&N Dec. 424, 425 (Reg. Comm. 1965) ("While it is conceded that practical experience will increase a person's efficiency in any line of endeavor, the intent of the statute involved here is to train rather than to gain experience"). the petitioner should submit as much information regarding the beneficiary's credentials as possible. If related to the proposed H-3 training program, copies of the beneficiary's diplomas and transcripts should be submitted, including any training and education received in the United States, copies of any relevant forms (for example, Certificate of Eligibility for Nonimmigrant (F-1) Student Status-For Academic and Language Students (Form I-20), Certificate of Eligibility for Exchange Visitor (J-1) Status (Form DS-2019)). If possible, letters from prior employers detailing the beneficiary's work experience should also be submitted.

9. Sufficiently Trained Staff

In order to establish that it has sufficiently trained staff to provide the training specified in the petition,[22] See 8 CFR 214.2(h)(7)(iii)(G). the petitioner should provide the names and credentials of the persons who will provide the training. The petitioner should specify the amount of time each trainer will spend training the beneficiary. The petitioner should also explain how the trainers' normal responsibilities will be performed while they are training the beneficiary (this is especially important in cases involving relatively small entities, as larger percentages of their workforces will presumably be diverted in order to provide the training).[23] There are, of course, situations where allocation of a significant percentage of the company's resources to train a single person would be reasonable and credible. As noted above, the regulation at 8 CFR 214.2(h)(7)(ii)(B)(6) requires the petitioner to describe "any benefit that will accrue to [it] for providing the training."

10. Unavailability of the Training in Beneficiary's Country

The petitioner must establish that the trainee cannot obtain the training in his or her country and demonstrate why it is necessary for the trainee to be trained in the United States.[24] See 8 CFR 214.2(h)(7)(ii)(B)(5). See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972) (rejecting petitioner's argument that he only needs to go on record as stating that training is not available outside the United States).

C. Approvals

If all documentary requirements have been met and the petition appears approvable, officers should endorse the action block on the petition. The approval period should coincide with the period of training requested by the petitioner, but only up to 2 years for trainees and up to 18 months for special education training program participants.[25] See 8 CFR 214.2(h)(9)(iii)(C) and 8 CFR 214.2(h)(13)(v).

When approving a special education training program participant, officers need to enter H-3B in CLAIMS and annotate H-3B on the petition. Because of the numerical limitations applicable to the H-3 Special Education Exchange Visitor category, officers must contact the USCIS Service Center Operations office to obtain authorization before approving an H-3 Special Education Exchange Visitor petition. The number assigned should be recorded on the front of the petition in the "Remarks" section. The approved petition should also be annotated "Approved Pursuant to Sec. 223 of Pub. L. 101-649."

D. Denials

If documentary requirements have not been met and the petition is not approvable, officers should prepare and issue a notice of denial and advise the petitioner of the right of appeal to the Administrative Appeals Office.

E. Transmittal of Petitions

USCIS sends all approved petitions to the Kentucky Consular Center (KCC). The KCC scans and uploads the documentation into the Consular Consolidated Database (CCD).[26] See 9 FAM 41.53 PN3. Consular officers and Customs and Border Protection officers have access to the CCD to verify and review documents.

Footnotes

1.

See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M*, 20 I&N Dec. 77, 79-80 (Comm. 1989)).

2.

See *Matter of Brantigan,* 11 I&N Dec. 493 (BIA 1966).

3.

Generalized assertions that the proposed training will expand the trainee's skill set or make him or her more desirable to prospective employers are usually not sufficient to demonstrate the proposed training will prepare the beneficiary for an existing career abroad. See 8 CFR 214.2(h)(7)(iii).

4.

Even if a new employee or current employee possesses knowledge in the proposed field of training, he or she could be considered a trainee if the company or organization decides he or she needs the training, so long as all other requirements are met (for example, so long as beneficiary does not possess substantial training and expertise in the proposed field of training).

5.

Although 8 CFR 214.2(h)(7)(iii)(C) states that a training program may not be approved if it is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training, this provision does not automatically prohibit professionals from participating in a training program. It remains the petitioner's burden to demonstrate by a preponderance of the evidence that the training program is approvable.

6.

See 8 CFR 214.2(h)(7)(ii)(A)(1).

7.

See 8 CFR 214.2(h)(1)(ii)(E)(1).

8.

If the petitioner does not meet the burden of demonstrating that the online training cannot be made available in the beneficiary's home country, officers may consider issuing a Request for Evidence (RFE).

9.

See 8 CFR 214.2(h)(7)(ii)(B)(1). See *Matter of Miyazaki Travel Agency, Inc.,* 10 I&N Dec. 644 (Reg. Comm. 1964) (denying petition for a trainee where the training program was deemed "unrealistic"). See *Matter of Masauyama*, 11 I&N Dec. 157 (Reg. Comm. 1965) (noting that the statute contemplates the training of an person rather than giving him further experience by day-to-day application of his skills).

10.

See 8 CFR 214.2(h)(7)(ii)(B)(3). See *Matter of Frigon*, 18 I&N Dec. 164, 166 (court noting that the number of hours devoted to on-the-job training without supervision is one of the factors to be considered).

11.

See *Matter of St. Pierre*, 18 I&N Dec. 308 (Reg. Comm. 1982) (holding that even though training will consist primarily of on-the-job training, the subject matter by its very nature can only be learned in that setting and since the beneficiary will not receive any payment from the petitioner, and will merely be observing field tests and not actively conducting them, he will not be engaging in productive employment which would displace a resident worker).

12.

See 8 CFR 214.2(h)(7)(ii)(B)(6). See *Matter of International Transportation Company*, 12 I&N Dec. 389 (Reg. Comm. 1967) (even though training will be 75% on-the-job training, any "productive gain" received by the company from such work will be "offset by the time spent by employees in the training of the beneficiary").

13.

See *Matter of Kraus Periodicals, Inc.*, 11 I&N Dec. 63 (Reg. Comm. 1964) (H-3 petition was denied where the petitioner failed to set forth a training program, the specific position, duties, or skills in which the beneficiary is to be trained, and where the substantial salary the beneficiary would have received suggested that the training position was productive employment which may displace a U.S. citizen). See 8 CFR 214.2(h)(7)(ii)(B)(6).

14.

See 8 CFR 214.2(h)(7)(ii)(A)(3) and 8 CFR 214.2(h)(7)(iii)(F).

15.

See *Matter of Glencoe Press*, 11 I&N Dec. 764, 766 (Reg. Comm. 1966).

16.

See 8 CFR 214.2(h)(7)(ii)(B)(1) and 8 CFR 214.2(h)(7)(ii)(B)(2).

17.

See 8 CFR 214.2(h)(7)(ii)(A)(3) and 8 CFR 214.2(h)(7)(iii)(E).

18.

If the job description and the proffered wage seem suspect, the officer may request more specific information from the petitioner as described in 8 CFR 214.2(h)(7)(ii)(B).

19.

See 8 CFR 214.2(h)(7)(ii)(B)(2) and 8 CFR 214.2(h)(7)(iii)(E).

20.

The regulations prohibit the approval of a petition involving a training program that will result in productive employment beyond that which is incidental and necessary to the training. See 8 CFR 214.2(h)(7)(iii)(E). Further, a significant percentage of time devoted to productive employment indicates that the beneficiary may be placed in a position which is in the normal operation of the business and in which U.S. workers are regularly employed. See 8 CFR 214.2(h)(7)(ii)(A)(3), 8 CFR 214.2(h)(7)(iii)(E), and 8 CFR 214.2(h)(7)(ii)(F). See *Matter of Miyazaki Travel Agency, Inc.*, 11 I&N Dec. 424, 425 (Reg. Comm. 1964) ("An industrial trainee shall not be permitted to engage in productive employment if such employment will displace a United States resident"). See *Matter of Sasano*, 11 I&N Dec. 363, 364 (Reg. Comm. 1965) ("[I]t is concluded [that] the beneficiary would be involved in full-time productive employment and that any training received would be incidental thereto"). See *Matter of St. Pierre*, 18 I&N Dec. 308, 310 (Reg. Comm. 1982) ("The petitioner has established that the beneficiary will not be engaged in productive employment that might displace a resident worker").

21.

See 8 CFR 214.2(h)(7)(iii)(C). See *Matter of Masauyama*, 11 I&N Dec. 157, 158 (Reg. Comm. 1965) ("It is conceded that practical day-to-day experience will increase proficiency in any line of endeavor. However, the statute involved here is one that contemplates the training of an person rather than giving him further experience by day-to-day application of his skills"). See *Matter of Koyama*, 11 I&N Dec. 424, 425 (Reg. Comm. 1965) ("While it is conceded that practical experience will increase a person's efficiency in any line of endeavor, the intent of the statute involved here is to train rather than to gain experience").

22.

See 8 CFR 214.2(h)(7)(iii)(G).

23.

There are, of course, situations where allocation of a significant percentage of the company's resources to train a single person would be reasonable and credible. As noted above, the regulation at 8 CFR 214.2(h)(7)(ii)(B)(6) requires the petitioner to describe "any benefit that will accrue to [it] for providing the training."

24.

See 8 CFR 214.2(h)(7)(ii)(B)(5). See *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg. Comm. 1972) (rejecting petitioner's argument that he only needs to go on record as stating that training is not available outside the United States).

25.

See 8 CFR 214.2(h)(9)(iii)(C) and 8 CFR 214.2(h)(13)(v).

26.

See 9 FAM 41.53 PN3.

Chapter 7 - Admissions, Extensions of Stay, and Change of Status

A. Admissions

H-3 trainees and externs should be admitted for the length of the training program, but for no longer than 2 years.[1] See 8 CFR 214.2(h)(9)(iii)(C)(1). H-3 visa special education exchange visitors should be admitted for the length of the training program, but for no longer than 18 months.

H-3 trainees and special education exchange visitors who respectively, have spent 2 years or 18 months in the United States, in either H-visa or L-visa classifications may not seek extension of, change of status to, or be readmitted in, either H-visa or L-visa status unless they have resided outside the United States for the previous six months.[2] See 8 CFR 214.2(h)(13)(iv).

There are limited exceptions to this rule. For example, the limitation does not apply to an H-3 nonimmigrant whose H or L status was seasonal, intermittent, or lasted for an aggregate of 6 months or less per year.[3] See 8 CFR 214.2(h)(13)(v).

Additionally, time spent as an H-4 dependent does not count against the maximum allowable periods of stay available to principals in H-3 status (or vice-versa). Thus, a foreign national who was previously granted H-4 dependent status and subsequently is granted H-3 classification, or a foreign national who was previously granted H-3 classification and subsequently is granted H-4 dependent status, may be eligible to remain in the United States for the maximum

period of stay applicable to the classification.

For example, a husband and wife who come to the United States as a principal H-3 and dependent H-4 spouse may maintain status for one year, and then change status to H-4 and H-3 respectively, as long as the change of status application is properly filed before the principal H-3 has spent the maximum allowable period of stay in the United States.[4] Maintenance of H-4 status continues to be tied to the principal's maintenance of H status. Thus, H-4 dependentsmay only maintain such status as long as the principal maintains the relevant principal H status.

B. Extensions of Stay

H-3 trainees and externs can only extend their stay if their original stay was less than 2 years, and the total period of stay, together with the extension period, does not exceed 2 years. H-3 special education exchange visitors can extend their stay in the United States only if their total period of stay does not exceed 18 months.[5] See 8 CFR 214.2(h)(15)(ii)(D).

To file for an extension, the petitioner must file another Petition for a Nonimmigrant Worker (Form I-129) and H Classification Supplement to Form I-129, fully documented in the same manner as the first petition, and also include:

- A letter from the petitioner requesting an extension of status for the trainee, with an explanation of why the training has not yet been completed;
- A copy of the beneficiary's Arrival/Departure Record (Form I-94); and
- A copy of the beneficiary's first Notice of Action (Form I-797).

If the H-3 beneficiary has a dependent (a spouse, or unmarried child under the age of 21) in the United States, those dependents will need to submit an Application To Extend/Change Nonimmigrant Status (Form I-539).

C. Change of Status

Certain categories of nonimmigrants are eligible to change status to that of an H-3 nonimmigrant, including certain students and other temporary visa holders.[6] Certain categories generally cannot change status if they are in the United States, including nonimmigrants who entered the United States with the following visas: C, Travel without a Visa, D, K-1 or K-2, J-1, or M-1. Other nonimmigrants, such as B-1 and B-2, may change status to H-3. Such change of status requests must establish that:

- The beneficiaries entered the United States legally;
- The beneficiaries have never worked in the United States illegally, or otherwise violated the terms of their visa; and
- The expiration date on the beneficiary's I-94 has not passed.[7] See 8 CFR 248.1(b) for information on timely

filing and maintenance of status, and circumstances when failure to file timely may be excused in the discretion of USCIS.

Footnotes

1.

See 8 CFR 214.2(h)(9)(iii)(C)(1).

2.

See 8 CFR 214.2(h)(13)(iv).

3.

See 8 CFR 214.2(h)(13)(v).

4.

Maintenance of H-4 status continues to be tied to the principal's maintenance of H status. Thus, H-4 dependents

may only maintain such status as long as the principal maintains the relevant principal H status.

5.

See 8 CFR 214.2(h)(15)(ii)(D).

6.

Certain categories generally cannot change status if they are in the United States, including nonimmigrants who entered the United States with the following visas: C, Travel without a Visa, D, K-1 or K-2, J-1, or M-1. Other nonimmigrants, such as B-1 and B-2, may change status to H-3.

7.

See 8 CFR 248.1(b) for information on timely filing and maintenance of status, and circumstances when failure to file timely may be excused in the discretion of USCIS.

Volume 7 - Adjustment of Status

Part L - Refugee Adjustment

Chapter 1 - Purpose and Background

A. Purpose

USCIS seeks to:

- Resolve the refugee's status after admission by ultimately determining whether the refugee is admissible to the United States as an immigrant; and

- Provide qualified refugees a pathway to permanent residence as persons of special humanitarian concern to the United States.

B. Background

Before the Refugee Act of 1980, refugee admission policy was reactive and piecemeal as it grew in response to humanitarian crises and ethnic conflicts. The result was an assortment of laws and regulations that classified persons as refugees, conditional entrants, parolees, pre-parolees, escapees, evacuees, or asylum grantees. In many cases, the long-term resolution of these classifications was unclear. The Refugee Act of 1980 addressed these issues by providing a systematic procedure for the admission and permanent resettlement of refugees of special humanitarian concern to the United States.

Prior to the passage of the Refugee Act, a refugee in the United States had to wait two years to apply for adjustment of status. The refugee also had to show that he or she had fled (or stayed away from) any communist-dominated country or country within the Middle East and was unwilling or unable to return due to fear of persecution.

Although the refugee was not required to show that he or she continued to meet the definition of a refugee, he or she adjusted status under section 245 of the Immigration and Nationality Act (INA), meaning that all of the inadmissibility grounds and bars to adjustment applied. The Refugee Act established, among other things, a uniform basis for permanent resettlement by amending the INA with the creation of section 209.

Refugees are now required to apply to adjust status one year after being admitted as a refugee in order for USCIS to determine their admissibility to the United States as an immigrant.[1] See INA 209. Recognizing the unique and tenuous position of this population, Congress determined that certain grounds of inadmissibility would not apply at time of adjustment, while allowing for the possible waiver of other grounds.

C. Legal Authorities

- INA 209(a) – Adjustment of Status of Refugees
- 8 CFR 209.1 – Adjustment of Status of Refugees
- Pub. L. 96-212 – Refugee Act of 1980
- INA 101(a)(42) – Definition of “refugee”

Footnotes

1. See INA 209.

Chapter 2 - Eligibility Requirements

By applying for adjustment of status, refugees are considered to be applying for inspection and admission to the U nited States as an immigrant. A refugee may adjust status to a lawful permanent resident if the refugee meets the following four requirements:

- Admitted as a refugee under INA 207;
- Physically present in the United States as a refugee for at least one year;
- Refugee status has not been terminated; and
- Permanent resident status has not already been acquired in the United States.

Applicants who fail to meet any of these requirements are statutorily ineligible for adjustment of status as a refugee.

A. Admitted as a Refugee under INA 207

Only applicants classified as refugees are eligible to adjust status as a refugee. Foreign nationals are generally classified as refugees through an approved Registration for Classification as Refugee (Form I-590), or an approved Asylee/Refugee Relative Petition (Form I-730) filed by a principal refugee.

Refugees who are admitted to the United States through an approved Form I-590 are granted refugee status on the date they are admitted. Derivative refugees already in the United States when their relative petition (Form I-730) is approved are granted refugee status on the date the relative petition is approved. Derivative refugees outside the U nited States when their relative petition is approved are granted refugee status on the date they are admitted to the U nited States.

Immigrants Often Mistaken as Refugees:

Several classifications of immigrants are often mistaken for refugees. Many of these foreign nationals apply for adjustment of status as a refugee because they are not aware of the difference between their status and refugee status and may genuinely think they are refugees. These applicants are not eligible for adjustment of status under the refugee adjustment of status provisions. The most commonly encountered non-refugees are:

Asylees

Asylum may be granted to persons who are already in the United States and meet the definition of a refugee. Asylees are similar to refugees in many ways and in some cases may be confused with refugees. However, asylees gain status through either an Application for Asylum and for Withholding of Removal (Form I-589) approved by an Asylum Office, Immigration Judge or the Board of Immigration Appeals, or by obtaining a visa through an approved relative petition for derivative asylees not included on the original asylum application. Asylees also may apply for adjustment of status under INA 209, but through a process separate from the refugee adjustment process.[1] See Part M, Asylee Adjustment [7 USCIS-PM M] for details on adjustment of status for asylees.

Lautenberg Parolees

As part of a program under the Lautenberg Amendment first introduced in 1990, certain foreign nationals from the former Soviet Union found to be ineligible for refugee status and whose applications are denied can be offered parole into the United States. These persons include, but are not necessarily limited to: Jews, Evangelical Christians, and Ukrainian Christians of the Orthodox and Roman Catholic denominations. Prior to mid-1994, Lautenberg parolees also included certain Vietnamese, Cambodians, and Laotians. Lautenberg parolees will usually have a denied Form I-590 and a travel letter, or an Arrival/Departure Record (Form I-94) showing that they were paroled into the United States. Lautenberg parolees may adjust status under section 599E of Pub. L. 101-167.

Cuban Entrants

Since 1959, thousands of Cuban nationals have been paroled or admitted into the United States, many for humanitaria n reasons but not as refugees. Although Cubans from the port of Mariel, Cuba, entered the United States shortly after the enactment of the Refugee Act of 1980 and may have documentation that seems to indicate refugee status, they do not adjust status as refugees. Such persons who have been physically present in the United States for one year can adjust status under the Cuban Adjustment Act of 1966.

Indochinese Parolees

Throughout the 1980s and 1990s, thousands of citizens of Vietnam, Cambodia, and Laos were paroled into the United States under the Orderly Departure Program. Those who were paroled into the United States before October 1, 1997 and who were in the United States on that day may adjust status under section 586 of Pub. L. 106-429.

Humanitarian Parolees

Persons throughout the world who are facing a humanitarian crisis may be paroled into the United States. Sometimes these are extended family members of refugees or asylees who cannot be approved on a relative petition. They may be similar to Lautenberg parolees in that they do not qualify for refugee status but are facing some type of hardship. These foreign nationals generally have no means to adjust status based on their parole.

Illegal Entrants

Some illegal entrants may consider themselves to be refugees because they are fleeing someone or some place. They may have applied for asylum status and been denied, entered the United States without inspection or overstayed their nonimmigrant visa.

Iraqi and Afghan Translators

While some Iraqi and Afghan nationals are admitted as refugees, others may be admitted into the United States based on their service to the United States Armed Forces as a translator or interpreter (SI-1 classification). These foreign

nationals are not refugees. The holder of a SI-1 classification will have an approved Petition for Amerasian, Widow(er), Or Special Immigrant (Form I-360) in order to apply for adjustment of status. Iraqi nationals and citizens with an approved Form I-360 do not adjust status as a refugee but rather as employment-based 4th preference special immigrants.

Iraqi Employees Who Worked On or Behalf of the U.S. Government

Section 1244 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181) authorizes special immigrant status (SQ-1 classification) for Iraqi nationals who worked for or on behalf of the U.S. government in Iraq on or after March 20, 2003 to be admitted to the United States or adjust to immigrant status. These foreign nationals are not refugees. The holder of a SQ-1 classification must have an approved Form I-360 in order to apply for adjustment of status. Iraqi nationals and citizens with an approved Form I-360 do not adjust status as a refugee but rather as employment-based 4th preference special immigrants.

Afghan Allies

The Afghan Allies Protection Act of 2009 authorizes special immigrant status (SQ-1 classification) for Afghan nationals who worked for or on behalf of the U.S. government to be admitted to the United States or adjust to immigrant status. These foreign nationals are not refugees. The holder of the SQ-1 classification must have an approved Form I-360 in order to apply for adjustment of status. Iraqi nationals and citizens with an approved Form I-360 do not adjust status as a refugee but rather as employment-based 4th preference special immigrants.

Aliens Erroneously Admitted to the United States as Refugees

Sometimes a foreign national may be erroneously admitted as a refugee as indicated on their admission document (Form I-94). This is most common with derivative asylees, humanitarian parolees, and sometimes Lautenberg parolees. The fact that a person was admitted erroneously as a refugee does not make that person eligible to adjust status under the refugee adjustment of status provisions.[2] See INA 209(a). As is the case in all adjustment of status applications, an officer must determine if the person was indeed admitted under the proper classification prior to making a decision on the adjustment application.[3] See Matter of Khan, 14 I&N Dec. 122 (BIA 1972). This applies in general to any immigrant who was admitted under the wrong status or was ineligible for admission under that status.

B. Physical Presence in the United States for at Least One Year

Refugees are required to have one year of physical presence in the United States at time of filing the application in order to be eligible to adjust status. For applicants who gained derivative refugee status through an approved relative petition and who were in the United States when the petition was approved, the one year period begins on the date the relative petition was approved.

Because the requirement is one year of physical presence and not just one year from the date of admission as a refugee, only time spent in the United States counts toward this requirement. Applicants who travel outside the United States within their first year of residence as a refugee will not meet this requirement until the cumulative amount of time spent in the United States is at least one year.

C. Refugee Status Has Not Been Terminated

An applicant whose refugee status has been terminated is not eligible to adjust status. Evidence of termination of status in the applicant's A-file will generally include a notice of termination of status, a Notice To Appear, and EOIR court records. Other evidence may include a notice of intent to terminate status, interview notes, and assessment notes. See Chapter 6 of this Part for more information on termination of status.

D. Permanent Resident Status Has Not Already Been Acquired in the United States

Refugees who have already acquired permanent resident status are not eligible to adjust status. Evidence of permanent resident status will most often be an approved adjustment application already in the applicant's A-file.

Refugees who sought adjustment of status prior to July 1998 applied through the local field office. These refugees will usually have only an approved Memorandum of Creation of Record of Lawful Permanent Residence (Form I-181) in their A-file as evidence of their adjustment of status. Refugees who adjusted status between 1998 and 2005 will usually have both an approved adjustment of status application (Form I-485) and an approved Form I-181 in their A-file.

Refugees who adjusted status from 2005 to the present will usually have only an approved adjustment of status application in their A-file. The Form I-181 is no longer in use.

E. Others Allowed to Apply for Adjustment under INA 209 by Statute or Regulation

Historically, USCIS has granted other foreign nationals status that is similar to the current refugee and asylee categories. Although most of these persons have already applied for adjustment of status due to the passage of time, an officer may occasionally encounter such cases. These applicants are eligible to apply for adjustment of status under INA 209 once certain conditions have been met.

1. Pre-April 1, 1980 Conditional Entrants

Prior to April 1, 1980, the INA allowed persons from communist or communist-dominated countries and persons from countries in the general area of the Middle East to be admitted as "conditional entrants" under what was then known as the seventh preference category. Conditional entrants were allowed to become permanent residents after a specified period (initially two years, later reduced to one year) in the United States.

The conditional entrant provisions were generally repealed by the Refugee Act of 1980, except that the repeal did not apply to persons who were granted conditional entry prior to April 1, 1980. Accordingly, any conditional entrant encountered today who is seeking LPR status should be treated in the same fashion as a refugee seeking permanent residence, except that the correct adjustment code is "P7-5."

2. Persons Paroled as Refugees Prior to April 1, 1980

The Refugee Act also allowed foreign nationals paroled into the United States as refugees prior to April 1, 1980 to adjust their status if they were eligible for the benefits of section 5 of Pub. L. 95-412. The law states in part that "Notwithstanding any other provision of law, any refugee, not otherwise eligible for retroactive adjustment of status, who was or is paroled into the United States by the Attorney General pursuant to INA 212(d)(5) before April 1, 1980, shall have his status adjusted pursuant to the provisions of INA 203(g) and (h) of the Act."

Therefore, a person paroled into the United States as a refugee prior to April 1, 1980, may have his or her status adjusted to lawful permanent resident, if otherwise eligible.

3. Persons Paroled as Refugees Between April 1, 1980 and May 18, 1980

Some foreign nationals continued to be paroled into the United States for a few weeks after April 1, 1980. They are to be treated the same as persons admitted under the former seventh preference (conditional entrant) category.[4] See 8 CFR 209.1(a)(2). Even though conditional entrance or parole of refugees was not permitted after passage of the Refugee Act, legacy INS may have done so in error. Since the adjustment of status of such a person is not covered by the INA or current regulations, the officer should contact the Refugee Affairs Division at the Refugee, Asylum, and International Operations Directorate (RAIO) for further guidance.

F. Special Considerations for Refugee Adjustment of Status Applicants

Officers must be aware of the following provisions affecting refugees applying for adjustment of status:

- Refugees do not have to continue to meet the definition of "refugee" within the meaning of the INA after admission and may still adjust status as a refugee.
- Derivative refugees accompanying or following to join the principal refugee do not have to wait until the principal refugee has adjusted status to adjust their own status. They are considered refugees in their own right once admitted to the United States.
- Derivative refugees do not have to maintain their familial relationship to the principal refugee after admission to the United States to be eligible to adjust status.
- There is no bar to adjustment of status for refugees who have firmly resettled in a foreign country subsequent to being admitted to the United States as refugees.
- There is no bar to adjustment of status for refugees who previously had the status of an exchange nonimmigrant under INA 101(a)(15)(J) and who had been subject to the foreign resident requirement under INA 212(e), even if the foreign resident requirement was never met. In this case, no waiver is necessary.

1. Relationship Issues

While reviewing a case, an officer may become aware that, at the time a derivative refugee was admitted to the United States, he or she did not possess the requisite relationship to the principal refugee and as such was not entitled to derivative refugee status at time of admission. In certain instances, these applicants may be found inadmissible for fraud or misrepresentation because they were questioned about their marital status and familial relationships during the Form I-590 interview or interview for Form I-730 derivative refugee status, or at the port of entry.

Although the derivative refugees in each of the following examples have been admitted to the United States as refugees, they were not eligible for that status when they were admitted because their status was dependent upon their relationship to the principal, and the relationship did not exist or no longer existed at the time of admission.[5] See Matter of Khan, 14 I&N Dec. 122 (BIA 1972). The most common scenarios are:

Pre-Departure Marriages

It is not uncommon for some derivative refugee children to marry prior to admission as a refugee to the United States. The marriage severs their familial relationship to the principal refugee. In February 2003, USCIS officers began requiring derivative children of the principal refugee (RE-3 classification) to sign an *RE-3 Notice on Pre-Departure Marriage & Declaration* statement.

By signing the notice, RE-3 derivatives acknowledge that they will be ineligible for admission as a derivative refugee if they marry prior to being admitted to the United States. Refugee derivatives who sign this notice and who marry prior to being admitted to the United States as a refugee may also be found inadmissible for fraud or misrepresentation should they present themselves as unmarried children. A pre-departure change to marital status will render the applicant ineligible for admission as a derivative refugee regardless of whether the foreign national signs an RE-3 Notice.

Pre-Departure Divorces

A derivative spouse (RE-2 classification) of a refugee who divorces the principal refugee prior to seeking admission as a refugee to the United States is ineligible for admission as a derivative refugee. Officers should note that if USCIS did not ask the derivative spouse about their marital status or eligibility at the time of admission, the foreign national may not have committed an act of fraud or misrepresentation.

Non-Existent or Fraudulent Relationships

Some derivative refugees may be untruthful on the refugee application about their marital status. A derivative spouse (RE-2) may not have been legally married to the principal applicant when the refugee application was filed, although they may have publicly presented themselves as husband and wife. A derivative child (RE-3) may have been married when the application was filed but claimed to be single. Additionally, applicants who have no relationship to the principal could claim a relationship as either a spouse or child, and likewise the principal may claim a relationship to them in order to gain access to the U.S. Refugee Admissions Program.

In all three scenarios, refugee adjustment allows most grounds of inadmissibility to be waived for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Many applicants who may be found inadmissible due to relationship fraud or ineligibility due to not having the requisite relationship at time of admission may be deserving of a waiver of that ground, especially those who have or had a legitimate familial relationship or common law relationship to the principal. An officer should use their discretion when granting these waivers and

should consider the totality of the circumstances, including whether or not the derivative has had an actual relationship to the principal.

2. Child Status Protection Act Provisions

As of August 6, 2002, any derivative refugee child who had a pending relative petition (Form I-730), adjustment application (Form I-485), or refugee application (Form I-590) on or after that date has had his or her age "frozen" as of the date the petition or application was filed. This was to allow the foreign national's continued classification as a child for purposes of both refugee classification and adjustment of status. Any person who aged out prior to that date is not eligible for continuing classification as a child unless one of these applications was pending on August 6, 2002.

An unmarried child who is under 21 on the day the principal refugee files the refugee application will remain eligible to be classified as a child as long as he or she was listed on the parent's refugee application prior to adjudication. In determining continuing eligibility as a derivative refugee child for adjustment, the officer need only verify that the derivative applicant's age was under 21 at the time the refugee application or the relative petition was filed, whichever form first listed the child.

Footnotes

1.

See Part M, Asylee Adjustment [7 USCIS-PM M] for details on adjustment of status for asylees.

2.

See INA 209(a).

3.

See *Matter of Khan*, 14 I&N Dec. 122 (BIA 1972). This applies in general to any immigrant who was admitted under the wrong status or was ineligible for admission under that status.

4.

See 8 CFR 209.1(a)(2).

5.

See *Matter of Khan*, 14 I&N Dec. 122 (BIA 1972).

Chapter 3 - Admissibility and Waiver Requirements

Refugees must be admissible to the United States as an immigrant at the time adjustment of status is granted. However, an officer must remember that applicants who were admitted to the United States as refugees were subject to grounds of inadmissibility at the time of admission.

Therefore, any information contained in the A-file known to the refugee officer, consular officer, or inspections officer at the time of admission is generally not used to find the refugee inadmissible at the time of adjustment, unless the law or interpretation of the law has changed subsequent to admission, or a clear error was made by the original adjudicating officer.[1] For example, a ground of inadmissibility was waived for which no waiver was available, or a

national security issue was not properly addressed.

An officer makes a determination regarding the refugee's admissibility at the time of admission and the officer adjudicating the adjustment of status application should give deference to this prior determination.

A. Exemptions

The following grounds of inadmissibility do not apply to refugees adjusting status:

- Public Charge – INA 212(a)(4)
- Labor Certification and Qualifications for Certain Immigrants – INA 212(a)(5)
- Documentation Requirements for Immigrants – INA 212(a)(7)(A)

B. Applicable Inadmissibility Grounds

The following grounds of inadmissibility apply to refugees adjusting status:

- Health-Related – INA 212(a)(1)
- Crime-Related – INA 212(a)(2)
- Security-Related – INA 212(a)(3)
- Illegal Entrants and Immigration Violators – INA 212(a)(6)
- Ineligibility for Citizenship – INA 212(a)(8)
- Foreign Nationals Previously Removed – INA 212(a)(9)
- Practicing Polygamists, Guardians Required to Accompany Helpless Persons, International Child Abductors, Unlawful Voters, and Former Citizens who Renounced Citizenship to Avoid Taxation – INA 212(a)(10)

Health-Related Considerations

Generally, if an officer waives the grounds of inadmissibility at the time of the refugee admission, the waiver carries forward to the adjustment application. A notable exception would be for waivers of medical inadmissibility for Class A medical conditions. In these instances, the waiver does not carry through to adjustment and the applicant must submit to a new medical exam to determine whether the Class A medical condition has been resolved.

C. Inadmissibility Grounds that May Not Be Waived

While waivers are generally available for most of the grounds listed in Section B, Applicable Inadmissibility Grounds, [2] See 7 USCIS-PM L.3(B). the following grounds of inadmissibility cannot be waived:

- Controlled Substance Traffickers – INA 212(a)(2)(C)
- Espionage; Sabotage; Illegal Export of Goods, Technology, or Sensitive Information; Unlawful Overthrow or Opposition to U.S. Government – INA 212(a)(3)(A)
- Terrorist Activities – INA 212 (a)(3)(B)
- Adverse Foreign Policy Impact – INA 212(a)(3)(C)
- Participants in Nazi Persecutions or Genocide – INA 212(a)(3)(E)

An officer should deny the adjustment application if no waiver is available due to the type of inadmissibility found.

National Security Issues

In the event that an adjudicating officer identifies at any stage one or more national security indicator(s) or concerns unknown at the time of the refugee grant, an officer should refer to USCIS guidance on disposition of national security cases. An officer should also follow current USCIS instructions on cases that involve Terrorist Related I nadmissibility Ground (TRIG) issues for disposition of the case or see their supervisor for questions on material support to terrorism.

Unless sent specifically to a field office for resolution of a TRIG issue, an officer should return any refugee adjustment case with unresolved TRIG issues to the Nebraska Service Center for resolution.

D. Waivers [3] **See Adjudicator's Field Manual (AFM) Chapter 41.6, Waivers of Inadmissibility for Refugees and Asylees for more information on waivers of inadmissibility for refugees under INA 209(c).**

All grounds of inadmissibility listed at Section B, Applicable Inadmissibility Grounds[4] See 7 USCIS-PM L.3(B). are subject to waiver, if the applicant can establish he or she qualifies for a waiver. An officer may have waived a refugee adjustment applicant's ground of inadmissibility for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. This is a more generous waiver provision than what is used for general adjustments, which typically require an applicant to prove extreme hardship.

In adjudicating a discretionary waiver application for refugee adjustment, an officer must balance the humanitarian, family unity, or public interest considerations with the seriousness of the offense that rendered the applicant inadmissible. In making this determination, an officer should recognize that the applicant has already established either past persecution or a well-founded fear of future persecution, which is an extremely strong positive discretionary factor. Therefore, unless there are even stronger negative factors that outweigh the positive ones, the waiver application should generally be approved.

Often, waiver applications for refugees are handled overseas before the foreign national is approved for the refugee classification. However, if a ground of inadmissibility arose after the applicant's approval for the refugee classification, or if it was not known to the officer who approved the refugee classification, the applicant may seek a waiver. The officer should adjudicate the waiver as a part of the refugee adjustment process. The applicant generally seeks a waiver through the filing of an Application by Refugee for Waiver of Grounds of Excludability (Form I-602).

When an officer determines that an applicant is inadmissible and a waiver is available, an officer may grant the waiver without requiring submission of a Form I-602, if:

- The applicant is inadmissible under a ground of inadmissibility that may be waived (other than health related grounds);[5] See Health Related Considerations in Section B, Applicable Inadmissibility Grounds [7 USCIS-PM L.3(B)].
- USCIS records and other information available to an officer contain sufficient information to assess eligibility for a waiver;
- There is no evidence to suggest that negative factors would adversely impact the exercise of discretion; and
- It is appropriate to grant a waiver.

If an officer determines that the applicant does not need to file a Form I-602, the officer should indicate that they have waived the inadmissibility by annotating the adjustment application to reflect this action. An officer may use a written annotation, stamp, or pre-printed label to indicate the specific inadmissibility ground that they are waiving.

The officer's signature and approval stamp on the adjustment application also serves as the signature and approval of the waiver. Waivers granted because the vaccinations were not medically appropriate do not require a waiver annotation on the adjustment application or the medical record (Form I-693).[6] See INA 212(g)(2)(B). All others do require an annotation.

In cases that require a Form I-602, there is no need for a separate waiver approval notice because the approval of the adjustment application will indicate the approval of the waiver application. The officer should simply stamp the waiver application as approved, check the block labeled "Waiver of Grounds of Inadmissibility is Granted," and make

the appropriate endorsements in the space labeled "Basis For Favorable Action."

If the applicant is statutorily ineligible for a waiver (i.e., he or she is inadmissible under a ground of inadmissibility that cannot be waived) or if there are sufficient negative factors to warrant denial of the waiver application, the officer should check the block on Form I-602 labeled "Waiver of Grounds of Inadmissibility is Denied," and write "See Form I-291"[7] USCIS uses the Form I-291 to notify the applicant that his or her application has been denied. in the space labeled "Reasons."

The denial of the waiver should be fully discussed in the denial of the adjustment application. While there is no appeal from the denial of the Form I-602, the immigration judge may consider the waiver application *de novo* when he or she considers the renewed adjustment application during removal proceedings.

Footnotes

1.

For example, a ground of inadmissibility was waived for which no waiver was available, or a national security issue was not properly addressed.

2.

See 7 USCIS-PM L.3(B).

3.

See Adjudicator's Field Manual (AFM) Chapter 41.6, Waivers of Inadmissibility for Refugees and Asylees for more information on waivers of inadmissibility for refugees under INA 209(c).

4.

See 7 USCIS-PM L.3(B).

5.

See Health Related Considerations in Section B, Applicable Inadmissibility Grounds [7 USCIS-PM L.3(B)].

6.

See INA 212(g)(2)(B).

7.

USCIS uses the Form I-291 to notify the applicant that his or her application has been denied.

Chapter 4 - Documentation and Evidence

The officer should review the following documentation or evidence to determine the refugee's eligibility for adjustment:

A. Required Documentation and Evidence

- Application to Register Permanent Residence or Adjust Status (Form I-485)

Each applicant must file a separate application regardless of whether he or she is a principal or a derivative refugee. There is no fee required for refugees to file this form.

- Biographic Information Sheet (Form G-325A)

This form is required for every applicant who is 14 years of age or older at the time of filing. The officer must check the Form G-325A for additional aliases requiring a systems query.

- Proof of refugee status

An officer must review the contents of the A-file for proof of refugee status. The A-file should contain an approved refugee application (Form I-590) with proper endorsement, or an approved relative petition (Form I-730). Although applicants may submit an Arrival/Departure Record (Form I-94), or a notice showing an approved relative petition with their application, these documents must always be cross-checked with the evidence in the A-file to confirm the applicant's refugee status.

- Evidence of one-year physical presence in the United States

An officer can generally verify physical presence by reviewing of the "date of last arrival" and "place of last entry into the United States" blocks on the adjustment application, the information listed on the G-325A and the information within USCIS systems, such as the Central Index System.

In addition, the officer should review the date of admission on either a Form I-94 or Form I-590 with the date of filing of the adjustment application. If the evidence lends reasonable doubt as to the time periods the applicant has spent in the United States, the officer may request additional information verifying physical presence.

- Two (2) passport-style photos, taken no earlier than 30 days prior to filing

- Report of Medical Examination and Vaccination Record (Form I-693)

Typically a complete medical examination record is not needed by refugees. A refugee who already received a medical examination prior to admission does not need to repeat the entire medical examination unless the original examination revealed a Class A medical condition. However, the refugee must establish compliance with the vaccination requirements at the time of adjustment of status. The refugee must submit the vaccination record portion completed by a designated civil surgeon. State and local health departments may qualify for a blanket designation as civil surgeons for the purpose of completing the vaccination record for refugees applying for adjustment of status.[1] For more information, see Volume 8, Admissibility, Part C, Civil Surgeon Designation and Revocation, Chapter 3, Blanket Civil Surgeon Designation, Section A, Blanket Designation of State and Local Health Departments [8 USCIS-PM C.3(A)].

- Certified copies of arrest/court records (if applicable)

An applicant must submit an original official statement by the arresting agency or a certified court order for all arrests, detentions or convictions, regardless of whether the arrest, detention or conviction occurred in the United States or elsewhere in the world.

- Application by Refugee for Waiver of Grounds of Excludability (Form I-602) (if applicable)

- Health and Human Services Statistical Data for Refugee/Asylee Adjusting Status (Form I-643)

Although this form is required at time of filing, it will generally be removed during pre-processing for submission to the Department of Health and Human Services Office of Refugee Resettlement prior to an officer reviewing the Form I-485. Therefore, the officer will generally be unaware if the form was filed and should not issue an RFE if it is missing from the file.

B. Supplemental Documentation

Supplemental documentation is often submitted by the applicant but is not required. This may include the following:

- Arrival/Departure Document (Form I-94), with appropriate endorsement

- Birth certificate, when obtainable

See the Department of State Reciprocity Tables for information on the availability of identity documents in particular countries and during specific time periods. There may be other instances in which a birth certificate is unobtainable because of country conditions or personal circumstances.

In these instances, affidavits may be submitted to establish the applicant's identity. An officer may also review the A-file to check for a birth certificate that the applicant may have submitted with the refugee application or for other evidence submitted at the time of the interview to establish the applicant's identity.

- Copy of passport(s), when obtainable

In most instances a refugee will be unable to produce of copy of his or her passport. There may be other instances in which a passport is unobtainable due to country conditions, personal circumstances, or the fact that the applicant may have never possessed a passport. In these cases, a copy of a passport is not required and an officer may use evidence in the A-file to verify the applicant's identity.

An officer should review any supplemental documentation submitted to ensure it is consistent with the documentation contained in the A-file. Since identity is already established during the adjudication of the refugee application, a birth

certificate or passport is not required at the time of adjustment.

Nevertheless, if the applicant submits any of these documents, the officer must address and resolve any discrepancies at the time of adjudication. In all cases, an officer should give considerable weight to the documentation contained in the refugee application or with the relative petition, as this information was previously vetted at the time of the refugee status interview or relative petition approval.

C. Documentation Already Contained in the A-File

The refugee application, (generally referred to as the "refugee travel packet"), should already be included in the applicant's A-file, including all of the forms, evidence, and officer notes that were part of the original application for refugee status. The most important document for an officer to review is either the refugee application or the relative petition, which provides proof of status and establishes identity (with attached photo) as well as citizenship, since most refugees will not have a birth certificate or a passport.

Another important document in the refugee travel packet is the Medical Examination of Applicants for United States Visas (Form DS-2053, formerly numbered OF-157). An officer does not need to be aware of the overseas medical examination requirements, but should realize that the overseas medical examination requirements are not the same as the requirements for medical examinations performed in the United States. Refugees are generally not required to complete a new medical exam in the United States if a medical exam was performed overseas and there were no Class A conditions.

D. Unavailable or Missing Documentation

When a refugee flees the country of persecution, he or she may not be able to obtain any documentation issued by a civil authority as proof of identity or of a familial relationship. At the time of the refugee status interview, an officer reviews many documents and affidavits and solicits testimony when seeking to establish a refugee's personal and family identity. Any available documents submitted at the time of the refugee status interview should be contained within the A-file.

An officer may rely on the documents contained in the original refugee travel packet to verify identity at the time of adjustment. While it is not necessary to request the applicant's birth certificate or passport as proof of identity, an officer should review any documentation establishing identity submitted with the adjustment application.

Additionally, an officer should compare photos submitted with the application to the photos in the refugee packet. If an officer is unable to establish an applicant's identity due to discrepancies between the documentation the applicant submitted and information contained in the original refugee packet, then the officer should forward the file to the field office with jurisdiction over the case for interview and resolution.

Footnotes

1.

For more information, see Volume 8, Admissibility, Part C, Civil Surgeon Designation and Revocation, Chapter 3, Blanket Civil Surgeon Designation, Section A, Blanket Designation of State and Local Health Departments [8 USCIS-PM C.3(A)].

Chapter 5 - Adjudication Procedures

A. Record of Proceedings (ROP) Review and Underlying Basis

The officer should place all documents in the file according to the established Record of Proceedings order, including the filing of any documents the applicant submitted in response to a Request for Evidence (RFE).

When the officer reviews the application for adjustment of status of a refugee, the officer should also review the refugee travel packet to verify the applicant's identity, refugee status and admission, completion of the overseas medical exam and to ensure consistency with the adjustment application. There are several forms that may be found in the A-file that may be of particular importance:

- Registration for Classification as Refugee (Form I-590)

This form documents identity, marital status, number of children, military service, organizational memberships and any violations of law. A photo of the refugee should be attached to the upper left hand corner. In addition, the Port of Admission Block at the bottom of the second page should be stamped. This indicates the refugee's particular port of entry and date of admission.

- Sworn Statement of Refugee Applicant for Entry into the US (G-646)

This form documents the applicant's testimony regarding possible persecutory acts and the inadmissibility provisions that pertain to refugees.

- Refugee Assessment

This document, completed by a USCIS Officer, contains the testimony given by the principal refugee to establish his or her claim for refugee status during an interview with a USCIS Officer and includes the officer's legal analysis including an assessment of the applicant's eligibility under the refugee definition, admissibility and credibility.

- Case History/Persecution Story

This document details the key material aspects of the principal refugee's life from birth up to the time of refugee processing. It is completed by Resettlement Support Center (RSC) staff under cooperative agreement with the Department of State (DOS).

- Family Tree

This document contains the biographic information and family relationships for the principal refugee and each person included in the case of the principal refugee. The family tree is completed by RSC staff under cooperative agreement with the DOS.

- Referrals from the Office of the United Nations High Commissioner for Refugees (UNHCR), the U.S. Embassy or Nongovernmental Organization (NGO)

These documents contain biographical information, family relationships, organizational memberships, political/social/ religious affiliations, any detentions or imprisonments, the refugee claim, and inadmissibility issues. This document is completed by UNHCR, the U.S. Embassy or the referring NGO.

- Record of Medical Examination

This form documents the pre-departure medical examination of the refugee. Any Class A conditions would be noted, as would any recommendations for follow-up treatment.

B. Interview Criteria

The decision to interview a refugee applicant for adjustment of status will be made on a case-by-case basis.[1] See 8 CFR 209.1(d). Interviews are generally required when an officer at a Service Center is unable to verify identity or eligibility or to determine admissibility based solely on the immigration records available to the officer. Although the decision to relocate a case to a field office for interview will be made on a case-by-case basis, an officer at the Service Center should generally relocate a case to the field office for interview if it meets one of the following criteria:

- The officer cannot verify the identity of the applicant through the information in the A-file.
- The officer can verify the identity of the applicant through the information in the A-file, but the applicant is claiming a new identity.
- Immigration records are insufficient for the officer to determine whether or not the applicant has refugee status.
- The applicant has an approved Form I-730 but, if granted overseas, was not interviewed as part of the derivative refugee process or, if granted in the United States, was not interviewed prior to the approval.[2] See Section C, Beneficiaries Applying for Adjustment without Prior Interview Overseas [7 USCIS-PM L.5(C)].
- The applicant's FBI fingerprint results indicate that further processing is needed.
- The officer cannot determine the applicant's admissibility without an interview.

- The officer determines that the applicant is inadmissible but that an interview is necessary to determine if a waiver is appropriate.

C. Beneficiaries Applying for Adjustment without Prior Interview Overseas

Within two years of his or her admission, a refugee may petition for a spouse and child(ren) on a Refugee/Asylee Relative Petition (Form I-730). When proceeding from abroad, the derivative beneficiary is required to undergo an overseas interview and processing. When applying for adjustment of status, there is the possibility that some derivative family members may not have gone through the overseas process or may not have been admitted to the United States as refugees.

For example, beneficiaries of an approved relative petition sometimes enter the United States without inspection or on a nonimmigrant visa. The beneficiaries may never have received an interview confirming their identity and relationship to the principal, which is part of the USCIS process overseas. Under current regulations, refugee status is conferred on the beneficiary at the point he or she is present in the United States with an approved petition, although the beneficiary may never have provided biometrics or appeared in person before a USCIS or consular officer to verify his or her identity.

In addition, a derivative refugee must be admissible to the United States (i.e., if any of the grounds of inadmissibility apply to the derivative refugee, the grounds must be waived before the derivative refugee is fully qualified for such status). Since, in this particular situation, the applicant was not interviewed overseas and was not inspected and admitted as a refugee at a port of entry, it raises the possibility that a ground of inadmissibility may exist.

To address these concerns and to verify identity and the familial relationship, in the event a derivative family member of a refugee is applying for adjustment of status without having been previously interviewed either abroad or in the United States, the officer should refer him or her for an interview at a field office as part of the adjustment of status process.

During the interview process, the USCIS officer will verify the identity of the beneficiary and the requisite familial relationship to the principal as well as examine the beneficiary's eligibility for admission as an immigrant. The officer may conduct a background investigation to address any of these issues, provided that the investigation maintains the confidentiality of the principal's refugee application.

D. Requests to Change Name or Date of Birth

The officer must address and reconcile any discrepancy in biographical information found in case records or USCIS data systems at the time of adjustment. During the overseas interview, the refugee reviewed their refugee application, relative petition, and biographical information and had the opportunity to correct any errors or resolve any identity issues at that time. An officer may not accept an affidavit as proof of a changed name or erroneous date of birth.

The officer should be aware that name changes may occur after the refugee interview, such as in the case of a legal adoption, marriage or divorce. Applicants requesting a name change at time of adjustment will need to submit one of the following documents issued by a civil authority, (whether by a foreign state or U.S. authority):

- Legal name change decree – lists former and new legal name;
- Marriage certificate – listing maiden name/last name of spouse;
- Divorce decree – showing restoration of maiden name; or
- Adoption decree – lists adopted child's birth name and the names of the adoptive parents.

While there may be a reasonable explanation for a refugee to change his or her name after arrival, an officer should consider whether such a change raises the possibility that the person either used an alias or committed fraud or misrepresentation at the time of the overseas interview.

E. Spelling of Names and Naming Convention Issues

From time to time, refugee adjustment applicants may complete an adjustment application by filling out their name in some variation of what was listed on the refugee application or relative petition. Although some immigrants may be permitted on other local or federal government-issued documents to anglicize their name or to use a slightly different spelling, refugees are not permitted to change the spelling of their names from what was listed on their refugee application or relative petition or to use an anglicized version at time of adjustment. This is prohibited in order to preserve the continuity and integrity of immigration records on the refugee.

Occasionally, the refugee application or relative petition may contain an error in the spelling or the order of a person's name. If, based on a review of underlying documents in the refugee packet, the officer clearly recognizes such an error , he or she may correct the error by amending the name on the adjustment application accordingly. If the applicant is approved for permanent resident status, the name must also be amended in the appropriate electronic systems.

F. Detained Refugees

In certain circumstances, U.S. Immigration and Customs Enforcement (ICE) may encounter a refugee who has failed to timely file for adjustment of status under INA 209(a). This most often occurs when the refugee has been apprehended by other law enforcement agencies for suspected criminal activity. If ICE determines that the refugee should be placed in removal proceedings, the local Enforcement and Removal Operations Field Office (ERO) will promptly reach out to its corresponding USCIS Field Office Director or designated point-of-contact to begin the adjustment of status process.

The ERO field office will advise the refugee of the requirement by law to file for adjustment of status and will provide him or her with an adjustment application and waiver application to fill out prior to the refugee's release from custody. Should the refugee refuse, ICE personnel will fill out Part 1 of both forms instead and sign them as completed by ICE. Originals are sent to the USCIS Field Office Director or designee for expedited processing. The field office should follow procedures to alert the Nebraska Service Center (NSC) by e-mail that they are sending a faxed copy of the adjustment application for expeditious handling.

If the NSC determines that the refugee has already submitted a refugee-based adjustment application or has a denied refugee-based adjustment application, they will contact the field office concerning the use of the previously-filed application. If a case is already pending at the NSC, the NSC Duty Attorney will determine whether the case should be completed at the NSC or relocated to the field office for final adjudication.

If the NSC does not locate a prior adjustment application, the NSC will assign a receipt number to the application and will update the necessary systems so that adjudication of the application at the field office may proceed.

G. Decision

1. Approval

If the adjustment application is properly filed, the applicant meets all eligibility requirements, and the applicant satisfies admissibility and waiver requirements, then the officer must approve the application. Unlike most applications for adjustment of status, refugee adjustments are not discretionary, and the application may only be denied if the applicant is found to be ineligible, inadmissible, or if the application was improperly filed.

Effective Date of Residence

If the adjustment application is approved, the effective date of permanent residence is the date the applicant was first admitted to the United States as a refugee.

The effective date of permanent residence for derivative refugees who gained their status through an approved relative petition and who were already in the United States when the petition was approved will be the date the relative petition was approved.

Code of Admission

An applicant who has been granted refugee status in his or her own right (RE-1, classification as a principal) is adjust ed using the code “RE-6.” The RE-6 code should not be used for the former spouse or child of a principal refugee where that relationship terminated after the derivative was granted refugee status. The RE-6 code is reserved solely for the principal refugee to ensure there is no confusion regarding the eligibility to file a relative petition.

An applicant who was admitted as a spouse of a refugee (RE-2 classification) who either remains the spouse or becomes a former spouse of the principal at time of adjustment is given the code “RE-7.” An applicant who was admitted as a child of a refugee (RE-3 classification) is given the code “RE-8,” regardless of the child’s marital status or current age at time of adjustment.

In cases of nonexistent or fraudulent derivative refugee relationships in which a waiver was granted, applicants should be given an adjustment code of RE-7 or RE-8, depending on the original admission code given, even though they are not technically the derivative spouse or child of the principal refugee.

Classes of Applicants & Corresponding Codes of Admission	
Applicant	**Code of Admission**
Refugee (Principal)	RE6
Spouse of a Principal Refugee (RE6)	RE7
Child of a Principal Refugee (RE6)	RE8

The officer must ensure that the refugee's new Class of Admission (COA) information is updated in the appropriate electronic systems, so that the applicant will receive a permanent resident card. After completion, A-files will be routed to the National Records Center (NRC).

2. Denial

If the adjustment application is denied based on inadmissibility, the refugee should be placed into removal proceedings, provided there are applicable grounds of deportability under INA 237.[3] See Matter of D-K-, 25 I&N Dec. 761 (BIA 2012). The foreign national "must be charged in the notice to appear under section 237 of the [INA] rather than section 212 of the Act." See Matter of D-K-, 25 I&N Dec. 761, 761 (BIA 2012).

If the adjustment application is denied based on improper filing, abandonment, or ineligibility, the applicant has not been inspected for admission and should not be placed into removal proceedings because no determination of admissibility has been made. The applicant continues to have refugee status until such time that the applicant is inspected and an admissibility determination is made.

The officer should write a denial notice explaining the reasons for denial in clear language that the applicant can understand. There is no appeal from the denial, but the applicant may renew the application for adjustment while in removal proceedings before the Immigration Judge.

Footnotes

1.

See 8 CFR 209.1(d).

2.

See Section C, Beneficiaries Applying for Adjustment without Prior Interview Overseas [7 USCIS-PM L.5(C)].

3.

See *Matter of D-K-*, 25 I&N Dec. 761 (BIA 2012). The foreign national "must be charged in the notice to appear under section 237 of the

[INA] rather than section 212 of the Act." See *Matter of D-K-*, 25 I&N Dec. 761, 761 (BIA 2012).

Chapter 6 - Termination of Status and Notice to Appear Considerations

A. Basis

Changed country conditions in the refugee's country of nationality do not justify termination of refugee status. The sole basis for an officer to terminate the status of a foreign national admitted to the United States as a refugee is if the officer determinates that the foreign national was not a refugee within the meaning of the INA at the time of his or her admission to the United States. In order to make this determination, an officer must be familiar with how the term "refugee" is defined.[1] See INA 207(c)(4) and 8 CFR 207.9.

This determination standard applies solely to principal refugees and never to derivative refugees. Derivative refugees are not required to prove past persecution or a well-founded fear of future persecution. However, an officer may terminate a derivative refugee's status if the principal's status is terminated.

The statute and regulations do not require the formal termination of refugee status prior to removal proceedings where the refugee has been inspected and examined for adjustment of status, has been found inadmissible, and has not been granted a waiver of inadmissibility. Prior to being placed in removal proceedings, the applicant may first be given an opportunity to apply for a discretionary waiver of inadmissibility grounds.

If USCIS denies the adjustment application and/or waiver application, the applicant may also renew his or her application for adjustment or waiver of inadmissibility before an Immigration Judge (IJ). The applicant may also apply for asylum or any other relief from removal before an IJ.

The officer should prepare a Notice To Appear (NTA) if the refugee is inadmissible. Upon written notice of the adjustment application's denial, the applicant is no longer considered an admitted alien and should be charged with inadmissibility grounds under INA 212(a). However, if the officer is denying the adjustment application on other grounds (e.g., abandonment), the officer should not issue a NTA, since the applicant has not been found inadmissible.

Alternatively, USCIS may place a person who was admitted as a refugee directly in removal proceedings, without termination of refugee status, on the basis of any applicable charges under INA 237 without the adjudication of an adjustment application.

B. Procedures

USCIS conducts terminations of refugee status.[2] See 8 CFR 207.9. If an officer concludes after reviewing a refugee's A-file that the facts merit termination of the principal refugee's status, the officer will follow the procedures below, depending on where the case is located:

1. Cases Located at Service Centers

All evidence relevant to a possible termination of refugee status should be reviewed by a supervisor and then scanned and forwarded to the Refugee Affairs Division (RAD) within the Refugee, Asylum, and International Operations Directorate (RAIO) for review. RAD will review the information and send a response back with a recommendation on how to proceed. If RAD recommends relocation of the case for possible termination, the principal's file and all derivative files, along with a copy of RAD's recommendation, should be relocated to the District or Field Office to interview the refugee for possible termination of status.

2. Cases Located at Field Offices

All evidence relevant to a possible termination of refugee status should be reviewed by a supervisor and then scanned and forwarded along with an explanation detailing why the officer believes termination may be appropriate to HQ FOD through appropriate channels. This evidence will be forwarded for review to the Refugee Affairs Division (RAD). RAD will review the information and send a response back with a recommendation on how to proceed.

If RAD recommends possible termination, all family members' files should be requested. Once all family files have been received, the Field Office should interview the refugee for possible termination of status. If RAD does not rec ommend termination, no interview is needed for Notice of Intent to Terminate purposes and the officer should resume adjudication of the adjustment application.

Footnotes

1.

See INA 207(c)(4) and 8 CFR 207.9.

2.

See 8 CFR 207.9.

Part M - Asylee Adjustment

Chapter 1 - Purpose and Background

A. Purpose

U.S. Citizenship and Immigration Services (USCIS) seeks to:

- Resolve the asylee's status by ultimately determining whether he or she is admissible to the United States as an immigrant; and

- Provide qualified asylees a pathway to permanent residence as persons of special humanitarian concern to the United States.

B. Background

The Refugee Act of 1980 not only provided for the admission and adjustment of status of refugees but also established procedures for foreign nationals to seek asylum. Prior to the Refugee Act, there was no mechanism for someone in the United States to apply for protection under the Refugee Convention. The Refugee Act required the establishment of a procedure for a foreign national who meets the definition of a refugee to apply for and be granted asylum if physically present in the United States regardless of the person's immigration status.

The Refugee Act provided for the adjustment of status of asylees to permanent residents. Unlike refugees, asylees are not required to apply for adjustment of status one year after receiving asylum. Instead, an asylee may apply for adjustment of status after accruing one year of physical presence after receiving asylum status. The asylee is not required to apply within a specific time frame.

Although the Refugee Act exempted asylees from the worldwide annual limitations on immigrants, the law placed a ceiling of 5,000 on the number of asylees who could adjust to permanent resident status each year. The Immigration Act of 1990 increased the annual ceiling to 10,000 and waived the annual limit for those asylees who met the required one-year physical presence requirement and filed for adjustment of status on or before June 1, 1990. In 2005, the REAL ID Act[1] See the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, Pub. L. 109-13 (May 11, 2005). permanently eliminated the annual cap on the number of asylees allowed to adjust status.

C. Legal Authority

- INA 209(b) – Adjustment of Status of Refugees
- 8 CFR 209.2 – Adjustment of Status of Alien Granted Asylum
- Pub. L. 96-212 – The Refugee Act of 1980

Footnotes

1.

See the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, Pub. L. 109-13 (May 11, 2005).

Chapter 2 - Eligibility Requirements

An asylee may adjust status to a lawful permanent resident if the asylee meets the following four requirements:

- The asylee has been physically present in the United States for at least one year after being granted asylum.

- The principal asylee continues to meet the definition of a refugee, or the derivative asylee continues to be the spouse or child of the principal asylee.

- The asylee has not firmly resettled in any foreign country.

- The asylee is admissible to the United States as an immigrant at the time of examination for adjustment of status, subject to various exceptions and waivers.

Applicants who fail to meet any of these requirements are statutorily ineligible for adjustment of status as an asylee.

The Immigration Act of 1990 (IMMACT 90) added additional eligibility requirements to applicants granted asylum who wish to adjust status. USCIS issued regulations[1] See 8 CFR 209.2(a)(2). to clarify that persons granted asylum status prior to enactment of IMMACT 90 would not be subject to these additional requirements at time of adjustment.

Therefore, applicants who were granted asylum prior to November 29, 1990 may have their status adjusted to permanent residents even if they no longer are a refugee due to a change in circumstance, no longer meet the definition of a refugee, or have failed to meet the required one year of physical presence in the United States after being granted asylum. These applicants need only apply for adjustment and establish that they have not been resettled in another country and are not inadmissible to the United States.

Although it is unlikely that any of these cases still remain pending, an officer should be aware of these special provisions that apply to any asylum adjustment applicant whose grant of asylum was prior to November 29, 1990.

A. Physical Presence in the United States of at Least One Year

Only time spent in the United States counts towards the one-year physical presence requirement. A principal asylee's physical presence starts accruing on the date the asylee is granted asylum.

If a derivative asylee was physically present in the United States when USCIS approved his or her relative petition (Form I-730) or the principal asylee's asylum application (Form I-589), whichever is applicable, then the derivative asylee may start accruing physical presence on the approval date of the petition or application. If the derivative asylee is living abroad when USCIS approves the relative petition, then the derivative asylee's physical presence begins accruing on the date of admission as an asylee.

An asylee who travels outside the United States as an asylee will not meet the physical presence requirement until the cumulative amount of time spent in the United States equals one year. The officer should review the asylee's adjustment application and the documentation in the record to determine whether the asylee has been absent from the United States during the previous calendar year to ensure the asylee meets the physical presence requirement for adjustment.

B. Principal Asylee Continues to Meet the Definition of a Refugee

In order to be eligible for asylee status, the principal asylee had to show a well-founded fear of persecution based on at least one of five statutory grounds:

- Race
- Religion
- Nationality
- Membership in a Particular Social Group
- Political Opinion

If an applicant no longer meets the definition of a refugee,[2] See INA 101(a)(42). he or she is not eligible to adjust status as an asylee. In general, at the time of adjustment, an officer will not readjudicate the asylum claim. However, if there is new evidence that the asylee may not have met the definition of a refugee at the time of the asylum grant, the officer should refer the case to the Asylum Division within the Refugee, Asylum, and International Operations Directorate or to an Immigration Judge for termination of status.[3] For more information, see Chapter 6, Termination of Status and Notice to Appear Considerations [7 USCIS-PM M.6].

C. Derivative Asylee Continues to be the Spouse or Child of the Principal Asylee

A derivative asylee must continue to meet the definition of a spouse or child of a refugee both at the time of filing and final adjudication of the adjustment application. A derivative asylee spouse fails to meet this eligibility requirement if the marital relationship has ended. A derivative child fails to meet this requirement if he or she marries or no longer meets the definition of a child.[4] See INA 101(b)(1). Likewise, if the principal is no longer a refugee or adjusted asylee at the time a derivative seeks to adjust status, then the derivative asylee will no longer qualify.

A derivative asylee who fails to meet this requirement does not lose his or her asylum status when the relationship to the principal asylee ends or when the principal asylee naturalizes. A derivative asylee only loses the ability to adjust status as a derivative asylee, but may adjust status under another category if he or she can establish eligibility.

1. Surviving Spouse or Child of a Deceased Principal Asylee

The Immigration and Nationality Act (INA) was amended by the addition of section 204(*l*) which allows USCIS to approve an adjustment of status application for the derivative spouse or child of a deceased qualifying relative, including a derivative spouse or child of a deceased principal asylee. Therefore, an applicant that meets all the requirements of this new law will remain a derivative spouse or child of an asylee for purposes of adjustment of status even after the principal asylee's death.

This applies to an adjustment of status application adjudicated on or after October 28, 2009, even if the qualifying

relative died before October 28, 2009. If a petition or application was denied on or after October 28, 2009, without considering the effect of this section, and the section could have permitted approval, USCIS must, on its own motion, reopen the case for a new decision in light of this new law.[5] See INA 204(l) and Adjudicator's Field Manual (AFM) Chapter 10.21(C), Receipting and Acceptance Processing for additional guidance.

2. Derivative Asylees Ineligible for Adjustment of Status

Divorced Spouse

A spouse who is divorced from the principal asylee is no longer a spouse of the principal and is no longer eligible to adjust status as a derivative asylee.

Married Child

A child who is married either at the time of filing or at the time of adjudication of the adjustment of status application is no longer considered a child of the principal and is no longer eligible to adjust status as a derivative asylee. However, a child who was married after his or her grant of derivative asylum status, but has since divorced (and is therefore unmarried at the time of filing for adjustment of status) may qualify once again as the derivative child of the principal asylee, provided the child is under 21 or eligible for the benefits of the Child Status Protection Act (CSPA).

Child 21 or older and not eligible for benefits under the Child Status Protection Act (CSPA)

Certain derivative children who have turned 21 years old and are not protected by the CSPA are no longer eligible to adjust status as a derivative asylee. This is generally only seen in cases that were filed prior to August 6, 2002.

As of August 6, 2002, any derivative asylee child who had a pending refugee/asylee relative petition (Form I-730), adjustment application (Form I-485) or principal's asylum application (Form I-589) on or after that date had his or her age "frozen" as of the date the application was filed. This allows the foreign national's continued classification as a child for purposes of both asylum and adjustment of status. Any person who aged out prior to August 6, 2002 is not eligible for continuing classification as a child unless one of these applications was pending on August 6, 2002.

As a result of CSPA provisions, an unmarried child who is under 21 on the day the principal asylee files the asylum application will remain eligible to be classified as a child as long as he or she was eligible to be listed on the parent's asylum application prior to adjudication and is unmarried at the time of adjudication. In determining continuing eligibility as a child for adjustment, the officer need only verify that the derivative applicant's age was under 21 at the time the principal's asylum application was filed and that the child is currently unmarried.

Principal Asylee has Naturalized

A principal asylee who has naturalized no longer meets the definition of a refugee.[6] See INA 101(a)(42). Therefore, once the principal has naturalized, a spouse or child is no longer eligible to adjust status as a derivative asylee because they no longer qualify as the spouse or child of a refugee.

Principal Asylee Who No Longer Meets Definition of Refugee and has Asylum Status Terminated)

If a principal asylee no longer meets the definition of a refugee and his or her asylum status is terminated, then a derivative asylee is also no longer eligible to adjust status.

3. Nunc Pro Tunc Asylum Cases

"*Nunc pro tunc,*" meaning "now for then," refers to cases where a derivative asylee who is ineligible to adjust status as a derivative asylee may file for and be granted asylum in his or her own right and the grant may be dated as of the date of the original principal's asylum grant. Any foreign national who is physically present in the United States regardless of status may apply for asylum. In certain cases, the *nunc pro tunc* process may enable a derivative asylee who is ineligible to adjust as a derivative to become a principal asylee and eligible to adjust status.

Like any other asylum application filed with USCIS, these cases are handled by the Asylum Division of the Refugee, Asylum and International Operations (RAIO) Directorate. New asylum applications can be filed by derivative asylees requesting to be considered as principal applicants.

If an officer encounters a case in which the applicant is not eligible for adjustment of status as a derivative asylee, the adjustment application should be denied.

4. Pre-Departure Marriages and Divorces

Occasionally, derivative asylees who are admitted to the United States based on a refugee/asylee relative petition (Form I-730) process will end their relationship to the principal asylee through either divorce or marriage after the grant of the petition, but before being admitted to the United States. In these cases, if the derivative asylee was admitted to the United States, he or she was not eligible for that status at time of admission because the status was dependent upon the relationship to the principal, which no longer existed at time of admission.[7] See Matter of Khan, 14 I&N Dec. 122 (BIA 1972).

While USCIS may pursue termination of status on these applicants, the actual relationship of the derivative to the principal may be a consideration in the determination. In cases in which the officer makes an initial determination that termination may be appropriate, he or she should return the file to the Asylum Office for further review and potential termination of status.

Derivatives who end their relationship with the principal asylee at any time are not eligible to adjust status in their own right, but may be eligible to file for asylum as a principal applicant.

5. Non-Existent or Fraudulent Relationships

At times, an officer may discover that a derivative asylee never had a bona fide relationship to the principal asylee. Examples would include a claimed spouse who was never legally married to the principal although they may have cohabitated or other relatives who are claimed as children. Those derivatives will be ineligible to adjust status.

Additionally, applicants who have no relationship to the principal asylee could claim a relationship as either a spouse or child, and likewise the principal asylee could claim a relationship to them, in order to be granted asylum. These applicants are ineligible for admission as derivative asylees and may be found removable for fraud or misrepresentation.

Although they were admitted as derivative asylees, they were not eligible for that status when they were admitted because their status was dependent upon their relationship to the principal, which did not exist at the time of admission. USCIS may decide to pursue termination of status on these persons; however, the actual relationship of the derivative to the principal should be a factor when considering possible termination of status.

In cases in which the adjustment officer makes an initial determination that termination may be appropriate, he or she should return the file to the Asylum Office for further review and potential termination of status.

D. Not Firmly Resettled in Any Foreign Country

An applicant who has firmly resettled in another country is not eligible to obtain either asylum or adjustment of status as an asylee in the United States. A person is considered firmly resettled in another country if he or she has been offered resident status, citizenship, or some other type of permanent resettlement in another country.

The asylum officer would have considered whether the application was firmly resettled prior to arriving in the United States so an officer considering the adjustment of status application would rarely need to reconsider the prior determination. However, any evidence in the file that suggests resettlement in another country subsequent to the granting of asylum status will need to be considered.

Footnotes

1.

See 8 CFR 209.2(a)(2).

2.

See INA 101(a)(42).

3.

For more information, see Chapter 6, Termination of Status and Notice to Appear Considerations [7 USCIS-PM M.6].

4.

See INA 101(b)(1).

5.

See INA 204(*l*) and Adjudicator's Field Manual (AFM) Chapter 10.21(C), Receipting and Acceptance Processing for additional guidance.

6.

See INA 101(a)(42).

7.

See *Matter of Khan*, 14 I&N Dec. 122 (BIA 1972).

Chapter 3 - Admissibility and Waiver Requirements

An asylee adjustment applicant must be admissible at the time USCIS grants the adjustment of status. Because an asylee is not subject to admissibility grounds at the time of the asylum grant, the adjudication of the adjustment application may be the first instance that inadmissibility grounds are considered. The applicants may be found inadmissible based on any information in the A-file or submitted with the adjustment application or through security checks.

A. Exemptions

The following grounds of inadmissibility do not apply to asylees adjusting status:

- Public Charge – INA 212(a)(4)
- Labor Certification and Qualifications for Certain Immigrants – INA 212(a)(5)
- Documentation Requirements for Immigrants – INA 212(a)(7)(A)

B. Applicable Inadmissibility Grounds

The following grounds of inadmissibility apply to asylees adjusting status:

- Health-Related – INA 212(a)(1)
- Crime-Related – INA 212(a)(2)
- Security-Related – INA 212 (a)(3)
- Illegal Entrants and Immigration Violators – INA 212(a)(6)

- Ineligibility for Citizenship – INA 212(a)(8)

- Foreign Nationals Previously Removed – INA 212(a)(9)

- Practicing Polygamists, Guardians Required to Accompany Helpless Persons, International Child Abductors, Unlawful Voters, and Former Citizens who Renounced Citizenship to Avoid Taxation – INA 212(a)(10)

1. Health-Related Considerations

In some cases, a derivative asylee who had a relative petition (Form I-730) processed overseas may have had a Class A medical condition that was waived for purposes of admission as an asylee. In these instances, the waiver does not carry through to adjustment and the applicant must submit to a new medical examination to determine whether the Class A medical condition has been resolved.

2. Unlawful Presence Considerations

An unlawful presence exception applies during the period of time in which the asylee had a bona fide, pending asylum application. The time period that the applicant's bona fide asylum application was pending should not be included in any unlawful presence calculation,[1] See INA 212(a)(9)(B). provided the applicant was not employed without authorization during such time period. Unauthorized employment would disqualify the asylee from this exception.[2] See INA 212(a)(9)(B)(iii)(II).

While departures from the United States may trigger an unlawful presence bar, an officer may consider a waiver for unlawful presence either through submission of a waiver application (Form I-602), or in conjunction with the adjustment of status application, in instances in which a waiver application is not requested. If the officer does not request a waiver application, the officer should notate any waiver granted on the adjustment of status application. However, the Board of Immigration Appeals held on April 17, 2012 that travel on advance parole for a pending adjustment applicant will not trigger the unlawful presence bar.[3] See Matter of Arrabally and Yerrabelly, 25 I&N Dec. 771 (BIA 2012).

C. Inadmissibility Grounds that May Not Be Waived

While waivers are generally available for most of the grounds listed in Section B, Applicable Inadmissibility Grounds,[4] See 7 USCIS-PM M.3(B). the following grounds of inadmissibility cannot be waived:

- Controlled Substance Traffickers – INA 212(a)(2)(C)

- Espionage; Sabotage; Illegal Export of Goods, Technology, or Sensitive Information; Unlawful Overthrow or

Opposition to U.S. Government – INA 212(a)(3)(A)

- Terrorist Activities – INA 212 (a)(3)(B) (Note: Exemptions for some of these grounds exist)
- Adverse Foreign Policy Impact – INA 212(a)(3)(C)
- Participants in Nazi Persecutions or Genocide – INA 212(a)(3)(E)

An officer should deny the adjustment application where no waiver or exemption is available due to the type of inadmissibility found.

National Security Issues

In the event that the adjudicating officer identifies at any stage one or more national security indicator(s) or concerns unknown at the time of the grant of asylum, the officer should refer to USCIS guidance on disposition of national security cases. The officer should also follow current USCIS instructions on cases that involve terrorist related grounds of inadmissibility for disposition of the case or see their supervisor for questions.

Unless a case is sent specifically to a field office for resolution of Terrorist Related Inadmissibility Ground (TRIG) issues and final adjudication of the adjustment application, an officer should return any asylee adjustment case with unresolved TRIG issues to the originating Service Center for resolution.

D. Waivers

All grounds of inadmissibility listed at Section B, Applicable Inadmissibility Grounds[5] See 7 USCIS-PM M.3(B). are subject to waiver, if the applicant can establish he or she qualifies for a waiver.

An asylee adjustment applicant may have a ground of inadmissibility waived for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. This type of waiver does not require the applicant to prove extreme hardship.

In adjudicating a discretionary waiver application for asylee adjustment, an officer must balance the humanitarian, family unity, or public interest considerations with the seriousness of the offense or conduct that rendered the applicant inadmissible. In making this determination, an officer should recognize that the applicant has already established past or a well-founded fear of future persecution, which is an extremely strong positive discretionary factor.

Footnotes

1.

See INA 212(a)(9)(B).

2.

See INA 212(a)(9)(B)(iii)(II).

3.

See *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012).

4.

See 7 USCIS-PM M.3(B).

5.

See 7 USCIS-PM M.3(B).

Chapter 4 - Documentation and Evidence

Officers should review the following documentation to determine an asylee's eligibility to adjust status.

A. Required Documentation and Evidence

- Form I-485, Application to Register Permanent Residence or Adjust Status

Each applicant must file a separate application with fee (unless granted a fee waiver) regardless of whether the applicant is a principal or derivative asylee.

- Form G-325A, Biographic Information Sheet

This form is required for every applicant who is 14 years of age or older at the time of filing. The officer must check the Form G-325A for additional aliases requiring a systems query. Also, the officer should review the "Applicant's Last Address Outside the United States of More Than One Year" information.

A country listed in this area other than the applicant's country of persecution should be given consideration as potential evidence of resettlement in a country other than the United States by the applicant. However, an applicant is only considered firmly resettled in another country if he or she has been offered resident status, citizenship, or some other type of permanent resettlement in another country.

- Proof of asylum status

An officer must review the contents of the A-file for proof of asylum status. The A-file should contain an approved asylum application (Form I-589) or an approved relative petition (Form I-730). Although an applicant may submit a Form I-94, Arrival/Departure Record, or an approval notice of the relative petition with their application, these documents must always be cross-checked with evidence in the A-file and in USCIS systems to confirm the applicant's asylum status.

- Evidence of one-year physical presence in the United States

An officer can verify physical presence for a principal asylee by reviewing the date the asylum application was approved as indicated either on the approval letter from the Asylum Office, or on the order from the Immigration Judge, the Board of Immigration Appeals or a federal court. Officers may also check the information available in RAPS (the Refugees, Asylum and Parole System).

An officer can generally verify physical presence for a derivative asylee by reviewing:

- The "Date of Last Arrival" and "Place of Last Entry into the United States" blocks on the adjustment application (Form I-485);
- The principal's and derivative's "Residence Information" listed on each Form G-325A; and
- The admissions information contained in USCIS systems.

Officers should also review the date of admission as an asylee found on a Form I-94 Arrival/Departure Document against the filing date of the adjustment application.

An officer should review any requests for travel documents or advance parole prior to the filing of the adjustment application. If there is doubt as to the applicant's time periods in the United States, the officer may request additional information verifying physical presence. This may include pay stubs or employment records, school or medical records, rental and utility receipts, or any other documentation that supports proof of residence.

- Two (2) Passport-Style Photos taken no earlier than 30 days prior to filing
- Form I-693, Report of Medical Examination and Vaccination Record

A principal asylee is required to submit a complete medical examination and vaccination record. The examination must be completed by a USCIS designated civil surgeon, meet the standards of the medical examination, and include all required vaccinations as of the date of the examination. A complete medical examination is not required of all derivative asylees at time of adjustment.

Derivative asylees that had a medical examination conducted overseas will not be required to undergo a new medical examination at the time of applying for adjustment of status if:

- The results of the overseas medical examination are contained in the A-file and no Class A condition was reported;
- The asylee has applied for adjustment of status within one year of filing eligibility (i.e., within two years of the

date of admission as an asylee derivative); and

- There is no evidence in the A-file or testimony given at an interview to suggest that the asylee has acquired a Class A condition subsequent to his or her entry into the United States.

Even if a complete new medical examination is not required, the applicant must still establish compliance with the vaccination requirements and submit the vaccination record portion of the medical examination record with the adjustment application. Unlike refugees, derivative asylees may not have their vaccination records completed by a health department with a blanket waiver as a civil surgeon. Blanket waivers for civil surgeons only extend to refugee vaccination certifications.[1] This is a determination made by the Department of Health and Human Services, Centers for Disease Control and Prevention.

- Certified Copies of Arrest/Court Records (if applicable)

An applicant must submit an original official statement by the arresting agency or certified court order for all arrests, detentions or convictions.

- Form I-602, Application by Refugee for Waiver of Grounds of Excludability (if applicable)

B. Supplemental Documentation and Evidence

Applicants often submit supplemental documentation although not required to do so. This may include:

- Form I-94, Arrival/Departure Document, with appropriate endorsement

- Birth Certificate, when obtainable

See the Department of State Reciprocity Tables for identity documents that cannot be obtained in particular countries and during specific time periods. There may be other instances in which a birth certificate is unobtainable because of country conditions or personal circumstances. In these instances, an applicant may submit affidavits to establish his or her identity. The officer may also review the A-file to check for a birth certificate that the applicant submitted with the asylum application or other evidence the applicant submitted at the time of the interview to establish his or her identity.

- Copy of Passport(s), when obtainable

In many instances, an asylee will be unable to produce a copy of his or her passport. There may be other instances in which a passport is unobtainable due to country conditions, personal circumstances or the simple fact that the applicant never possessed a passport. In these cases, a copy of a passport is not required and the officer may use evidence in the applicant's A-file to verify his or her identity. The asylee's date of birth and nationality are established during the asylum application or relative petition process.

The officer should review any supplemental documentation submitted by the applicant to ensure it is consistent with the documentation contained in the A-file. Since identity is already established during the asylum proceedings, a birth certificate or passport is not required at the time of adjustment. Nevertheless, if the applicant submits any of these documents, the officer must address and resolve any discrepancies at the time of adjudication. In all cases, considerable weight is given to the documentation contained in the asylum packet or with the relative petition.

C. Documentation Already Contained in the A-File

The original asylum application should already be in a principal applicant's A-file. A copy of the asylum application should also be found in the A-file of each derivative asylee who was in the United States at the time of asylum adjudication and was included on the asylum application. The relative petition should be in a derivative asylee's A-file if the derivative asylee followed to join the principal and was not included on the original asylum application.

Each case file will contain all of the forms, evidence, and officer notes that were part of the application for asylum. The most important document for an officer to review is either the asylum application (Form I-589) or the relative petition (Form I-730). Both provide proof of status and establish identity (with attached photo) as well as citizenship, since many asylees will not have a birth certificate or passport.

D. Unavailable or Missing Documentation

When an asylee flees the country of persecution, they may have been unable to obtain any documentation issued by a civil authority as proof of identity or of a familial relationship. At the time of the asylum interview, the asylum officer reviews a myriad of documents and affidavits and solicits testimony when seeking to establish an asylum-seeker's personal and family identity. Any available documents submitted at the time of the asylum interview should be contained within the A-file.

An officer may rely on the documents contained in the A-file to verify the applicant's identity at the time of adjustment. While it is not necessary to request the applicant's birth certificate or passport as proof of identity, officers should review any documentation the applicant submits to establish identity. Additionally, photos the applicant submit s should be compared to the photos in the A-file. If an officer is unable to establish an applicant's identity due to discrepancies between the documentation the applicant submitted and the information contained in the A-file, then the file should be forwarded to the field office having jurisdiction over the case for interview and resolution.

Footnotes

1.

This is a determination made by the Department of Health and Human Services, Centers for Disease Control and Prevention.

Chapter 5 - Adjudication Procedures

A. Record of Proceedings (ROP) Review and Underlying Basis

The officer should place all documents in the file according to the established Record of Proceedings order, including the filing of any documents the applicant submitted in response to a Request for Evidence (RFE).

In determining eligibility for adjustment of status as an asylee, the officer should review the underlying application (either Form I-589 or Form I-730) that provided the applicant with asylum status. The application will establish identity, family relationships, and date of grant of asylum status (if a principal asylee or a derivative asylee was within the United States at time of grant).

B. Interview Criteria

Officers will make the decision to interview an asylee applicant for adjustment of status on a case-by-case basis.[1] See 8 CFR 209.2(e). Interviews are generally required when an officer at a Service Center is unable to verify identity or eligibility or determine admissibility based solely on the available immigration records. Although officers may decide to relocate a case to a Field Office for interview on a case-by-case basis, the Service Center Officer should generally relocate a case to the field for interview if it meets one of the following criteria:

- The officer cannot verify the identity of the applicant through the information in the A-file.
- The officer can verify the identity of the applicant through the information in the A-file, but the applicant is claiming a new identity.
- Immigration records are insufficient for the officer to determine whether or not the applicant has asylum status.
- The applicant has an approved Form I-730 but, if granted overseas, was not interviewed as part of the overseas process or, if in the United States, was not interviewed prior to the approval.
- The applicant's FBI fingerprint results indicate a record that may cause the applicant to be inadmissible, or the applicant has had 2 unclassifiable fingerprints and the applicant must provide a sworn statement at an interview.
- The officer cannot determine the applicant's admissibility without an interview.
- The officer determines that the applicant is inadmissible but that an interview is necessary to determine if a waiver is appropriate.
- There is evidence that suggests that the original grant of asylum may have been obtained through fraud or misrepresentation.

- There is evidence that suggests that the principal asylum applicant no longer meets the definition of a refugee.

- There is evidence that suggests that the asylee derivative beneficiary no longer has the requisite relationship to adjust status as a derivate spouse or child.

These interview criteria may be modified in response to developing circumstances and concerns, which would dictate the need for further restrictions.

C. Beneficiaries Applying for Adjustment within the United States without a Prior Interview

A principal asylee may petition for immediate family members within two years of admission on a Form I-730, Refugee/Asylee Relative Petition. When proceeding from abroad, the derivative asylee is required to undergo various interviews and processing steps overseas. When applying for adjustment of status, there is the possibility that some derivative family members may not have undergone overseas processing and may have entered the United States prior to or after being granted derivative asylum status.

For example, beneficiaries of an approved Form I-730 sometimes enter the United States without inspection or with a nonimmigrant visa. The beneficiaries may never have received an interview confirming identity and relationship to the principal, which is part of the overseas process. Because asylum status is conferred on the beneficiary at the point they are present in the United States with an approved Form I-730 petition, the derivative asylee may have gained status without having to provide biometrics or appear in person before an officer to verify his or her identity.

In the event a derivative asylee (Form I-730 beneficiary) is applying for adjustment of status without having been previously interviewed either abroad or in the United States, he or she should be referred for an interview at a field office as part of the adjustment of status process and to verify identity and the familial relationship.

During the interview process, the officer will verify the identity of the derivative asylee and the requisite familial relationship to the principal as well as examine the derivative asylee's eligibility for admission as an immigrant.[2] See INA 209(b).

D. Waiver Instructions

When the officer determines that an applicant is inadmissible and a waiver is available, the officer may grant the waiver without requiring submission of an Application by Refugee for Waiver of Grounds of Excludability (Form I-602), if:

- The applicant is inadmissible under a ground of inadmissibility that may be waived (other than health related grounds);

- USCIS records and other information available to the officer contain sufficient information to assess eligibility for a waiver;

- There is no evidence to suggest that negative factors would adversely impact the exercise of discretion; and

- It is appropriate to grant a waiver.

If the adjudicating officer determines that a waiver application (Form I-602) is not required, the officer should indicate that the waiver has been granted by annotating on the adjustment application the particular inadmissibility that has been waived. The officer may use a written annotation, stamp, or pre-printed label to indicate the specific inadmissibility ground that is being waived in any open space on the face of the adjustment application.

An officer's signature and approval stamp on the adjustment application also serves as the signature and approval of the waiver for any waived grounds of inadmissibility specified on the face of the adjustment application. Waivers granted because the vaccinations were not medically appropriate or other blanket waivers for medical grounds do not require a waiver annotation on the adjustment application or the medical examination and vaccination record (Form I-693). All others require an annotation.

When a waiver application is required, the officer should stamp the waiver application approved, check the block labeled "Waiver of Grounds of Inadmissibility is Granted," and make the appropriate endorsements in the space provided.

In both instances, there is no need for a separate approval notice since the approval of the adjustment application will also indicate the approval of the waiver or the waiver application. .

If the applicant is statutorily ineligible for a waiver (i.e., he or she is inadmissible under a ground of inadmissibility that cannot be waived) or if there are sufficient negative factors to warrant denial of the waiver application, the officer should check the block labeled "Waiver of Grounds of Inadmissibility is Denied" and write "See Form I-291".[3] USCIS uses the Form I-291 to inform the applicant of the denial of his or her application. in the space labeled "Reasons."

The officer should be fully discuss the denial of the waiver in the written decision of the adjustment application. While there is no appeal from the denial of the waiver application, an immigration judge may consider the waiver application *de novo* when he or she considers the renewed adjustment application during removal proceedings.

E. Requests to Change Name or Date of Birth

Asylum-seekers sometimes enter the United States with fraudulent documentation. This fraudulent biographical information may be entered in the agency's information systems as an alias. The asylee will have to address and reconcile any outstanding discrepancies in biographical information found in case records or USCIS data systems at the time of adjustment.

While a principal asylee would have had his or her identity confirmed at time of asylum grant, this may not be true for derivative asylees who had neither an overseas interview nor an interview by a USCIS officer as a part of the Form I-730 adjudication process.

In this case, the derivative asylee may have to provide documentation as proof of his or her true identity if the biographical information contained on the Form I-730 does not match the information contained on the adjustment application. Additionally, the applicant would need to provide a reasonable explanation for why his or her true identity, including name and date of birth, was not properly established with the Form I-730.

During the asylum or overseas interview, asylees reviewed their asylum application or relative petition and biographical information and had the opportunity to correct any errors or resolve any identity issues at that time. Therefore, an officer should be cautious in reviewing any documents that now assert a change to the applicant's name or date of birth, as it raises the possibility that the person either used an alias or committed fraud or misrepresentation at the time of the asylum or overseas interview. An officer may not accept an affidavit as proof of a changed name or date of birth.

An officer should be aware that name changes may legitimately occur after the asylum or overseas interview, such as in the case of a legal adoption, marriage or divorce. Applicants requesting a name change at the time of adjustment will need to submit one of the following civil-issued documents:

- Legal name change decree – lists former and new legal name
- Marriage certificate – lists maiden name/last name of spouse
- Divorce decree – shows restoration of maiden name
- Adoption decree – lists adopted child's birth name and the names of the adoptive parents

F. Spelling of Names and Naming Convention Issues

From time to time, asylee adjustment applicants may complete an adjustment application by filling out their name in some variation of that which was listed on the Form I-589 or Form I-730. Although immigrants may be permitted on other local or federal government-issued documents to change their name or use a slightly different spelling, asylees will not be permitted to change the spelling of their names from that listed on their asylum application or relative petition or to use another version of their name at time of adjustment, unless the applicant provides documentation of a legal name change. This is prohibited in order to preserve the continuity and integrity of immigration.

The asylum application or relative petition might contain an error in the spelling or the order of a person's name. If an officer, based on a review of underlying documents in the A-file, recognizes that the original application or petition clearly had an error and the applicant is requesting the corrected name on the adjustment application, the officer may correct the error by amending the name on the application. If the applicant is granted permanent resident status, the name must also be corrected in the appropriate electronic immigration systems.

G. Decision

1. Approvals

If the application is properly filed, the applicant meets the eligibility requirements, and the applicant satisfies admissibility or waiver requirements, then the officer may approve the adjustment application as a matter of discretion .

Effective Date of Residence

The date of adjustment for approved applications filed by asylees shall be one year prior to the date of being approved for permanent residence.

For example, an asylee is granted asylum status on January 1, 2007. The asylee files for adjustment of status on March 15, 2009, and the application is approved on July 1, 2009. The date of adjustment of status is rolled back one year to July 1, 2008. This is the date that will appear on the applicant's permanent resident card and in USCIS systems. Additionally, the one-year roll back is counted toward physical presence for naturalization purposes.

Code of Admission

An applicant who has been granted asylum status as a principal asylee is adjusted using the code "AS-6." The AS-6 code is reserved for the principal asylee to ensure there is no confusion regarding the eligibility to file a relative petition. The AS-6 code also applies to asylees who were granted asylum through the *nunc pro tunc* process. An applicant who adjusts status as a spouse of an asylee (AS-2 classification) is given the code "AS-7." An applicant who adjusts status as a child of a principal asylee (AS-3 classification) is given the code "AS-8."

Classes of Applicants & Corresponding Codes of Admission

Applicant	Code of Admission
Asylee (Principal)	AS6
Spouse of a Principal Asylee (AS6)	AS7
Child of a Principal Asylee (AS6)	AS8

The officer must ensure that the asylee's new Class of Admission (COA) information is updated in the appropriate electronic systems, so that the applicant will receive a permanent resident card. After completion, cases are routed to the National Records Center (NRC).

2. Denials

If an applicant fails to establish eligibility for adjustment under this section, the application will be denied. The officer must provide the applicant with a written notice specifying the reasons for denial in clear language the applicant can understand. While there is no appeal from denial of this type of case, a motion to reopen may be considered if timely filed within 30 days of the date of the denial and received before removal proceedings are instituted.

An applicant may also renew the application for adjustment while in removal proceedings before an Immigration Judge. If a motion includes a waiver, and the motion to reopen is granted, the officer must adjudicate the waiver before a final decision can be made on the adjustment application.

If an officer denies the adjustment application due to ineligibility, improper filing, or abandonment of the application, the applicant should not be placed into removal proceedings and the applicant will still keep his or her asylum status. In certain instances, if officer denies the adjustment application because the applicant is inadmissible, the asylee may be placed into removal proceedings.

Footnotes

1.

See 8 CFR 209.2(e).

2.

See INA 209(b).

3.

USCIS uses the Form I-291 to inform the applicant of the denial of his or her application.

Chapter 6 - Termination of Status and Notice to Appear Considerations

On occasion, an officer reviewing the adjustment application will discover evidence that indicates the applicant was not eligible for asylum status at the time of asylum grant or is otherwise no longer eligible for asylum status. The officer should return the file to the Asylum Office for further review and potential termination of status.

A. Basis

A grant of asylum does not convey a right to remain permanently in the United States and may be terminated.[1] See INA 208(c)(2). The date of the asylum grant guides the termination procedures.

Fraud in the application pertaining to eligibility for asylum at the time it was granted is grounds for termination regardless of the filing date.

1. Asylum Application Filed on or after April 1, 1997

USCIS may terminate asylum if USCIS determines that the applicant:

- No longer meets the definition of a refugee;
- Ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;
- Constitutes a danger to the community of the United States, if convicted of a particularly serious crime;
- Committed a serious nonpolitical crime outside the United States prior to arriving in the United States;
- Is a danger to the security of the United States, including terrorist activity;
- May be removed, to a country (other than the country of the applicant's nationality or last habitual residence) in which the applicant's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, where the applicant is eligible to receive asylum or equivalent temporary protection;
- Has voluntarily availed himself or herself of the protection of the country of nationality or last habitual residence by returning to such country with permanent resident status or the reasonable possibility of obtaining such status with the same rights and obligations pertaining to other permanent residents of that country; or
- Has acquired a new nationality and enjoys the protection of the country of his new nationality.

2. Asylum Application Filed before April 1, 1997

USCIS may terminate the approval of asylum if USCIS determines that the applicant:

- No longer has a well-founded fear of persecution due to changed country conditions;
- Was convicted of a particularly serious crime or an aggravated felony;
- Was firmly resettled in third country;
- Can reasonably be regarded as a danger to the security of the United States; or
- Is a persecutor or has engaged in terrorist activity.

B. Procedures

If an officer determines that termination is appropriate, he or she should forward the case to the appropriate asylum office with jurisdiction. The Asylum Office may only terminate asylum status if an Asylum Officer or a District Director granted the status. Asylum status granted by an Immigration Judge may not be terminated by USCIS since jurisdiction rests with the immigration court. In such cases, asylum offices should coordinate with the Refugee and Asylum Law Division at the Office of Chief Counsel, USCIS Headquarters.

For those cases within USCIS jurisdiction, a Notice of Intent to Terminate (NOIT) must be served on the applicant by the Asylum Office at least 30 days prior to an interview with an asylum officer. The NOIT must contain *prima facie* evidence supporting the termination. The grounds of termination must be proven by a preponderance of the evidence. The applicant has an opportunity to present evidence that he or she is still eligible for asylum. The officer must provide the applicant with written notice if asylum and/or related employment authorization are terminated.

An immigration judge may terminate a grant of asylum made under the jurisdiction of USCIS at any time after the applicant has been provided a Notice of Intent to Terminate (NOIT). A termination hearing may take place in conjunction with removal proceedings.

If USICS terminates the applicant's asylum status or the officer cannot approve the adjustment of status application due to the applicant's inadmissibility, the officer should deny the application issue the applicant a Notice to Appear (NTA). The applicant should be placed in removal proceedings. The denial order should set forth all the reasons for the denial in clear language which can be understood by the applicant. There is no appeal from the denial of the application, but the alien may renew the application for adjustment in his or her removal proceedings before the Immigration Court.[2] See 8 CFR 209.2(e) and 8 CFR 209.2(f).

Footnotes

1.

See INA 208(c)(2).

2.

See 8 CFR 209.2(e) and 8 CFR 209.2(f).

Volume 8 - Admissibility

Part B - Health-Related Grounds of Inadmissibility

Chapter 1 - Purpose and Background

A. Purpose

The medical grounds of inadmissibility, the medical examination of foreign nationals, and the vaccinations administered to foreign nationals are designed to protect the health of the United States population. The immigration

medical examination, the resulting medical examination report, and the vaccination record provide the information USCIS uses to determine if a foreign national meets the health-related standards for admissibility.

Four basic medical conditions may make an applicant inadmissible on health-related grounds:

- Communicable disease of public health significance,
- An immigrant's failure to show proof of required vaccinations,
- Physical or mental disorder with associated harmful behavior, and
- Drug abuse or addiction.

B. Background

Public health concerns have been reflected in U.S. immigration law since the Immigration Act of 1882.[1] See Immigration Act of 1882, 22 Stat. 214. Among others, "persons suffering from a loathsome or a dangerous contagious disease" were not allowed to enter the United States.[2] See Immigration Act of 1891, 26 Stat. 1084. In 1990, Congress revised and consolidated all of the grounds of inadmissibility. It narrowed health-related grounds of inadmissibility to include only applicants with communicable diseases, physical or mental disorders with associated harmful behavior, or those with drug abuse or addiction problems.[3] See Immigration Act of 1990 (IMMACT 90), Pub. L. 101-649.

As of 1996, Congress requires all immigrant visa and adjustment of status applicants to establish that they have been vaccinated against certain vaccine-preventable diseases.[4] See Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208 and INA 212(a)(1)(A)(ii).

C. Role of the Department of Health and Human Services (HHS)

Because medical knowledge and public health concerns can and do change over time, Congress gave the Department of Health and Human Services (HHS) the authority to designate by regulations which conditions make a person inadmissible on health-related grounds.

The HHS component charged with defining these medical conditions is the Centers for Disease Control and Prevention (CDC). CDC's responsibilities include:

- Publishing regulations addressing health-related conditions that render an applicant inadmissible;
- Establishing the medical examination requirements in its Technical Instructions for Medical Examination of Aliens (Technical Instructions) that are binding on civil surgeons in the United States, panel physicians

overseas, USCIS Officers, and State Department Consular Officers;[5] Officers and designated physicians must obtain the Technical Instructions from CDC's website at http://www.cdc.gov/immigrantrefugeehealth/exams/ti/index.html. Updates to the Technical Instructions must also be followed.

- Responding to medical questions that officers, civil surgeons, and panel physicians may have based on the Technical Instructions;[6] CDC can be reached at cdcqap@cdc.gov. Officers should identify themselves as an immigration officer in the e-mail. This e-mail address is not for inquiries from the public. It is only for inquiries from immigration officers and civil surgeons. Inquiries from the public should be submitted to CDC INFO at http://www.cdc.gov/cdc-info/requestform.html. and

- Advising USCIS on the adjudication of medical waivers.

D. Role of the Department of Homeland Security (DHS)

Congress authorizes the Department of Homeland Security (DHS) to determine a foreign national's admissibility to the United States, which includes determinations based on health reasons.[7] See INA 212(a). DHS must follow HHS regulations and instructions when determining whether an applicant is inadmissible on health-related grounds.[8] See INA 212(a)(1)(A).

Congress also empowers DHS to designate qualified physicians as civil surgeons who conduct medical examinations of foreign nationals physically present in the United States.[9] See INA 232.

E. Making a Medical Inadmissibility Determination

To make a medical inadmissibility determination, the officer should follow the steps outlined below:

Overview of Process of Making a Medical Inadmissibility Determination	
Step of Adjudication	**Where can I find information on this step?**
Step 1: Is the applicant subject to health-related grounds of inadmissibility or is there another reason that requires the applicant to undergo a medical examination?	Chapter 3, Applicability of Medical Examination and Vaccination Requirement [8 USCIS-PM B.3]
Step 2: If required, has the applicant been medically examined by the appropriate physician and is the appropriate medical documentation in the file?	Chapter 3, Applicability of Medical Examination and Vaccination Requirement [8 USCIS-

	PM B.3]
Step 3: Was the medical documentation[10] Report of Medical Examination and Vaccination Record (Form I-693); Medical Examination for Immigrant or Refugee Applicant (1991 TB Technical Instructions) (Form DS-2053) or the Medical Examination for Immigrant or Refugee Applicant (2007 TB Technical Instructions) (Form DS-2054), and related worksheets. properly completed and is it still valid?	Chapter 4, Review of Medical Examination Documentation [8 USCIS-PM B.4] through Chapter 10, Other Medical Conditions [8 USCIS-PM B.10]
Step 4: Is the applicant inadmissible based on health-related grounds?	Chapter 11, Inadmissibility Determination [8 USCIS-PM B.11]
Step 5: Is the applicant inadmissible based on grounds other than health-related grounds, as evidenced by the medical documentation?	Chapter 11, Inadmissibility Determination, Section D, Other Grounds of Inadmissibility [8 USCIS-PM B.11(D)]

F. Legal Authorities

- INA 212(a)(1) – Health-Related Grounds
- INA 221(d) – Physical Examination
- INA 232; 8 CFR 232 – Detention of Aliens for Physical and Mental Examination
- 42 U.S.C. 252 – Medical Examination of Aliens
- 42 CFR 34 – Medical Examination of Aliens
- Technical Instructions for Civil Surgeons (Technical Instructions), and updates[11] Available online at http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/technical-instructions-civil-surgeons.html.

Footnotes

1.

See Immigration Act of 1882, 22 Stat. 214.

2.

See Immigration Act of 1891, 26 Stat. 1084.

3.

See Immigration Act of 1990 (IMMACT 90), Pub. L. 101-649.

4.

See Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208 and INA 212(a)(1)(A)(ii).

5.

Officers and designated physicians must obtain the Technical Instructions from CDC's website at http://www.cdc.gov/immigrantrefugeehealth/exams/ti/index.html. Updates to the Technical Instructions must also be followed.

6.

CDC can be reached at cdcqap@cdc.gov. Officers should identify themselves as an immigration officer in the e-mail. This e-mail address is not for inquiries from the public. It is only for inquiries from immigration officers and civil surgeons. Inquiries from the public should be submitted to CDC INFO at http://www.cdc.gov/cdc-info/requestform.html.

7.

See INA 212(a).

8.

See INA 212(a)(1)(A).

9.

See INA 232.

10.

Report of Medical Examination and Vaccination Record (Form I-693); Medical Examination for Immigrant or Refugee Applicant (1991 TB Technical Instructions) (Form DS-2053) or the Medical Examination for Immigrant or Refugee Applicant (2007 TB Technical Instructions) (Form DS-2054), and related worksheets.

11.

Available online at http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/technical-instructions-civil-surgeons.html.

Chapter 2 - Medical Examination and Vaccination Record

A. Purpose of the Medical Examination and Vaccination Report

The results of the medical examination and vaccination record determine whether an applicant is inadmissible on health-related grounds. The medical examination documentation indicates whether the applicant has either a Class A or Class B medical condition and the vaccination record shows whether the applicant has complied with all vaccination requirements.

B. Class A and B Conditions and Their Impact on Admissibility

Class A and B conditions are defined in HHS regulations.[1] See 42 CFR 34.

Class A conditions are medical conditions that render a person inadmissible and ineligible for a visa or adjustment of status.[2] Class A conditions are medical conditions mentioned in INA 212(a)(1)(A). A Class A medical condition is a:

- Communicable disease of public health significance per HHS regulation;
- Present or past physical or mental disorder with associated harmful behavior or harmful behavior that is likely to recur; and
- Drug abuse or addiction.

Class B conditions are defined as physical or mental abnormalities, diseases, or disabilities serious in degree or permanent in nature amounting to a substantial departure from normal well-being.[3] See 42 CFR 34.2(e). This may be a medical condition that, although not rendering an applicant inadmissible, represents a departure from normal health or well-being that may be significant enough to:

- Interfere with the applicant's ability to care for himself or herself, to attend school, or to work; or
- Require extensive medical treatment or institutionalization in the future.

C. Completion of a Medical Examination

When a medical examination is required to determine the applicant's admissibility, the person must be examined by a physician who is designated to perform this examination.

By statute, any medical officer in the U.S. Public Health Service may conduct the examination. However, this rarely occurs. Most medical examinations are conducted by a physician designated as a civil surgeon by USCIS.[4] See INA 232 and 8 CFR 232. or designated as a panel physician abroad by the U.S. Department of State (DOS). Civil surgeons complete medical examinations for applicants in the United States, while panel physicians complete medical examinations for immigrant visa and refugee applicants seeking immigration benefits from outside the United States.

Footnotes

1.

See 42 CFR 34.

2.

Class A conditions are medical conditions mentioned in INA 212(a)(1)(A).

3.

See 42 CFR 34.2(e).

4.

See INA 232 and 8 CFR 232.

Chapter 3 - Applicability of Medical Examination and Vaccination Requirement

A. Requirements by Benefit Type

Medical examination and vaccination requirements vary depending on the immigration benefit the person is seeking.

Most applicants subject to medical grounds of inadmissibility must undergo a medical examination to determine their admissibility. Some applicants, however, do not need to undergo a medical examination unless there is a specific concern. Nonimmigrants, for example, are in this category.

Even if the applicant is not subject to health-related grounds of inadmissibility, the officer may still order a medical examination as a matter of discretion if the evidence indicates that there may be a public health concern.[1] Based on the conditions listed in INA 212(a)(1). This could apply, for example, when an officer adjudicates a request for parole.[2] See INA 212(d)(5)(A).

In general, an immigration officer may order a medical examination of an applicant at any time, if the officer is concerned that the applicant may be medically inadmissible.[3] See Matter of Arthur, 16 I&N Dec. 558 (BIA 1978) (The applicant has the burden of proof to establish his or her admissibility to the United States according to INA 291; the burden never shifts to the government). This rule applies regardless of the type of immigration benefit sought, or whether the applicant is applying for a visa, seeking entry at a U.S. port-of-entry, or already in the United States.

A civil surgeon in the United States can only perform a medical examination for purposes of a benefits application processed within the United States. Similarly, a panel physician abroad can generally only perform a medical examination for purposes of a visa application processed outside the United States. There are limited exceptions where an applicant seeking a benefit application inside the United States does not have to repeat a medical examination performed by a panel physician. The following chart highlights the benefits that require a medical examination and vaccinations, and whether a civil surgeon or panel physician should conduct the medical examination.[4] Special considerations that apply to certain benefit types are noted in Section B, Special Considerations [8 USCIS-PM B.3(B)].

Medical Examination and Vaccination Requirements by Benefit Type			
Benefit Type	**Medical Examination (Yes or No)**	**Vaccination (Yes or No)**	**Panel Physician or Civil Surgeon**
Immigrant Visa Applicants, applying with U.S. Department of	Yes	Yes	Panel Physician

State (DOS)			
Adjustment Applicants	Yes	Yes	Civil Surgeon
Nonimmigrant Visa Applicants, applying with DOS; and Nonimmigrants seeking change/extension of status while in the United States[5] **See INA 248. See 8 CFR 214.1 and 8 CFR 248.**	No (with some exceptions)[6] See Section B, Special Considerations [8 USCIS-PM B.3(B)].	No	N/A
Temporary Protected Status (TPS) Applicants[7] **See INA 244.**	No (with some exceptions)[8] See Section B, Special Considerations [8 USCIS-PM B.3(B)].	No	N/A
K or V Visa Applicants, applying with DOS[9] **See INA 214. See 8 CFR 214.2(k) and 8 CFR 214.15.**	Yes	No	Panel Physician
Nonimmigrant seeking change of status to V status[10] **See INA 214(q) and 8 CFR 214.15.**	Yes	No	Civil Surgeon
K or V nonimmigrants applying for adjustment of status in the United States[11] **See INA 245 and 8 CFR 245.**	May be required[12] See Section B, Special Considerations [8 USCIS-PM B.3(B)].	Yes	Panel Physician and/or Civil Surgeon
Refugee Applicants, including Principal and Derivative Applicants Overseas[13] **See INA 207 and 8 CFR 207.7. See INA 208 and 8 CFR 208.21.**	Yes	No	Panel Physician
Applicants seeking derivative refugee or derivative asylee status while in the United States[14] **See INA 207 and 8 CFR 207.**	No	No	N/A
Principal Asylum Applicants in the United States[15] **See INA 208 and 8 CFR 208.**	No	No	N/A
Applicants Seeking Derivative Asylee Status with DOS[16] **See**	Yes	No	Panel Physician

INA 208 and 8 CFR 208.21.			
Refugee-Based Adjustment Applicants[17] See INA 209 and 8 CFR 209.1.	May be required [18] See Section B, Special Considerations [8 USCIS-PM B.3(B)].	Yes	Civil Surgeon[19] Including State or local health department physicians, who are blanket designated by USCIS as civil surgeons for purposes of completing the vaccination record for refugees adjusting status only.
Asylees Applying for Adjustment of Status[20] See INA 209 and 8 CFR 209.2.	May be required [21] See Section B, Special Considerations [8 USCIS-PM B.3(B)].	Yes	Civil Surgeon
Kurdish asylees paroled under Operation Pacific Haven applying for adjustment of status	Yes	Yes	Panel Physician or Civil Surgeon
Registry Applicants	No	No	N/A
North American Indians entering the United States[22] See 8 CFR 289.1 and 8 CFR 289.2. American Indians born in Canada who meet the regulatory requirements may be regarded as having been admitted for lawful permanent residence. Because neither an immigrant visa nor an adjustment of status application is required, the applicant is not required to comply with the medical examination and vaccination requirements.	No	No	N/A
Children of returning residents entering the United States[23] See INA 101(a)(27)(A) and 22 CFR 42.22. or Children of U.S. nationals	No	No	N/A
Internationally Adopted Orphans [24] See INA 101(b)(1)(F), including Hague Convention	Yes	Yes (Exception	Panel Physician

Adoptees.		available)	

B. Special Considerations

1. Nonimmigrants and TPS Applicants

In general, nonimmigrant visa applicants, nonimmigrants seeking change or extension of status, and Temporary Protected Status (TPS) applicants are only medically examined if the Consular Officer or immigration officer has concerns as to the applicant's inadmissibility on health-related grounds. CBP Officers at ports-of-entry may also require a nonimmigrant arriving with or without a visa to submit to a medical examination to determine whether a medical ground of inadmissibility applies.

2. K or V Visa Applicants Applying with DOS[25] See INA 214. See 8 CFR 214.2(k) and 8 CFR 214.15. See 9 FAM 41.108 Note 1.2.

While the Consular Officer may encourage compliance, the Consular Officer cannot deny a K or V visa for lack of compliance with the vaccination requirements.

Some panel physicians may perform the vaccination assessment in anticipation of the applicant's later adjustment of status application.

3. Nonimmigrants Applying for Change of Status to V Status

For nonimmigrants applying for change of status to V status, the civil surgeon may perform the vaccination assessment in anticipation of the applicant's later adjustment of status application.

4. K or V Nonimmigrants Applying for Adjustment[26] See INA 245 and 8 CFR 245.

K and V nonimmigrants applying for adjustment of status are not required to repeat the medical examination if the application was filed within one year of the date of the original medical examination, and:

- The medical examination did not reveal a Class A medical condition; or
- The applicant received a conditional waiver in conjunction with the K or V nonimmigrant visa or the change of status to V and the applicant submits evidence of compliance with the waiver terms and conditions.[27] See 8 CFR 245.5.

If a new medical examination is required and reveals a Class A medical condition, a new waiver application will also be required. In such cases, the officer should determine whether the applicant complied with the terms and conditions of the first waiver, if applicable. Such determination should be given considerable weight in the adjudication of a subsequent waiver application.[28] See Volume 9, Waivers, Part C, Waivers for Health-Related Grounds of Inadmissibility [9 USCIS-PM C] for more information on medical waivers.

Even if a new medical examination is not required, applicants must still comply with the vaccination requirements if the vaccination record was not included as part of the original medical examination report. If the vaccination report was properly completed at the time of the overseas examination, the officer may accept the vaccination assessment completed by the panel physician.

An applicant's overseas medical examination report completed by a panel physician should already be in the applicant's A-file. If it is not in the A-file, the officer should request the medical examination report through a Request for Evidence (RFE).

If the applicant was granted a change of status to V in the United States,[29] Under INA 214(q). the medical examination report completed by the civil surgeon should be in the A-file created at the time that the change of status was initially granted.

5. Refugees Applying for Adjustment[30] **See INA 209 and 8 CFR 209.1.**

By regulation, refugees applying for adjustment of status generally do not need to repeat the entire medical examination if the applicant was already examined by a panel physician for purposes of admission to the United States.[31] See 8 CFR 209.1(c). Refugees must undergo an additional medical examination only if the original examination by the panel physician revealed a Class A medical condition.

Family members granted refugee status in the United States must submit to a medical examination at the time they seek to adjust their status.

All refugees must comply with the vaccination requirements at the time of adjustment of status by submitting the relevant parts of the Report of Medical Examination and Vaccination Record (Form I-693) completed by a designated civil surgeon. A prior vaccination assessment performed by the panel physician cannot be used for purposes of the adjustment of status application.[32] See 8 CFR 209.1(c).

USCIS granted a blanket civil surgeon designation to state and local health department physicians for the limited purpose of completing the vaccination record for refugees applying for adjustment of status.

6. Asylees Applying for Adjustment

All asylees are required to undergo an immigration medical exam, including vaccination assessment, at time of adjustment.[33] See 8 CFR 209.2(d).

However, according to USCIS policy developed in consultation with CDC, an asylee dependent who had a medical examination conducted overseas is not required to undergo a new medical exam when applying for adjustment of status if:

- The results of the overseas medical examination are contained in the A-file and no Class A condition was reported;
- The asylee has applied for adjustment of status within one year of eligibility to file; and
- No evidence in the A-file or testimony given at the interview suggests that the asylee has acquired a Class A condition after his or her entry into the United States.

Even if an asylee dependent may use the result of the previous examination, he or she must still establish compliance with the vaccination requirements and submit the vaccination assessment with his or her adjustment of status application. This requirement applies even if the applicant had a vaccination assessment completed overseas by a panel physician. To comply with the requirement, the applicant must have the relevant parts of Form I-693 completed by the civil surgeon.

7. Children of Returning Residents Entering the United States[34] **See INA 101(a)(27)(A) and 22 CFR 42.22.**

For children of returning residents entering the United States, as long as the parent's visa is valid or the parent is a U.S. resident or U.S. national, there are no medical examination or vaccination requirements.

Children of returning residents entering the United States are:

- Children born abroad after the parent has been issued an immigrant visa and while the parent is applying for admission to the United States.
- Children born abroad during the temporary visit abroad of a mother who is a national or permanent resident of the United States.

8. Internationally Adopted Orphans[35] **See INA 101(b)(1)(F). See Chapter 9, Vaccination Requirement, Section G, Exceptions for Certain Adopted Children [8 USCIS-PM B.9(G)] for more on this exception.**

Children 10 years of age or younger who are classified as orphans and who are applying for IR-3 and IR-4 (orphans) and IH-3 and IH-4 (Hague Convention Adoptees) visas are not required to comply with the vaccination requirements before admission to the United States.[36] See INA 212(a)(1)(C), as amended by Section 2 of the International Adoption Simplification Act, Pub. L. 111-287, 124 Stat. 3058 (2010).

Footnotes

1.

Based on the conditions listed in INA 212(a)(1).

2.

See INA 212(d)(5)(A).

3.

See *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1978) (The applicant has the burden of proof to establish his or her admissibility to the United States according to INA 291; the burden never shifts to the government).

4.

Special considerations that apply to certain benefit types are noted in Section B, Special Considerations [8 USCIS-PM B.3(B)].

5.

See INA 248. See 8 CFR 214.1 and 8 CFR 248.

6.

See Section B, Special Considerations [8 USCIS-PM B.3(B)].

7.

See INA 244.

8.

See Section B, Special Considerations [8 USCIS-PM B.3(B)].

9.

See INA 214. See 8 CFR 214.2(k) and 8 CFR 214.15.

10.

See INA 214(q) and 8 CFR 214.15.

11.

See INA 245 and 8 CFR 245.

12.

See Section B, Special Considerations [8 USCIS-PM B.3(B)].

13.

See INA 207 and 8 CFR 207.7. See INA 208 and 8 CFR 208.21.

14.

See INA 207 and 8 CFR 207.

15.

See INA 208 and 8 CFR 208.

16.

See INA 208 and 8 CFR 208.21.

17.

See INA 209 and 8 CFR 209.1.

18.

See Section B, Special Considerations [8 USCIS-PM B.3(B)].

19.

Including State or local health department physicians, who are blanket designated by USCIS as civil surgeons for purposes of completing the vaccination record for refugees adjusting status only.

20.

See INA 209 and 8 CFR 209.2.

21.

See Section B, Special Considerations [8 USCIS-PM B.3(B)].

22.

See 8 CFR 289.1 and 8 CFR 289.2. American Indians born in Canada who meet the regulatory requirements may be regarded as having been admitted for lawful permanent residence. Because neither an immigrant visa nor an adjustment of status application is required, the applicant is not required to comply with the medical examination and vaccination requirements.

23.

See INA 101(a)(27)(A) and 22 CFR 42.22.

24.

See INA 101(b)(1)(F), including Hague Convention Adoptees.

25.

See INA 214. See 8 CFR 214.2(k) and 8 CFR 214.15. See 9 FAM 41.108 Note 1.2.

26.

See INA 245 and 8 CFR 245.

27.

See 8 CFR 245.5.

28.

See Volume 9, Waivers, Part C, Waivers for Health-Related Grounds of Inadmissibility [9 USCIS-PM C] for more information on medical waivers.

29.

Under INA 214(q).

30.

See INA 209 and 8 CFR 209.1.

31.

See 8 CFR 209.1(c).

32.

See 8 CFR 209.1(c).

33.

See 8 CFR 209.2(d).

34.

See INA 101(a)(27)(A) and 22 CFR 42.22.

35.

See INA 101(b)(1)(F). See Chapter 9, Vaccination Requirement, Section G, Exceptions for Certain Adopted Children [8 USCIS-PM B.9(G)] for more on this exception.

36.

See INA 212(a)(1)(C), as amended by Section 2 of the International Adoption Simplification Act, Pub. L. 111-287, 124 Stat. 3058 (2010).

Chapter 4 - Review of Medical Examination Documentation

A. Results of the Medical Examination

The physician must annotate the results of the examination on the following forms:

Panel Physicians

Panel physicians must annotate the results of the medical examination on the Medical Examination for Immigrant or Refugee Applicant (1991 TB Technical Instructions) (Form DS-2053) or the Medical Examination for Immigrant or Refugee Applicant (2007 TB Technical Instructions) (Form DS-2054), and related worksheets.[1] As of October 1, 2013, panel physicians only use DS-2054. The DS-2053 is no longer used after that date.

Civil Surgeons

Civil surgeons must annotate the medical examination results on the Report of Medical Examination and Vaccination Record (Form I-693).

B. Documentation Completed by Panel Physician

Since a State Department Consular Officer reviews the medical documentation completed by a panel physician as part of the overseas visa process, a USCIS Officer may assume that the medical documentation is properly completed.[2] The Technical Instructions for Panel Physicians may differ from the Technical Instructions for Civil Surgeons. As long as the DS form is properly completed, the officer should accept the finding of the consular officer as correct.

If the USCIS Officer notices a significant irregularity such as an omission of a particular section, the officer may issue a Request for Evidence (RFE) to have a civil surgeon in the United States complete the missing part(s) of the medical examination. A civil surgeon should address any deficiency by completing the respective parts of a Form I-693 according to the Technical Instructions for Civil Surgeons issued by CDC.[3] In this case, because the DS form was completed by a panel physician, the officer should retain the original document. The RFE must specify which sections

of Form I-693 have to be completed by a civil surgeon. This should only happen in rare instances.

Applicants who have already been examined abroad and are not required to repeat the medical examination in the United States may still have to show proof of the vaccination requirement.[4] See Chapter 3, Applicability of Medical Examination and Vaccination Requirement [8 USCIS-PM B.3] for specific information on who is required to be examined and to what extent.

C. Documentation Completed by Civil Surgeon

1. Civil Surgeon Designation

Except for physicians who are Public Health Service Officers, only physicians designated by USCIS to act as civil surgeons may conduct an immigration medical examination in the United States and complete Form I-693.[5] Form I-693 can only be used for immigration benefits that are granted in the United States. Only doctors of medicine (M.D.) and doctors of osteopathy (D.O.) who are currently licensed to practice as physicians may be designated.[6] See INA 232 and 8 CFR 232. The physician must be designated as a civil surgeon at the time of the completion of the medical examination.

To determine whether the physician is designated as a civil surgeon, the officer should consult the designated civil surgeon list through the civil surgeon locator on uscis.gov.

If the officer has questions as to the past designation of a civil surgeon, the officer should contact the appropriate civil surgeon POC(s).

2. Complete Form

The following requirements must always be met regarding any Form I-693 submitted to USCIS:

- The form must be completed legibly;
- All required parts of the form must be completed;[7] Some parts of the form may not be required. For example, if an applicant is not required to undergo a chest X-ray in the TB section of the medical examination report, the chest X-ray section would not have to be completed.
- The form must be signed and dated by the designated civil surgeon who conducted the medical examination;[8] See Subsection 3, Signatures [8 USCIS-PM B.4(C)(3)].
- The form must be signed and dated by the applicant who was examined;[9] See Subsection 3, Signatures [8

USCIS-PM B.4(C)(3)].

- If applicable, the form must be signed and dated by the physician(s) completing referral evaluations;[10] See Subsection 3, Signatures [8 USCIS-PM B.4(C)(3)].

- The form must still be valid;[11] See Subsection 4, Validity Period of Form I-693 (Including Use of Prior Versions) [8 USCIS-PM B.4(C)(4)]. and

- The form must be in a sealed envelope as detailed in the form's instructions.

If the above requirements are not met, or if there is evidence that the envelope has been tampered with, the officer must return the original Form I-693 to the applicant for corrective action. Whenever an original is returned to the applicant, the officer should retain a copy.

A response to an RFE is acceptable if it is completed by a civil surgeon in one of the following ways:

- The civil surgeon annotates the original medical examination in the deficient part(s), and both the applicant and the civil surgeon re-sign and re-date their respective certifications.

- The civil surgeon re-completes an entirely new Form I-693, and corrects for the original deficiency.

- The civil surgeon completes the following sections of a new form: The part containing the applicant's information,[12] As part of completing the Form I-693, the civil surgeon must ensure that the applicant has signed the applicant's certification. the part(s) that were deficient in the original examination, and the part containing the civil surgeon's information and certification. The civil surgeon must include the original medical examination documentation with the newly completed parts.

The applicant may return to the original civil surgeon who performed the immigration medical exam or a new civil surgeon to correct the form.

The civil surgeon must place the corrected form[13] Along with the original Form I-693, if separate from the corrected form. in a sealed envelope. The applicant must then return the sealed envelope to USCIS.

3. Signatures

The applicant, the civil surgeon, and any other health care provider who evaluated the applicant as part of the immigration medical examination should sign the form, to verify that the content of their representations is truthful.

Signature of the Civil Surgeon

The civil surgeon's signature must be an original signature. There is no exception to this requirement. Stamps of the physician's signature or other substitutes, or copies of the civil surgeon's original signature, are not acceptable.

As outlined in CDC's Technical Instructions, the civil surgeon is only permitted to sign the Form I-693 after he or she has completed the entire medical examination. An examination is not completed until any prescribed treatment for a Class A condition has been administered.

There may be circumstances when an applicant refuses to undergo one part of the examination, but the civil surgeon certifies the form with a notation that part of the exam is not complete. In these cases, the officer should issue an RFE to the applicant for corrective action.

The civil surgeon might also diagnose a Class A condition for which the applicant refuses treatment. The civil surgeon might then annotate the Class A condition but still certify and sign the form. In this case, the officer should not return the form for corrective action. The officer should determine that the applicant is inadmissible and ask the applicant to request a waiver, if available.[14] See Volume 9, Waivers, Part C, Waivers for Health-Related Grounds of Inadmissibility [9 USCIS-PM C] for more on waivers.

Signature of the Health Department

In agreement with CDC, USCIS granted blanket civil surgeon designation to local and state health departments in the United States. This blanket designation allows health departments to complete the vaccination portion of Form I-693 for refugees seeking adjustment if they have a physician who meets the professional qualifications for a civil surgeon. If a refugee only requires the vaccination assessment, the only parts of the form that need to be completed are the applicant's information, the vaccination assessment, and the certifications. The other parts are irrelevant and do not have to be submitted.

If the health department physician is completing only a vaccination assessment for refugees seeking adjustment, the physician's signature may be either an original (handwritten) or a stamped signature, as long as it is the signature of the health department physician. The attending nurse may, but does not have to, co-sign with the physician. The signature of the physician must be accompanied by the health department's stamp or raised seal, whichever is customarily used.

If the health department does not properly sign, the officer should return the medical documentation to the applicant for corrective action.[15] See Part C, Civil Surgeon Designation and Revocation [8 USCIS-PM C] for more information on the blanket civil surgeon designation for health departments.

Signature of a Military Physician designated as a Civil Surgeon for Members and Veterans of the Armed Forces

To ease the difficulties encountered by physicians and applicants in the military, USCIS issued a blanket civil surgeon designation to qualifying military physicians to permit them to perform the immigration medical examination and complete the Form I-693 for eligible members and veterans of the U.S. armed forces and their dependents.[16] See Part C, Civil Surgeon Designation and Revocation [8 USCIS-PM C] for more information on the blanket civil surgeon

designation for military physicians.

Pursuant to the understanding reached between USCIS and the CDC, military physicians who qualify under this blanket civil surgeon designation may perform the entire immigration medical examination as long as the exam is conducted in the United States on the premises of a Military Treatment Facility (MTF) and conducted for a U.S. armed forces member, veteran, or dependent who is eligible to receive medical care at the MTF.

If operating under the blanket civil surgeon designation for military physicians, a physician's signature may be either an original (handwritten) or stamped signature, as long as it is the signature of a qualifying military physician. Nurses and other health care professionals may, but are not required to, co-sign the form. The signature of the physician must be accompanied by the official stamp or raised seal of the MTF, whichever is customarily used.

If the military physician does not properly sign, the officer should return the medical documentation to the applicant for corrective action.

Signature of the Applicant

The applicant or the civil surgeon may complete the section about the applicant's information. The civil surgeon must always verify the applicant's identity by requiring a government-issued ID, as stated in CDC's Technical Instructions.

The applicant must sign the certification only when instructed by the civil surgeon. By signing the form, the applicant attests that he or she consented to the medical examination and that any information provided in relation to the medical examination is truthful.

Whenever the civil surgeon orders a test that he or she does not perform personally, the civil surgeon must ensure that the physician or staff to whom the applicant is referred checks the identity of the applicant by requesting a government-issued ID.[17] By signing the form, the civil surgeon certifies that he or she has examined the applicant according to the procedures and requirements outlined in the Technical Instructions, Form I-693, and form instructions. Officers do not need to verify whether the civil surgeon instructed the referring physician to check the applicant's identity.

An officer should follow the chart below to determine whether the applicant or a legal guardian must sign the form.[18] See 8 CFR 103.2(a)(2).

Signature of the Applicant	
Age of Applicant	**Signature Requirement**
Age 14 or Older	The applicant must sign Form I-693. However, a legal guardian may sign for a mentally incompetent person.
	Either the applicant, a parent, or legal guardian may sign the

Under Age 14	Form I-693. The officer should not reject the form as improperly completed if only the applicant, parent, or guardian signs.

Signature of Physicians Receiving Referrals for Evaluation

If the civil surgeon is unable to perform a particular medical assessment, he or she is required to refer the applicant to another physician. The physician receiving the referral is required to complete the appropriate section on Form I-693 after he or she has completed the evaluation of the applicant's condition. The civil surgeon may not sign the civil surgeon's certification on the form until the civil surgeon has received and reviewed the report of the physician who received the referral. If the referring physician ordered treatment, the civil surgeon may not sign the certification until the treatment has been completed.

Contracted services used by the civil surgeon to complete a step in the medical examination are not considered referrals. Therefore, the referral section can be blank in such cases.[19] Civil surgeons are, however, still responsible for ensuring that the contractor properly checks the applicant's ID. For example, if the civil surgeon uses a contractor to draw blood, the referral section does not have to be completed. However, if the Technical Instructions require a referral to the Health Department because the applicant has TB, the officer must make sure that the referral section is completed.

4. Validity Period of Form I-693 (Including Use of Prior Versions)

Evidentiary Value

A person seeking an immigration benefit and who is subject to medical grounds of inadmissibility must establish that he or she is not inadmissible on medical grounds.[20] See INA 212(a)(1). In general, those applying for immigration benefits while in the United States must use Form I-693 to show they are free from any conditions that would render them inadmissible.

An officer may determine that the applicant has met the burden of proof required to establish that he or she is free from a medical condition that would render the applicant inadmissible if all of the following criteria are met:

- The medical exam was performed by a USCIS-designated civil surgeon in accordance with HHS regulations;
- The medical examination report was properly completed;[21] See Section C, Documentation Completed by Civil Surgeon [8 USCIS-PM B.4(C)].
- The medical examination report was submitted to USCIS less than one year after completion of the examination;[22] USCIS will use the date the Form I-693 was signed by the civil surgeon (including blanket-designated health departments and military physicians) to determine whether the report was submitted less than one year after completion of the examination.
- The benefit application[23] For example, an Application to Register Permanent Residence or Adjust Status

(Form I-485). is adjudicated no more than one year after the date the medical examination report was submitted to USCIS;[24] USCIS will use the date that USCIS received the Form I-693 to determine whether the medical examination report is more than one year old at time of adjudication of the benefit application. Although the medical examination report is generally valid for adjudicatory purposes up to one year after filing, the officer may order an additional immigration medical examination at any time if he or she has concerns as to an applicant's inadmissibility on health-related grounds. For more information, see Chapter 11, Inadmissibility Determination, Section C, Other Information [8 USCIS-PM B.11(C)]. and

- The medical examination report establishes that the applicant does not have a Class A medical condition and has complied with the vaccination requirements or is granted a waiver.[25] For more information on determining inadmissibility based on medical grounds, see Chapter 5, Review of Overall Findings [8 USCIS-PM B.5] through Chapter 11, Inadmissibility Determination [8 USCIS-PM B.11].

In general, if any one of the above criteria is not met, the applicant has not met the burden of proof required to establish that he or she is free of a medical condition that would render him or her inadmissible to the United States. In this case, the officer should follow standard operating procedures regarding issuance of an RFE or Notice of Intent to Deny (NOID) to address the deficiency.

Special rules may apply to certain foreign nationals who were examined overseas, including certain nonimmigrant fiancé(e)s or spouses of U.S. citizens (K visa), spouses of lawful permanent residents (V visa), refugees, and asylee dependents. Such foreign nationals usually do not need to repeat the full medical exam in the United States for purposes of adjustment of status.[26] See Chapter 3, Applicability of Medical Examination and Vaccination Requirement [8 USCIS-PM B.3] for more information on these special considerations.

Generally, the only acceptable version of Form I-693 is the version in use at the time of the medical examination. Prior versions of Form I-693 are generally not acceptable because they may lack necessary information.[27] See http://www.uscis.gov/i-693 for the current and accepted version(s) of the form.

Timing of the Submission of the Medical Examination Report

The medical examination report may be submitted to USCIS:

- Concurrently with the immigration benefit application; or

- At any time after filing the immigration benefit application but prior to the adjudication of that application; if not filed concurrently with the immigration benefit application, USCIS encourages applicants to wait until USCIS requests the medical examination report before submitting it.[28] This includes a request to bring the medical examination report to the interview.

Place of Submission of the Medical Examination Report

The medical examination report should be submitted to the appropriate location.[29] See http://www.uscis.gov/i-693 for location information.

Footnotes

1.

As of October 1, 2013, panel physicians only use DS-2054. The DS-2053 is no longer used after that date.

2.

The Technical Instructions for Panel Physicians may differ from the Technical Instructions for Civil Surgeons. As long as the DS form is properly completed, the officer should accept the finding of the consular officer as correct.

3.

In this case, because the DS form was completed by a panel physician, the officer should retain the original document. The RFE must specify which sections of Form I-693 have to be completed by a civil surgeon.

4.

See Chapter 3, Applicability of Medical Examination and Vaccination Requirement [8 USCIS-PM B.3] for specific information on who is required to be examined and to what extent.

5.

Form I-693 can only be used for immigration benefits that are granted in the United States.

6.

See INA 232 and 8 CFR 232.

7.

Some parts of the form may not be required. For example, if an applicant is not required to undergo a chest X-ray in the TB section of the medical examination report, the chest X-ray section would not have to be completed.

8.

See Subsection 3, Signatures [8 USCIS-PM B.4(C)(3)].

9.

See Subsection 3, Signatures [8 USCIS-PM B.4(C)(3)].

10.

See Subsection 3, Signatures [8 USCIS-PM B.4(C)(3)].

11.

See Subsection 4, Validity Period of Form I-693 (Including Use of Prior Versions) [8 USCIS-PM B.4(C)(4)].

12.

As part of completing the Form I-693, the civil surgeon must ensure that the applicant has signed the applicant's certification.

13.

Along with the original Form I-693, if separate from the corrected form.

14.

See Volume 9, Waivers, Part C, Waivers for Health-Related Grounds of Inadmissibility [9 USCIS-PM C] for more on waivers.

15.

See Part C, Civil Surgeon Designation and Revocation [8 USCIS-PM C] for more information on the blanket civil surgeon designation for

health departments.

16.

See Part C, Civil Surgeon Designation and Revocation [8 USCIS-PM C] for more information on the blanket civil surgeon designation for military physicians.

17.

By signing the form, the civil surgeon certifies that he or she has examined the applicant according to the procedures and requirements outlined in the Technical Instructions, Form I-693, and form instructions. Officers do not need to verify whether the civil surgeon instructed the referring physician to check the applicant's identity.

18.

See 8 CFR 103.2(a)(2).

19.

Civil surgeons are, however, still responsible for ensuring that the contractor properly checks the applicant's ID.

20.

See INA 212(a)(1).

21.

See Section C, Documentation Completed by Civil Surgeon [8 USCIS-PM B.4(C)].

22.

USCIS will use the date the Form I-693 was signed by the civil surgeon (including blanket-designated health departments and military physicians) to determine whether the report was submitted less than one year after completion of the examination.

23.

For example, an Application to Register Permanent Residence or Adjust Status (Form I-485).

24.

USCIS will use the date that USCIS received the Form I-693 to determine whether the medical examination report is more than one year old at time of adjudication of the benefit application. Although the medical examination report is generally valid for adjudicatory purposes up to one year after filing, the officer may order an additional immigration medical examination at any time if he or she has concerns as to an applicant's inadmissibility on health-related grounds. For more information, see Chapter 11, Inadmissibility Determination, Section C, Other Information [8 USCIS-PM B.11(C)].

25.

For more information on determining inadmissibility based on medical grounds, see Chapter 5, Review of Overall Findings [8 USCIS-PM B.5] through Chapter 11, Inadmissibility Determination [8 USCIS-PM B.11].

26.

See Chapter 3, Applicability of Medical Examination and Vaccination Requirement [8 USCIS-PM B.3] for more information on these special considerations.

27.

See http://www.uscis.gov/i-693 for the current and accepted version(s) of the form.

28.

This includes a request to bring the medical examination report to the interview.

29.

See http://www.uscis.gov/i-693 for location information.

Chapter 5 - Review of Overall Findings

A. Overall Finding of Admissibility

The civil surgeon should properly complete the part addressing when the medical examinations and any follow-up examinations took place. The civil surgeon should also mark the appropriate boxes in the "Summary of Overall Findings" section.

If the summary indicates a Class A condition, the officer should ensure that the findings in the other form sections correspond. If they do correspond, the applicant is inadmissible. If there is conflicting information, the officer should return the form to the applicant for corrective action.

If the civil surgeon omits the summary finding entirely, the officer should check the findings in the other form sections to determine whether the applicant has a Class A condition. If all sections are properly completed, and no Class A condition has been indicated by the civil surgeon, the officer should not issue a Request for Evidence (RFE) and instead proceed with the adjudication.

If the officer is unable to determine whether the applicant has a Class A condition based on the other form sections, the officer should return the form to the applicant for corrective action. The RFE should be sent to the applicant directing him or her to return to the civil surgeon to correct the form.

B. Changes to the Summary Findings

The Technical Instructions direct civil surgeons to treat Class A communicable diseases of public health significance or refer the applicant for treatment. Generally, the civil surgeon can only sign off upon completion of the treatment. This is why the officer may encounter a summary finding that has been reclassified from a "Class A condition" to a "Class B" or "No Class A or Class B" condition.

The officer should not reject the form because of the reclassification as long as the information is consistent with the information otherwise provided in the medical examination documentation. In such cases, the applicant is not inadmissible on health-related grounds.

For example, a civil surgeon may initially annotate the summary section with a Class A condition but, following treatment, change the annotation to a Class B condition. In this instance, the summary section may indicate an earlier Class A condition, followed by a later Class B determination. Since the civil surgeon indicated on the Form I-693 that a former Class A condition is now a Class B condition, the applicant is not inadmissible on health-related grounds.

Chapter 6 - Communicable Diseases of Public Health Significance

A. Communicable Diseases

Applicants who have communicable diseases of public health significance are inadmissible.[1] See INA 212(a)(1)(A)(i). HHS has designated the following conditions as communicable diseases of public health significance that apply to immigration medical examinations conducted in the United States:[2] See 42 CFR 34.2(b).

- Chancroid
- Gonorrhea
- Granuloma inguinale
- Leprosy, infectious
- Lymphogranuloma venereum
- Syphilis, infectious stage
- Tuberculosis (TB), Active—Only a Class A TB diagnosis renders an applicant inadmissible to the United States. Under current CDC guidelines, Class A TB means TB that is clinically active and communicable.

1. Additional Communicable Diseases for Applicants Abroad

HHS regulations also list two additional general categories of communicable diseases of public health significance.[3] See 42 CFR 34.2(b)(2) and 42 CFR 34.2(b)(3). Currently, these provisions only apply to applicants outside the United States who have to be examined by panel physicians:[4] An officer will not encounter such annotations on Form I-693, but may on the DS-2053/DS-2054.

- Communicable diseases that may make a person subject to quarantine, as listed in a Presidential Executive Order, as provided under Section 361(b) of the Public Health Service Act.[5] The current revised list of quarantinable communicable diseases is available at http://www.cdc.gov and http://www.archives.gov/federal-register.
- Communicable diseases that may pose a public health emergency of international concern if they meet one or more of the factors listed in 42 CFR 34.3(d) and for which the Director of the CDC has determined that (A) a threat exists for importation into the United States, and (B) such disease may potentially affect the health of the American public. The determination will be made consistent with criteria established in Annex 2 of the revised International Health Regulations. HHS/CDC's determinations will be announced by notice in the *Federal Register*.

2. Human Immunodeficiency Virus (HIV)

As of January 4, 2010, HIV infection is no longer defined as a communicable disease of public health significance according to HHS regulations.[6] See Pub. L. 110-293 and 42 CFR 34.2(b) as amended by 74 FR 56547 (November 2, 2009). Therefore, HIV infection does not make the applicant inadmissible on health-related grounds for any immigration benefit adjudicated on or after January 4, 2010, even if the applicant filed the immigration benefit application before January 4, 2010.

The officer should disregard a diagnosis of HIV infection when determining whether an applicant is inadmissible on health-related grounds. The officer should administratively close any HIV waiver application filed before January 4, 2010.

B. Parts of Form I-693 Addressing Communicable Diseases

1. Tuberculosis

An initial screening test, either a Tuberculin Skin Test (TST) or an Interferon Gamma Release Assay (IGRA), is required for all applicants 2 years of age or older. According to the Technical Instructions, applicants under 2 years of age are required to undergo an initial screening test if there is evidence of contact with an applicant known to have TB or there is another reason to suspect TB. For more information, please see the TB Component of the Technical Instructions.

The "testing age" is the applicant's age on the date the civil surgeon completed the medical examination by signing the form, not the age at the time of the adjudication. An officer should not send a Request for Evidence (RFE) for testing if the applicant was properly exempt from the testing requirement due to age at the time of the medical examination. The officer, however, may always require testing if evidence indicates the applicant may have been exposed to TB since the examination.

The initial screening test results must be recorded. If the initial screening test was not administered, the exceptions should be clearly annotated in the remarks portion after the "not administered" box in the testing section. The officer should be aware that anyone who previously received the Bacille Calmette-Guérin vaccine[7] Often referred to as the "BCG" vaccine. BCG vaccine is a tuberculosis vaccination that is administered in many countries outside of the United States, especially those with a high TB rate. For more information, please see CDC's website at www.cdc.gov. must still undergo an initial TB screening test. These applicants are not exempt from the initial screening test.

The civil surgeon must also annotate the "Initial Screening Test Result and Chest X-Ray Determination" section. If the section indicates that the applicant is medically cleared relating to TB, then no further TB tests are required. In this case, the X-ray section should be left blank.

If a chest X-ray is required, the chest X-ray section must be completed. If the chest X-ray is suggestive of active TB disease, the applicant must be referred to the health department for further assessment and possible treatment.[8] Under the new Technical Instructions, among other assessments, sputum cultures are required for applicants with

chest X-ray findings suggestive of active TB diseases. Drug susceptibility testing is required for positive cultures results. These tests can take months to complete. Also, a referral to the health department and the TB treatment can take months. Officers, applicants, and their representatives should be aware that it can take a long time, and that the civil surgeon is not permitted to sign the Form I-693 until after follow-up assessments and treatment have been completed. The civil surgeon cannot sign off on the Form I-693 until any required steps relating to TB have been completed.

Under the Technical Instructions, a pregnant applicant can defer the chest X-ray until after pregnancy but the civil surgeon may not submit the form until the chest X-ray has been performed, interpreted, and the appropriate follow-up, if required under the Technical Instructions, is completed. If the officer receives an incomplete medical examination for a pregnant applicant, the officer should return the original form to the applicant for corrective action according to established local procedures.

Class A TB requires a referral to the TB Control Program of the Health Department for evaluation and the completion of TB treatment before the civil surgeon can sign off on the form. In this case, the referral evaluation section must be completed and evidence of treatment must accompany the form. If not, the officer should RFE for corrective action.

All Class B TB (other than Class B, latent TB) requires a referral to the Health Department for follow-up assessment before the civil surgeon can sign off on the form. In this case, the referral evaluation section must be completed. If not, the officer should RFE for corrective action.

For applicants identified with Class B, latent TB, a referral to the Health Department is only recommended under the Technical Instructions. A referral is not required and that section does not have to be completed in this case. Therefore, the officer may accept Form I-693 without the referral evaluation section being completed and should not RFE.

Determining whether a referral is required is detailed in the TB Technical Instructions.[9] Available online at http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/tuberculosis-civil-technical-instructions.html.

2. Syphilis and Other Communicable Diseases

Serological testing for syphilis is required for applicants 15 years of age or older. Applicants under 15 years may be tested by the civil surgeon if illness is suspected. The testing age is the age on the date the civil surgeon completed the medical examination and signed the form, not the age at the time of the adjudication of the adjustment application.

The civil surgeon must complete all “Findings” boxes for all categories. The civil surgeon may add explanatory remarks; however, the officer should not RFE simply because there are no remarks. Note that versions of Form I-693 prior to the October 14, 2009 version may not have had boxes for “No Class A or B Condition” for some of these entries. In this case, the adjudicator should accept the finding reflected in the Summary Findings section of the form for the admissibility determination.

Footnotes

1.

See INA 212(a)(1)(A)(i).

2.

See 42 CFR 34.2(b).

3.

See 42 CFR 34.2(b)(2) and 42 CFR 34.2(b)(3).

4.

An officer will not encounter such annotations on Form I-693, but may on the DS-2053/DS-2054.

5.

The current revised list of quarantinable communicable diseases is available at http://www.cdc.gov and http://www.archives.gov/federal-register.

6.

See Pub. L. 110-293 and 42 CFR 34.2(b) as amended by 74 FR 56547 (November 2, 2009).

7.

Often referred to as the "BCG" vaccine. BCG vaccine is a tuberculosis vaccination that is administered in many countries outside of the United States, especially those with a high TB rate. For more information, please see CDC's website at www.cdc.gov.

8.

Under the new Technical Instructions, among other assessments, sputum cultures are required for applicants with chest X-ray findings suggestive of active TB diseases. Drug susceptibility testing is required for positive cultures results. These tests can take months to complete. Also, a referral to the health department and the TB treatment can take months. Officers, applicants, and their representatives should be aware that it can take a long time, and that the civil surgeon is not permitted to sign the Form I-693 until after follow-up assessments and treatment have been completed.

9.

Available online at http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/tuberculosis-civil-technical-instructions.html.

Chapter 7 - Physical or Mental Disorder with Associated Harmful Behavior

A. Physical or Mental Disorders with Associated Harmful Behavior

Applicants who have physical or mental disorders and harmful behavior associated with those disorders are inadmissible.[1] See INA 212(a)(2)(A)(iii). The inadmissibility ground is divided into two subcategories:

- Current physical or mental disorders, with associated harmful behavior.
- Past physical or mental disorders, with associated harmful behavior that is likely to recur or lead to other harmful behavior.

There must be both a physical or mental disorder and harmful behavior to make an applicant inadmissible based on this ground. Neither harmful behavior nor a physical/mental disorder alone renders an applicant inadmissible on this ground. Harmful behavior is defined as behavior that may pose, or has posed, a threat to the property, safety, or

welfare of the applicant or others.

Physical or mental disorders with associated harmful behaviors are diagnosed according to the Diagnostic and Statistical Manual of Mental Disorders (DSM). Officers should consult the Technical Instructions for additional information, if needed.

Under the Technical Instructions, a diagnosis of substance abuse/addiction for a substance that is not listed in Section 202 of the Controlled Substance Act (with current associated harmful behavior or a history of associated harmful behavior judged likely to recur) is classified as a mental disorder.

Under prior Technical Instructions and the July 20, 2010 or older versions of the form, these conditions were summarized under the drug abuse/addiction part of the form. An officer, however, should not find an applicant inadmissible for "drug abuse/addiction" if a non-controlled substance is involved.

B. Relevance of Alcohol-Related Driving Arrests or Convictions

1. Alcohol Use and Driving

Alcohol is not listed in Section 202 of the Controlled Substances Act. Therefore, alcohol use disorders are treated as a physical or mental disorder for purposes of determining inadmissibility. As a result, an applicant with an alcohol use disorder will not be deemed inadmissible unless there is current associated harmful behavior or past associated harmful behavior likely to recur. The harmful behavior must be such that it poses, has posed, or is likely to pose a threat to the property, safety, or welfare of the applicant or others.

In the course of adjudicating benefit applications, officers frequently encounter criminal histories that include arrests and/or convictions for alcohol-related driving incidents, such as DUI (driving under the influence) and DWI (driving while intoxicated). These histories may or may not rise to the level of a criminal ground of inadmissibility.[2] See INA 212(a)(2). A record of criminal arrests and/or convictions for alcohol-related driving incidents may constitute evidence of a health-related inadmissibility as a physical or mental disorder with associated harmful behavior.

Operating a motor vehicle under the influence of alcohol is clearly an associated harmful behavior that poses a threat to the property, safety, or welfare of the applicant or others. Where a civil surgeon's mental status evaluation diagnoses the presence of an alcohol use disorder (abuse or dependence), and where there is evidence of harmful behavior associated with the disorder, a Class A medical condition should be certified on Form I-693.

2. Re-Examinations

Requesting Re-Examinations

Some applicants may fail to report, or may underreport, alcohol-related driving incidents in response to the civil surgeon's queries. Where these incidents resulted in an arrest, they may be subsequently revealed in the criminal

history record resulting from a routine fingerprint check. Consequently, a criminal record printout revealing a significant history of alcohol-related driving arrests may conflict with the medical examination report that indicates no alcohol-related driving incidents were reported to or evaluated by the civil surgeon.

In such an instance, an officer may require the applicant to be re-examined. The re-examination would be limited to a mental status evaluation specifically considering the record of alcohol-related driving incidents. On the Request for Evidence (RFE), officers should use the following language: "Please return to the civil surgeon for purposes of conducting a mental status evaluation specifically considering the record of alcohol-related driving incidents."

Upon re-examination, the civil surgeon may refer the applicant for further evaluation to a psychiatrist or to a specialist in substance-abuse disorders as provided for under the Technical Instructions. After such referral, the civil surgeon will determine whether a Class A medical condition exists and amend the Form I-693 accordingly. The determination of a Class A condition is wholly dependent on the medical diagnosis of a designated civil surgeon.

Re-Examination for Significant Criminal Record of Alcohol-Related Driving Incidents

Only applicants with a significant criminal record of alcohol-related driving incidents that were not considered by the civil surgeon during the original medical examination should be referred for re-examination.

The actual criminal charges for alcohol-related driving incidents vary among the different states. A significant criminal record of alcohol-related driving incidents includes:

- One or more arrests/convictions for alcohol-related driving incidents (DUI/DWI) while the driver's license was suspended, revoked, or restricted at the time of the arrest due to a previous alcohol-related driving incident(s).

- One or more arrests/convictions for alcohol-related driving incidents where personal injury or death resulted from the incident(s).

- One or more convictions for alcohol-related driving incidents where the conviction was a felony in the jurisdiction in which it occurred or where a sentence of incarceration was actually imposed.

- One arrest/conviction for alcohol-related driving incidents within the preceding five years.[3] See CDC's Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-Related Disorders, available at http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/mental-civil-technical-instructions.html.

- Two or more arrests/convictions for alcohol-related driving incidents within the preceding ten years.[4] See CDC's Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-Related Disorders, available at http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/mental-civil-technical-instructions.html.

If the officer finds that the criminal record appears to contradict the civil surgeon's finding in the medical examination report, then the officer should request a re-examination.

Example: An applicant's criminal record shows that she was convicted for DWI-related vehicular manslaughter. However, the medical examination report reflects that no Class A or B physical or mental disorder was found. In this case, the officer should request a re-examination because the medical examination report finding should have reflected that the applicant has a history relating to an alcohol-related driving incident that could indicate a physical or mental disorder with associated harmful behavior.

3. Determination Based on Re-Examination

Upon completion of the re-examination, the officer should determine whether the applicant is inadmissible. If the civil surgeon annotated a Class A condition, the applicant is inadmissible. If no Class A condition is certified by the civil surgeon, the officer may not determine that the applicant is inadmissible. In exceptional cases, the officer may seek review of the civil surgeon's determination from CDC.

If the applicant is inadmissible, he or she may file an application for waiver of inadmissibility.[5] See Volume 9, Waivers, Part C, Waivers for Health-Related Grounds of Inadmissibility [9 USCIS-PM C] for more on waivers.

C. Relevance of Other Evidence

The guidance relating to alcohol-related driving arrests or convictions described above applies to any similar scenario where the record of proceeding contains evidence that may indicate inadmissibility due to a mental or physical disorder with associated harmful behavior that was not considered by the civil surgeon in the original medical examination. Such evidence includes, but is not limited to:

- A prior finding of inadmissibility due to a mental disorder.
- A history of institutionalization for a mental disorder.
- A criminal history other than drunk driving arrests/convictions, such as assaults and domestic violence, in which alcohol or a psychoactive substance was a contributing factor.
- Any other evidence that suggests an alcohol problem.
- Other criminal arrests where there is a reasonable possibility of a mental disorder as a contributing factor.

Accordingly, where the record of proceeding available to the officer contains evidence suggestive of a mental disorder, and the Form I-693 medical report does not reflect that the evidence was considered by the civil surgeon, the applicant must be required to undergo a mental status re-examination by a civil surgeon specifically addressing the

adverse evidence that may not have initially been revealed to the civil surgeon.

D. Parts of Form I-693 Addressing Physical or Mental Disorders

The civil surgeon must check the appropriate findings box on the medical examination report. The civil surgeon should also either annotate the findings in the remarks section or attach a report, if the space provided is not sufficient. However, the officer should not RFE simply because the civil surgeon has omitted the remarks or failed to attach a report.

Footnotes

1.

See INA 212(a)(2)(A)(iii).

2.

See INA 212(a)(2).

3.

See CDC's Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-Related Disorders, available at http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/mental-civil-technical-instructions.html.

4.

See CDC's Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-Related Disorders, available at http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/mental-civil-technical-instructions.html.

5.

See Volume 9, Waivers, Part C, Waivers for Health-Related Grounds of Inadmissibility [9 USCIS-PM C] for more on waivers.

Chapter 8 - Drug Abuse or Drug Addiction

A. Drug Abuse or Drug Addiction

Applicants who are found to be drug abusers or addicts are inadmissible.[1] See INA 212(a)(1)(A)(iv). Drug abuse and drug addiction are defined as the non-medical use of a controlled substance listed in Section 202 of the Controlled Substance Act.

In 2010, CDC changed the Technical Instructions on how a civil surgeon determines whether an applicant is a drug abuser or drug addict.[2] See CDC's Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-Related Disorders, available at http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/mental-civil-technical-instructions.html. The civil surgeon must now make this determination according to the Diagnostic and Statistical Manual of Mental Disorders (DSM) as specified in the Technical Instructions.[3] The DSM is a publication of the American Psychiatric Association. Considerations that were relevant under previous Technical Instructions, such as a pattern of abuse or a history of experimental use of drugs, no longer play a direct role in the admissibility determination; they are now only

considered as one of the elements under the DSM assessment. The assessment under the DSM is complicated. For more information, please see the Technical Instructions.

If the applicant is classified as a drug abuser or addict, the applicant can apply again for an immigration benefit if his or her drug abuse or addiction is in remission. Remission is now defined by DSM criteria, and no longer by a set timeframe as it was under previous Technical Instructions.[4] Under the pre-2010 Technical Instructions, an applicant's substance abuse or addiction was in remission if the applicant had not engaged in non-medical use of a controlled substance within the past three years, or non-medical use of a non-controlled substance within the past two years. In order for an applicant's drug abuse or addiction to be classified as in remission, the applicant must return to a civil surgeon for a new assessment.

If the officer has reason to question the completeness or accuracy of the medical examination report, the officer should ask CDC to review the medical report before sending a Request for Evidence (RFE).

Most applicants who are found to be drug abusers or addicts are ineligible for a waiver; the availability depends, however, on the immigration benefit the applicant seeks.[5] See Volume 9, Waivers, Part C, Waivers for Health-Related Grounds of Inadmissibility [9 USCIS-PM C] for more on waivers.

B. Part of Form I-693 Addressing Drug Abuse or Drug Addiction

The civil surgeon must check the appropriate findings box on the medical examination report. The civil surgeon should also either annotate the findings in the remarks section or attach a report, if the space provided is not sufficient. However, the officer should not RFE simply because the civil surgeon has omitted the remarks or failed to attach a report.

C. Request for CDC Advisory Opinion

If an officer has a case where there is a question concerning the diagnosis and/or classification made by the civil surgeon or panel physician, the officer may forward the pertinent documents to CDC and request an advisory opinion.

The request should include a cover letter indicating the request and reason(s) for the request.

The request should include the following documents:

- A copy of the medical examination documentation (Form I-693 or Form DS-2053/DS-2054, and its related worksheets);
- A copy of the provided medical report(s) detailing the medical condition for which the advisory opinion is being requested; and
- Copies of all other relevant medical reports, laboratory results, and evaluations connected to the medical condition.

The documents should be mailed to the following address:

Centers for Disease Control and Prevention

Division of Global Migration and Quarantine

1600 Clifton Road, Mailstop E 03

Atlanta, GA 30333

Attention: Quality Assessment Program (QAP)/Advisory Opinion

If the officer determines that a waiver case warrants expeditious review by CDC, the case may be faxed to (404) 639-4441 or emailed to cdcqap@cdc.gov, **Attention: Quality Assessment Program (QAP)/Advisory Opinion, Urgent**. If sent via email, the documents should be sent in password protected file(s). If sent via fax, the fax cover sheet should request that the case be reviewed expeditiously and that CDC's response be sent via fax. The officer should also email CDC a cdcqap@cdc.gov, advising that an expedited request was sent via fax.

Once the documents are received by CDC, the documents are reviewed and CDC will forward a response letter with results of the review to the requesting USCIS office. Only CDC's response is provided to the requesting USCIS office.

CDC's usual processing time for review and response back to the requesting USCIS office is approximately 4 weeks.

Upon receipt, the officer should review CDC's response letter to determine next steps.

Footnotes

1.

See INA 212(a)(1)(A)(iv).

2.

See CDC's Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-Related Disorders, available at http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/mental-civil-technical-instructions.html.

3.

The DSM is a publication of the American Psychiatric Association. Considerations that were relevant under previous Technical Instructions, such as a pattern of abuse or a history of experimental use of drugs, no longer play a direct role in the admissibility determination; they are now only considered as one of the elements under the DSM assessment. The assessment under the DSM is complicated. For more information, please see the Technical Instructions.

4.

Under the pre-2010 Technical Instructions, an applicant's substance abuse or addiction was in remission if the applicant had not engaged in non-medical use of a controlled substance within the past three years, or non-medical use of a non-controlled substance within the past two years.

5.

See Volume 9, Waivers, Part C, Waivers for Health-Related Grounds of Inadmissibility [9 USCIS-PM C] for more on waivers.

Chapter 9 - Vaccination Requirement

A. Vaccination Requirements for Immigrants

Some vaccines are expressly required by statute. Others are required because CDC has determined they are in the interest of public health.[1] Effective December 14, 2009, CDC changed its methods on how to assess which vaccines should be required for immigration purposes. This led to changes in the list of required vaccines; some that were required prior to 2009 are no longer required since December 14, 2009.

The INA[2] See INA 212(a)(1)(A)(ii). specifies the following vaccinations:

- Mumps, measles, rubella
- Polio
- Tetanus and diphtheria toxoids[3] Applicants who have completed the initial DTP/DTaP/DT or Td/Tdap series should receive a Td/Tdap booster shot every 10 years. If the last dose was received more than 10 years ago, the applicant is required to have the booster shot, otherwise the applicant is inadmissible under INA 212(a)(1)(A)(ii).
- Pertussis
- Haemophilius influenza type B
- Hepatitis B

CDC requires the following additional vaccines for immigration purposes:

- Varicella
- Influenza
- Pneumococcal pneumonia
- Rotavirus
- Hepatitis A
- Meningococcal

If any of the listed vaccinations are not received and the vaccinations are age appropriate and medically appropriate, the applicant is inadmissible. Generally, all age appropriate vaccine rows of the vaccination assessment must have at least one entry before the assessment can be considered to have been properly completed.

B. Blanket Waiver if Vaccine is "Not Medically Appropriate"

1. Definition of "Not Medically Appropriate"

The term "not medically appropriate" applies to:

- Vaccinations that are not required based on the applicant's age at the time of the medical exam ("not age appropriate").[4] See Section D, Vaccination Chart [8 USCIS-PM B.9(D)] for more information.
- Vaccinations that cannot be administered on account of a medical contraindication ("contraindication");
    - A contraindication is a condition in a recipient which is likely to result in a life-threatening problem if the vaccine is given.
    - Examples of contraindications include a severe allergic reaction to a vaccination that was previously given, or pregnancy.
- Vaccinations that are administered as a series in intervals, but there is insufficient time to complete the entire vaccination series at the time of the medical examination ("insufficient time interval");[5] In these cases, the civil surgeon will administer the dose due at the time of the medical examination and mark on the form that there is not sufficient time to complete the entire vaccination series (insufficient time interval). or
- The influenza vaccine if it is not the flu season, or if the vaccine for the specific flu strain missing is no longer available ("not flu season").

If receiving the vaccine is not medically appropriate, the civil surgeon should indicate this medical finding on the Form I-693 in the appropriate boxes. USCIS will then waive that vaccine(s).[6] See INA 212(g)(2)(B). A separate waiver application is not required for an officer to grant a waiver of the vaccination requirement as "not medically appropriate."

The officer should generally accept a finding by the civil surgeon that a vaccine is not medically appropriate unless that finding is clearly wrong. For example, if a vaccine was age appropriate at the time of the medical exam based on the vaccination chart,[7] See Section D, Vaccination Chart. [8 USCIS-PM B.9(D)]. but the civil surgeon marked that the vaccine is not medically appropriate because it is not age appropriate, then it is clear that the civil surgeon's mark is incorrect. The same is true for a finding that a vaccine is not medically appropriate because it is not flu season; the

officer should be able to clearly see whether the finding is correct based on the date of the medical examination.

An officer, however, should usually defer to a civil surgeon's finding that a vaccine is not medically appropriate because of a contraindication. This is because such a finding involves medical judgment.

As indicated in the previous section, generally all age appropriate vaccine rows of the vaccination assessment must have at least one entry before the assessment can be considered to have been properly completed. However, if the officer can see from the record that the age appropriate vaccine was not required because, for instance, "it is not the flu season" but the civil surgeon failed to mark this on the vaccination assessment, then the officer may grant a blanket waiver despite the omission. In such cases, the officer should annotate in the "For USCIS Use Only" Remarks box in the vaccination record that a blanket waiver was granted.

2. Pregnancy or an Immuno-Compromised Condition[8] **Immuno-compromised condition refers to a medical state that does not allow the body to fight off infection.**

Some vaccines are, in general, not medically appropriate during pregnancy. These vaccines will likely be marked as contraindicated on Form I-693 if the applicant was pregnant at the time of the medical examination.[9] See CDC's Vaccination Technical Instructions for a list of the specific vaccines not medically appropriate during pregnancy, available at http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/vaccination-civil-technical-instructions.html.

The civil surgeon may annotate in the remarks section that the applicant did not receive one or more vaccines because of a contraindication that is based on pregnancy or a condition other than pregnancy. The reason for the contraindication may be annotated by the civil surgeon on the Form I-693; however, if it is omitted, the officer does not need to issue a Request for Evidence (RFE) solely for that omission as long as the contraindication is marked in the vaccine chart.

An officer should also never issue an RFE for additional vaccines if the applicant is no longer pregnant at the time of the adjudication of the adjustment of status. As long as the vaccination assessment was properly completed by the civil surgeon at the time of the examination, the vaccination assessment can be accepted. In other words, if a woman did not receive certain required vaccines because she was pregnant at the time of the medical examination, and the contraindication box is marked by the civil surgeon, the applicant is not required to get those vaccines later at the time of the adjudication.

Likewise, some vaccines are not medically appropriate for applicants who have an immuno-compromised condition (such as HIV/AIDS or a weakened immune system because of taking certain medications) and may be marked by the civil surgeon as contraindicated.[10] See CDC's Vaccination Technical Instructions for a list of the specific vaccines not medically appropriate for immuno-compromised persons, available at http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/vaccination-civil-technical-instructions.html.

In the case of an immuno-compromised person, the officer should never issue an RFE for additional vaccines even if, at the time of the adjudication of adjustment of status, the applicant is no longer immuno-compromised. As long as the vaccination assessment was properly completed at the time of the examination by the civil surgeon, the vaccination assessment can be accepted. The applicant should not be required to get the missing vaccines later at the time of the adjudication.

3. Blanket Waiver due to Nationwide Vaccination Shortage

USCIS will grant a blanket waiver only in the case of a vaccination shortage if CDC recommends that USCIS should do so based on CDC's assessment that there is a nationwide shortage.

An officer may only grant a blanket waiver for a vaccine based on a vaccination shortage if the following circumstances are met:

- CDC declares that there is a nationwide vaccination shortage, and issues the appropriate statement on its website for civil surgeons;
- USCIS issues the appropriate statement on uscis.gov; and
- The civil surgeon annotates the medical examination form in compliance with any additional requirements specified by CDC or USCIS.

The grant of this blanket waiver does not differ from the grant of other blanket waivers.

4. Vaccines Not Routinely Available Abroad

"National vaccination shortage" principles do not apply overseas. In the context of overseas vaccinations, the term panel physicians use to indicate the unavailability of a vaccine is "not routinely available." Therefore, if the adjustment applicant is permitted to use the vaccination assessment completed overseas,[11] See Chapter 3, Applicability of Medical Examination and Vaccination Requirement [8 USCIS-PM B.3] for more information on applicants who may use the vaccination assessment completed overseas for adjustment purposes. then officers should not find the applicant inadmissible solely based on the lack of the vaccine(s) that is "not routinely available." Officers should also not issue an RFE for corrective action. USCIS will grant a blanket waiver in these cases.

C. Adjudication Steps

Vaccination Requirement: Adjudication Steps	
Step 1	Determine which vaccination(s) were age appropriate for the applicant to receive based on the applicant's age on the date the medical exam was completed.[12] See Section D, Vaccination Chart [8 USCIS-PM B.9(D)] for a chart of vaccine requirements by age.
	Verify that any vaccine that was required (age appropriate)[13] Since the applicant was not required to receive non-age appropriate vaccines at the time of the medical exam, the officer does not need to review these vaccine rows at the time of adjudication. as of the date of the medical exam is marked as:

Step 2	• Received by the applicant; or • "Not medically appropriate" because of contraindication, inappropriate time interval, or not flu season.
Step 3	If the required (age appropriate) vaccinations were not received or not marked as "not medically appropriate" as of the date the medical exam was completed, determine whether the missing vaccinations would still be required as of the date of adjudication. Vaccinations missing at the time of the medical exam may no longer be required as of the date of adjudication if, for example, the applicant has aged out, or it is not the flu season, or a vaccine is no longer required by law.
Step 4	If the missing vaccinations are no longer required as of the date of the adjudication, the vaccination requirements have been met.
Step 5	If the missing vaccinations would still be required, the officer should send an RFE for an updated Form I-693 showing the applicant has received those vaccinations.

D. Vaccination Chart

CDC's most updated vaccination table for civil surgeons can be located through the following link: Vaccination Chart in Technical Instructions.

USCIS officers should rely on the following chart to determine inadmissibility based on failure to meet the vaccination requirements. This chart is specifically made for USCIS and is updated as of January 28, 2014.

The chart is not intended to be used by civil surgeons.

Vaccination Chart	
Age of Applicant	**Age Appropriate Vaccinations (Required for Immigration Purposes)**
Birth through 5 weeks	• Hepatitis B

6 weeks through 7 weeks	• Hepatitis B • Rotavirus
2 months through 5 months	• DT, DTP, or DTaP • IPV or OPV (Note: OPV not administered in U.S.) • Hib • Hepatitis B • Pneumococcal (for PCV) • Rotavirus
6 months through 7 months	• DT, DTP, or DTaP • IPV or OPV (Note: OPV not administered in U.S.) • Hib • Hepatitis B • Pneumococcal (for PCV) • Influenza (during flu season only; Oct. 1 thru Mar. 31) • Rotavirus
8 months through 11 months	• DT, DTP, or DTaP • IPV or OPV (Note: OPV not administered in U.S.) • Hib • Hepatitis B • Pneumococcal (for PCV) • Influenza (during flu season only; Oct. 1 thru Mar. 31)
12 months through 23 months	• DT, DTP, or DTaP • IPV or OPV (Note: OPV not administered in U.S.) • MMR • Hib • Hepatitis B • Varicella • Pneumococcal (for PCV) • Influenza (during flu season only; Oct. 1 thru Mar. 31) • Hepatitis A

2 years through 4 years	• DT, DTP, or DTaP • IPV or OPV (Note: OPV not administered in U.S.) • MMR • Hib • Hepatitis B • Varicella • Pneumococcal (for PCV) • Influenza (during flu season only; Oct. 1 thru Mar. 31)
5 years through 6 years	• DT, DTP, or DTaP • IPV or OPV (Note: OPV not administered in U.S.) • MMR • Hepatitis B • Varicella • Influenza (during flu season only; Oct. 1 thru Mar. 31)
7 years through 10 years	• Td or Tdap • IPV or OPV (Note: OPV not administered in U.S.) • MMR • Hepatitis B • Varicella • Influenza (during flu season only; Oct. 1 thru Mar. 31)
11 years through 17 years	• Td or Tdap • IPV or OPV (Note: OPV not administered in U.S.) • MMR • Hepatitis B • Varicella • Influenza (during flu season only; Oct. 1 thru Mar. 31) • Meningococcal
18 years	• Td or Tdap • MMR • Hepatitis B • Varicella

	• Influenza (during flu season only; Oct. 1 thru Mar. 31) • Meningococcal
19 years through 49 years	• Td or Tdap • MMR • Varicella • Influenza (during flu season only; Oct. 1 thru Mar. 31)
50 years through 59 years	• Td or Tdap • MMR (if born in 1957 or later) • Varicella • Influenza (during flu season only; Oct. 1 thru Mar. 31)
60 years through 64 years	• Td or Tdap • Varicella • Influenza (during flu season only; Oct. 1 thru Mar. 31)
65 years and older	• Td • Varicella • Pneumococcal (for PPV) • Influenza (during flu season only; Oct. 1 thru Mar. 31)

E. Special Vaccination Considerations

Additionally, officers should pay special attention to the following developments.

1. Human Papillomavirus (HPV) Vaccination

From August 1, 2008 through December 13, 2009, HPV vaccination was required for female applicants ages 11 years through 26 years. The requirement was eliminated on December 14, 2009, and affects any admissibility determination under INA 212(a)(1)(A)(ii) on that date or thereafter. Therefore, for adjudications taking place on or after December 14, 2009, officers should disregard any annotation of the HPV vaccine, or the lack thereof, on Form I-693 or U.S. Department of State's Vaccination Documentation Worksheet (Form DS-3025), when determining whether the vaccination requirements are met.

2. Zoster Vaccination

From August 1, 2008 through December 13, 2009, the zoster vaccination was required for applicants ages 60 years or older unless the applicant had received the varicella vaccine.

The zoster vaccine, however, was not available in the United States due to a nationwide shortage from the time it became mandatory. Therefore, even though the vaccine was missing, the Form I-693 could be accepted if the physician was unable to obtain the vaccine.

On December 14, 2009, the zoster vaccine was removed from the list of required vaccines for immigration purposes, and the change affects any admissibility determination made on or after that date. Therefore, officers should disregard any annotation of the zoster vaccine, or the lack thereof, on any Form I-693 or U.S Department of State's Vaccination Documentation Worksheet (Form DS-3025), when determining whether the vaccination requirements are met.

3. Influenza Vaccination

The flu vaccination is only available during the flu season. For purposes of Form I-693, the flu season commences annually on October 1 and runs through March 31.

Over time, CDC has changed the age category of applicants required to obtain the flu vaccine for immigration purposes. As of November 16, 2010, CDC's Technical Instructions require that all applicants 6 months of age or older receive the flu vaccine during the flu season.

If an applicant was required to obtain the flu vaccine at the time of the medical examination (the date of the civil surgeon's certification governs) but a flu vaccine annotation is missing, the officer should only issue an RFE if it is still the same flu season and if it is reasonable to expect that the applicant will be able to obtain the flu vaccine within the time frame of the RFE.

This accounts for the fact that the flu vaccine is strain-specific and only available for a limited time each year. The officer should not issue an RFE if the applicant will not be able to obtain the strain-specific flu vaccine that had been required at the time of the medical examination because:

- It is no longer the same flu season; or
- It is not the flu season at all.

4. Vaccination Requirements Prior to August 1, 2008

The following vaccines were NOT required prior to August 1, 2008: Hepatitis A, meningococcal, rotavirus, human papillomavirus (HPV), and zoster.[14] Please see information immediately above for the zoster and the HPV vaccine, since these vaccines have not been required since December 2009.

F. Completion of the Results Section by the Civil Surgeon

According to the Vaccination Component of the Technical Instructions, the civil surgeon should mark the appropriate results box at the bottom of the vaccination assessment chart. The Technical Instructions direct the civil surgeon to only check one appropriate box.

The officer should be aware that civil surgeons may improperly mark the boxes because they may misunderstand the meaning of these boxes. Therefore, the officer should determine, from the vaccination assessment completed by the civil surgeon, whether the applicant received all vaccines, which blanket waivers should be granted, and whether the applicant requires any other waivers. The officer should exercise discretion in reviewing the vaccination chart and when evaluating the results boxes at the bottom of the vaccination assessment chart.

If the civil surgeon did not check any result boxes, the officer should only return the form for corrective action if he or she is unable to ascertain whether the applicant is admissible. The officer should never alter or complete sections on the medical examination report that are the responsibility of the civil surgeon, such as the results boxes.

The results boxes and their meanings are described below (according to the Vaccination Component of the Technical Instructions).

Vaccination Record: Explanation of Results	
Applicant may be eligible for blanket waiver(s) as indicated above	This box will usually be checked because some vaccines may not be age appropriate for the applicant, a vaccination series could not be completed, there was a contraindication, or because of any other condition noted in the "Not Medically Appropriate" heading.
Applicant will request an individual waiver based on religious or moral convictions	If an applicant objects to one of the vaccines based on religious or moral convictions, the "Applicant will request an individual waiver based on religious or moral convictions" box must be checked. This is not a blanket waiver, and the applicant will have to submit a waiver request on Form I-601. Even if the applicant otherwise requires a blanket waiver(s), the civil surgeon must check this box, and not the box titled "Applicants may be eligible for blanket waivers." It may be, however, that the civil surgeon checks both boxes, in which case, the officer should just request the waiver documentation that establishes the religious or moral conviction.
Vaccine history complete for each vaccine, all requirements met	If the applicant has met the vaccination requirements, i.e., completed the series for all required vaccines, the "Vaccine history complete for each vaccine, all requirements met" box must be checked.
Applicant does not meet immunization requirements	If an applicant's vaccine history is incomplete and the applicant refuses administration of a single dose of any required vaccine that is medically appropriate for the applicant, the "Applicant does not meet immunization requirements" box must be checked. If this box is checked, the applicant may be inadmissible. Depending on the case, the officer should ask for the reason through an RFE, Notice of Intent to Deny (NOID), or an interview.

	If the applicant refused to be vaccinated on account of a religious or moral conviction, the officer should direct the applicant to file a waiver. If the applicant had no religious or moral reason for refusal, the applicant is inadmissible. The officer should not return the assessment to the civil surgeon if he or she has enough information to determine health-related inadmissibility.

G. Exception for Certain Adopted Children

Some children are not subject to the vaccination requirement[15] Under INA 212(a)(1)(C), as amended by Section 2 of the International Adoption Simplification Act, Pub. L. 111-287, 124 Stat. 3058 (2010). if all of the following conditions are met:

- The child is 10 years of age or younger;
- The child is classified as an orphan (IR3 or IR4) or a Hague Convention adoptee (IH3 or IH4);[16] See INA 101(b)(1)(F) and INA 101(b)(1)(G), respectively. and
- The child is seeking an immigrant visa as an immediate relative.[17] Under INA 201(b); a child can either obtain an IR-3 or IR-4 immigrant visa as an immediate relative if the child is an "orphan" or an IH-3 or IH-4 immigrant visa if the child is a Hague Convention adoptee.

For the child to benefit from this exception, the adopting parent(s) must sign an affidavit prior to the immigrant visa issuance, affirming that the child will receive the required vaccination within 30 days of admission to the United States or at the earliest time that is medically appropriate. However, noncompliance with the vaccination requirements following the child's admission to the United States is not a ground for removal.

The Department of State has developed a standard affidavit form, Affidavit Concerning Exemption from Immigrant Vaccination Requirements for a Foreign Adopted Child (Form DS-1981), to ensure that adopting parents are aware of the possibility of an exception from the vaccination requirements and of their obligation to ensure that the child is vaccinated following admission.[18] The affidavit is made under oath or affirmation in the presence of either the consular officer or a notary public. The completed form must be submitted to the consulate as part of the immigrant visa application.

Only orphans or Convention adoptees whose adoptive or prospective adoptive parents have signed an affidavit will be exempt from the vaccination requirement. If the adopting parent(s) prefers that the child meet the vaccination requirement as part of the visa application process, the child may benefit from the waiver(s) for those vaccinations which the panel physician determines are medically inappropriate.[19] See INA 212(g)(2)(B). This waiver authority has been delegated to the Department of State and a consular officer can grant the waiver. Neither a form nor a fee is required.

When the adoptive or prospective adoptive parent cannot sign the affidavit in good faith because of religious or moral objections to vaccinations, the child will require a waiver.[20] When the waiver application is for a child, the child's parent must satisfy the waiver requirements under INA 212(g)(2)(C). The waiver is filed by submitting an Application For Waiver of Grounds of Inadmissibility (Form I-601), along with the required fee. See Volume 9, Waivers, Part C, Waivers for Health-Related Grounds of Inadmissibility, Chapter 3, Waiver of Immigrant Vaccination Requirement [9 USCIS-PM C.3] for more information on the requirements for vaccination waivers based on religious beliefs or moral objections.

Footnotes

1.

Effective December 14, 2009, CDC changed its methods on how to assess which vaccines should be required for immigration purposes. This led to changes in the list of required vaccines; some that were required prior to 2009 are no longer required since December 14, 2009.

2.

See INA 212(a)(1)(A)(ii).

3.

Applicants who have completed the initial DTP/DTaP/DT or Td/Tdap series should receive a Td/Tdap booster shot every 10 years. If the last dose was received more than 10 years ago, the applicant is required to have the booster shot, otherwise the applicant is inadmissible under INA 212(a)(1)(A)(ii).

4.

See Section D, Vaccination Chart [8 USCIS-PM B.9(D)] for more information.

5.

In these cases, the civil surgeon will administer the dose due at the time of the medical examination and mark on the form that there is not sufficient time to complete the entire vaccination series (insufficient time interval).

6.

See INA 212(g)(2)(B).

7.

See Section D, Vaccination Chart. [8 USCIS-PM B.9(D)].

8.

Immuno-compromised condition refers to a medical state that does not allow the body to fight off infection.

9.

See CDC's Vaccination Technical Instructions for a list of the specific vaccines not medically appropriate during pregnancy, available at http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/vaccination-civil-technical-instructions.html.

10.

See CDC's Vaccination Technical Instructions for a list of the specific vaccines not medically appropriate for immuno-compromised persons, available at http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/vaccination-civil-technical-instructions.html.

11.

See Chapter 3, Applicability of Medical Examination and Vaccination Requirement [8 USCIS-PM B.3] for more information on applicants who may use the vaccination assessment completed overseas for adjustment purposes.

12.

See Section D, Vaccination Chart [8 USCIS-PM B.9(D)] for a chart of vaccine requirements by age.

13.

Since the applicant was not required to receive non-age appropriate vaccines at the time of the medical exam, the officer does not need to review these vaccine rows at the time of adjudication.

14.

Please see information immediately above for the zoster and the HPV vaccine, since these vaccines have not been required since December 2009.

15.

Under INA 212(a)(1)(C), as amended by Section 2 of the International Adoption Simplification Act, Pub. L. 111-287, 124 Stat. 3058 (2010).

16.

See INA 101(b)(1)(F) and INA 101(b)(1)(G), respectively.

17.

Under INA 201(b); a child can either obtain an IR-3 or IR-4 immigrant visa as an immediate relative if the child is an "orphan" or an IH-3 or IH-4 immigrant visa if the child is a Hague Convention adoptee.

18.

The affidavit is made under oath or affirmation in the presence of either the consular officer or a notary public.

19.

See INA 212(g)(2)(B). This waiver authority has been delegated to the Department of State and a consular officer can grant the waiver. Neither a form nor a fee is required.

20.

When the waiver application is for a child, the child's parent must satisfy the waiver requirements under INA 212(g)(2)(C). The waiver is filed by submitting an Application For Waiver of Grounds of Inadmissibility (Form I-601), along with the required fee. See Volume 9, Waivers, Part C, Waivers for Health-Related Grounds of Inadmissibility, Chapter 3, Waiver of Immigrant Vaccination Requirement [9 USCIS-PM C.3] for more information on the requirements for vaccination waivers based on religious beliefs or moral objections.

Chapter 10 - Other Medical Conditions

The civil surgeon should annotate any other medical condition the applicant may have, as directed by the Technical Instructions. A condition annotated in this section does not render the applicant inadmissible on health-related grounds of inadmissibility. However, it may impact other inadmissibility determinations.

Chapter 11 - Inadmissibility Determination

A. Civil Surgeon or Panel Physician Documentation

If a "Class A condition" is noted on the medical form, it is conclusive evidence that the applicant is inadmissible. The Class A annotation may also indicate that an applicant could be inadmissible on other grounds of inadmissibility. For example, "harmful behavior" associated with a physical or mental disorder, or illegal drug use, may have resulted in criminal convictions that make an applicant inadmissible under INA 212(a)(2). However, a criminal conviction should be supported by conviction records or similar evidence, and not just the medical examination report.[1] See Section D, Other Grounds of Inadmissibility [8 USCIS-PM B.11(D)] for more information.

If a civil surgeon or panel physician only annotates a "Class B condition" (per HHS regulations), the applicant is never inadmissible on health-related grounds. The officer should remember that if the civil surgeon or panel physician indicates on the Form I-693 that a former Class A condition is now a Class B condition, the applicant is no longer inadmissible. However, a Class B condition may indicate that the applicant could be inadmissible on other grounds because of the condition, such as public charge.[2] See Section D, Other Grounds of Inadmissibility [8 USCIS-PM

B.11(D)] for more information.

The officer may encounter medical documentation that is not fully completed. In this case, the officer should issue a Request for Evidence (RFE). If the physician fails to properly complete the form in response to the RFE, the applicant has not established that he or she is clearly admissible to the United States.[3] See INA 291.

B. Applicant's Declaration

If the applicant indicates that he or she may be inadmissible based on a medical reason, the officer must order a medical examination of the applicant. Based on the results of that medical exam, the officer should ascertain whether the applicant actually has a Class A, Class B, or no condition at all that is relevant to the applicant's admissibility. The applicant should not be found inadmissible unless the medical examination confirms the presence of a Class A medical condition.

C. Other Information

Even if the civil surgeon or panel physician did not annotate a Class A or B condition in the medical documentation, or if the applicant was not required to undergo a medical examination, the officer may order or reorder an immigration medical examination at any time if he or she has concerns as to an applicant's inadmissibility on health-related grounds.

The concern should be based on information in the A-file, information that is revealed by the applicant or another applicant during an interview, or information revealed during a background investigation.

D. Other Grounds of Inadmissibility

1. General Considerations

Where relevant, the information contained in the medical examination can be used to determine whether other grounds of inadmissibility may apply. For instance, health is one factor to consider when determining if someone is inadmissible on public charge grounds. This factor must, however, be considered in light of all other factors specified by law[4] See INA 212(a)(4)(B). and in standard public charge guidance.[5] Whether the person is likely to become a public charge is determined according to standard public charge guidance: Is it likely that the person will become primarily dependent on the Government for subsistence, as shown by (a) receipt of public cash assistance for income maintained or (b) long-term institutionalization at public expense? See 64 FR 28689 (1999).

2. Criminal Grounds

An applicant may be inadmissible on criminal grounds if he or she has admitted to committing certain controlled

substance violations.[6] See INA 212(a)(2)(A). An applicant may acknowledge to a civil surgeon or a panel physician that he or she has used a controlled substance, which the physician then may annotate on the medical documentation.

USCIS does not consider this acknowledgement, in and of itself, a valid admission that would make an applicant inadmissible on criminal grounds.[7] A valid admission (absent a conviction) for purposes of criminal inadmissibility grounds "requires that the [foreign national] be given an adequate definition of the crime, including all essential elements, and that it be explained in understandable terms." See Matter of K-, 7 I&N Dec. 594 (BIA 1957). However such an acknowledgment of drug use may open a line of questioning to determine criminal inadmissibility. USCIS Officers should find that an applicant has made a valid "admission" of a crime only when the admission is made in accordance with the requirements outlined by the Board of Immigration Appeals (BIA).[8] See Matter of K-, 7 I&N Dec. 594 (BIA 1957). Even in the Ninth Circuit, USCIS officers should continue to follow Matter of K-, rather than Pazcoguin v. Radcliffe, 292 F.3d 1209 (9th Cir. 2002). Following Matter of K- will ensure that any admission the person may make is a fully informed one.

E. Privacy Concerns

An officer should take great care to regard the privacy of the applicant. The officer should generally not discuss the applicant's medical issues with applicants other than the applicant, his or her counsel, immigration officers, or other government officials[9] Such as CDC. who clearly have a need to know the information.

The officer should not directly contact a civil surgeon to discuss an applicant's inadmissibility or medical issues. If the officer has any concerns that cannot be resolved by reviewing the evidence in the record, the officer should issue an RFE.

Footnotes

1.

See Section D, Other Grounds of Inadmissibility [8 USCIS-PM B.11(D)] for more information.

2.

See Section D, Other Grounds of Inadmissibility [8 USCIS-PM B.11(D)] for more information.

3.

See INA 291.

4.

See INA 212(a)(4)(B).

5.

Whether the person is likely to become a public charge is determined according to standard public charge guidance: Is it likely that the person will become primarily dependent on the Government for subsistence, as shown by (a) receipt of public cash assistance for income maintained or (b) long-term institutionalization at public expense? See 64 FR 28689 (1999).

6.

See INA 212(a)(2)(A).

7.

A valid admission (absent a conviction) for purposes of criminal inadmissibility grounds "requires that the [foreign national] be given an adequate definition of the crime, including all essential elements, and that it be explained in understandable terms." See *Matter of K-*, 7 I&N Dec. 594 (BIA 1957).

8.

See *Matter of K-*, 7 I&N Dec. 594 (BIA 1957). Even in the Ninth Circuit, USCIS officers should continue to follow *Matter of K-,* rather than *Pazcoguin v. Radcliffe,* 292 F.3d 1209 (9th Cir. 2002). Following *Matter of K-* will ensure that any admission the person may make is a fully informed one.

9.

Such as CDC.

Chapter 12 - Waiver Authority

USCIS may provide waivers for some medical grounds of inadmissibility under INA 212(g) and other provisions governing the specific immigration benefit the applicant is seeking. In certain cases, applicants must file a waiver application.[1] See Application for Waiver of Grounds of Inadmissibility (Form I-601), Application By Refugee for Waiver of Grounds of Exludability (Form I-602), or Application for Waiver of Grounds of Inadmissibility Under Section 245A or 210 of the Immigration and Nationality Act (Form I-690), either along with their Application to Register Permanent Residence or Adjust Status (Form I-485) and Report of Medical Examination and Vaccination Record (Form I-693) or in response to a Request for Evidence (RFE).[2] See Volume 9, Waivers, Part C, Waivers for Health-Related Grounds of Inadmissibility [9 USCIS-PM C] for more information on waivers of medical grounds of inadmissibility.

Footnotes

1.

See Application for Waiver of Grounds of Inadmissibility (Form I-601), Application By Refugee for Waiver of Grounds of Exludability (Form I-602), or Application for Waiver of Grounds of Inadmissibility Under Section 245A or 210 of the Immigration and Nationality Act (Form I-690).

2.

See Volume 9, Waivers, Part C, Waivers for Health-Related Grounds of Inadmissibility [9 USCIS-PM C] for more information on waivers of medical grounds of inadmissibility.

Part C - Civil Surgeon Designation and Revocation

Chapter 1 - Purpose and Background

A. Purpose

U.S. Citizenship and Immigration Services (USCIS) designates eligible physicians as civil surgeons to perform medical examinations for immigration benefits applicants in the United States.[1] If a physician wishes to be designated, he or she submits an application to USCIS for designation. Civil Surgeons should be distinguished from

panel physicians. Panel physicians are designated by the Department of State and provide immigration medical examinations required as part of an applicant's visa processing at a U.S. Embassy or consulate abroad. See 42 CFR 34.2(o) and 22 CFR 42.66. See 9 FAM 42.66 and Notes. Civil surgeons assess whether applicants have any health conditions that could result in exclusion from the United States.

Based on the results of the civil surgeon's assessment, USCIS determines whether the applicant is admissible to the United States or whether the applicant is inadmissible based on health-related grounds of inadmissibility. The health-related grounds of inadmissibility[2] See INA 212(a)(1). and the medical examination of applicants are designed to protect the health of the United States population.

B. Background

The Immigration Act of 1882[3] See 22 Stat. 58. first granted the Secretary of the Treasury the authority to examine foreign nationals arriving in the United States to prohibit the entry of any "person unable to take care of himself or herself without becoming a public charge." The Act provided that the examination be delegated to state commissions, boards, or officers.

The term "civil surgeon" was first introduced in the Immigration Act of 1891 as an alternative to surgeons of the Marine Hospital Service if such surgeons were not available to perform the medical examination on arriving aliens.[4] See Section 8 of the Immigration Act of 1891, 26 Stat. 1084.

The Immigration and Nationality Act (INA) of 1952, as amended by the Homeland Security Act of 2002,[5] See Pub. L. 107-296, 116 Stat. 2135. authorizes the Secretary of Homeland Security to designate civil surgeons if medical officers of the U.S. Public Health Service (USPHS) are not available. USCIS exercises the authority to designate civil surgeons on the Secretary's behalf, and may designate as many or as few civil surgeons as needed.[6] See 8 CFR 232.2(b). Since USPHS medical officers are rarely available today, civil surgeons generally provide all immigration medical examinations required of foreign nationals in the United States.

The civil surgeon's primary role is to perform immigration medical examinations to assess whether foreign nationals have any of the following medical conditions that could result in their inadmissibility:

- Communicable disease of public health significance;
- Failure to show proof of required vaccinations (for immigrant visa applicants and adjustment of status applicants only);
- Physical or mental disorder with associated harmful behavior; and
- Drug abuse or addiction.[7] See INA 212(a)(1).

Civil surgeons must perform such examinations according to the Technical Instructions for the Medical Examination of Aliens in the United States, issued by the Centers for Disease Control and Prevention (CDC), an agency of the Department of Health and Human Services (HHS).

The civil surgeon must also record the results of the immigration medical examination on the Report of Medical Examination and Vaccination Record (Form I-693) according to the form instructions. A foreign national submits the form to USCIS as part of his or her immigration benefits application, if required. USCIS reviews the form to determine whether the applicant is inadmissible based on health-related grounds.

C. Professional Qualifications

Only licensed physicians with at least four years of professional experience may be designated as civil surgeons.[8] See INA 232(b) and 8 CFR 232.2(b). USCIS interprets "not less than four years' professional experience" to require four years of professional practice *after* completion of training. Based on consultations with CDC, USCIS has determined that internships and residences do not count toward the four-year professional experience because they are both part of a physician's training.[9] A fellowship, however, would generally count toward professional experience since fellowships are not typically required as part of a physician's training. Even if one is already licensed as a physician, the four-year period of professional practice only begins when the post-graduate training ends.

Therefore, to be eligible for civil surgeon designation, the physician must meet all of the following requirements:

- Be either a Doctor of Medicine (M.D.) or a Doctor of Osteopathy (D.O.);
- Be licensed to practice medicine without restrictions in the state in which he or she seeks to perform immigration medical examinations; and
- Have the requisite four years of professional experience.

Registered nurses, nurse practitioners, medical technicians, physical therapists, physician assistants, chiropractors, podiatrists, and other healthcare workers who are not licensed as physicians (M.D. or D.O.) may not be designated or function as civil surgeons.

D. Responsibilities of Designated Civil Surgeons

Civil surgeon designation comes with a number of responsibilities. Physicians who fail to meet their responsibilities as a civil surgeon may have their designation revoked by USCIS.[10] See Chapter 4, Termination and Revocation [8 USCIS-PM C.4] for more information on revocation.

Civil surgeons' responsibilities include:[11] See the Instructions to the Report of Medical Examination and Vaccination Record (Form I-693) and Application for Civil Surgeon Designation (Form I-910) for more information on these responsibilities.

- Completing medical examinations according to HHS regulations and CDC requirements, such as the Technical Instructions for the Medical Examination of Aliens in the United States (Technical Instructions) and any

updates posted on CDC's website;[12] Available online at http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/technical-instructions-civil-surgeons.html.

- Making referrals for treatment and filing case reports, as required by the Technical Instructions;
- Reporting the results of the immigration medical examination on Form I-693 accurately;
- Informing USCIS of any changes in contact information within 15 days of the change;[13] See www.uscis.gov/i-910 for more information on how to update contact information. and
- Refraining from any activity related to the civil surgeon designation and medical examination of immigrants if USCIS revokes the physician's civil surgeon designation. This includes the physician informing his or her patients seeking immigration medical examinations that the physician may no longer complete medical examinations.

E. Legal Authorities

- INA 212(a)(1) – Health-Related Grounds
- INA 232; 8 CFR 232 – Detention of Aliens for Physical and Mental Examination
- 42 U.S.C. 252 – Medical Examination of Aliens
- 42 CFR 34 – Medical Examination of Aliens
- Technical Instructions for Civil Surgeons (Technical Instructions), and updates[14] Available online at http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/technical-instructions-civil-surgeons.html.

Footnotes

1.

If a physician wishes to be designated, he or she submits an application to USCIS for designation. Civil Surgeons should be distinguished from panel physicians. Panel physicians are designated by the Department of State and provide immigration medical examinations required as part of an applicant's visa processing at a U.S. Embassy or consulate abroad. See 42 CFR 34.2(o) and 22 CFR 42.66. See 9 FAM 42.66 and Notes.

2.

See INA 212(a)(1).

3.

See 22 Stat. 58.

4.

See Section 8 of the Immigration Act of 1891, 26 Stat. 1084.

5.

See Pub. L. 107-296, 116 Stat. 2135.

6.

See 8 CFR 232.2(b).

7.

See INA 212(a)(1).

8.

See INA 232(b) and 8 CFR 232.2(b).

9.

A fellowship, however, would generally count toward professional experience since fellowships are not typically required as part of a physician's training.

10.

See Chapter 4, Termination and Revocation [8 USCIS-PM C.4] for more information on revocation.

11.

See the Instructions to the Report of Medical Examination and Vaccination Record (Form I-693) and Application for Civil Surgeon Designation (Form I-910) for more information on these responsibilities.

12.

Available online at http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/technical-instructions-civil-surgeons.html.

13.

See www.uscis.gov/i-910 for more information on how to update contact information.

14.

Available online at http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/technical-instructions-civil-surgeons.html.

Chapter 2 - Application for Civil Surgeon Designation

A. Background

Historically, civil surgeon designation was an informal process handled by USCIS District Directors. By regulation, USCIS District Directors are authorized to designate civil surgeons in their respective jurisdictions.[1] See 8 CFR 232.2. In some circumstances, District Directors had delegated the designation authority to Field Office Directors in their districts. Physicians submitted informal written requests for civil surgeon designation to the district or field office with jurisdiction, along with documentary evidence showing they meet the professional qualifications to be a civil surgeon.

As of March 11, 2014, USCIS replaced the informal, decentralized civil surgeon application process with a formal, centralized process by (a) requiring centralized filing of the Application for Civil Surgeon Designation (Form I-910), at a Lockbox facility, and (b) delegating the District Directors' authority to grant, deny, and revoke civil surgeon designation to the Director of the National Benefits Center (NBC).[2] USCIS Field Offices continued to accept applications for civil surgeon designation until March 11, 2014. Federal regulations provide the authority for this transfer of authority: Director or district director prior to March 1, 2003, means the district director or regional service center director, unless otherwise specified. On or after March 1, 2003, pursuant to delegation from the Secretary of Homeland Security or any successive re-delegation, the terms mean, to the extent that authority has been delegated to such official: asylum office director; director, field operations; district director for interior enforcement; district director for services; field office director; service center director; or special agent in charge. The terms also mean such other official, including an official in an acting capacity, within U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, or other component of the Department of Homeland Security who is delegated the function or authority above for a particular geographic district, region, or area. See 8 CFR 1.2. These changes were made to improve the application intake process, enhance case management, promote consistency and uniformity in decision-making, and improve the overall efficiency and integrity of the program.

B. Application

A physician generally must apply for civil surgeon designation with USCIS. However, physicians who qualify under a blanket designation are exempt from the filing and fee requirements.[3] See Chapter 3, Blanket Civil Surgeon Designation [8 USCIS-PM C.3] for more information.

USCIS will only accept[4] USCIS also has the authority to select as many (or as few) civil surgeons necessary to serve the needs of the jurisdiction. See 8 CFR 232.2(b). Therefore, USCIS may also reject complete applications if it determines the jurisdiction's needs are met. In this case, USCIS would return the entire application package to the physician, including the fee associated with the application. and consider complete applications for civil surgeon designation; applications must be submitted in accordance with the form instructions.[5] Filing instructions can be found at www.uscis.gov/I-910.

A complete application consists of the following:

1. Application for Civil Surgeon Designation (Form I-910)

A physician seeking designation as a civil surgeon must complete all required parts of the Application for Civil Surgeon Designation.[6] The current version of the form and instructions can be accessed online at www.uscis.gov/i-910.

2. Filing Fee

The physician must include the required filing fee[7] See 8 CFR 103.7(b)(1)(i). The current filing fee can also be found at www.uscis.gov/i-910. with the completed Application for Civil Surgeon Designation. Applications for civil surgeon designation that do not include the correct filing fee will be rejected.

3. Evidence

The physician must include evidence that shows that he or she meets the eligibility requirements to be designated a civil surgeon. At a minimum, the civil surgeon applicant must submit all of the following evidence with the completed Application for Civil Surgeon Designation (Form I-910):[8] If not all of the required initial evidence has been submitted or the officer determines that the totality of the evidence submitted does not meet the applicable standard of proof, the officer may request additional evidence.

- Proof of U.S. citizenship, legal status, or authorization to work in the United States;
- A copy of the physician's current medical license in the state in which he or she seeks to perform immigration medical examinations;
- A copy of the physician's medical degree verifying he or she is an M.D. or D.O.; and
- Evidence to verify the requisite professional experience, such as letters of employment verification.

4. Signature

The physician must sign the application.[9] See 8 CFR 103.2(a)(2). The signature must be submitted to USCIS on Application for Civil Surgeon Designation (Form I-910). Applications for civil surgeon designation that do not include a signature may be rejected or returned to the physician.

C. Adjudication of Civil Surgeon Applications

1. Adjudication

To determine whether to approve or deny the application for civil surgeon designation, the officer should follow these steps:

Adjudication of Civil Surgeon Applications
Step 1: Determine whether the physician meets all of the eligibility requirements to be designated a civil surgeon:
• Is the physician authorized to work in the United States?[10] If an officer grants civil

surgeon designation to a physician who is only authorized to work in the United States for a limited period of time, the designation should be limited to the duration of the physician's work authorization.

- Is the physician an M.D. or a D.O?
- Is the physician licensed without restriction in the state in which he or she seeks to perform immigration medical examinations?
- Does the physician have at least four years of professional experience, not including residency or internships or other experience related to training?

If there is insufficient information in the application and evidence submitted with the application to make this determination, the officer may issue a Request for Evidence (RFE) for additional information such as documentary evidence establishing any of the eligibility requirements.

If the physician does not meet all of the eligibility requirements, the officer should **deny** the application. Otherwise, go to Step 2.

Step 2: Determine whether the application warrants a favorable exercise of discretion.[11] **USCIS has the discretion to designate as many (or as few) civil surgeons as needed. See 8 CFR 232.2(b). In general, a favorable exercise of discretion is warranted unless there are adverse factors that prevent it.**

An unfavorable exercise of discretion may, for instance, be applied to any applications submitted by physicians who had a prior civil surgeon designation revoked by USCIS, and where the concerns underlying that revocation have not been resolved.

If there is insufficient evidence in the application to make this determination, the officer may request additional information through the issuance of a Request for Evidence (RFE).

Examples:

Example: The physician had a prior civil surgeon designation revoked due to the physician's confirmed participation in an immigration fraud scheme. The officer should deny the civil surgeon application as a matter of discretion. The fee will not be refunded since USCIS performed an adjudication of the application.

Example: The physician had a prior civil surgeon designation revoked due to suspension of her medical license. However, the officer determines that the underlying reason for the suspension

has been resolved, is unlikely to recur, and the physician now has a current, unrestricted medical license. In this case, the officer may approve the civil surgeon application if the physician otherwise meets the eligibility requirements.

2. Approval

If the application for civil surgeon designation is approved, the officer should do the following:

Notification

Notify the physician in writing of the approval.

Files

Either create a new file for the physician who was granted civil surgeon designation; or, if a file for the physician already exists, update the file to reflect the grant of designation.

The files should be maintained in such a way as to facilitate retrieval or review of information relating to the specific civil surgeon. The file should be retained according to the established records retention schedule.

Updating Civil Surgeon List

The NBC should coordinate with Customer Service and Public Engagement Directorate (CSPE) to ensure the civil surgeon list is updated in a timely manner to reflect all newly designated civil surgeons. At a minimum, the newly designated civil surgeon's full name, name of medical practice, address, and telephone number should be added to the list. Particular care should be taken when entering the civil surgeon's zip code and telephone number since these are the primary ways that applicants search for civil surgeons.

3. Denial

If the application for civil surgeon designation is denied, the officer should do the following:

Notification

Notify the physician in writing of the denial. There is no appeal from a decision denying designation as a civil

surgeon. However, the physician may file a motion to reopen or reconsider.[12] See 8 CFR 103.5. To file a motion to reopen or reconsider, a physician should file a Notice of Appeal or Motion (Form I-290B), with fee. Forms and fee information can be found at www.uscis.gov. In the decision denying designation as a civil surgeon, the officer must notify the physician of the possibility to file a timely motion to reopen or reconsider.

A physician who is denied designation is not precluded from reapplying for civil surgeon designation. In the decision denying designation as a civil surgeon, the officer should also notify the physician that he or she may reapply if the physician believes that he or she has overcome the reason(s) for denial.[13] If the physician would like to reapply for civil surgeon designation because he or she has overcome the reason(s) for denial, the physician must file a new Application for Civil Surgeon Designation (Form I-910) with the required evidence and filing fee.

Files

Create a new file for each physician who was denied designation; or, if a file for the physician already exists, the officer should update the file to reflect the denial of the designation.

4. File Maintenance

The files should be maintained in such a way as to facilitate retrieval or review of information relating to the specific civil surgeon. The file should be retained according to the established records retention schedule.

Footnotes

1.

See 8 CFR 232.2. In some circumstances, District Directors had delegated the designation authority to Field Office Directors in their districts.

2.

USCIS Field Offices continued to accept applications for civil surgeon designation until March 11, 2014. Federal regulations provide the authority for this transfer of authority: *Director or district director* prior to March 1, 2003, means the district director or regional service center director, unless otherwise specified. On or after March 1, 2003, pursuant to delegation from the Secretary of Homeland Security or any successive re-delegation, the terms mean, to the extent that authority has been delegated to such official: asylum office director; director, field operations; district director for interior enforcement; district director for services; field office director; service center director; or special agent in charge. The terms also mean such other official, including an official in an acting capacity, within U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, or other component of the Department of Homeland Security who is delegated the function or authority above for a particular geographic district, region, or area. See 8 CFR 1.2.

3.

See Chapter 3, Blanket Civil Surgeon Designation [8 USCIS-PM C.3] for more information.

4.

USCIS also has the authority to select as many (or as few) civil surgeons necessary to serve the needs of the jurisdiction. See 8 CFR 232.2(b). Therefore, USCIS may also reject complete applications if it determines the jurisdiction's needs are met. In this case, USCIS would return the entire application package to the physician, including the fee associated with the application.

5.

Filing instructions can be found at www.uscis.gov/I-910.

6.

The current version of the form and instructions can be accessed online at www.uscis.gov/i-910.

7.

See 8 CFR 103.7(b)(1)(i). The current filing fee can also be found at www.uscis.gov/i-910.

8.

If not all of the required initial evidence has been submitted or the officer determines that the totality of the evidence submitted does not meet the applicable standard of proof, the officer may request additional evidence.

9.

See 8 CFR 103.2(a)(2).

10.

If an officer grants civil surgeon designation to a physician who is only authorized to work in the United States for a limited period of time, the designation should be limited to the duration of the physician's work authorization.

11.

USCIS has the discretion to designate as many (or as few) civil surgeons as needed. See 8 CFR 232.2(b).

12.

See 8 CFR 103.5. To file a motion to reopen or reconsider, a physician should file a Notice of Appeal or Motion (Form I-290B), with fee. Forms and fee information can be found at www.uscis.gov.

13.

If the physician would like to reapply for civil surgeon designation because he or she has overcome the reason(s) for denial, the physician must file a new Application for Civil Surgeon Designation (Form I-910) with the required evidence and filing fee.

Chapter 3 - Blanket Civil Surgeon Designation

A. Blanket Designation of State and Local Health Departments[1] See INA 209.

1. Overview

USCIS has the authority to designate either individual physicians or members of a specified class of physicians as civil surgeons, provided they meet the legal requirements.[2] As specified under INA 232(b), 8 CFR 232.2(b), and 42 CFR 34.2(b). Through policy and in agreement with CDC, USCIS designated all State and local health departments as civil surgeons. Health departments may only use this blanket civil surgeon designation to complete the vaccination assessments for refugees seeking adjustment of status.[3] See INA 209.

This blanket designation eases the difficulties encountered by refugee adjustment applicants in complying with the vaccination requirement. It also relieves USCIS of the need to maintain lists of health departments and the names of individual physicians at these health departments.

2. Eligible Physicians

Participation in this blanket civil surgeon designation is entirely voluntary and at the discretion of each health department. Health departments may only participate under this blanket designation if they have physicians authorized to provide medical services who meet the professional qualifications of a civil surgeon.[4] As described in Chapter 1, Purpose and Background, Section C, Professional Qualifications [8 USCIS-PM C.1(C)], since only these qualifying physicians may certify the vaccination assessment for refugees seeking adjustment of status. This includes volunteer physicians at State and local health departments.

Eligible physicians at health departments may, but are not required to, personally perform the vaccination assessment. Nurses or other medical professionals may perform the vaccination assessment and complete the vaccination record in the Report of Medical Examination and Vaccination Record (Form I-693) as long as the health department physician reviews and certifies the Form I-693.

Neither health departments nor eligible physicians at health departments need to obtain approval from USCIS prior to performing the vaccination component of immigration medical examinations as specified in the next section. Blanket designated civil surgeons are exempt from both application and fee requirements for civil surgeon designation.

However, health departments and eligible physicians must review and be familiar with the Technical Instructions for the vaccination requirements before they can begin performing vaccination assessments.[5] The Technical Instructions are available online at: http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/vaccination-civil-technical-instructions.html.

3. Scope

Pursuant to the understanding reached between USCIS and CDC, health departments may only use this blanket civil surgeon designation to complete the vaccination assessments for refugees seeking adjustment of status.[6] See INA 209. Therefore, health departments operating under this blanket designation should examine government-issued documents presented by the applicant to verify that he or she is a refugee.[7] Refugees may present their Arrival-Departure Record (Form I-94), Refugee Travel Document (Form I-571), or Employment Authorization Document (Form I-766) as evidence of refugee status. However, health departments completing the vaccination assessment will not know whether a refugee seeks adjustment under INA 209 or under another provision. Therefore, when reviewing a vaccination assessment completed by a blanket designated civil surgeon for a refugee seeking adjustment, the officer should confirm that the refugee is adjusting under INA 209 before accepting the vaccination assessment performed by a blanket designated health department. This blanket designation does not cover asylees seeking adjustment of status.[8] See INA 209.

Accordingly, health departments operating under this blanket designation are authorized *only* to perform the vaccination component of the immigration medical examination for refugees seeking adjustment of status. If a health department physician would like to perform parts of the immigration medical examination other than the vaccination assessment, the physician must obtain designation as a civil surgeon through the standard application process.[9] As outlined in Chapter 2, Application for Civil Surgeon Designation [8 USCIS-PM C.2].

Refugees who require the entire medical exam,[10] See 8 CFR 209.1(b). will likewise need to visit a physician designated as a civil surgeon through the standard application process.[11] However, blanket-designated health

departments may still perform the vaccination component of the medical exam for refugees who require the entire medical exam.

4. Recording and Certification Requirements

Health departments operating under the blanket civil surgeon designation must record the vaccination assessment on the Report of Medical Examination and Vaccination Record (Form I-693) as follows:

- Ensure the applicant's information and certification are completed;
- Complete the vaccination record; and
- Complete the civil surgeon's information and certification.

In accordance with the agreements reached with CDC, health departments operating under the blanket civil surgeon designation are required to certify Form I-693 by providing the attending physician's signature and a seal or stamp of the health department:

Physician Signature

The attending physician must sign Form I-693. A signature stamp may be used. Health department nurses or other health care professionals may, but are not required to, co-sign the form. However, a form that has been signed only by a registered nurse, physician's assistant, or other medical professional who is not a licensed physician is not sufficient.

If a form for a refugee adjusting status has been signed only by a medical professional employed by the health department (without an accompanying signature by a medical doctor), an RFE should be sent to the applicant for corrective action.

Health Department Stamp or Seal

The health department is also required to affix either the official stamp or raised seal (whichever is customarily used) of that health department on the space designated on the form.

As with all immigration medical examinations, the signed Form I-693 must be placed in a sealed envelope, according to the form's instructions.

B. Blanket Designation of Military Physicians as Civil Surgeons

1. Overview

Through policy, USCIS extended a blanket civil surgeon designation to military physicians for the completion of all parts of a required immigration medical examination for members and veterans of the U.S. armed forces and certain eligible dependents if the military physician meets certain conditions.

This blanket designation eases the difficulties encountered by U.S. armed forces members, veterans, and certain eligible dependents when obtaining immigration medical examinations. It also eases the civil surgeon designation process for military physicians, since many military physicians are not licensed in the states in which they provide medical services for the military. Furthermore, this policy relieves USCIS of the need to maintain lists of individual military physicians designated as civil surgeons.

2. Eligible Physicians

Participation in this blanket civil surgeon designation is entirely voluntary and at the discretion of each medical facility. This blanket designation only applies to military physicians who:

- Meet the professional qualifications of a civil surgeon[12] As described in Chapter 1, Purpose and Background, Section C, Professional Qualifications [8 USCIS-PM C.1(C)]. except that the physician may be licensed in *any* state in the United States, and is not required to be licensed in the state in which the physician is performing the immigration medical examination;

- Are employed by the Department of Defense (DOD) or provides medical services to U.S. armed forces members, veterans, and their dependents as military contract providers or civilian physicians; and

- Are authorized to provide medical services at a military treatment facility (MTF) within the United States.

Neither the medical facility nor the physician who qualifies and wishes to participate in the blanket designation needs to obtain approval from USCIS prior to performing immigration medical examinations as specified in the next section. Blanket designated civil surgeons are exempt from both USCIS application and fee requirements for civil surgeon designation.

However, military physicians must review and be familiar with CDC's Technical Instructions for the Medical Examination of Aliens in the United States before they can begin performing immigration medical examinations.[13] The Technical Instructions are available online at: http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/technical-instructions-civil-surgeons.html.

3. Scope

Pursuant to the understanding reached between USCIS and CDC, military physicians who qualify under this blanket civil surgeon designation may perform the entire immigration medical examination as long as the exam is conducted

in the United States on the premises of an MTF, and for a U.S. armed forces member, veteran, or dependent who is eligible to receive medical care at that MTF.

Military physicians must apply for civil surgeon designation under the standard designation process[14] As outlined in Chapter 2, Application for Civil Surgeon Designation [8 USCIS-PM C.2], if they wish to complete immigration medical examinations:

- In a U.S. location other than on the premises of an MTF; or
- For applicants other than those U.S. armed forces members, veterans, or dependents to whom they are authorized to provide medical services at an MTF.

U.S. armed forces members, veterans, or dependents will need to visit a physician designated as civil surgeon through the standard application process if they:

- Prefer to have the immigration medical examination performed by a physician who does not qualify under this blanket designation for military physicians;
- Prefer to have the immigration medical examination performed in a U.S. location other than at the MTF at which they are authorized to receive medical services; or
- Do not have access to a military physician who is performing immigration medical examinations under this blanket designation.

4. Recording and Certification Requirements

Military physicians operating under the blanket civil surgeon designation must record the results of the immigration medical examination on the Report of Medical Examination and Vaccination Record (Form I-693), according to the standard procedures all civil surgeons are required to follow.

In accordance with the agreements reached with CDC, a military physician operating under the blanket civil surgeon designation is required to certify Form I-693 by providing both of the following on the form:

Physician Signature

The blanket designated civil surgeon must sign Form I-693. A signature stamp may be used. Nurses or other health care professionals may, but are not required to, co-sign the form. However, a form that has been signed only by a registered nurse, physician's assistant, or other medical professional who is not a licensed physician is not sufficient. If a form for a U.S. armed forces member, veteran, or eligible dependent has been signed only by a medical professional employed by the military facility (without an accompanying signature by a medical doctor), an RFE should be sent to the applicant for corrective action.

MTF Stamp or Seal

The MTF is also required to affix either the official stamp or raised seal of that facility on the space designated on the form.

The signed Form I-693 must be placed in a sealed envelope, according to the form's instructions.

Footnotes

1.

See INA 209.

2.

As specified under INA 232(b), 8 CFR 232.2(b), and 42 CFR 34.2(b).

3.

See INA 209.

4.

As described in Chapter 1, Purpose and Background, Section C, Professional Qualifications [8 USCIS-PM C.1(C)].

5.

The Technical Instructions are available online at: http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/vaccination-civil-technical-instructions.html.

6.

See INA 209.

7.

Refugees may present their Arrival-Departure Record (Form I-94), Refugee Travel Document (Form I-571), or Employment Authorization Document (Form I-766) as evidence of refugee status. However, health departments completing the vaccination assessment will not know whether a refugee seeks adjustment under INA 209 or under another provision. Therefore, when reviewing a vaccination assessment completed by a blanket designated civil surgeon for a refugee seeking adjustment, the officer should confirm that the refugee is adjusting under INA 209 before accepting the vaccination assessment performed by a blanket designated health department.

8.

See INA 209.

9.

As outlined in Chapter 2, Application for Civil Surgeon Designation [8 USCIS-PM C.2].

10.

See 8 CFR 209.1(b).

11.

However, blanket-designated health departments may still perform the *vaccination component* of the medical exam for refugees who require the entire medical exam.

12.

As described in Chapter 1, Purpose and Background, Section C, Professional Qualifications [8 USCIS-PM C.1(C)].

13.

The Technical Instructions are available online at: http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/technical-instructions-civil-surgeons.html.

14.

As outlined in Chapter 2, Application for Civil Surgeon Designation [8 USCIS-PM C.2].

Chapter 4 - Termination and Revocation

A. Voluntary Termination

A civil surgeon who no longer wishes to be designated as a civil surgeon should request, in writing, that USCIS terminate the designation.[1] See www.uscis.gov/i-910 for more information on where to send a request to terminate one's designation.

A physician who voluntarily terminates his or her civil surgeon designation must re-apply with USCIS if he or she wishes to be designated as a civil surgeon again.

B. Revocation

Current regulations do not contain specific revocation provisions; however, the law does not preclude revocation, especially when the physician no longer qualifies for civil surgeon designation.

1. Grounds for Revocation

USCIS may revoke a physician's civil surgeon designation if he or she:

- Fails to comply with the Technical Instructions, Form I-693 Instructions, or fails to fulfill other responsibilities of a civil surgeon consistently or intentionally;
- Falsifies or conceals any material fact in the application for civil surgeon designation, or provides any false documents or information to obtain the designation;
- Knowingly falsifies or conceals any material fact on Form I-693, or includes any false documents or information to support any findings in the record;

- Fails to maintain a currently valid and unrestricted license to practice as a physician in any state in which the physician conducts immigration medical examinations, unless otherwise excepted or exempted from this requirement;

- Is subject to any court or disciplinary action that revokes, suspends, or otherwise restricts the physician's authority to practice as a physician in any state in which the physician conducts immigration medical examinations; or

- Has failed to meet any of the professional qualifications for a civil surgeon at any time during the period of a physician's designation as a civil surgeon, unless USCIS finds both that the physician has corrected any gap in eligibility and that the physician refrained from conducting immigration medical examinations during any period in which the physician was not eligible for designation as a civil surgeon.

2. Initiating Revocation

The file should be well-documented before USCIS takes any steps to revoke a physician's civil surgeon designation. When the proposed revocation is based on allegations of misconduct reported by an adjustment of status applicant, the officer should take a sworn statement to support the allegations. The officer should also retain any other available evidence of the alleged misconduct.

The NBC may request the assistance of other USCIS offices to collect evidence if such evidence is not otherwise available to the NBC and if resources allow. For instance, if the NBC is unable to reach or communicate with a particular civil surgeon, the NBC may request assistance from the local office to contact the civil surgeon.

In instances where the civil surgeon may be involved in fraud, USCIS Fraud Detection and National Security Directorate (FDNS) should be notified per the standard fraud referral operating procedures and the civil surgeon's record should be annotated to reflect that suspected fraud played a factor in initiating revocation. Depending on the nature and severity of the allegations, it may also be necessary to consult with CDC to obtain expert medical advice.

USCIS counsel must review any proposed revocation, unless the intended revocation is based on evidence that the civil surgeon is no longer licensed to practice medicine in the state where he or she is performing immigration medical examinations. When referring the case to USCIS counsel, the officer should include the reasons for the intended revocation and copies of the supporting evidence.

Once the decision has been made to initiate the revocation, the officer must serve the physician with a notice of intent to revoke by Certified Mail/Return Receipt Requested or other method that provides proof of delivery. The notice must clearly state the exact grounds for the intended revocation and include copies of any relevant evidence.[2] USCIS may redact certain sensitive or identifying information. The officer must give the physician 30 days from the date of the notice to respond with countervailing evidence. The physician may be represented by private counsel at his or her own expense.[3] Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) must also be filed in this case.

3. Allegations of Malpractice, Breaches of Medical Ethics, and Other Improper Conduct

The authority to designate civil surgeons does not give USCIS authority to regulate the practice of medicine. For this reason, the process for revoking designation as a civil surgeon is not the proper forum for adjudicating complaints against a physician concerning malpractice, breach of medical ethics, or other improper conduct. If USCIS receives a complaint of this kind, USCIS should advise the complainant to make the complaint with the proper medical licensing authority for the State or territory in which the physician practices.

4. Decision

Once the period for the physician's response to the notice of intent to revoke has expired, USCIS will review the record and decide whether to revoke the physician's designation as a civil surgeon. Any response from the physician will be included in the record of proceeding. USCIS must notify the physician in writing of the decision.

There is no administrative appeal from a decision to revoke a physician's designation as a civil surgeon. The physician may, however, file a motion to reopen or reconsider.[4] As permitted in 8 CFR 103.5. To file a motion to reopen or reconsider, a physician should file a Notice of Appeal or Motion (Form I-290B), with fee. Forms and fee information can be found at www.uscis.gov. A decision revoking a physician's designation as a civil surgeon must notify the physician of the right to file a timely motion to reopen or reconsider.

Similarly, USCIS may reopen and reconsider a decision on its own motion. A physician whose civil surgeon designation is revoked is not precluded from reapplying for civil surgeon designation, but the ground(s) upon which revocation is based should be considered as part of the adjudication of a subsequent application for civil surgeon designation. A physician, however, whose prior civil surgeon designation was revoked based on confirmed involvement in an immigration benefits fraud scheme will be denied civil surgeon designation upon reapplication.

If USCIS revokes a physician's designation as a civil surgeon, the public civil surgeon list should be updated immediately to remove the civil surgeon's information.[5] As specified in Chapter 5, Civil Surgeon List [8 USCIS-PM C.5].

If an officer reviewing Form I-693 has a concern about the sufficiency of an immigration medical examination performed by a physician who was designated at the time of the medical exam but subsequently had his or her designation revoked, the officer may reorder the medical exam to be performed by a civil surgeon to address the concern.[6] In general, an officer may order or reorder an immigration medical examination, in part or in whole, at any time if he or she has concerns regarding an applicant's inadmissibility on health-related grounds. See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [8 USCIS-PM B].

Footnotes

1.

See www.uscis.gov/i-910 for more information on where to send a request to terminate one's designation.

2.

USCIS may redact certain sensitive or identifying information.

3.

Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) must also be filed in this case.

4.

As permitted in 8 CFR 103.5. To file a motion to reopen or reconsider, a physician should file a Notice of Appeal or Motion (Form I-290B), with fee. Forms and fee information can be found at www.uscis.gov.

5.

As specified in Chapter 5, Civil Surgeon List [8 USCIS-PM C.5].

6.

In general, an officer may order or reorder an immigration medical examination, in part or in whole, at any time if he or she has concerns regarding an applicant's inadmissibility on health-related grounds. See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [8 USCIS-PM B].

Chapter 5 - Civil Surgeon List

A. Overview

USCIS maintains a nationwide list of civil surgeons available to the public. Applicants may search the list for civil surgeons designated in their area at USCIS.gov (via the Civil Surgeon Locator) or through the National Customer Service Center's toll-free number at 1-800-375-5283.

Physicians on the civil surgeon list are generally current in their designation as civil surgeons. Since the list is updated weekly, it is advisable for the applicants to check that a physician is still on the civil surgeon list as close as possible to the date of the immigration medical exam appointment. If uncertain, applicants should also confirm with their doctors regarding their civil surgeon status prior to the immigration medical examination.

B. Requests to Update the Civil Surgeon Information

A civil surgeon should inform USCIS of any change that is relevant to the civil surgeon designation within 15 days of the change.[1] See www.uscis.gov/i-910 for more information on how to update contact information.

If an officer at a USCIS field or district office receives a request to update the civil surgeon list, he or she should forward the request to the NBC for review.

C. Maintaining the Civil Surgeon List

USCIS will review all requests from civil surgeons to update contact information or to terminate the civil surgeon designation. USCIS will also update the civil surgeon list accordingly, as well as remove civil surgeons whose designations have been suspended or revoked.

1. Request to Update Contact Information

If a civil surgeon's request to update contact information involves a move to a new state, then evidence of medical licensure in the new state[2] The physician must show that he or she continues to meet the professional qualifications to be a civil surgeon in the new state. must accompany the request before the officer may approve it. If this evidence is missing, the officer may request this information through the issuance of an RFE.

2. Termination, Suspension, or Revocation

If a civil surgeon requests to be removed from the civil surgeon list or if USCIS determines designation should be suspended or revoked, the officer should annotate the date and reason for removal. Records of former civil surgeons should be retained internally; the information may be relevant, for instance, to the adjudication of a medical examination the civil surgeon completed before he or she was removed from the civil surgeon list or if the physician re-applies for civil surgeon designation in the future.

3. Updates and Review of Civil Surgeon List

USCIS will ensure the civil surgeon list is updated in a timely manner to reflect any changes in a civil surgeon's contact information or designation status. In addition, USCIS will perform a review of the civil surgeon list on a bi-annual basis, at a minimum, to ensure that all publicly available civil surgeon information is current and accurate.

If during this review USCIS learns that a civil surgeon is no longer performing immigration medical examinations in the location specified as part of the designation, or is no longer practicing medicine at all, USCIS may terminate the civil surgeon designation and remove the physician from the list. USCIS should follow regular revocation procedures.

Footnotes

1.

See www.uscis.gov/i-910 for more information on how to update contact information.

2.

The physician must show that he or she continues to meet the professional qualifications to be a civil surgeon in the new state.

Part J - Fraud and Willful Misrepresentation

Chapter 1 - Purpose and Background

A. Purpose

To properly control movement across its borders, a government must be able to scrutinize and assess a person's identity as part of determining eligibility to enter. If a foreign national willfully provides incorrect information about identity and intentions for entering the country, the person has deprived the government of its right to examine the request for admission.[1] See Matter of B- and P-, 2 I&N Dec. 638, 645-46 (A.G. 1947).

In recognition of these principles, Congress provided a specific ground of inadmissibility to address the use of fraud or willful misrepresentation when obtaining a benefit under the Immigration and Nationality Act (INA).

There are exceptions and waivers to inadmissibility due to fraud or willful misrepresentation available to a person under certain circumstances depending on the particular immigration benefit the person is seeking.[2] For more on the waiver of fraud or willful misrepresentation under INA 212(i), see Volume 9, Waivers, Part G, Waivers for Fraud and Willful Misrepresentation [9 USCIS-PM G].

B. Background

The 1924 Immigration Act[3] See Immigration Act of 1924, Pub. L. 68-139, sections 22(b) and 22(c) (May 26, 1924). made obtaining a visa under a false name or submitting false evidence in support of a visa application a federal crime. The Board of Immigration Appeals (BIA) and the courts used this principle to find that a visa obtained by fraud was no visa at all, making the person's admission with a fraudulent visa unlawful.[4] See Matter of B- and P-, 2 I&N Dec. 638, 640-41 (A.G. 1947), citing McCandless v. Murphy, 47 F.2d 1072 (3rd Cir. 1931). See United States ex rel. Leibowitz v. Schlotfeldt, 94 F.2d 263 (7th Cir. 1938). See United States ex rel. Fink v. Reimer, 96 F.2d 217 (2nd Cir. 1938).

Congress codified the BIA's and the courts' approach in the Immigration and Nationality Act of 1952. With former INA 212(a)(19), it created a new bar to admission for any applicant who used fraud or willful misrepresentation to gain entry into the United States or obtain a visa or other documentation.[5] Former INA 212(a)(19) made inadmissible any applicant who "seeks to procure, or has sought to procure or has procured a visa or other documentation, or seeks to enter the United States by fraud, or by willfully misrepresenting a material fact." Immigration and Nationality Act of 1952, Pub. L. 82-414 (June 27, 1952).

In 1986, Congress amended the bar so that a person could be found inadmissible for using fraud or willful misrepresentation when seeking any benefit under the INA, not just entry, visas, or other documents.[6] Congress expanded former INA 212(a)(19) to make one inadmissible for using fraud or willful misrepresentation in relation to "a visa, other documentation, or entry into the United States or other benefit provided under this Act." See the Immigration Marriage Fraud Amendments of 1986, section 6(a), Pub. L. 99-639 (November 10, 1986). Congress re-designated former INA 212(a)(19) as INA 212(a)(6)(C) in 1990 but did not alter the bar to admission itself.[7] See the Immigration Act of 1990, section 601(a), Pub. L. 101-649 (November 29, 1990). Substantive changes to the inadmissibility ground did not come until 1996 when Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).[8] See Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. 104-208 (September 30, 1996).

With the passage of IIRIRA, Congress created two separate inadmissibility grounds that remain unchanged to this day:[9] See Illegal Immigration Reform and Immigrant Responsibility Act, section 344(a) Division C, Pub. L. 104-208 (September 30, 1996).

- Fraud or willful misrepresentation made in connection with obtaining an immigration benefit;[10] See INA 212(a)(6)(C)(i). and

- False claim to U.S. citizenship made on or after September 30, 1996.[11] See INA 212(a)(6)(C)(ii).

These two grounds differ significantly. This Part J only addresses the inadmissibility determination for fraud or willful misrepresentation made in connection with obtaining an immigration benefit. This includes, however, false claims to U.S. citizenship made prior to September 30, 1996.

Foreign nationals who made a false claim to U.S. citizenship prior to September 30, 1996, cannot be found inadmissible under the false claim to U.S. citizenship ground of inadmissibility.[12] See INA 212(a)(6)(C)(ii). IIRIRA made this ground applicable only to false claims made on or after September 30, 1996.[13] See Illegal Immigration Reform and Immigrant Responsibility Act, section 344(c), Pub. L. 104-208 (September 30, 1996).

Therefore, for false claims to U.S. citizenship made before September 30, 1996, the officer must analyze the person's inadmissibility according to the general fraud and willful misrepresentation ground of inadmissibility, as outlined in this Part J.[14] See INA 212(a)(6)(C)(i).

C. Scope

This guidance addresses inadmissibility for fraud and willful misrepresentation[15] See INA 212(a)(6)(C)(i). Inadmissibility for falsely claiming U.S. citizenship on or after September 30, 1996 is a separate inadmissibility ground. See INA 212(a)(6)(C)(ii). in relation to obtaining a benefit under the INA, including inadmissibility for falsely claiming U.S. citizenship before September 30, 1996.

D. Legal Authorities

- INA 212(a)(6)(C)(i) – Illegal Entrants and Immigration Violators - Misrepresentation

Footnotes

1.

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

2.

For more on the waiver of fraud or willful misrepresentation under INA 212(i), see Volume 9, Waivers, Part G, Waivers for Fraud and Willful Misrepresentation [9 USCIS-PM G].

3.

See Immigration Act of 1924, Pub. L. 68-139, sections 22(b) and 22(c) (May 26, 1924).

4.

See *Matter of B- and P-*, 2 I&N Dec. 638, 640-41 (A.G. 1947), citing *McCandless v. Murphy*, 47 F.2d 1072 (3rd Cir. 1931). See *United States ex rel. Leibowitz v. Schlotfeldt*, 94 F.2d 263 (7th Cir. 1938). See *United States ex rel. Fink v. Reimer*, 96 F.2d 217 (2nd Cir. 1938).

5.

Former INA 212(a)(19) made inadmissible any applicant who "seeks to procure, or has sought to procure or has procured a visa or other documentation, or seeks to enter the United States by fraud, or by willfully misrepresenting a material fact." Immigration and Nationality Act of 1952, Pub. L. 82-414 (June 27, 1952).

6.

Congress expanded former INA 212(a)(19) to make one inadmissible for using fraud or willful misrepresentation in relation to "a visa, other documentation, or entry into the United States or other benefit provided under this Act." See the Immigration Marriage Fraud Amendments of 1986, section 6(a), Pub. L. 99-639 (November 10, 1986).

7.

See the Immigration Act of 1990, section 601(a), Pub. L. 101-649 (November 29, 1990).

8.

See Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. 104-208 (September 30, 1996).

9.

See Illegal Immigration Reform and Immigrant Responsibility Act, section 344(a) Division C, Pub. L. 104-208 (September 30, 1996).

10.

See INA 212(a)(6)(C)(i).

11.

See INA 212(a)(6)(C)(ii).

12.

See INA 212(a)(6)(C)(ii).

13.

See Illegal Immigration Reform and Immigrant Responsibility Act, section 344(c), Pub. L. 104-208 (September 30, 1996).

14.

See INA 212(a)(6)(C)(i).

15.

See INA 212(a)(6)(C)(i). Inadmissibility for falsely claiming U.S. citizenship on or after September 30, 1996 is a separate inadmissibility ground. See INA 212(a)(6)(C)(ii).

Chapter 2 - Overview of Fraud and Willful Misrepresentation

A. General

An applicant may be found inadmissible if he or she obtains a benefit under the INA either through:

- Fraud; or

- Willful misrepresentation.

Although fraud and willful misrepresentation are distinct actions for inadmissibility purposes, they share common elements. All of the elements necessary for a finding of inadmissibility based on willful misrepresentation are also needed for a finding of inadmissibility based on fraud. However, a fraud finding requires two additional elements.

This is why a person who is inadmissible for fraud is always also inadmissible for willful misrepresentation. However, the opposite is not necessarily true: a person inadmissible for willful misrepresentation is not necessarily inadmissible for fraud.[1] For more on the interplay between findings of fraud and willful misrepresentation, see Section D, Comparing Fraud and Willful Misrepresentation [8 USCIS-PM J.2(D)].

Additionally, misrepresentation of a material fact may lead to other adverse immigration consequences. For example, if the beneficiary commits marriage fraud, it may have adverse immigration consequences for both the petitioner and the beneficiary.

B. Willful Misrepresentation

Inadmissibility based on willful misrepresentation requires a finding that a person willfully misrepresented a material fact.[2] See INA 212(a)(6)(C)(i). For a definition of materiality, see Chapter 3, Adjudicating Inadmissibility, Section E, Materiality [8 USCIS-PM J.3(E)]. For a person to be inadmissible, the officer must find all of the following elements:

- The person procured, or sought to procure, a benefit under U.S. immigration laws;
- The person made a false representation;
- The false representation was willfully made;
- The false representation was material; and
- The false representation was made to a U.S. government official, generally an immigration or consular officer.[3] See Matter of Y-G-, 20 I&N Dec. 794, 796 (BIA 1994).

If all of the above elements are present, then the person is inadmissible for willful misrepresentation.

If the person succeeded in obtaining the benefit under the INA, he or she would be inadmissible for having procured the benefit by willful misrepresentation. If the attempt was not successful,[4] For example, the misrepresentation was detected and the benefit was denied. the person would still be inadmissible for having "sought to procure" the

immigration benefit by willful misrepresentation. In each case, evidence of intent to deceive is not required.[5] See Matter of Kai Hing Hui, 15 I&N Dec. 288, 289-90 (BIA 1975).

C. Fraud

Inadmissibility based on fraud requires a finding that a person knowingly made a false representation of a material fact with the intent to deceive the other party.[6] See Matter of Tijam, 22 I&N Dec. 408, 424 (BIA 1998).

For a person to be inadmissible for having procured entry, a visa, other documentation, or any other benefit under the INA by fraud, the officer must find all of the following elements:

- The person procured, or sought to procure, a benefit under U.S. immigration laws;
- The person made a false representation;
- The false representation was willfully made;
- The false representation was material;
- The false representation was made to a U.S. government official, generally an immigration or consular officer;[7] See Matter of Y-G-, 20 I&N Dec. 794, 796 (BIA 1994).
- The false representation was made with the intent to deceive a U.S. government official authorized to act upon the request (generally an immigration or consular officer);[8] See Matter of Tijam, 22 I&N Dec. 408, 424 (BIA 1998). and
- The U.S. government official believed and acted upon the false representation by granting the benefit.[9] See Matter of G- G-, 7 I&N Dec. 161 (BIA 1956).

If all of the above elements are present, then the person is inadmissible for having procured an immigration benefit by fraud. Since the elements required for fraud also include the elements for willful misrepresentation, the person is also inadmissible for willful misrepresentation.

If the person was unsuccessful in obtaining the benefit,[10] For example, the fraud was detected and the benefit was denied. he or she may still be inadmissible for having "sought to procure" the immigration benefit by fraud. In this case, the fraud element requiring the U.S. government official to believe and act upon the false representation is not applicable; however, intent to deceive is still a required element.

In cases of attempted fraud, it may be difficult to establish the person's intent to deceive because the fraud has not actually succeeded. However, establishing intent to deceive may be unnecessary; if evidence supports a finding of willful misrepresentation, which does not require intent to deceive,[11] See Matter of Kai Hing Hui, 15 I&N Dec. 288, 289-90 (BIA 1975). then the person is already considered inadmissible without any further determination of fraud.

D. Comparing Fraud and Willful Misrepresentation

In practice, the distinction between fraud and willful misrepresentation is not greatly significant because either fraud or a willful misrepresentation alone is sufficient to establish inadmissibility.

The following table shows a comparison of the elements required for each ground:

Comparing Fraud and Willful Misrepresentation		
	Elements Required for a Finding of …	
Scenario	**Willful Misrepresentation**	**Fraud**
The person procured, or sought to procure, a benefit under U.S. immigration laws.	**X**	**X**
The person made a false representation.	**X**	**X**
The false representation was willfully made.	**X**	**X**
The false representation was material.	**X**	**X**
The false representation was made to a U.S. government official.	**X**	**X**
When making the false representation, the person intended to deceive a U.S. government official authorized to act upon the request (generally an immigration or consular officer).	***Not Applicable***	**X**
The U.S. government official believed	***Not Applicable***	**X** *(Not applicable if*

and acted upon the false representation.		*fraud finding based on "seeking to procure" benefit)*

As the table illustrates, a fraud finding encompasses a willful misrepresentation finding. Therefore, if all the elements are present to make a finding of fraud, then the elements for making a finding of willful misrepresentation must also necessarily be present.

Example:

The officer finds that a person obtained an immigration benefit by fraud. The person is then inadmissible for both fraud.[12] See Matter of B- and P-, 2 I&N Dec. 638, 651 (A.G. 1947). and willful misrepresentation.

Example:

The officer finds that there was no intent to deceive, but the other elements of fraud are present. The person is not inadmissible based on fraud but is still inadmissible for willful misrepresentation.[13] See Matter of Kai Hing Hui, 15 I&N Dec. 288, 290 ("We interpret the Attorney General's decision in Matter of S- and B-C- as one which modified Matter of G-G- so that the intent to deceive is no longer required before the willful misrepresentation charge comes into play.").

E. Overview of Admissibility Determination

A finding of willful misrepresentation or fraud requires certain determinations. If the evidence indicates that the person may be inadmissible due to fraud or willful misrepresentation, the officer should follow the steps in the table below to determine inadmissibility:

Overview of Admissibility Determination		
Step		**For More Information**
Step 1	Determine whether the person procured, or sought to procure, a benefit under U.S. immigration laws.	Chapter 3, Adjudicating Inadmissibility, Section B, Procuring a Benefit under the INA [8 USCIS-PM J.3(B)]
Step 2	Determine whether the person made a false representation.	Chapter 3, Adjudicating Inadmissibility, Section C, False Representation [8 USCIS-PM J.3(C)]

Step 3	Determine whether the false representation was willfully made.	Chapter 3, Adjudicating Inadmissibility, Section D, Willfulness [8 USCIS-PM J.3(D)]
Step 4	Determine whether the false representation was material.	Chapter 3, Adjudicating Inadmissibility, Section E, Materiality [8 USCIS-PM J.3(E)]
Step 5	Determine whether the false representation was made to a U.S. government official.	Chapter 3, Adjudicating Inadmissibility, Section F, Fraud or Willful Misrepresentation Must Be Made to a U.S. Government Official [8 USCIS-PM J.3(F)]
Step 6	Determine whether, when making the false representation, the person intended to deceive a U.S. government official authorized to act upon request (generally an immigration or consular officer).	Chapter 3, Adjudicating Inadmissibility, Section G, Elements Only Applicable to Fraud [8 USCIS-PM J.3(G)]
Step 7	Determine whether the U.S. government official believed and acted upon the false representation.	Chapter 3, Adjudicating Inadmissibility, Section G, Elements Only Applicable to Fraud [8 USCIS-PM J.3(G)]
Step 8	Determine whether a waiver of inadmissibility is available.	Volume 9, Waivers[14] For guidance on the waiver of the fraud and willful misrepresentation inadmissibility ground under INA 212(i), see Volume 9, Waivers, Part G, Waivers for Fraud and Willful Misrepresentation [9 USCIS-PM G].

When making the inadmissibility determination, the officer should keep in mind the severe nature of the penalty for fraud or willful misrepresentation. The person will be barred from admission for the rest of his or her life unless the person qualifies for and is granted a waiver. The officer should examine all facts and circumstances when evaluating inadmissibility for fraud or willful misrepresentation.[15] See 9 FAM 40.63, Note 1.3, Application of INA 212(a)(6)(C)(i), Nature of Penalty.

Footnotes

1.

For more on the interplay between findings of fraud and willful misrepresentation, see Section D, Comparing Fraud and Willful Misrepresentation [8 USCIS-PM J.2(D)].

2.

See INA 212(a)(6)(C)(i). For a definition of materiality, see Chapter 3, Adjudicating Inadmissibility, Section E, Materiality [8 USCIS-PM J.3(E)].

3.

See *Matter of Y-G-*, 20 I&N Dec. 794, 796 (BIA 1994).

4.

For example, the misrepresentation was detected and the benefit was denied.

5.

See *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975).

6.

See *Matter of Tijam,* 22 I&N Dec. 408, 424 (BIA 1998).

7.

See *Matter of Y-G-*, 20 I&N Dec. 794, 796 (BIA 1994).

8.

See *Matter of Tijam,* 22 I&N Dec. 408, 424 (BIA 1998).

9.

See *Matter of G- G-,* 7 I&N Dec. 161 (BIA 1956).

10.

For example, the fraud was detected and the benefit was denied.

11.

See *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975).

12.

See *Matter of B- and P-*, 2 I&N Dec. 638, 651 (A.G. 1947).

13.

See *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 290 ("We interpret the Attorney General's decision in *Matter of S- and B-C-* as one which modified *Matter of G-G-* so that the intent to deceive is no longer required before the willful misrepresentation charge comes into play.").

14.

For guidance on the waiver of the fraud and willful misrepresentation inadmissibility ground under INA 212(i), see Volume 9, Waivers, Part G, Waivers for Fraud and Willful Misrepresentation [9 USCIS-PM G].

15.

See 9 FAM 40.63, Note 1.3, Application of INA 212(a)(6)(C)(i), Nature of Penalty.

Chapter 3 - Adjudicating Inadmissibility

A. Evidence and Burden of Proof

1. Evidence

To find a person inadmissible for fraud or willful misrepresentation,[1] See INA 212(a)(6)(C)(i). there must be at least some evidence that would permit a reasonable person to find that the person used fraud or that he or she willfully misrepresented a material fact in an attempt to obtain a visa, other documentation, admission into the United States, or any other immigration benefit.[2] The "reasonable person" standard is drawn from INS v. Elias-Zacarias, 502 U.S. 478 (1992) (agency fact-finding must be accepted unless a reasonable fact-finder would necessarily conclude otherwise).

In addition, the evidence must show that the person made the misrepresentation to an authorized official of the U.S. government, whether in person, in writing, or through other means.[3] See Matter of Y-G-, 20 I&N Dec. 794 (BIA 1994). See Matter of D-L- & A-M-, 20 I&N Dec. 409 (BIA 1991). See Matter of L-L-, 9 I&N Dec. 324 (BIA 1961). Examples of evidence an officer may consider include oral or written testimony, or any other documentation containing false information.

2. Burden of Proof

The burden of proof to establish admissibility during the immigration benefit-seeking process is always on the applicant. During the adjudication of the benefit, the burden never shifts to the government.[4] See INA 291. See Matter of Arthur, 16 I&N Dec. 558 (BIA 1978).

If there is no evidence the applicant obtained or sought to obtain a benefit under the INA by fraud or willful misrepresentation, USCIS should find that the applicant has met the burden of proving that he or she is not in admissible under this ground.[5] See Matter of D- L- and A- M-, 20 I&N Dec. 409 (BIA 1991).

However, if there is evidence that would permit a reasonable person to conclude that the applicant may be inadmissible for fraud or willful misrepresentation, then the applicant has not successfully met the burden of proof.[6] See INS v. Elias-Zacarias, 502 U.S. 478 (1992). In failing to meet the burden of proof, the applicant will be considered inadmissible for fraud or willful misrepresentation unless the applicant is able to successfully rebut the officer's inadmissibility finding.

If the officer's finding of inadmissibility is based on evidence that the applicant obtained or sought to obtain a benefit under the INA by willful misrepresentation, then the applicant has the burden of establishing at least one of the following facts to rebut the finding:

- The misrepresentation was not made to procure a visa, admission, or some other benefit under the INA;
- There was no false representation;
- The false representation was not willful;
- The false representation was not material; or

- The false representation was not made to a U.S. government official.

If the officer's finding of inadmissibility is based on evidence that the applicant obtained a benefit under the INA by fraud, then the applicant has the burden of establishing at least one of the following facts to rebut the finding:

- The fraud was not made to procure a visa, admission, or some other benefit under the INA;
- There was no false representation;
- The false representation was not willful;
- The false representation was not material;
- The false representation was not made to a U.S. government official;
- The person did not intend to deceive; or
- The U.S. government official did not believe or did not act upon the false representation.

If the officer's finding of inadmissibility is based on evidence that the applicant sought to obtain a benefit under the INA by fraud, then the applicant has the burden of establishing at least one of the following facts to rebut the finding:

- The fraud was not made to procure a visa, admission, or some other benefit under the INA;
- There was no false representation;
- The false representation was not willful;
- The false representation was not material;
- The false representation was not made to a U.S. government official; or
- The person did not intend to deceive.

If the officer determines, after assessing all of the evidence, that the applicant has established at least one of the above facts, then the applicant has successfully rebutted the inadmissibility finding. The applicant has therefore met the burden of proving that he or she is not inadmissible on account of fraud or willful misrepresentation.

If the officer determines, after assessing all of the evidence, that the applicant has established none of these facts, then the applicant has not successfully rebutted the inadmissibility finding. The applicant is therefore inadmissible because he or she has not satisfied the burden of proof.[7] See Matter of Rivero-Diaz, 12 I&N Dec. 475 (BIA 1967). See Matter of M-, 3 I&N Dec. 777 (BIA 1949).

Finally, if the officer finds that the evidence for and against a finding of fraud or willful misrepresentation is of equal weight, then the applicant is inadmissible due to failure to meet the burden of proof. As long as there is a reasonable evidentiary basis to conclude that a person is inadmissible for fraud or willful misrepresentation, and the applicant has not overcome that reasonable basis with evidence, the officer should find the applicant inadmissible.

3. The U.S Department of State's 30/60 Day Rule

The U.S. Department of State (DOS) has developed a 30/60-day rule to assist consular officers in evaluating misrepresentation in cases involving a person who was in the United States and whose conduct is or was inconsistent with representations made to the consular officer concerning his or her intentions at the time of the visa application.[8] For more information on the 30/60 Day Rule, refer to the Foreign Affairs Manual (FAM). See 9 FAM 40.63, Note 4.7, Interpretation of the Term "Misrepresentation," Applying the 30/60 Day Rule.

An officer should keep in mind that the 30/60 day rule is not a "rule" in the sense of a binding principle of decision. The rule is simply an analytical tool that may be helpful in resolving in a particular case whether a person's actions support of finding of fraud or misrepresentation. Officers must not use Foreign Affairs Manual (FAM) guidance in a denial.

B. Procuring a Benefit under the INA

1. General

In order to be found inadmissible for fraud or willful misrepresentation, a person must seek to procure, have sought to procure, or have procured one of the following:

- An immigrant or nonimmigrant visa;
- Other documentation;
- Admission into the United States; or

- Other benefit provided under the INA.

The fraud or willful misrepresentation must have been made to an official of the U.S. government, generally an immigration or consular officer.[9] See Matter of Y-G-, 20 I&N Dec. 794 (BIA 1994). See Matter of D-L- & A-M-, 20 I&N Dec. 409 (BIA 1991). See Matter of L-L-, 9 I&N Dec. 324 (BIA 1961).

2. Other Documentation

"Other documentation" refers to documents required when a person applies for admission to the United States. This includes, but is not limited to:

- Re-entry permits;
- Refugee travel documents;
- Border crossing cards; and
- U.S. passports.

Documents evidencing extension of stay are not considered entry documents.[10] See Matter of M-y R-, 6 I&N Dec. 315 (BIA 1954). See 9 FAM 40.63, Note 9.1, Interpretation of the Terms "Other Documentation" or "Other Benefit," Other Documentation. Similarly, documents such as petitions and labor certification forms are documents that are presented in support of a visa application or applications for status changes. They are not, by themselves, entry documents and therefore, they are also not considered "other documentation."

However, if such documents are used in support of obtaining another benefit provided under the INA, they may be relevant to a finding of willful misrepresentation or fraud.

3. Other Benefits Provided under the INA

Any "other benefit" refers to an immigration benefit or entitlement provided for by the INA. This includes, but is not limited to:

- Requests for extension of nonimmigrant stay;[11] See 8 CFR 214.1.
- Change of nonimmigrant status;[12] See INA 248. See 8 CFR 248.
- Permission to re-enter the United States;

- Waiver of the 2-year foreign residency requirement;[13] See INA 212(e).
- Employment authorization;[14] See INA 274A. See 8 CFR 274a.12.
- Parole;[15] See INA 212(d)(5). See 8 CFR 212.5.
- Voluntary departure;[16] See INA 240B. See 8 CFR 240.25 and 8 CFR 1240.26.
- Adjustment of status;[17] See INA 245. and
- Requests for stay of deportation.[18] See 9 FAM 40.63, Note 9.2, Interpretation of the Terms "Other Documentation" or "Other Benefit," Other Benefit.

C. False Representation

1. General

False representation, or usually called "misrepresentation," is an assertion or manifestation that is not in accordance with the true facts. A person may make a false representation in oral interviews, or written applications, or by submitting evidence containing false information.[19] See General Counsel Opinion 91-39. See 9 FAM 40.63, Note 4, Interpretation of the Term "Misrepresentation."

2. False Representation Must be Connected to Benefit

A person is only inadmissible if he or she makes a misrepresentation in connection with his or her own immigration benefit. If a person misrepresents a material fact in connection with another's immigration benefit, then the person is not inadmissible for fraud or willful misrepresentation.[20] See Matter of M-R-, 6 I&N Dec. 259 (BIA 1954) (the procurement of documentation for the applicant's two children to facilitate their entry into the United States did not render the applicant himself inadmissible under former INA 212(a)(19)). However, fraud or willful misrepresentation made in connection with another's immigration benefit may make the person inadmissible for alien smuggling.[21] See INA 212(a)(6)(E).

There may be situations in which a representative or a parent makes a misrepresentation on behalf of the applicant. The question then becomes whether the applicant himself or herself willfully allowed such an action.

D. Willfulness

The person is only inadmissible for fraud or willful misrepresentation if the false representation was willfully made.

1. Definition of Willfulness

The term "willfully" should be interpreted as "knowingly" as distinguished from accidentally, inadvertently, or in a good faith belief that the factual claims are true.[22] See Matter of Healy and Goodchild, 17 I&N Dec. 22 (BIA 1979). To find the element of willfulness, the officer must determine that the person had knowledge of the falsity of the misrepresentation, and therefore knowingly, intentionally, and deliberately presented false material facts.[23] See Matter of G-G-, 7 I&N Dec. 161 (BIA 1956), superseded in part by Matter of Kai Hing Hui, 15 I&N Dec. 288 (BIA 1975). See Matter of Tijam, 22 I&N Dec. 408, 425 (BIA 1998) (Rosenberg, J., concurring and dissenting).

When determining the "willfulness" of a person's false representation, the officer should consider the circumstances that existed at the time the benefit was issued.[24] See Matter of Healy and Goodchild, 17 I&N Dec. 22, 28 (BIA 1979) (finding that the applicant had not willfully misrepresented since he could have reasonably believed his actions were correct under the law at the time).

USCIS petitions and applications are signed "under penalty of perjury." The person may also be interviewed under oath. By signing or by making statements under oath, the person therefore asserts his or her claims are truthful. If the evidence in the record subsequently shows that the claims are factually unsupported, that may indicate the applicant willfully misrepresented his or her claim(s).

2. Silence or Failure to Volunteer Information

A person's silence or failure to volunteer information does not, in and of itself, constitute fraud or willful misrepresentation because silence itself does not establish a conscious concealment.[25] See Matter of G-, 6 I&N Dec. 9 (BIA 1953), superseded on other grounds by Matter of F-M-, 7 I&N Dec. 420 (BIA 1957). See 9 FAM 40.63, Note 4.2, Interpretation of the Term "Misrepresentation," Differentiation Between Misrepresentation and Failure to Volunteer Information. Silence or omission can, however, lead to a finding of fraud or willful misrepresentation if it is clear from the evidence that the person consciously concealed information.

If the evidence shows that the person was reasonably aware of the nature of the information sought and knowingly, intentionally, and deliberately concealed information from the officer, then the officer should find that the applicant consciously concealed and willfully misrepresented a material fact.

Example:

An applicant is legally married but has lived apart from his spouse for 20 years. During that time apart, the applicant lived with another person for 10 years as domestic partners until the other person died. A few years later, having been in touch with his legal spouse by letter, the applicant states in his application for admission to the United States that he is coming to join his wife.

Although the applicant did not reveal the complications in his marital status during the past 20 years, the applicant was not specifically asked any questions relating to these facts. As a matter of law, the applicant is still married to the spouse, and there is no evidence that he married the spouse to obtain an immigration benefit. Since the applicant gave

reasonably accurate and correct answers, his failure to disclose his complicated marital situation did not constitute conscious concealment of facts.

Example:

During World War II, a person was captured by Germans while serving in the Russian Army and forced to serve as an armed guard at a Nazi concentration camp. The person later applies for a visa and is questioned about his present and past memberships and affiliations, including any military service. The person discloses that he had served in the Russian army but does not mention his time as a guard at the concentration camp. When pressed for more on his military service, the person continues to present only information on service in the Russian army.

Since the person provided an unreasonably narrow response to a general question, it is likely that the person was fully aware that his time at the concentration camp was pertinent to the response and information sought by the officer. When the person provided only a partial response, he concealed information knowingly, intentionally, and deliberately. The person's conscious concealment of facts, therefore, constitutes willful misrepresentation.[26] See Fedorenko v. United States, 449 U.S. 490 (1981).

3. Refusal to Respond to Questions

A person's refusal to answer a question does not necessarily mean that he or she willfully made a false representation. However, refusal to answer a question during an admissibility determination could result in the officer finding that the applicant failed to establish admissibility.[27] It is the applicant's burden to establish that he or she is not inadmissible. See INA 291. See Matter of Arthur, 16 I&N Dec. 558 (BIA 1978).

4. Misrepresentation Made by a Person's Agent

If the false representation is made by an applicant's attorney or agent, the applicant will be held responsible if it is established that the applicant was aware of the action taken by the representative in furtherance of his or her application. This includes oral misrepresentations made at the border by someone assisting a person to enter illegally. Furthermore, a person cannot deny responsibility for any misrepresentation made on the advice of another unless it is established that the person lacked the capacity to exercise judgment.[28] See 9 FAM 40.63, Note 5.2, Interpretation of Term "Willfully," Misrepresentation is Alien's Responsibility. For more information on factors the officer should consider when determining whether a person is capable of exercising judgment and committing intentional acts, see Subsection 5, Misrepresentations by Minors (Under 18) or those who are Mentally Incompetent [8 USCIS-PM J.3(D)(5)].

5. Misrepresentations by Minors (Under 18) or those who are Mentally Incompetent

The INA does not exempt a person from inadmissibility for fraud or willful misrepresentation solely based on age or mental incapacity. The BIA has not yet addressed in any precedent decision whether a minor is shielded from this inadmissibility on account of being a minor.

Both fraud and willful misrepresentation must be intentional acts. There may be cases in which the officer finds that a person, because of mental incompetence or young age, was incapable of independently forming an intent to defraud or misrepresent. In these cases, a person's inability to commit intentional acts precludes a finding of inadmissibility for fraud or willful misrepresentation since the person could not have acted "willfully."

The officer should consider all relevant factors when evaluating fraud or willful misrepresentation including the applicant's:

- Age;
- Level of education;
- Background;
- Mental capacity;
- Level of understanding;
- Ability to appreciate the difference between true and false; and
- Other relevant circumstances.

The fact that a misrepresentation occurred while the person was under 18 years of age, in particular, is not determinative. There is no categorical rule that someone under 18 cannot, as a matter of law, make a willful misrepresentation. A person may be able to claim, however, that, on the basis of the facts of his or her own case, he or she lacked the capacity necessary to form a willful intent to misrepresent a material fact.

If admissibility is an issue in a case, USCIS does not bear the burden of proving that the person is inadmissible. As long as there is at least some evidence that would permit a reasonable person to find an applicant inadmissible, the applicant must establish that the inadmissibility ground does not apply. For this reason, someone who appears to have made a willful misrepresentation of a material fact while under the age of 18 would have to prove his or her lack of capacity.

This burden of proof would also apply to someone who claimed a lack of capacity based on a reason other than age, such as cognitive or other disabilities.

If the evidence, clearly and beyond doubt, shows that the person did not have the capacity to form an intent to deceive, then the misrepresentation could not have been fraudulent. Similarly, if the evidence, clearly and beyond doubt, shows that the person did not have the capacity to know that the information was false, then the misrepresentation could not have been willful.

In these cases, the officer should not find the applicant inadmissible for fraud or willful misrepresentation.

6. Timely Retraction

As a defense to inadmissibility for fraud or willful misrepresentation, a person may show that he or she timely retracted or recanted the false statement. The effect of a timely retraction is that the misrepresentation is eliminated as if it had never happened.[29] See Matter of R-R-, 3 I&N Dec. 823 (BIA 1949). See Matter of M-, 9 I&N Dec. 118 (BIA 1960) (also cited by Matter of R-S-J-, 22 I&N Dec. 863 (BIA 1999)). If a person timely retracts the statement, the person is not inadmissible for fraud or willful misrepresentation.

For the retraction to be effective, it has to be voluntary and timely.[30] "If the witness withdraws the false testimony of his own volition and without delay, the false statement and its withdrawal may be found to constitute one inseparable incident out of which an intention to deceive cannot rightly be drawn." See Llanos-Senarrilos v. United States, 177 F.2d 164, 165 (9th Cir. 1949). See Matter of R-R-, 3 I&N Dec. 823 (BIA 1949). See Matter of Namio, 14 I&N Dec. 412 (BIA 1973), referring to Matter of M-, 9 I&N Dec. 118 (BIA 1960) and Llanos-Senarrilos v. United States, 177 F.2d 164 (9th Cir. 1949). The applicant must correct his or her representation before being exposed by the officer or U.S. government official or before the conclusion of the proceeding during which he or she gave false testimony. A retraction can be voluntary and timely if made in response to an officer's question during which the officer gives the applicant a chance to explain or correct a potential misrepresentation.

Admitting to the false representation after USCIS has challenged the veracity of the claim is not a timely retraction.[31] See Matter of Namio, 14 I&N Dec. 412 (BIA 1973). For example, an applicant's recantation of the false testimony is neither voluntary nor timely if made a year later and only after it becomes apparent that the disclosure of the falsity of the statements is imminent.[32] See Matter of Namio, 14 I&N Dec. 412 (BIA 1973). A retraction or recantation is only timely if it is made in the same proceeding in which the person gives the false testimony or misrepresentation.[33] See Llanos-Senarrilos v. United States, 177 F.2d 164, 165 (9th Cir. 1949).

E. Materiality

1. Definition of Materiality

A false representation only renders a person inadmissible if it is material. A "material" misrepresentation is a false representation concerning a fact that is relevant to the person's eligibility for an immigration benefit.[34] Officers may consult with field office leadership and Office of Chief Counsel for further assistance as needed to determine whether an applicant's misrepresentation is material.

2. Test to Determine Materiality

The U.S. Supreme Court has developed a test to determine whether a misrepresentation is material: A concealment or a misrepresentation is material if it has a natural tendency to influence or was capable of influencing the decisions of the decision-making body.[35] See Kungys v. United States, 485 U.S. 759, 770 (1988) (proceeding to revoke a person's naturalization). The misrepresentation is only material if it led to the person gaining some advantage or benefit to which he or she may not have been entitled under the true facts.

A misrepresentation has a natural tendency to influence the officer's decision to grant the immigration benefit if:

- The person would be inadmissible on the true facts;[36] See Fedorenko v. United States, 449 U.S. 490 (1981) (visa applicant who failed to disclose that he had been an armed guard at a concentration camp made a false statement that was material and is therefore inadmissible because disclosure of true facts would have made applicant ineligible for a visa). or

- The misrepresentation tends to cut off a line of inquiry, which is relevant to the applicant's eligibility and which might have resulted in a proper determination that he or she is inadmissible.[37] See Matter of S- and B-C-, 9 I&N Dec. 436, 447-49 (A.G. 1961), accord. Matter of Bosuego, 17 I&N Dec. 125 (BIA 1980). See Matter of Ng, 17 I&N Dec. 536 (BIA 1980). See Said v. Gonzales, 488 F.3d 668 (5th Cir. 2007) (though the court never reaches the issue, it is discussed).

The table below provides step-by-step guidelines to assist officers to determine whether a misrepresentation is material.

Guidelines for Determining whether Misrepresentation is Material		
Step	**If Yes, then…**	**If No, then…**
Step 1: Consider whether the evidence in the record supports a finding that the applicant is (or was) inadmissible on the true facts.	**Misrepresentation is Material**	*Proceed to Step 2*
Step 2: Consider whether misrepresentation tended to shut off a line of inquiry, which was relevant to the applicant's eligibility.	*Proceed to Step 3*	**Misrepresentation is NOT Material**
Step 3: If a relevant line of inquiry had been cut off, ask whether that inquiry might have resulted in a determination of ineligibility. (The applicant has the burden to show that it would not have resulted in ineligibility.)	**Misrepresentation is Material**	**Misrepresentation is NOT Material**

3. Harmless Misrepresentation

A misrepresentation that is not material because it is not relevant to an applicant's eligibility for the benefit is considered a harmless misrepresentation.[38] See Matter of Martinez-Lopez, 10 I&N Dec. 409 (BIA 1964) (submission of a forged job offer in the United States was not material when the applicant was not otherwise inadmissible as a person likely to become a public charge). See Matter of Mazar, 10 I&N Dec. 79 (BIA 1962) (no materiality in the nondisclosure of membership in the Communist Party since the membership was involuntary and would not have resulted in a determination of inadmissibility). An applicant is not inadmissible for making a harmless

misrepresentation even though the applicant misrepresented a fact. However, a harmless misrepresentation may still be taken into account when considering whether a benefit is warranted as a matter of discretion.

4. Misrepresenting Identity

A misrepresentation concerning a person's identity almost always shuts off a line of inquiry because, at the outset, it prevents the adjudicating from scrutinizing a person's eligibility for a benefit.[39] See Matter of S- and B-C-, 9 I&N Dec. 436, 448 (A.G. 1961). However, if the line of inquiry that is shut off would not have resulted in the denial of the benefit, then the misrepresentation is harmless.[40] See Matter of S- and B-C-, 9 I&N Dec. 436, 449 (A.G. 1961). As noted above, a harmless misrepresentation may still be taken into account when considering whether a benefit is warranted as a matter of discretion. The applicant bears the burden of proof to demonstrate that the relevant line of inquiry that was shut off by the misrepresentation of his or her identity was irrelevant to the original eligibility determination.[41] See Matter of S- and B-C-, 9 I&N Dec. 436 (A.G. 1961).

F. Fraud or Willful Misrepresentation Must Be Made to a U.S. Government Official

In addition to the other elements outlined above, the person must have made the fraud or willful misrepresentation to a U.S. government official in order for such act to rise to the level of an inadmissible offense.[42] See Matter of Y-G-, 20 I&N Dec. 794, 796 (BIA 1994). Fraud or willful misrepresentation made to a private person or entity would not make one inadmissible under this ground.[43] See Matter of Y-G-, 20 I&N Dec. 794 (BIA 1994). See Matter of L-L-, 9 I&N Dec. 324 (BIA 1961).

G. Elements Only Applicable to Fraud

Fraud differs from willful misrepresentation in that there are generally two extra elements, in addition to the willful misrepresentation elements listed in Chapter 2(B),[44] See 8 USCIS-PM J.2(B). necessary for a fraud finding:

- The willful misrepresentation was made with the intent to deceive a U.S. government official authorized to act upon the request (generally an immigration or consular officer); and
- The U.S. government official believed and acted upon the willful misrepresentation by granting the immigration benefit.[45] See Matter of G-G, 7 I&N Dec. 161 (BIA 1956). See Matter of Kai Hing Hui, 15 I&N Dec. 288 (BIA 1975).

Depending on whether the person successfully procured the immigration benefit, one or both elements are needed to establish inadmissibility based on fraud.

If the person successfully obtained the immigration benefit, the officer needs to establish both elements. If the person was unsuccessful in obtaining the immigration benefit, he or she may still be inadmissible for "seeking to procure" the benefit by fraud. In this case, the officer only needs to establish that the person intended to deceive a U.S. government official for the purpose of obtaining an immigration benefit to which the person was not entitled.[46] For a comparison

of the elements required for a finding of fraud and a finding of willful misrepresentation, see Chapter 2, Overview of Fraud and Willful Misrepresentation, Section D, Comparing Fraud and Willful Misrepresentation [8 USCIS-PM J.2(D)].

As stated previously, the distinction between fraud and willful misrepresentation is not of great practical importance since either fraud or a willful misrepresentation alone is sufficient to establish inadmissibility.

All of the elements necessary for a finding of willful misrepresentation are also needed for a finding of fraud. However, the opposite is not necessarily true: a person inadmissible for willful misrepresentation is not necessarily also inadmissible for fraud.

Therefore, once an officer determines that all the elements of willful misrepresentation are present, the person is inadmissible without any further determination of fraud.

Footnotes

1.

See INA 212(a)(6)(C)(i).

2.

The "reasonable person" standard is drawn from *INS v. Elias-Zacarias,* 502 U.S. 478 (1992) (agency fact-finding must be accepted unless a reasonable fact-finder would necessarily conclude otherwise).

3.

See *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994). See *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991). See *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961).

4.

See INA 291. See *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1978).

5.

See *Matter of D- L- and A- M-*, 20 I&N Dec. 409 (BIA 1991).

6.

See *INS v. Elias-Zacarias,* 502 U.S. 478 (1992).

7.

See *Matter of Rivero-Diaz,* 12 I&N Dec. 475 (BIA 1967). See *Matter of M-,* 3 I&N Dec. 777 (BIA 1949).

8.

For more information on the 30/60 Day Rule, refer to the Foreign Affairs Manual (FAM). See 9 FAM 40.63, Note 4.7, Interpretation of the Term "Misrepresentation," Applying the 30/60 Day Rule.

9.

See *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994). See *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991). See *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961).

10.

See *Matter of M-y R-, 6 I&N Dec. 315 (BIA 1954).* See 9 FAM 40.63, Note 9.1, Interpretation of the Terms "Other Documentation" or "Other Benefit," Other Documentation.

11.

See 8 CFR 214.1.

12.

See INA 248. See 8 CFR 248.

13.

See INA 212(e).

14.

See INA 274A. See 8 CFR 274a.12.

15.

See INA 212(d)(5). See 8 CFR 212.5.

16.

See INA 240B. See 8 CFR 240.25 and 8 CFR 1240.26.

17.

See INA 245.

18.

See 9 FAM 40.63, Note 9.2, Interpretation of the Terms "Other Documentation" or "Other Benefit," Other Benefit.

19.

See General Counsel Opinion 91-39. See 9 FAM 40.63, Note 4, Interpretation of the Term "Misrepresentation."

20.

See *Matter of M-R-*, 6 I&N Dec. 259 (BIA 1954) (the procurement of documentation for the applicant's two children to facilitate their entry into the United States did not render the applicant himself inadmissible under former INA 212(a)(19)).

21.

See INA 212(a)(6)(E).

22.

See *Matter of Healy and Goodchild*, 17 I&N Dec. 22 (BIA 1979).

23.

See *Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956), *superseded in part by Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975). See *Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998) (Rosenberg, J., concurring and dissenting).

24.

See *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979) (finding that the applicant had not willfully misrepresented since he could have reasonably believed his actions were correct under the law at the time).

25.

See *Matter of G-,* 6 I&N Dec. 9 (BIA 1953), superseded on other grounds by *Matter of F-M-,* 7 I&N Dec. 420 (BIA 1957). See 9 FAM 40.63, Note 4.2, Interpretation of the Term "Misrepresentation," Differentiation Between Misrepresentation and Failure to Volunteer Information.

26.

See *Fedorenko v. United States*, 449 U.S. 490 (1981).

27.

It is the applicant's burden to establish that he or she is not inadmissible. See INA 291. See *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1978).

28.

See 9 FAM 40.63, Note 5.2, Interpretation of Term "Willfully," Misrepresentation is Alien's Responsibility. For more information on factors the officer should consider when determining whether a person is capable of exercising judgment and committing intentional acts, see Subs ection 5, Misrepresentations by Minors (Under 18) or those who are Mentally Incompetent [8 USCIS-PM J.3(D)(5)].

29.

See *Matter of R-R-*, 3 I&N Dec. 823 (BIA 1949). See *Matter of M-*, 9 I&N Dec. 118 (BIA 1960) (also cited by *Matter of R-S-J-*, 22 I&N Dec. 863 (BIA 1999)).

30.

"If the witness withdraws the false testimony of his own volition and without delay, the false statement and its withdrawal may be found to constitute one inseparable incident out of which an intention to deceive cannot rightly be drawn." See *Llanos-Senarrilos v. United States*, 177 F.2d 164, 165 (9th Cir. 1949). See *Matter of R-R-*, 3 I&N Dec. 823 (BIA 1949). See *Matter of Namio*, 14 I&N Dec. 412 (BIA 1973), referring to *Matter of M-,* 9 I&N Dec. 118 (BIA 1960) *and Llanos-Senarrilos v. United States*, 177 F.2d 164 (9th Cir. 1949).

31.

See *Matter of Namio*, 14 I&N Dec. 412 (BIA 1973).

32.

See *Matter of Namio*, 14 I&N Dec. 412 (BIA 1973).

33.

See *Llanos-Senarrilos v. United States*, 177 F.2d 164, 165 (9th Cir. 1949).

34.

Officers may consult with field office leadership and Office of Chief Counsel for further assistance as needed to determine whether an applicant's misrepresentation is material.

35.

See *Kungys v. United States*, 485 U.S. 759, 770 (1988) (proceeding to revoke a person's naturalization).

36.

See *Fedorenko v. United States,* 449 U.S. 490 (1981) (visa applicant who failed to disclose that he had been an armed guard at a concentration camp made a false statement that was material and is therefore inadmissible because disclosure of true facts would have made applicant ineligible for a visa).

37.

See *Matter of S- and B-C-*, 9 I&N Dec. 436, 447-49 (A.G. 1961), accord. *Matter of Bosuego*, 17 I&N Dec. 125 (BIA 1980). See *Matter of Ng* , 17 I&N Dec. 536 (BIA 1980). See *Said v. Gonzales,* 488 F.3d 668 (5th Cir. 2007) (though the court never reaches the issue, it is discussed).

38.

See *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1964) (submission of a forged job offer in the United States was not material when the applicant was not otherwise inadmissible as a person likely to become a public charge). See *Matter of Mazar*, 10 I&N Dec. 79 (BIA 1962) (no materiality in the nondisclosure of membership in the Communist Party since the membership was involuntary and would not have resulted in a determination of inadmissibility).

39.

See *Matter of S- and B-C-*, 9 I&N Dec. 436, 448 (A.G. 1961).

40.

See *Matter of S- and B-C-*, 9 I&N Dec. 436, 449 (A.G. 1961). As noted above, a harmless misrepresentation may still be taken into account when considering whether a benefit is warranted as a matter of discretion.

41.

See *Matter of S- and B-C-*, 9 I&N Dec. 436 (A.G. 1961).

42.

See *Matter of Y-G-*, 20 I&N Dec. 794, 796 (BIA 1994).

43.

See *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994). See *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961).

44.

See 8 USCIS-PM J.2(B).

45.

See *Matter of G-G*, 7 I&N Dec. 161 (BIA 1956). See *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975).

46.

For a comparison of the elements required for a finding of fraud and a finding of willful misrepresentation, see Chapter 2, Overview of Fraud and Willful Misrepresentation, Section D, Comparing Fraud and Willful Misrepresentation [8 USCIS-PM J.2(D)].

Volume 9 - Waivers

Part C - Waivers for Health-Related Grounds of Inadmissibility

Chapter 1 - Purpose and Background

A. Purpose

USCIS balances public health interests against family unity and the needs of the applicant in adjudicating waivers of medical inadmissibility. For this reason, one of the terms and conditions imposed on all applicants with the grant of a waiver is to receive treatment so that the medical condition no longer poses a public health risk.

B. Background

A medical examination is generally required for all immigrant visa and some nonimmigrant visa applicants, as well as for refugees, and adjustment of status applicants. The purpose of the medical examination is to determine if an applicant has a medical condition(s) that renders him or her inadmissible to the United States.

Generally, applicants establish their admissibility on medical grounds by submitting a Report of Medical Examination and Vaccination Record (Form I-693), or Medical Examination for Immigrant or Refugee Applicant (1991 TB Technical Instructions) (Form DS-2053) or Medical Examination for Immigrant or Refugee Applicant (2007 TB Technical Instructions) (Form DS-2054), and related worksheets.[1] As of October 1, 2013, panel physicians only use DS-2054.

Civil surgeons or panel physicians complete these documents after the medical examination of the applicant,[2] See INA 212 and INA 232. certifying the presence or absence of physical or mental conditions that may render the applicant inadmissible. Two types of certifications may indicate to USCIS that the applicant may be inadmissible: a "Class A" and a "Class B" condition.

A Class A condition is conclusive evidence that an applicant is inadmissible on health-related grounds. A Class B condition, unlike a Class A condition, does not make an applicant inadmissible on health-related grounds but may lead the officer to conclude that the applicant is inadmissible on other grounds (such as public charge).[3] See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [8 USCIS-PM B] for more information on Class A and B conditions.

Before 1957, no waiver was available to applicants inadmissible on health-related grounds. The Immigration Act of 1957 created the first waiver provision for those afflicted with tuberculosis who had close relatives in the United States.[4] See Pub. L. 85-316, 71 Stat. 639 (Sept. 11, 1957). In addition, the 1965 amendments to the INA authorized the waiver of inadmissibility and admission of certain applicants in this category who had close relatives in the United States.[5] See Pub. L. 89-236, 79 Stat. 911 (Oct. 3, 1965).

The Immigration Act of 1990[6] See Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1990). relaxed the requirements for a familial relationship before a medical waiver could be granted. In addition, over time, other provisions were added to the 1952 Immigration Act that allowed for other waivers of medical grounds depending on the immigration benefit sought.

C. Scope

If an applicant is inadmissible because of a medical condition,[7] Under INA 212(a)(1)(A), four categories of medical conditions may render an applicant inadmissible: (1) Communicable disease of public health significance (2) For immigrants, failure to show proof of required vaccinations(3) Physical or mental disorder with associated harmful behavior(4) Drug abuse or addictionSee Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [8 USCIS-PM B] for more information. he or she may have a waiver available. The availability of a waiver depends on the legal provisions governing the immigration benefit the applicant seeks.

This Part C only addresses the processes used for the medical waiver available to persons seeking an immigrant visa or adjustment of status based on a family- or employment-based petition.[8] Under INA 212(g). All medical grounds of inadmissibility have a corresponding waiver under this section except for inadmissibility based on drug abuse or addiction.[9] See INA 212(g), which specifically waives INA 212(a)(1)(A)(i)-INA 212(a)(1)(A)(iii) but omits reference to INA 212(a)(1)(A)(iv).

Applicants for other immigration benefits categories, such as refugees and asylees seeking adjustment,[10] Under INA 209. Legalization or SAW applicants,[11] Under INA 245A and INA 210. or applicants under other special programs, may have additional or other means to waive grounds of medical inadmissibility, including inadmissibility for drug abuse or addiction.[12] For example, an asylee or a refugee seeking adjustment of status who is found to be a drug abuser or addict may apply for a waiver of inadmissibility under INA 209(c). INA 209(c) waivers are not addressed in this Part.,[13] While these other waivers may be briefly discussed in this chapter, more detailed discussion can be found in the program-specific waiver chapters in this volume.

Many of the processes mentioned in this Part C are also applicable to other medical waivers, such as those obtained by asylees or refugees seeking adjustment of status.

D. Legal Authorities

- INA 212(a)(1) – Health-Related Grounds
- INA 212(g) – Bond and Conditions for Admission of Alien Excludable on Health-Related Grounds
- 8 CFR 212.7 – Waiver of Certain Grounds of Inadmissibility

E. Forms Used When Applying For a Medical Waiver

Applicants for the immigration benefits listed below may apply for a medical waiver by using the following USCIS forms:[14] For further information on waivers other than the medical waiver described in this Part, please see the program-specific waiver chapters in this volume.

Applying for Waiver of Health-Related Ground of Inadmissibility		
Immigration Benefits Category	**Statutory Authority for Waiver**	**Relevant Form**
Adjustment of status or immigrant visa	INA 212(g)	Application for Waiver of Grounds of Inadmissibility (Form I-601) (with the appropriate fee unless waived)
Admission as refugee under INA 207	INA 207(c)(3)	Application by Refugee for Waiver of Grounds of Excludability (Form I-602) (no fee associated)
Refugee or asylee applying for adjustment of status under INA 209	INA 209(c)	
Legalization under INA 245A	INA 245A(d)(2)(B)(i)	Application for Waiver of Grounds of Inadmissibility Under Sections 245A or 210 of the Immigration and Nationality Act (Form I-690) (with the appropriate fee unless waived)
Special Agricultural Workers (SAW) under INA 210	INA 210(c)(2)(B)(i)	
	INA 212(d)(13) and INA	Application for Advance

T and U nonimmigrant visa	212(d)(14)	Permission to Enter as Nonimmigrant (Form I-192) (with the appropriate fee unless waived)
Other nonimmigrant visa	INA 212(d)(3)(A)	

F. Role of Centers for Disease Control and Prevention (CDC)

Any waiver application to overcome a medical ground of inadmissibility (other than lack of a required vaccination) must be sent to the U.S. Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC) for review before USCIS can determine whether to grant or deny the waiver.

CDC's favorable response does not constitute a waiver approval. The purpose of CDC's review is to ensure that

- The civil surgeon or panel physician examined, diagnosed, and classified the applicant according to the Technical Instructions; and
- The applicant (or person assuming the responsibility on behalf of the applicant) has identified a suitable health care provider in the United States who will provide medical care and treatment for the medical condition if a waiver is granted.

CDC's response, however, carries significant weight in determining what terms, conditions, or controls should be placed on the waiver, and whether USCIS should approve the waiver.

Footnotes

1.

As of October 1, 2013, panel physicians only use DS-2054.

2.

See INA 212 and INA 232.

3.

See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [8 USCIS-PM B] for more information on Class A and B conditions.

4.

See Pub. L. 85-316, 71 Stat. 639 (Sept. 11, 1957).

5.

See Pub. L. 89-236, 79 Stat. 911 (Oct. 3, 1965).

6.

See Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1990).

7.

Under INA 212(a)(1)(A), four categories of medical conditions may render an applicant inadmissible:

(1) Communicable disease of public health significance
(2) For immigrants, failure to show proof of required vaccinations
(3) Physical or mental disorder with associated harmful behavior
(4) Drug abuse or addiction

See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [8 USCIS-PM B] for more information.

8.

Under INA 212(g).

9.

See INA 212(g), which specifically waives INA 212(a)(1)(A)(i)-INA 212(a)(1)(A)(iii) but omits reference to INA 212(a)(1)(A)(iv).

10.

Under INA 209.

11.

Under INA 245A and INA 210.

12.

For example, an asylee or a refugee seeking adjustment of status who is found to be a drug abuser or addict may apply for a waiver of inadmissibility under INA 209(c). INA 209(c) waivers are not addressed in this Part.

13.

While these other waivers may be briefly discussed in this chapter, more detailed discussion can be found in the program-specific waiver chapters in this volume.

14.

For further information on waivers other than the medical waiver described in this Part, please see the program-specific waiver chapters in this volume.

Chapter 2 - Waiver of Communicable Disease of Public Health Significance

A. General

The INA authorizes USCIS to exercise discretion in deciding whether to waive inadmissibility based on a communicable disease of public health significance.[1] See INA 212(g)(1) and INA 212(a)(1)(A)(i). INA 212(g)(1) was also amended to include a specific provision for battered immigrants. See section 1505(d) of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. 106-386, 114 Stat. 1464 (October 28, 2000). For more information on the inadmissibility determination based on communicable disease of public health significance, see Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility, Chapter 6, Communicable Diseases of Public Health Significance [8 USCIS-PM B.6]. USCIS may grant this waiver in accordance with such terms, conditions,[2] A condition of granting a waiver for an applicant with a communicable disease of public health significance, such as tuberculosis, is that the applicant must agree to see a doctor immediately upon admission and make arrangements to receive private or public medical care for that disease. This requirement is reflected, for example, in the Application for Waiver of Grounds of Inadmissibility (Form I-601), TB Supplement. and controls, if any, that USCIS considers appropriate after consultation with the Secretary of HHS.[3] See INA 212(g)(1)(B). This

includes the grant of a waiver based on requiring payment of a bond.

Once the officer has verified that the applicant is inadmissible because of a communicable disease of public health significance and requires a waiver,[4] Note that an applicant who has been determined to have a Class A condition involving a communicable disease of public health significance may successfully complete treatment. If, after treatment, the civil surgeon or panel physician certifies that the applicant now has a Class B condition, the applicant is no longer inadmissible and does not need a waiver. the officer must go through the following steps to adjudicate the waiver application:

- Determine whether the applicant meets the eligibility requirements of the waiver;
- Consult with CDC; and
- Determine whether the waiver is warranted as a matter of discretion.

B. Special Note on HIV

As of January 4, 2010, HIV infection is no longer defined as a communicable disease of public health significance according to HHS regulations.[5] See 42 CFR 34.2(b) as amended by 74 FR 56547 (November 2, 2009). Therefore, HIV infection does not make an applicant inadmissible if the immigration benefit is adjudicated on or after January 4, 2010, even if the applicant filed the immigration benefit application before January 4, 2010. Officers should administratively close any HIV waiver application that is filed before January 4, 2010 but adjudicated on or after January 4, 2010.

C. Waiver Eligibility and Adjudication

1. Qualifying Relationship

To be eligible for the waiver, the applicant must be one of the following:

- The spouse, parent, child, unmarried son or daughter,[6] USCIS interprets the references to "unmarried son or daughter" as embracing both those sons and daughters who qualify as "children" because they are not yet 21 years old and sons and daughters who are over 21, so long as they are not married. or minor unmarried lawfully adopted child[7] USCIS interprets "minor unmarried lawfully adopted child" as a clarifying, not as a restricting, provision. Therefore, an applicant is eligible to apply for this waiver if he or she qualifies as the "child" of a citizen or permanent resident (or a person who has received an immigrant visa) under any provision of INA 101(b)(1). This includes, but is not limited to, both children adopted abroad to be admitted in class IR3 or IH3 and children whose adoption will be finalized in the United States to be admitted in class IR4 or IH4. of:
  - A U.S. citizen,

- A person lawfully admitted for permanent residence, or
- A person who has been issued an immigrant visa.

- Eligible for classification as a self-petitioning spouse or child.[8] Under INA 204(a)(1)(A)(iii) or INA 204(a)(1)(A)(iv) or INA 204(a)(1)(B)(ii) or INA 204(a)(1)(B)(iii), including derivative children of the person. This includes self-petitioning spouses and children eligible for classification under INA 204(a)(1)(A)(v) or INA 204(a)(1)(B)(iv).
- The fiancé(e) of a U.S. citizen or the fiancé(e)'s child.

The officer should verify that the existence of the appropriate relationship is well supported in the applicant's file.

2. Documentation for CDC's Review

As stated above, USCIS can only grant this waiver after it has consulted with CDC. However, CDC's review of necessary documents does not constitute a waiver approval. CDC may recommend that USCIS should make the waiver subject to appropriate terms, conditions, or controls.

To obtain CDC's review of a waiver application, the officer should forward the following documents to CDC:

- A cover letter that identifies the USCIS office requesting the review;
- A copy of the waiver application (including the TB supplement,[9] TB is currently the only communicable disease of public health significance that requires a supplement. if applicable) that contains all the required signatures, but not the supporting documentation that is not medically relevant;[10] For instance, evidence of the family relationship.
- A copy of the medical examination documentation;[11] Report of Medical Examination and Vaccination Record (Form I-693); Medical Examination for Immigrant or Refugee Applicant (1991 TB Technical Instructions) (Form DS-2053) or the Medical Examination for Immigrant or Refugee Applicant (2007 TB Technical Instructions) (Form DS-2054), and related worksheets.
- Copies of all other medical reports, laboratory results, and evaluations regardless of whether they are connected to the communicable disease of public health significance.

Officers should only send copies, not originals, because CDC will retain the documents.

3. Sending Documents to CDC

The documents should be mailed to the following address:

Centers for Disease Control and Prevention (CDC)

Division of Global Migration and Quarantine

1600 Clifton Road, Mailstop E 03

Atlanta, GA 30333

Attention: Quality Assessment Program (QAP)/Waivers

If the officer determines that a waiver case warrants expeditious review by CDC, the case may be faxed to (404) 639-4441 or emailed to cdcqap@cdc.gov, **Attention: Quality Assessment Program (QAP)/Waivers, Urgent**. If sent via email, the documents should be sent in password protected file(s). If sent via fax, the fax cover sheet should request that the case be reviewed expeditiously and that CDC's response be sent via fax. The officer should also email CDC at cdcqap@cdc.gov, advising that an expedited request was sent via fax.

4. CDC Response

Once CDC receives and reviews the documents, CDC will forward a response letter with results of the review to the requesting USCIS office. CDC will not return any of the documents provided by USCIS; CDC will only send its recommendation in the response to the requesting USCIS office.

CDC's usual processing time for review and response to the requesting USCIS office is approximately 4 weeks. If CDC's response appears delayed, the officer may contact CDC at cdcqap@cdc.gov to obtain a status update.

Upon receipt, the officer should review CDC's response letter to determine next steps.

If CDC's response letter indicates that CDC was satisfied with the initial documentation and that it does not require additional information, then the officer may proceed to the next step of the waiver adjudication. If CDC was not satisfied with the documentation, it may request additional information or recommend additional conditions to be met before the waiver may be granted. In such a case, the officer should issue a Request for Evidence (RFE) for the applicant to provide the additional information or to demonstrate that he or she made the arrangements required by CDC.

If CDC requests it, the officer will need to submit the information obtained through the RFE to CDC to determine whether the additional information is sufficient. CDC will provide a response letter to the requesting USCIS office advising if the additional information is sufficient.

Once CDC indicates no additional information is needed, the officer may proceed with the next step of the waiver adjudication.

Note: For Class A TB waivers, CDC's response letter will provide a specific recommendation whether CDC supports

the granting of a waiver.

5. Discretion

As is generally the case for waivers, a waiver for communicable diseases of public health significance requires an officer to consider whether the grant of the waiver is warranted as a matter of discretion. Hardship to a qualifying relative is not required for this waiver.[12] See INA 212(g)(1).

CDC's response in support of granting the waiver should ordinarily be sufficient to warrant a favorable exercise of discretion for the grant of the waiver. However, if an applicant declares openly his or her unwillingness to commit to treatment, the waiver may be denied as a matter of discretion.[13] If CDC certifies that an applicant who obtained an INA 212(g) waiver has failed to comply with any terms, conditions, or controls on the waiver, the applicant is subject to removal per INA 237(a)(1)(C)(ii). The U.S. health care provider treating the particular condition should provide a summary of the applicant's initial evaluation to CDC or notify CDC that the applicant has failed to report for care. Generally, no further follow-up is required by the officer. If CDC does not issue a favorable recommendation, the officer generally should not grant the waiver as a matter of discretion.

By statute, it is USCIS's decision whether to make the waiver subject to terms, conditions, or controls. A CDC recommendation concerning terms, conditions, or controls on the granting of the waiver ordinarily carries great persuasive weight.

Once a final decision (approval or denial) is made on the waiver, the officer should inform CDC of the decision. The officer should provide a brief statement indicating the final action and date of the action and forward it to CDC by any of the following methods:

Mail:

Centers for Disease Control and Prevention (CDC)

Division of Global Migration and Quarantine

1600 Clifton Road, Mailstop E 03

Atlanta, GA 30333

Attention: Quality Assessment Program (QAP)/Waivers

Fax: (404) 639-4441

Email: cdcqap@cdc.gov

D. Step-by-Step Checklist

Step-by-Step Checklist	
Step 1	Check for qualifying relationship to determine whether the applicant is eligible for the waiver.
Step 2	Gather the necessary documentation for CDC review.
Step 3	Send documentation to CDC.
Step 4	Review CDC response.
Step 5	Analyze whether the waiver should be granted as a matter of discretion.
Step 6	Inform CDC of waiver decision.

Footnotes

1.

See INA 212(g)(1) and INA 212(a)(1)(A)(i). INA 212(g)(1) was also amended to include a specific provision for battered immigrants. See section 1505(d) of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. 106-386, 114 Stat. 1464 (October 28, 2000). For more information on the inadmissibility determination based on communicable disease of public health significance, see Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility, Chapter 6, Communicable Diseases of Public Health Significance [8 USCIS-PM B.6].

2.

A condition of granting a waiver for an applicant with a communicable disease of public health significance, such as tuberculosis, is that the applicant must agree to see a doctor immediately upon admission and make arrangements to receive private or public medical care for that disease. This requirement is reflected, for example, in the Application for Waiver of Grounds of Inadmissibility (Form I-601), TB Supplement.

3.

See INA 212(g)(1)(B).

4.

Note that an applicant who has been determined to have a Class A condition involving a communicable disease of public health significance may successfully complete treatment. If, after treatment, the civil surgeon or panel physician certifies that the applicant now has a Class B condition, the applicant is no longer inadmissible and does not need a waiver.

5.

See 42 CFR 34.2(b) as amended by 74 FR 56547 (November 2, 2009).

6.

USCIS interprets the references to “unmarried son or daughter” as embracing both those sons and daughters who qualify as “children” because they are not yet 21 years old and sons and daughters who are over 21, so long as they are not married.

7.

USCIS interprets “minor unmarried lawfully adopted child” as a clarifying, not as a restricting, provision. Therefore, an applicant is eligible to apply for this waiver if he or she qualifies as the “child” of a citizen or permanent resident (or a person who has received an immigrant

visa) under any provision of INA 101(b)(1). This includes, but is not limited to, both children adopted abroad to be admitted in class IR3 or IH3 and children whose adoption will be finalized in the United States to be admitted in class IR4 or IH4.

8.

Under INA 204(a)(1)(A)(iii) or INA 204(a)(1)(A)(iv) or INA 204(a)(1)(B)(ii) or INA 204(a)(1)(B)(iii), including derivative children of the person. This includes self-petitioning spouses and children eligible for classification under INA 204(a)(1)(A)(v) or INA 204(a)(1)(B)(iv).

9.

TB is currently the only communicable disease of public health significance that requires a supplement.

10.

For instance, evidence of the family relationship.

11.

Report of Medical Examination and Vaccination Record (Form I-693); Medical Examination for Immigrant or Refugee Applicant (1991 TB Technical Instructions) (Form DS-2053) or the Medical Examination for Immigrant or Refugee Applicant (2007 TB Technical Instructions) (Form DS-2054), and related worksheets.

12.

See INA 212(g)(1).

13.

If CDC certifies that an applicant who obtained an INA 212(g) waiver has failed to comply with any terms, conditions, or controls on the waiver, the applicant is subject to removal per INA 237(a)(1)(C)(ii). The U.S. health care provider treating the particular condition should provide a summary of the applicant's initial evaluation to CDC or notify CDC that the applicant has failed to report for care. Generally, no further follow-up is required by the officer.

Chapter 3 - Waiver of Immigrant Vaccination Requirement

A. General

An applicant seeking an immigrant visa at a U.S. Consulate or an applicant seeking adjustment of status in the United States who is found inadmissible for not being vaccinated[1] See INA 212(a)(1)(A)(ii). may be eligible for the following waivers:

- The applicant has, by the date of the decision on the visa or adjustment application, received vaccination against the vaccine-preventable disease(s) for which he or she had previously failed to present documentation;[2] See INA 212(g)(2)(A).

- The civil surgeon or panel physician certifies that such vaccination would not be medically appropriate;[3] See INA 212(g)(2)(B). or

- The requirement of such a vaccination would be contrary to the applicant's religious beliefs or moral convictions.[4] See INA 212(g)(2)(C).

Each of these waivers has its own requirements.[5] These waivers are described in more detail in Section C, Blanket Waiver for Missing Vaccination Documentation [9 USCIS-PM C.3(C)]; Section D, Blanket Waiver if Vaccine is Not Medically Appropriate [9 USCIS-PM C.3(D)]; and Section E, Waiver due to Religious Belief or Moral Conviction [9 USCIS-PM C.3(E)]. Unlike some other waivers, no qualifying relative is required for the applicant to be eligible for a waiver of the immigrant vaccination requirement.

The first two waivers are often referred to as "blanket waivers." USCIS grants blanket waivers if a health professional indicates that an applicant has received the required vaccinations or is unable to receive them for medical reasons. If USCIS grants blanket waivers, the applicant does not have to file a form or pay a fee.

The waiver on account of religious or moral objection must be filed on the appropriate form and accompanied by the correct fee.

B. Use of Panel Physician's or Civil Surgeon's Report

The determination whether an applicant is inadmissible for lack of having complied with the vaccination requirement is made by reviewing the panel physician's or civil surgeon's vaccination assessment in the medical examination report.[6] See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [8 USCIS-PM B] for more information on the admissibility determination.

C. Blanket Waiver for Missing Vaccination Documentation[7] See INA 212(g)(2)(A).

Applicants who received the vaccinations for which documents were missing when they initially applied for adjustment of status or for an immigrant visa may be given a blanket waiver.

A streamlined procedure applies for this waiver; no form is needed. If a required vaccine is lacking, the officer should issue a Request for Evidence (RFE). The RFE should instruct the applicant to return to the civil surgeon for corrective action that demonstrates the applicant has received the required vaccine(s).

If the RFE response demonstrates that the missing vaccine(s) was received, the officer will deem the waiver granted. No annotation is needed on either the medical exam form, or any related form or worksheet.

D. Blanket Waiver if Vaccine is Not Medically Appropriate[8] See INA 212(g)(2)(B).

1. Situations Specified in the Law[9] See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility, Chapter 9, Vaccination Requirement [8 USCIS-PM B.9].

If the civil surgeon or the panel physician certifies that a vaccine is not medically appropriate for one or more of the following reasons, the officer may grant a blanket waiver (without requesting a form and fee):

- The vaccine is not age appropriate;

- The vaccine is contraindicated;
- There is an insufficient time interval to complete the vaccination series; or
- It is not the flu season, or the vaccine for the specific flu strain is no longer available.

Once the civil surgeon or panel physician annotates that the vaccine(s) is not medically appropriate, no further annotation is needed and the officer may proceed with granting the waiver. The civil surgeon's or panel physician's annotation on the vaccination assessment sufficiently documents that the requirements for the waiver have been met; the officer does not need to make any further annotation on the vaccination report.

2. Nationwide Vaccination Shortage[10] **See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility, Chapter 9, Vaccination Requirement [8 USCIS-PM B.9] for more information on blanket waivers based on a nationwide vaccination shortage.**

USCIS will grant a blanket waiver in the case of a vaccination shortage only if CDC recommends that USCIS should do so, and USCIS has published the appropriate guidance on its website. CDC will only make such a recommendation to USCIS after verifying that there is indeed a nationwide vaccination shortage and issuing the appropriate statement on its website for civil surgeons. In turn, USCIS will issue the appropriate statement on its website.

The term "nationwide vaccine shortage" does not apply to the medical examination conducted by a panel physician overseas. If a vaccine is not available in the applicant's country, the panel physician will annotate the vaccination assessment with the term "not routinely available." If an officer encounters this annotation, the officer may grant a blanket waiver based on this annotation alone.

E. Waiver due to Religious Belief or Moral Conviction[11] See INA 212(g)(2)(C).

1. General

USCIS may grant this waiver when the applicant establishes that compliance with the vaccination requirements would be contrary to his or her religious beliefs or moral convictions. Unlike other waivers of medical grounds of inadmissibility, there is no requirement that CDC review this waiver.

If, upon review of the medical documentation, the officer finds that the applicant is missing a vaccine and a blanket waiver is not available, the officer should ask the applicant why the vaccine is missing. The officer may request clarification during an interview or by sending an RFE.

If the applicant indicates that he or she does not oppose vaccinations based on religious beliefs or moral convictions, the applicant may be inadmissible if he or she refuses to obtain the missing vaccine(s). The officer should issue an RFE if the applicant is willing to obtain the vaccine.

If the applicant indicates that he or she opposes vaccinations, the officer should inform the applicant of the possibility

of the waiver. The officer should explain the basic waiver requirements for a religious belief or moral conviction waiver, as outlined below. The officer should, at that time, issue an RFE.[12] An officer should only issue one RFE, requesting all the necessary information, including the request for the waiver application. for the waiver application.

Upon receipt of the waiver documentation, the officer should proceed with the adjudication of the waiver.

2. Requirements

With the adjudication of this waiver, USCIS has always taken particular caution to avoid any perceived infringement on personal beliefs and First Amendment rights to free speech and religion. To best protect the public health, USCIS, in consultation with CDC, has established the following three requirements that an applicant (or, if the applicant is a child, the applicant's parents) has to demonstrate through documentary evidence:

The applicant must be opposed to all vaccinations in any form.[13] *The requirement that the religious or moral objection must apply to all vaccines has been in effect since 1997. The former INS created this policy in light of principles developed regarding conscientious objection to the military draft and challenges to State-mandated vaccinations for public school students.*

The applicant has to demonstrate that he or she opposes vaccinations in all forms; the applicant cannot "pick and choose" between the vaccinations. The fact that the applicant has received certain vaccinations but not others is not automatic grounds for the denial of a waiver. Instead, the officer should consider the reasons provided for having received those vaccines.

For example, the applicant's religious beliefs or moral convictions may have changed substantially since the date the particular vaccinations were administered, or the applicant is a child who may have already received certain vaccinations under the routine practices of an orphanage. These examples do not limit the officer's authority to consider all credible circumstances and accompanying evidence.

The objection must be based on religious beliefs or moral convictions.

This second requirement should be handled with sensitivity. On one hand, the applicant's religious beliefs must be balanced against the benefit to society as a whole. On the other hand, the officer should be mindful that vaccinations offend certain persons' religious beliefs.

The religious belief or moral conviction must be sincere.

To protect only those beliefs that are held as a matter of conscience, the applicant must demonstrate that he or she holds the belief sincerely, and in subjective good faith of an adherent. Even if these beliefs accurately reflect the applicant's ultimate conclusions about vaccinations, they must stem from religious or moral convictions, and must not have been framed in terms of a particular belief so as to gain the legal remedy desired, such as this waiver.

While an applicant may attribute his or her opposition to a particular religious belief or moral conviction that is inherently opposed to vaccinations, the focus of the waiver adjudication should be on whether that claimed belief or

moral conviction is truly held, that is, whether it is applied consistently in the applicant's life.

The applicant does not need to be a member of a recognized religion or attend a specific house of worship. Note that the plain language of the statute refers to religious beliefs or moral convictions, not religious or moral establishments.

It is necessary to distinguish between strong religious beliefs or moral convictions and mere preference. Religious beliefs or moral convictions are generally defined by their ability to cause an adherent to categorically disregard self-interest in favor of religious or moral tenets. The applicant has the burden of establishing a strong objection to vaccinations that is based on religious beliefs or moral convictions, as opposed to a mere preference against vaccinations.

3. Evidence

The applicant's objection to the vaccination requirement on account of religious belief or moral conviction may be established through the applicant's sworn statement. In this statement, the applicant should state the exact nature of those religious beliefs or moral convictions and establish how such beliefs would be violated or compromised by complying with the vaccination requirements.

Additional corroborating evidence supporting the background for the religious belief or moral conviction, if available and credible, should also be submitted by the applicant and considered by the officer. For example, regular participation in a congregation can be established by submitting affidavits from other members in the congregation, or evidence of regular volunteer work.

The officer should consider all evidence submitted by the applicant.

4. Discretion

As is generally the case for waivers, a waiver of the vaccination requirement requires an officer to consider whether the grant of the waiver is warranted as a matter of discretion.

A favorable exercise of discretion is generally warranted if the applicant establishes that he or she objects to the vaccination requirement on account of religious beliefs or moral convictions.

F. Step-by-Step Checklist

A blanket waiver may be available to the applicant. The officer should check whether the applicant is eligible for a blanket waiver before proceeding to this checklist.

Adjudication Vaccination Requirement Waiver

Based on Religious Beliefs or Moral Convictions		
Step	**If YES …**	**If NO …**
Step 1: Review the evidence for any indication that the applicant opposes the vaccination requirement based on religious beliefs or moral convictions.	Explain (during the interview or through an RFE) the waiver requirements and request that the applicant file a waiver, if he or she has not already done so. Proceed to Step 3.	RFE or interview to ascertain reasons why vaccines were not given. Proceed to Step 2A.
Step 2A: Did the applicant oppose the vaccines?	Explain to the applicant (at interview or through RFE) the waiver requirements and request that the applicant file a waiver if not already done so. Proceed to Step 3.	Proceed to Step 2B.
Step 2B: Is the applicant willing to obtain the missing vaccine?	Issue an RFE for corrective action of the vaccination assessment. Upon receipt of response to RFE, determine whether the vaccine requirement has been met. If the applicant is still missing vaccines, and no blanket waiver is available, begin at Step 1 again.	Applicant is inadmissible based on INA 212(a)(1)(A)(ii) (irrespective of the grant of any blanket waivers).
Step 3: Review the waiver application to determine whether the applicant opposes the vaccination requirement in any form.	Proceed to Step 4.	The waiver should be denied and the applicant is inadmissible based on INA 212(a)(1)(A)(ii) (irrespective of the grant of any blanket waivers).
Step 4: Review the waiver application to determine whether the applicant opposes the vaccination requirement on account of religious belief or moral conviction.	Proceed to Step 5.	The waiver should be denied and the applicant is inadmissible based on INA 212(a)(1)(A)(ii) (irrespective of the grant of any blanket waivers).
Step 5: Analyze whether the waiver application reflects that the applicant's belief is sincere.	Proceed to Step 6.	The waiver should be denied and the applicant is inadmissible based on INA 212(a)(1)(A)(ii) (irrespective of the grant of any blanket waivers).
Step 6: Analyze whether the waiver should be		

granted as a matter of discretion; ordinarily, the finding that the applicant holds sincere religious or moral objections should be sufficient for a grant of the waiver.	Grant the waiver.	The waiver should be denied and the applicant is inadmissible based on INA 212(a)(1)(A)(ii) (irrespective of the grant of any blanket waivers).

Footnotes

1.

See INA 212(a)(1)(A)(ii).

2.

See INA 212(g)(2)(A).

3.

See INA 212(g)(2)(B).

4.

See INA 212(g)(2)(C).

5.

These waivers are described in more detail in Section C, Blanket Waiver for Missing Vaccination Documentation [9 USCIS-PM C.3(C)]; Section D, Blanket Waiver if Vaccine is Not Medically Appropriate [9 USCIS-PM C.3(D)]; and Section E, Waiver due to Religious Belief or Moral Conviction [9 USCIS-PM C.3(E)].

6.

See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [8 USCIS-PM B] for more information on the admissibility determination.

7.

See INA 212(g)(2)(A).

8.

See INA 212(g)(2)(B).

9.

See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility, Chapter 9, Vaccination Requirement [8 USCIS-PM B.9].

10.

See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility, Chapter 9, Vaccination Requirement [8 USCIS-PM B.9] for more information on blanket waivers based on a nationwide vaccination shortage.

11.

See INA 212(g)(2)(C).

12.

An officer should only issue one RFE, requesting all the necessary information, including the request for the waiver application.

13.

The requirement that the religious or moral objection must apply to all vaccines has been in effect since 1997. The former INS created this policy in light of principles developed regarding conscientious objection to the military draft and challenges to State-mandated vaccinations for public school students.

Chapter 4 - Waiver of Physical or Mental Disorder Accompanied by Harmful Behavior

A. General

If the applicant has a physical or mental disorder and behavior associated with the disorder that poses, may pose, or has posed a threat to the property, safety, or welfare of the applicant or others, the applicant must file a waiver to overcome this ground of inadmissibility.[2] See INA 212(a)(1)(A)(iii). See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [8 USCIS-PM B] for more information on the inadmissibility determination based on physical or mental disorders with associated harmful behavior.

The officer should remember that the physical or mental disorder alone (that is, without associated harmful behavior) or harmful behavior alone (without it being associated with a mental or physical disorder) is not sufficient to find the applicant inadmissible on health-related grounds.

USCIS may grant this discretionary waiver in accordance with such terms, conditions, and controls (if any) that USCIS imposes after consulting with the Secretary of Health and Human Services (HHS).[3] See INA 212(g)(3). A condition could include the payment of a bond.

A common condition of granting a waiver for an applicant with a physical or mental disorder with associated harmful behavior is that the applicant must agree to see a U.S. health care provider immediately upon admission and make arrangements to receive care and treatment.

The officer must determine whether the applicant is eligible for the waiver, consult with CDC, and determine whether the waiver is warranted as a matter of discretion.

B. Waiver Eligibility and Adjudication

1. Qualifying Relationship

Unlike waivers for communicable diseases of public health significance, waivers for physical or mental disorders with associated harmful behaviors do not require a qualifying relationship.

2. Documentation for CDC's Review

As noted above, USCIS can only grant this waiver after it has consulted with CDC. However, CDC's review of the necessary documents does not constitute a waiver approval. CDC may recommend that USCIS should make the

waiver subject to appropriate terms, conditions, or controls.

To obtain CDC's review of the waiver application, the officer should forward the following documents to CDC:

- A cover letter that identifies the USCIS office requesting the review;
- A copy of the waiver application that contains all the required signatures, but not the supporting documentation that is not medically relevant;[4] For instance, evidence of the family relationship.
- A copy of the medical examination documentation;[5] Report of Medical Examination and Vaccination Record (Form I-693); Medical Examination for Immigrant or Refugee Applicant (1991 TB Technical Instructions) (Form DS-2053) or the Medical Examination for Immigrant or Refugee Applicant (2007 TB Technical Instructions) (Form DS-2054), and related worksheets.
- A copy of the supporting medical report, if provided, detailing the physical or mental disorder that is associated with the harmful behavior and the physician's recommendation regarding the course and prospects of the treatment;[6] The Instructions to Form I-601 detail the contents that should be included in the doctor's report. and
- Copies of all other medical reports, laboratory results, and evaluations regardless of whether they are connected to the mental or physical disorder with associated harmful behavior.

Officers should only send copies, not originals, because CDC retains the documents.

3. Sending Documents to CDC

The documents should be mailed to the following address:

Centers for Disease Control and Prevention (CDC)

Division of Global Migration and Quarantine

1600 Clifton Road, Mailstop E 03

Atlanta, GA 30333
Attention: Quality Assessment Program (QAP)/Waivers

If the officer determines that a waiver case warrants expeditious review by CDC, the case may be faxed to (404) 639-4441 or emailed to cdcqap@cdc.gov, **Attention: Quality Assessment Program (QAP)/Waivers, Urgent**. If sent via email, the documents should be sent in password protected file(s). If sent via fax, the fax cover sheet should request that the case be reviewed expeditiously and that CDC's response be sent via fax. The officer should also email CDC at cdcqap@cdc.gov, advising that an expedited request was sent via fax.

4. CDC Response

Once the documents are received by CDC, the documents are reviewed by CDC's consultant psychiatrist and results of that review are forwarded to the requesting USCIS office. CDC will not return any of the documents provided by USCIS.

CDC's usual processing time for review and response to the requesting USCIS office is approximately 4 weeks. If CDC's response appears delayed, the officer may contact CDC at cdcqap@cdc.gov to obtain a status update.

Upon receipt, the officer should review CDC's response to determine next steps.

If CDC agrees in its response that the applicant has a Class A condition, CDC will send to the USCIS requesting office CDC 4.422-1 forms, Statements in Support of Application for Waiver of Inadmissibility Under Section 212(a)(1)(A)(iii)(I) or 212(a)(1)(A)(iii)(II) of the Immigration and Nationality Act. The officer must provide the CDC 4.422-1 forms.[7] The CDC 4.422-1 forms are used to identify an appropriate U.S. health care provider for the waiver applicant. The forms are generated for the specific waiver applicant by CDC. Part II must be completed by U.S. health care provider and Part III must be completed by the applicant and/or the applicant's sponsor. to the applicant (or the applicant's sponsor) for completion. Once the CDC forms are completed and returned to USCIS, the officer must return the completed forms to CDC for review and endorsement.

Once CDC receives the completed forms, it reviews them to determine whether the applicant has identified an appropriate U.S. health care provider and that the health care provider has completed the forms. If the appropriate U.S. health care provider has been identified, CDC will endorse the forms and return them to the requesting USCIS office.

If CDC's response indicates that the applicant is "Class B" or "no Class A or B," it is CDC's recommendation that the applicant does not require a waiver for the medical condition.

If CDC's response indicates that additional information is needed in order to complete the review, the officer should issue a Request for Evidence (RFE) for the applicant to provide additional information as specified by CDC. The officer should submit the information obtained through the RFE to CDC. CDC will provide a response to USCIS regarding the additional information. Once CDC indicates that no additional information is needed, the officer may proceed with the adjudication of the waiver.

5. Discretion

As is generally the case for waivers, a waiver for mental or physical conditions with associated harmful behavior requires an officer to consider whether the grant of the waiver is warranted as a matter of discretion.[8] Neither a qualifying relationship nor a finding of hardship is required.

CDC's review and endorsement of the identified U.S. health care provider should ordinarily be sufficient to warrant a favorable exercise of discretion for the grant of the waiver. However, if an applicant declares openly his or her unwillingness to commit to treatment, the waiver may be denied as a matter of discretion.[9] If CDC certifies that a person who obtained an INA 212(g) waiver has failed to comply with any terms, conditions, or controls on the waiver, the person is subject to removal per INA 237(a)(1)(C)(ii). The U.S. health care provider treating the particular condition should provide a summary of the applicant's initial evaluation to CDC as provided on CDC 4.422-1 form. Generally, no further follow-up is required by the officer. If CDC does not favorably endorse the identified U.S. health care provider, the officer should generally not grant the waiver as a matter of discretion.

By statute, it is USCIS's decision whether to make the waiver subject to terms, conditions or controls. A CDC recommendation concerning terms, conditions, or controls on the granting of the waiver ordinarily has great persuasive weight, but is not binding on USCIS.

USCIS should inform CDC of the decision (approval or denial) of the waiver. The officer does so by completing the CDC response letter that CDC provided when it returned the endorsed CDC forms to the officer.

C. Step-by-Step Checklist

Step-by-Step Checklist	
Step 1	Gather the necessary documentation for CDC review.
Step 2	Send documentation to CDC.
Step 3	Review CDC response.
Step 4	If applicable, have CDC 4.422.1 forms completed by the applicant and return them for endorsement by CDC.
Step 5	Analyze whether the waiver should be granted as a matter of discretion.

Footnotes

1.

See INA 212(g)(3).

2.

See INA 212(a)(1)(A)(iii). See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [8 USCIS-PM B] for more information on the inadmissibility determination based on physical or mental disorders with associated harmful behavior.

3.

See INA 212(g)(3).

4.

For instance, evidence of the family relationship.

5.

Report of Medical Examination and Vaccination Record (Form I-693); Medical Examination for Immigrant or Refugee Applicant (1991 TB Technical Instructions) (Form DS-2053) or the Medical Examination for Immigrant or Refugee Applicant (2007 TB Technical Instructions) (Form DS-2054), and related worksheets.

6.

The Instructions to Form I-601 detail the contents that should be included in the doctor's report.

7.

The CDC 4.422-1 forms are used to identify an appropriate U.S. health care provider for the waiver applicant. The forms are generated for the specific waiver applicant by CDC. Part II must be completed by U.S. health care provider and Part III must be completed by the applicant and/or the applicant's sponsor.

8.

Neither a qualifying relationship nor a finding of hardship is required.

9.

If CDC certifies that a person who obtained an INA 212(g) waiver has failed to comply with any terms, conditions, or controls on the waiver, the person is subject to removal per INA 237(a)(1)(C)(ii). The U.S. health care provider treating the particular condition should provide a summary of the applicant's initial evaluation to CDC as provided on CDC 4.422-1 form. Generally, no further follow-up is required by the officer.

Chapter 5 - Waiver of Drug Abuse and Addiction

A. Adjustment of Status and Immigrant Visa Applicants

In general, no waiver is available for adjustment of status and immigrant visa applicants who are found inadmissible because of drug abuse or drug addiction.[1] There are specific statutory provisions that permit USCIS to waive this ground, such as those applying to asylees and refugees seeking adjustment, and Legalization and SAW applicants. These waivers are specific to those classes of immigrants and are outside the scope of this chapter, which focuses only on waivers available under INA 212(g). See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [8 USCIS-PM B] for more information on inadmissibility on account of drug abuse or drug addiction.

B. Remission

Although a waiver is unavailable for medical inadmissibility due to drug abuse or addiction, an applicant may still overcome this inadmissibility if his or her drug abuse or addiction is found to be in remission. After being found inadmissible due to drug abuse or drug addiction, an applicant may undergo a re-examination at a later date at his or her own cost. If, upon re-examination, the civil surgeon or panel physician certifies, per the applicable HHS regulations and CDC's Technical Instructions, that the applicant is in remission, the applicant is no longer inadmissible as a drug abuser or addict.

Footnotes

1.

There are specific statutory provisions that permit USCIS to waive this ground, such as those applying to asylees and refugees seeking adjustment, and Legalization and SAW applicants. These waivers are specific to those classes of immigrants and are outside the scope of this chapter, which focuses only on waivers available under INA 212(g). See Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [8 USCIS-PM B] for more information on inadmissibility on account of drug abuse or drug addiction.

Part G - Waivers for Fraud or Willful Misrepresentation

Chapter 1 - Purpose and Background

A. Purpose

An applicant who is inadmissible for fraud or willful misrepresentation may be eligible for a waiver.[1] See INA 212(a)(6)(C)(i). A waiver of inadmissibility allows an applicant to enter the United States or obtain an immigration benefit despite having been found inadmissible.

The purpose of a waiver for inadmissibility due to fraud or willful misrepresentation[2] See INA 212(a)(6)(C)(i). is to:

- Provide humanitarian relief and promote family unity;
- Ensure the applicant merits favorable discretion based on positive factors outweighing the applicant's fraud or willful misrepresentation and any other negative factors; and
- Allow the applicant to overcome the inadmissibility or removability ground.

B. Background

Prior to September 30, 1996, a waiver was available to applicants who could show either:

- More than 10 years had passed since the date of the fraud or willful misrepresentation; or
- The applicant's U.S. citizen or lawful permanent resident (LPR) parents, spouse, or children would suffer extreme hardship if the applicant was refused admission to the United States.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)[3] See Illegal Immigration Reform and Immigrant Responsibility Act, section 349, Pub. L. 104-208 (September 30, 1996). limited the availability of the waiver and eliminated the possibility of applying for a waiver if more than 10 years have passed.[4] Under INA 212(i). The applicable law for the adjudication of an INA 212(i) waiver is the law in effect on the date of the decision on the waiver application. See Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 563 (BIA 1999). A waiver is now available only to applicants who can demonstrate extreme hardship to:

- A U.S. citizen parent or spouse;
- An LPR parent or spouse;

- A U.S. citizen fiancé(e);[5] A fiancé(e) is not yet the spouse of a U.S. citizen. However, K inadmissibility issues are generally addressed as if the fiancé(e) were seeking admission as an immigrant. See 22 CFR 41.81(d). See Matter of Sesay, 25 I&N Dec. 431 (BIA 2011). As discussed below, the grant of an INA 212(i) waiver to a K nonimmigrant fiancé(e) or fiancé(e) child is conditioned on the fiancé(e)'s actually marrying the citizen petitioner. See 8 CFR 212.7(a)(4)(iii). or

- In the case of a Violence Against Women Act (VAWA) self-petitioner: the VAWA self-petitioner, or his or her U.S. citizen, LPR, or qualified alien parent or child.

IIRIRA made other changes that play a role in the waiver adjudication. IIRIRA modified the inadmissibility provision [6] See INA 212(a)(6)(C). by creating two inadmissibility grounds within the same provision:

- Inadmissibility for fraud or willful misrepresentation;[7] See INA 212(a)(6)(C)(i). and

- Inadmissibility for falsely claiming U.S. citizenship on or after September 30, 1996.[8] See INA 212(a)(6)(C)(ii), as implemented by the Illegal Immigration Reform and Immigrant Responsibility Act, section 344(a), Pub. L. 104-208 (September 30, 1996).

The waiver[9] Under INA 212(i). discussed in this Part G only applies to applicants who are inadmissible for fraud or willful misrepresentation.[10] See INA 212(a)(6)(C)(i).

Inadmissibility based on a false claim to U.S. citizenship made on or after September 30, 1996[11] IIRIRA made September 30, 1996 the effective date of the new INA 212(a)(6)(C)(ii). See Illegal Immigration Reform and Immigrant Responsibility Act, section 344(c), Pub. L. 104-208 (September 30, 1996). cannot be waived through a waiver for fraud or willful misrepresentation.[12] See INA 212(i). Some separate adjustment mechanisms, such as INA 209 (for refugees and asylees) may have more broadly available waivers that could apply to an applicant who is inadmissible under INA 212(a)(6)(C)(ii). For example, INA 209(c) allows the waiver of many grounds of inadmissibility, and does not list INA 212(a)(6)(C)(ii) as a ground that cannot be waived. However, because IIRIRA's changes were not retroactive, applicants who falsely claimed U.S. citizenship before September 30, 1996, are considered inadmissible for fraud or willful misrepresentation and may still seek the fraud or willful misrepresentation waiver.

C. Scope

The availability of a waiver of inadmissibility based on fraud or willful misrepresentation depends on the immigration benefit the applicant is seeking. The guidance in this Policy Manual part only addresses the processes used for the fraud or willful misrepresentation waiver[13] This guidance only addresses the waiver under INA 212(i). The fraud or willful misrepresentation waiver discussed in this guidance is also available to applicants who obtained, or attempted to obtain, a benefit based on falsely claiming U.S. citizenship before September 30, 1996. available to applicants listed in the table below.

Classes of Applicants Eligible to Apply for Waiver under INA 212(i)
Applicants seeking:
• An immigrant visa or adjustment of status based on a family-based petition or as a VAWA self-petitioner
• An immigrant visa or adjustment of status based on an employment-based petition
• A nonimmigrant K visa (fiancé(e)s of U.S. citizens and their accompanying minor children, foreign spouses, and step-children of U.S. citizens)
• A nonimmigrant V visa (spouses and unmarried children under age 21, or step-children of lawful permanent residents)

Applicants seeking other immigration benefits may have different means to waive inadmissibility for fraud or willful misrepresentation.

D. Legal Authorities

- INA 212(a)(6)(C)(i) – Illegal Entrants and Immigration Violators - Misrepresentation[14] This includes false claims to U.S. citizenship made before September 30, 1996.

- INA 212(i) – Admission of Immigrant Excludable for Fraud or Willful Misrepresentation of Material Fact

E. Applicants Who May Have a Waiver Available

The chart below details who may apply for a waiver of inadmissibility based on fraud or willful misrepresentation and the relevant form. This chart includes waivers under INA 212(i) as well as waivers of inadmissibility for fraud or willful misrepresentation under other provisions of the INA.

Available Waiver of Inadmissibility Based on Fraud or Willful Misrepresentation		
Applicant Category		**Relevant Form**

Applicants for adjustment of status, immigrant visas, and K and V nonimmigrant visas seeking waiver under INA 212(i)	**Form I-601**	Application for Waiver of Grounds of Inadmissibility
Temporary Protected Status (TPS) applicants seeking waiver under INA 244(c)	**Form I-601**	Application for Waiver of Grounds of Inadmissibility
Applicants for admission as refugees under INA 207	**Form I-602**	Application by Refugee for Waiver of Grounds of Inadmissibility
Refugees and asylees applying for adjustment of status under INA 209[15] If the officer has sufficient information in the file to determine whether the ground can be waived, then no form is required.	**Form I-602**	Application by Refugee for Waiver of Grounds of Inadmissibility
Legalization applicants under INA 245A	**Form I-690**	Application for Waiver of Grounds of Inadmissibility
Special Agricultural Workers (SAW) under INA 210	**Form I-690**	Application for Waiver of Grounds of Inadmissibility
Nonimmigrants, including T and U[16] T nonimmigrant status is for victims of human trafficking. U nonimmigrant status is for victims of certain criminal activity. visa applicants (but not K and V nonimmigrants)	**Form I-192**	Application for Advance Permission to Enter as Nonimmigrant

1. Immigrants, Adjustment of Status Applicants, and K and V Visa Applicants

USCIS has the discretion to waive inadmissibility based on fraud or willful misrepresentation[17] Under INA 212(i). for:

- A VAWA self-petitioner seeking adjustment of status;
- An immigrant visa applicant who is the spouse, son, or daughter of a U.S. citizen or LPR;

- An adjustment of status applicant who is the spouse, son, or daughter of a U.S. citizen or LPR;

- A V visa applicant who is the spouse, son, or daughter of a U.S. citizen or LPR;

- A K visa applicant who is the fiancé(e) of a U.S. citizen, or the applicant's children; [18] A fiancé(e) is not yet the spouse of the U.S. citizen. K inadmissibility issues, however, are generally addressed as if the fiancé(e) were seeking admission as an immigrant. See 22 CFR 41.81(d). See Matter of Sesay, 25 I&N Dec. 431 (BIA 2011). As discussed below, the grant of an INA 212(i) waiver to a K nonimmigrant fiancé(e) or fiancé(e) child is conditioned on the fiancé(e)'s actually marrying the citizen petitioner. and

- A K-3 or K-4 visa applicant.[19] Foreign spouses or step-children of U.S. citizens.

The instructions to Form I-601 and the USCIS website detail when and where the applicant should file the waiver.[20] For information on the adjudication of these waivers, see Chapter 2, Adjudication of Fraud and Willful Misrepresentation Waivers [9 USCIS-PM G.2].

2. Refugees

An applicant seeking admission as a refugee and who is inadmissible for fraud or willful misrepresentation may seek a waiver.[21] These applicants seek a waiver under INA 207. The waiver may be approved if the grant serves humanitarian purposes, family unity, or other public interests. The waiver is processed overseas as part of the refugee package.

3. Asylee and Refugee Based Adjustment Applicants

At the time of adjustment, asylees and refugees seeking adjustment of status may apply for a waiver of inadmissibility for fraud or willful misrepresentation.[22] These applicants seek a waiver under INA 209. The waiver can be approved if the grant serves humanitarian purposes, family unity, or other public interests. Under current USCIS policy, the officer has the discretion to grant the waiver with or without a waiver application for certain grounds of inadmissibility.

Waiver applications for refugees are usually adjudicated overseas before the applicant is admitted in the refugee classification. However, if the refugee is inadmissible based on actions that occurred prior to or after admission, the refugee can apply for a waiver when seeking adjustment.

4. Legalization and SAW Applicants

Legalization applicants[23] See INA 245A and any legalization-related class settlement agreements. and Special

Agricultural Workers (SAW) applicants[24] See INA 210. may be granted a waiver of inadmissibility based on fraud or willful misrepresentation if the grant serves humanitarian purposes, family unity, or other public interests.[25] For more information on waivers for legalization applicants see INA 245A(d)(2)(B)(i). See 8 CFR 245a.2(k), and 8 CFR 245a.18. For more information on waivers for SAW applicants see INA 210(c)(2)(B)(i).

5. Nonimmigrants, including T and U Nonimmigrant Visa Applicants

An applicant seeking admission as a nonimmigrant and who is inadmissible for fraud or willful misrepresentation may obtain a waiver for advance permission to enter the United States.[26] These applicants seek relief under INA 212(d)(3). This waiver is granted at the discretion of the Secretary of Homeland Security.

If the applicant is seeking a nonimmigrant visa (other than K, T, U, and V) overseas, the applicant must apply for the waiver through a U.S. Consulate. The Customs and Border Protection (CBP) Admissibility Review Office (ARO) adjudicates the waiver.[27] See INA 212(d)(3)(A)(i). If the applicant is not required to have a visa (other than visa waiver applicants) and is applying for the waiver at the U.S. border, the application is filed with CBP.[28] See Customs and Border Protection website for more information.

If the applicant is applying for a T or U nonimmigrant visa, the applicant must always file the waiver application with USCIS.

If the applicant is applying for a K or V nonimmigrant visa, the applicant is generally treated as if he or she is an intending immigrant. Therefore, the applicant must file a waiver application with USCIS if inadmissible for fraud or willful misrepresentation.[29] See INA 212(i). If USCIS grants the waiver, DOS will grant a nonimmigrant waiver[30] See INA 212(d)(3). without CBP involvement.

Footnotes

1.

See INA 212(a)(6)(C)(i).

2.

See INA 212(a)(6)(C)(i).

3.

See Illegal Immigration Reform and Immigrant Responsibility Act, section 349, Pub. L. 104-208 (September 30, 1996).

4.

Under INA 212(i). The applicable law for the adjudication of an INA 212(i) waiver is the law in effect on the date of the decision on the waiver application. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 563 (BIA 1999).

5.

A fiancé(e) is not yet the spouse of a U.S. citizen. However, K inadmissibility issues are generally addressed as if the fiancé(e) were seeking admission as an immigrant. See 22 CFR 41.81(d). See *Matter of Sesay*, 25 I&N Dec. 431 (BIA 2011). As discussed below, the grant of an INA 212(i) waiver to a K nonimmigrant fiancé(e) or fiancé(e) child is conditioned on the fiancé(e)'s actually marrying the citizen petitioner. See 8 CFR 212.7(a)(4)(iii).

6.

See INA 212(a)(6)(C).

7.

See INA 212(a)(6)(C)(i).

8.

See INA 212(a)(6)(C)(ii), as implemented by the Illegal Immigration Reform and Immigrant Responsibility Act, section 344(a), Pub. L. 104-208 (September 30, 1996).

9.

Under INA 212(i).

10.

See INA 212(a)(6)(C)(i).

11.

IIRIRA made September 30, 1996 the effective date of the new INA 212(a)(6)(C)(ii). See Illegal Immigration Reform and Immigrant Responsibility Act, section 344(c), Pub. L. 104-208 (September 30, 1996).

12.

See INA 212(i). Some separate adjustment mechanisms, such as INA 209 (for refugees and asylees) may have more broadly available waivers that could apply to an applicant who is inadmissible under INA 212(a)(6)(C)(ii). For example, INA 209(c) allows the waiver of many grounds of inadmissibility, and does not list INA 212(a)(6)(C)(ii) as a ground that cannot be waived.

13.

This guidance only addresses the waiver under INA 212(i). The fraud or willful misrepresentation waiver discussed in this guidance is also available to applicants who obtained, or attempted to obtain, a benefit based on falsely claiming U.S. citizenship before September 30, 1996.

14.

This includes false claims to U.S. citizenship made before September 30, 1996.

15.

If the officer has sufficient information in the file to determine whether the ground can be waived, then no form is required.

16.

T nonimmigrant status is for victims of human trafficking. U nonimmigrant status is for victims of certain criminal activity.

17.

Under INA 212(i).

18.

A fiancé(e) is not yet the spouse of the U.S. citizen. K inadmissibility issues, however, are generally addressed as if the fiancé(e) were see king admission as an immigrant. See 22 CFR 41.81(d). See *Matter of Sesay*, 25 I&N Dec. 431 (BIA 2011). As discussed below, the grant of an INA 212(i) waiver to a K nonimmigrant fiancé(e) or fiancé(e) child is conditioned on the fiancé(e)'s actually marrying the citizen petitioner.

19.

Foreign spouses or step-children of U.S. citizens.

20.

For information on the adjudication of these waivers, see Chapter 2, Adjudication of Fraud and Willful Misrepresentation Waivers [9

USCIS-PM G.2].

21.

These applicants seek a waiver under INA 207.

22.

These applicants seek a waiver under INA 209.

23.

See INA 245A and any legalization-related class settlement agreements.

24.

See INA 210.

25.

For more information on waivers for legalization applicants see INA 245A(d)(2)(B)(i). See 8 CFR 245a.2(k), and 8 CFR 245a.18. For more information on waivers for SAW applicants see INA 210(c)(2)(B)(i).

26.

These applicants seek relief under INA 212(d)(3).

27.

See INA 212(d)(3)(A)(i).

28.

See Customs and Border Protection website for more information.

29.

See INA 212(i).

30.

See INA 212(d)(3).

Chapter 2 - Adjudication of Fraud and Willful Misrepresentation Waivers

A. Eligibility

An applicant inadmissible for fraud or willful misrepresentation may be eligible for a waiver. Before adjudicating the waiver, the officer should determine if the applicant is inadmissible for fraud or willful misrepresentation.[2] For more on inadmissibility for fraud and willful misrepresentation, see Volume 8, Admissibility, Part J, Fraud and Willful Misrepresentation [8 USCIS-PM J].

If inadmissible, the applicant must meet the following requirements before a waiver can be granted:

- The applicant must show that denial of admission to or removal from the United States would result in extreme hardship to his or her qualifying relative (or if the applicant is a VAWA self-petitioner, to himself or herself);

and

- The applicant must show that a favorable exercise of discretion is warranted.[3] Once found inadmissible, the underlying fraud or willful misrepresentation is not considered again until the officer determines whether the waiver is warranted as a matter of discretion. For more information, see Chapter 3, Effect of Granting a Waiver [9 USCIS-PM G.3].

General Guidelines for Adjudication of Fraud and Willful Misrepresentation Waivers	
Step 1	Determine whether the applicant is a VAWA self-petitioner or has established the relationship to the qualifying relative.
Step 2	Determine whether the applicant has demonstrated that his or her qualifying relative (or the applicant himself or herself, if a VAWA self-petitioner) would suffer extreme hardship if the applicant were denied admission to or removed from the United States as a result of the denial of the waiver.
Step 3	Determine whether the waiver should be granted as a matter of discretion, particularly whether positive equities such as humanitarian relief to a qualifying relative and family unity overcome negative factors such as fraud and willful misrepresentation.

B. Waiver Adjudication

1. Determine Whether the Applicant Has a Qualifying Relative

For cases other than VAWA self-petitioners, the applicant must have a qualifying relative who is either the applicant's:

- U.S. citizen parent or spouse;
- Lawful permanent resident (LPR) parent or spouse; or
- U.S. citizen fiancé(e) petitioner (for K-1 or K-2 visa applicants only).

U.S. citizen or LPR children are not qualifying relatives.

A VAWA self-petitioner does not need a qualifying relative, since the VAWA self-petitioner may claim extreme

hardship to himself or herself. The VAWA self-petitioner may also claim extreme hardship to a U.S. citizen, LPR, or qualified alien parent or child.[4] See INA 212(i), INA 204(a)(1)(A)(iii), and INA 204(a)(1)(A)(iv).

The evidence needed to establish that an applicant has a qualifying relative is generally the same as the evidence required to establish the underlying relationship for a relative or fiancé(e) visa petition**.**

2. Make an Extreme Hardship Determination

An applicant must demonstrate that his or her qualifying relative (or the applicant himself or herself, if a VAWA self-petitioner) would suffer extreme hardship if the applicant were refused admission to or removed from the United States as a result of the denial of the waiver.

If the applicant fails to establish extreme hardship, then the officer must deny the waiver application because the applicant has not met the statutory requirements of the waiver. Before denying the waiver, the officer should follow standard operating procedures regarding issuance of a Request for Evidence or Notice of Intent to Deny.

In general, a finding that the applicant has not shown extreme hardship is sufficient to support a denial of the waiver application. If the applicant has not established extreme hardship, then it is unnecessary to determine whether the waiver would have been granted as a matter of discretion. There may be instances, however, where the applicant's past actions were so egregious that the officer may want to note in the decision that even if extreme hardship were found, the application would be denied as a matter of discretion.

If the applicant has established extreme hardship, the officer should proceed with the discretionary determination.

3. Analyze Whether the Waiver Should Be Granted as a Matter of Discretion

A fraud or willful misrepresentation waiver generally requires an officer to consider whether granting the waiver is warranted as a matter of discretion. The officer should determine whether the applicant's positive factors outweigh the negative factors.

The finding of extreme hardship experienced by a qualifying relative (or the VAWA self-petitioner himself or herself) is the first positive factor for consideration. The underlying fraud or willful misrepresentation itself is the first negative factor to consider.[5] See INS v. Yueh-Shaio Yang, 519 U.S. 26 (1996). See Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999). The nature, seriousness, and underlying circumstances of the fraud or willful misrepresentation may influence the weight given to this negative factor. Considerations include, but are not limited to:

- The facts and circumstances surrounding the fraud or willful misrepresentation;
- The reasons and motivations of the applicant when the fraud or willful misrepresentation was committed;

- Age or mental capacity of the applicant when the fraud was committed;

- Whether the applicant has engaged in a pattern of fraud or whether it was merely an isolated act of misrepresentation;[6] See INS v. Yueh-Shaio Yang, 519 U.S. 26 (1996). and

- The nature of the proceedings in which the applicant committed the fraud or willful misrepresentation.[7] In Matter of Tijam, 22 I&N Dec. 408, 413 (BIA 1998), the BIA stated that it considered making false statements under oath during the naturalization process to be an extremely serious adverse factor because of the Government's interest in maintaining the integrity of that process.

Footnotes

1.

See INA 212(i).

2.

For more on inadmissibility for fraud and willful misrepresentation, see Volume 8, Admissibility, Part J, Fraud and Willful Misrepresentation [8 USCIS-PM J].

3.

Once found inadmissible, the underlying fraud or willful misrepresentation is not considered again until the officer determines whether the waiver is warranted as a matter of discretion. For more information, see Chapter 3, Effect of Granting a Waiver [9 USCIS-PM G.3].

4.

See INA 212(i), INA 204(a)(1)(A)(iii), and INA 204(a)(1)(A)(iv).

5.

See *INS v. Yueh-Shaio Yang*, 519 U.S. 26 (1996). See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999).

6.

See *INS v. Yueh-Shaio Yang*, 519 U.S. 26 (1996).

7.

In *Matter of Tijam*, 22 I&N Dec. 408, 413 (BIA 1998), the BIA stated that it considered making false statements under oath during the naturalization process to be an extremely serious adverse factor because of the Government's interest in maintaining the integrity of that process.

Chapter 3 - Effect of Granting a Waiver

A. Validity of an Approved Waiver

If the waiver[1] See INA 212(i). is granted, then, except for K-1 and K-2 nonimmigrants and conditional permanent residents,[2] For K-1 and K-2 nonimmigrants granted a waiver, see Section B, Conditional Grant of a Waiver to K-1 or K-2 Nonimmigrant Visa Applicants [9 USCIS-PM G.3(B)]. the grant permanently waives fraud or willful

misrepresentation included in the application for purposes of any future immigration benefits application, whether immigrant or nonimmigrant. The waiver remains valid even if the person later abandons or otherwise loses lawful permanent resident (LPR) status.[3] See 8 CFR 212.7(a)(4)(ii).

For conditional permanent residents,[4] Foreign nationals lawfully admitted for permanent residence on a conditional basis. See INA 216. the waiver only becomes valid indefinitely if and when the conditions are removed from his or her permanent resident status. Conversely, termination of the conditional permanent resident status also terminates the validity of the waiver.[5] See 8 CFR 212.7(a)(4)(iv).

A waiver applies only to the specific grounds of inadmissibility and related crimes, events or incidents specified in the waiver application.[6] See 8 CFR 212.7(a)(4)(i). If, in the future, the applicant is found inadmissible for a separate incident of fraud or willful misrepresentation not already included in an approved waiver application, he or she will be required to file another waiver application. USCIS may reconsider an approval of a waiver at any time if it is determined that the decision has been made in error.[7] See 8 CFR 212.7(a)(4)(v).

B. Conditional Grant of a Waiver to K-1 or K-2 Nonimmigrant Visa Applicants

If the applicant seeks a waiver to obtain a fiancé(e) visa (K-1 or K-2), the waiver's approval is conditioned upon the K-1 nonimmigrant marrying the U.S. citizen who filed the fiancé(e) petition.[8] See 8 CFR 212.7(a)(4)(iii). The waiver becomes permanent once the K-1 marries the petitioner, as discussed in the section on validity of an approved waiver.[9] See Section A, Validity of an Approved Waiver [9 USCIS-PM G.3(A)].

If the K-1 nonimmigrant does not marry the petitioner, the K-1 and K-2 (if applicable) will remain inadmissible for purposes of any application for a benefit on any basis other than the proposed marriage between the K-1 and the K nonimmigrant visa petitioner.[10] See 8 CFR 212.7(a)(4)(iii).

C. Inadmissibility Based on Documentary Requirements[11] **See INA 212(a)(7).**

If an applicant procured an immigration benefit by fraud or willful misrepresentation, the applicant may also be inadmissible for lack of documentary requirements at the time of entry. When an applicant is granted a waiver for fraud or willful misrepresentation, inadmissibility based on lack of documentary requirements at the time of entry is also implicitly waived.

Example

An applicant misrepresents a material fact during the overseas nonimmigrant visa application process. The Department of State, however, grants the applicant a visa. Later, the applicant applies for adjustment of status. During the adjustment interview, an officer discovers the misrepresentation and finds applicant inadmissible for both willful misrepresentation[12] See INA 212(a)(6)(C)(i). and failure to comply with documentary requirements.[13] See INA 212(a)(7)(B)(i) (for example, for not possessing a valid nonimmigrant visa). The applicant then applies for a waiver of inadmissibility for willful misrepresentation.[14] See INA 212(i). Approval of the waiver has the effect of waiving inadmissibility for willful misrepresentation and for the lack of a valid visa at the time of entry.

Footnotes

1.

See INA 212(i).

2.

For K-1 and K-2 nonimmigrants granted a waiver, see Section B, Conditional Grant of a Waiver to K-1 or K-2 Nonimmigrant Visa Applicants [9 USCIS-PM G.3(B)].

3.

See 8 CFR 212.7(a)(4)(ii).

4.

Foreign nationals lawfully admitted for permanent residence on a conditional basis. See INA 216.

5.

See 8 CFR 212.7(a)(4)(iv).

6.

See 8 CFR 212.7(a)(4)(i).

7.

See 8 CFR 212.7(a)(4)(v).

8.

See 8 CFR 212.7(a)(4)(iii).

9.

See Section A, Validity of an Approved Waiver [9 USCIS-PM G.3(A)].

10.

See 8 CFR 212.7(a)(4)(iii).

11.

See INA 212(a)(7).

12.

See INA 212(a)(6)(C)(i).

13.

See INA 212(a)(7)(B)(i) (for example, for not possessing a valid nonimmigrant visa).

14.

See INA 212(i).

Volume 12 - Citizenship & Naturalization

Part A - Citizenship and Naturalization Policies and Procedures

Chapter 1 - Purpose and Background

A. Purpose

The United States has a long history of welcoming immigrants from all parts of the world. The United States values the contributions of immigrants who continue to enrich this country and preserve its legacy as a land of freedom and opportunity. USCIS is proud of its role in maintaining our country's tradition as a nation of immigrants and will administer immigration and naturalization benefits with integrity.

United States citizenship is a unique bond that unites people around civic ideals and a belief in the rights and freedoms guaranteed by the U.S. Constitution. The promise of citizenship is grounded in the fundamental value that all persons are created equal and serves as a unifying identity to allow persons of all backgrounds, whether native or foreign-born, to have an equal stake in the future of the United States.

This volume of the USCIS Policy Manual explains the laws and policies that govern United States citizenship and naturalization.

USCIS administers citizenship and naturalization law and policy by:

- Providing accurate and useful information to citizenship and naturalization applicants;
- Promoting an awareness and understanding of citizenship; and
- Adjudicating citizenship and naturalization applications in a consistent and accurate manner.

Accordingly, USCIS reviews benefit request for citizenship and naturalization to determine whether:

- Foreign-born children of U.S. citizens by birth or naturalization meet the eligibility requirements before recognizing their acquisition or derivation of U.S. citizenship.
- Persons applying for naturalization based on their time as lawful permanent residents meet the eligibility requirements to become U.S. citizens.
- Persons applying for naturalization based on their marriage to a U.S. citizen meet the eligibility requirements for naturalization through the provisions for spouses of U.S. citizens.
- Members of the U.S. armed forces and their families are eligible for naturalization and ensure that qualified applicants are naturalized expeditiously through the military provisions.

- Persons working abroad for certain entities, to include the U.S. Government, meet the eligibility requirements for certain exceptions to the general naturalization requirements.

Volume 12, Citizenship and Naturalization, contains detailed guidance on the requirements for citizenship and naturalization.

Volume 12: Citizenship and Naturalization		
Volume 12 Parts		**Guidance**
Part A	**Citizenship and Naturalization Policies and Procedures**	General policies and procedures relating to citizenship and naturalization
Part B	**Naturalization Examination**	Naturalization examination, to include security checks, interview and eligibility review
Part C	**Accommodations**	Accommodations and modifications that USCIS may provide in the naturalization process
Part D	**General Naturalization Requirements**	General naturalization requirements that apply to most lawful permanent residents
Part E	**English and Civics Testing and Exceptions**	Testing for educational requirements for naturalization
Part F	**Good Moral Character**	Good moral character for naturalization and the related permanent and conditional bars
Part G	**Spouses of U.S. Citizens**	Spouses of U.S. citizens who reside in the United States or abroad
Part H	**Children of U.S. Citizens**	Children of U.S. citizens who may have acquired or derived citizenship stateside or abroad
Part I	**Military Members and their Families**	Provisions based on military service for members of the military and their families
Part J	**Oath of Allegiance**	Oath of Allegiance for naturalization, to include modifications and waivers
Part K	**Certificates of Citizenship and Naturalization**	Issuance and replacement of Certificates of Citizenship and Certificates of Naturalization
Part L	**Revocation of Naturalization**	General procedures for revocation of naturalization (denaturalization)

B. Background

Upon the adoption of the U.S. Constitution in 1787, the first U.S. citizens were granted citizenship status retroactively as of 1776. Neither an application for citizenship, nor the taking of an Oath of Allegiance was required at that time.[1] See Franklin, F. (1906). The Legislative History of Naturalization in the United States; From the Revolutionary War to 1861. Chicago: The University of Chicago Press. Persons only needed to remain in the United States at the close of the war and the time of independence to show that they owed their allegiance to the new Government and accepted its protection.

The following key legislative acts provide a basic historical background for the evolution of the general eligibility requirements for naturalization as set forth in the Immigration and Nationality Act (INA).

Evolution of Naturalization Requirements Prior to the Immigration and Nationality Act (INA) of 1952	
Act	**Statutory Provisions**
Naturalization Act of 1790	• Established uniform rule of naturalization and oath of allegiance • Established two year residency requirement for naturalization • Required good moral character of all applicants
Naturalization Act of 1798	• Permitted deportation of foreign nationals considered dangerous • Increased residency requirements from 2 years to 14 years
Naturalization Act of 1802	• Reduced residency requirement from 14 years to 5 years
Naturalization Act of 1891	• Rendered polygamists, persons suffering from contagious disease and persons convicted of a "misdemeanor involving moral turpitude" ineligible for naturalization.
Naturalization Act of 1906	• Standardized naturalization procedures • Required knowledge of English language for citizenship • Established the Bureau of Immigration and Naturalization
The Alien Registration Act of 1940	• Required the registration and fingerprinting of all aliens in the United States over the age of 14 years

C. Legal Authorities

- INA 103; 8 CFR 103 – Powers and duties of the Secretary, the Under Secretary, and the Attorney General
- INA 310; 8 CFR 310 – Naturalization authority

- INA 312; 8 CFR 312 – Educational requirements for naturalization
- INA 316; 8 CFR 316 – General requirements for naturalization
- INA 332; 8 CFR 332 – Naturalization administration; executive functions
- INA 336; 8 CFR 336 – Hearings on denials of applications for naturalization
- INA 337; 8 CFR 337 – Oath of renunciation and allegiance
- 8 CFR 2 – Authority of the Secretary of the Department of Homeland Security

Footnotes

1.

See Franklin, F. (1906). *The Legislative History of Naturalization in the United States; From the Revolutionary War to 1861*. Chicago: The University of Chicago Press.

Chapter 2 - Becoming a U.S. Citizen

A person may derive or acquire U.S. citizenship at birth. Persons who are born in the United States and subject to the jurisdiction of the United States are citizens at birth. Persons who are born in certain territories of the United States also may be citizens at birth. In general, but subject in some cases to other requirements, including residence requirements as of certain dates, this includes persons born in:

- Puerto Rico on or after April 11, 1899;[1] See INA 302.
- Canal Zone or the Republic of Panama on or after February 26, 1904;[2] See INA 303. If the person was born in the Canal Zone, he or she acquired U.S. citizenship at birth if born between February 26, 1904 and October 1, 1979, and one parent was a U.S. citizen at the time of the person's birth. The Canal Zone ceased to exist on October 1, 1979. See the so-called Torrijos–Carter Treaties (September 7, 1977). If the person was born in the Republic of Panama, but not in the Canal Zone, one parent must have been a U.S. citizen parent employed by the U.S. Government, or by the Panama Railroad Company, at the time of the person's birth.
- Virgin Islands on or after January 17, 1917;[3] See INA 306.
- Guam born after April 11, 1899;[4] See INA 307. or
- Commonwealth of the Northern Mariana Islands on or after November 4, 1986.[5] See section 303 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Pub. L. 94-241 (48 U.S.C. 1801 note). In addition, certain persons in the CNMI who were born before November 4, 1986, and their children if under age 18 on that date, became U.S. citizens at that

time. See section 301 of Pub. L. 94-241 (48 U.S.C. 1801 note). In addition, the Department of State will issue U.S. passports to persons born in the Northern Mariana Islands between January 9, 1978 and November 3, 1986, pursuant to a judicial decision holding that such persons are U.S. citizens. See Sabangan v. Powell, 375 F. 3d 818 (9th Cir. 2004).

Persons born in American Samoa and Swains Island are generally considered nationals but not citizens of the United States.[6] See INA 308.

In addition, persons who are born outside of the United States may be U.S. citizens at birth if one or both parents were U.S. citizens at their time of birth. Persons who are not U.S. citizens at birth may become U.S. citizens through naturalization. Naturalization is the conferring of U.S. citizenship after birth by any means whatsoever.

In general, an applicant files a naturalization application and then USCIS grants citizenship after adjudicating the application. In some cases, a person may be naturalized by operation of law. This is often referred to as deriving citizenship. In either instance, the foreign citizen or national must fulfill all of the requirements established by Congress. In most cases, a person may not be naturalized unless he or she has been lawfully admitted to the United States for permanent residence.

Deciding to become a U.S. citizen is one of the most important decisions an immigrant can make. Naturalized U.S. citizens share equally in the rights and privileges of U.S. citizenship. U.S. citizenship offers immigrants the ability to:

- Vote in Federal elections;
- Travel with a U.S. Passport;
- Run for elective office where citizenship is required;
- Participate on a jury;
- Become eligible for federal and certain law enforcement jobs;
- Obtain certain State and Federal benefits not available to noncitizens;
- Obtain citizenship for minor children born abroad; and
- Expand and expedite their ability to bring family members to the United States.

Footnotes

1.

See INA 302.

2.

See INA 303. If the person was born in the Canal Zone, he or she acquired U.S. citizenship at birth if born between February 26, 1904 and October 1, 1979, and one parent was a U.S. citizen at the time of the person's birth. The Canal Zone ceased to exist on October 1, 1979. See the so-called Torrijos–Carter Treaties (September 7, 1977). If the person was born in the Republic of Panama, but not in the Canal Zone, one parent must have been a U.S. citizen parent employed by the U.S. Government, or by the Panama Railroad Company, at the time of the person's birth.

3.

See INA 306.

4.

See INA 307.

5.

See section 303 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Pub. L. 94-241 (48 U.S.C. 1801 note). In addition, certain persons in the CNMI who were born before November 4, 1986, and their children if under age 18 on that date, became U.S. citizens at that time. See section 301 of Pub. L. 94-241 (48 U.S.C. 1801 note). In addition, the Department of State will issue U.S. passports to persons born in the Northern Mariana Islands between January 9, 1978 and November 3, 1986, pursuant to a judicial decision holding that such persons are U.S. citizens. See *Sabangan v. Powell*, 375 F. 3d 818 (9th Cir. 2004).

6.

See INA 308.

Chapter 3 - USCIS Authority to Naturalize

It has long been established that Congress has the exclusive authority under its constitutional power to establish a uniform rule of naturalization and to enact legislation under which citizenship may be conferred upon persons.[1] See Chirac v. Chirac, 15 U.S. 259 (1817). Before 1991, naturalization within the United States was a judicial function exercised since 1790 by various courts designated in statutes enacted by Congress under its constitutional power to establish a uniform rule of naturalization.

As of October 1, 1991, Congress transferred the naturalization authority to the Attorney General (now the Secretary of DHS).[2] See INA 310(a). USCIS is authorized to perform such acts as are necessary to properly implement the Secretary's authority.[3] See INA 310. In certain cases, an applicant for naturalization may choose to have the Oath of Allegiance[4] See INA 337(a). administered by USCIS or by an eligible court with jurisdiction. Eligible courts may choose to have exclusive authority to administer the Oath of Allegiance.

Footnotes

1.

See *Chirac v. Chirac*, 15 U.S. 259 (1817).

2.

See INA 310(a).

3.

See INA 310.

4.

See INA 337(a).

Part B - Naturalization Examination

Chapter 1 - Purpose and Background

A. Purpose

USCIS conducts an investigation and examination of all naturalization applicants to determine whether an applicant meets all pertinent eligibility requirements to become a U.S. citizen. The investigation and examination process encompasses all factors relating to the applicant's eligibility:[1] See INA 335. See 8 CFR 335.1 and 8 CFR 335.2.

- Completion of security and criminal background checks;
- Review of the applicant's complete immigration record;
- In-person interview(s) with oral and written testimony;
- Testing for English and civics requirements; and
- Qualification for a disability exception.

USCIS officers have authority to conduct the investigation and examination.[2] See INA 335(b). See 8 CFR 332.1 and 8 CFR 335.2. The authority is delegated by the Secretary of the Department of Homeland Security. The authority includes the legal authority for certain officers to administer the Oath of Allegiance, obtain oral and written testimony during an in-person interview, subpoena witnesses, and request evidence.[3] See INA 332, INA 335, and INA 337. See 8 CFR 332, 8 CFR 335, and 8 CFR 337.

The applicant has the burden of establishing eligibility by a preponderance of the evidence throughout the examination.[4] See 8 CFR 316.2(b). The officer must resolve any pending issues and obtain all of the necessary information and evidence to make a decision on the application. Uniformity in decision-making and application processing is vital to the integrity of the naturalization process. Consistency in the decision-making process enhances USCIS's goal to ensure that the relevant laws and regulations are applied accurately to each case.

B. Background

Beginning in 1906, a complete examination and questioning under oath was required of the "petitioner" (now "applicant") for naturalization and his or her witnesses at the final hearing for naturalization in court.[5] In 1981 Congress enacted legislation which eliminated the character witness requirements of naturalization, though USCIS has the authority to subpoena witnesses if necessary. Congress amended the statute in 1940 to include English language requirements and a provision for questioning applicants on their understanding of the principles of the Constitution.[6] See the Nationality Act of 1940, Pub. L. 76-853, 54 Stat. 1137.

Today, USCIS conducts an investigation and examination of all applicants for naturalization to determine their eligibility for naturalization, including the applicant's lawful admission for permanent residence, ability to establish good moral character, attachment to the Constitution, residence and physical presence in the United States, and the English and civics requirements for naturalization.

C. Legal Authorities

- INA 310, 8 CFR 310 – Naturalization authority
- INA 312; 8 CFR 312 – Educational requirements for naturalization
- INA 316; 8 CFR 316 – General requirements for naturalization
- INA 332; 8 CFR 332 – Procedural and administrative provisions; executive functions
- INA 335; 8 CFR 335 – Investigation and examination of applicant
- INA 336; 8 CFR 336 – Hearings on denials of naturalization application

Footnotes

1.

See INA 335. See 8 CFR 335.1 and 8 CFR 335.2.

2.

See INA 335(b). See 8 CFR 332.1 and 8 CFR 335.2. The authority is delegated by the Secretary of the Department of Homeland Security.

3.

See INA 332, INA 335, and INA 337. See 8 CFR 332, 8 CFR 335, and 8 CFR 337.

4.

See 8 CFR 316.2(b).

5.

In 1981 Congress enacted legislation which eliminated the character witness requirements of naturalization, though USCIS has the authority to subpoena witnesses if necessary.

6.

See the Nationality Act of 1940, Pub. L. 76-853, 54 Stat. 1137.

Chapter 2 - Background and Security Checks

A. Background Investigation

USCIS conducts an investigation of the applicant upon his or her filing for naturalization. The investigation consists of certain criminal background and security checks.[1] See INA 335. See 8 CFR 335.1. The background and security checks include collecting fingerprints and requesting a "name check" from the Federal Bureau of Investigations (FBI). In addition, USCIS conducts other inter-agency criminal background and security checks on all applicants for naturalization. The background and security checks apply to most applicants and must be conducted and completed before the applicant is scheduled for his or her naturalization interview.[2] See 8 CFR 335.2(b).

B. Fingerprints

1. Fingerprint Requirement

USCIS must collect fingerprint records as part of the background check process on most applicants for naturalization.[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. Applicants 75 years of age and older are generally not required to submit fingerprints. USCIS notifies applicants in writing to appear for fingerprinting after submitting the naturalization application. Fingerprints are valid for 15 months from the date of processing by the FBI. An applicant abandons his or her naturalization application if the applicant fails to appear for the fingerprinting appointment without good cause and without notifying USCIS.[4] See 8 CFR 103.2(b)(13)(ii). See Chapter 4, Results of the Naturalization Examination [12 USCIS-PM B.4].

Once an Application Support Center (ASC) collects an applicant's biometrics, USCIS submits the records to the FBI for a full criminal background check.[5] See 8 CFR 335.2(b). The response from the FBI that a full criminal background check has been completed includes confirmation that:

- The applicant does not have an administrative or a criminal record;
- The applicant has an administrative or a criminal record; or
- The applicant's submitted fingerprint records have been determined "unclassifiable" for the purpose of conducting a criminal background check and have been rejected.

2. Fingerprint Waivers

Applicants Age 75 or Older

An applicant who is 75 years old or older at the time of filing his or her naturalization application is not required to provide fingerprints.

Applicants with Certain Medical Conditions

An applicant may qualify for a waiver of the fingerprint requirement if the applicant is unable to provide fingerprints because of a medical condition, to include birth defects, physical deformities, skin conditions, and psychiatric conditions. Only certain USCIS officers are authorized to grant a fingerprint waiver.

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

5.

See 8 CFR 335.2(b).

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] See INA 335(b). See 8 CFR 335.2. 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's 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] See Part D, General Naturalization Requirements [12 USCIS-PM D]. 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] See Part E, English and Civics Testing and Exceptions [12 USCIS-PM E]. 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] See the Immigration and Nationality Act (INA).

- The corresponding regulations explain the statutes further and provide guidance on how the statutes are applied.[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.

- 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] 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.

- 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] 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.

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

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] See 8 CFR 292.1(a)(1).

- Certain law students and law graduates not yet admitted to the bar;[10] See 8 CFR 292.1(a)(2).

- 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] See 8 CFR 292.1(a)(3).

- Accredited representatives from organizations accredited by the Board of Immigration Appeals (BIA);[12] See 8 CFR 292.1(a)(4) and 8 CFR 292.2.

- Accredited officials of the government to which a person owes allegiance;[13] See 8 CFR 292.1(a)(5). or

- Attorneys outside the United States.[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.

No other person may represent an applicant.[15] See 8 CFR 292.1(e).

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 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] For example, a Record of Arrest and Prosecution ("RAP" sheet). correspondence from other agencies, and investigative reports and enforcement actions from DHS or other agencies.

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

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 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). 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] See 8 CFR 335.9. In addition, an applicant for naturalization as a battered spouse of a U.S. citizen[20] See INA 319(a). 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] **See Chapter 2, Background and Security Checks [12 USCIS-PM B.2].**

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

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] An "Order to Show Cause" was the notice used prior to enactment of IIRIRA on April 1, 1997. USCIS cannot make a decision on any naturalization application from an applicant who is in removal proceedings. [25] This does not apply in cases involving naturalizations based on military service where the applicant may not be required to be lawfully admitted for permanent residence. See INA 318 and INA 329.

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] See INA 328(b)(2) and INA 329(b)(1).

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 N400). [27] See 8 CFR 335.2(a). 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] 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]. 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] See Part E, English and Civics Testing and Exceptions [12 USCIS-PM E]. USCIS may administer the test separately from the interview. and
- An officer's questions relating to the applicant's eligibility for naturalization.[30] See the relevant Volume 12 [12 USCIS-PM] part for the specific eligibility requirements for each naturalization provision.

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] See 8 CFR 335.2(c). 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 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).

The officer provides the applicant with a notice of results at the end of the examination regardless of the outcome.[33] The officer must use the Naturalization Interview Results (Form N652). The notice provides the outcome of the examination and should explain what the next steps are in cases that are continued.[34] See Chapter 4, Results of the Naturalization Examination [12 USCIS-PM B.4].

D. Subsequent Re-examination

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

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

E. Expediting Applications from Certain 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, 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 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 alien 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 one 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 the Immigration and Nationality Act (INA).

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) and 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 IIRIRA on April 1, 1997.

25.

This does not apply in cases involving naturalizations based on military service where the applicant may not be required to be lawfully admitted for permanent residence. See INA 318 and INA 329.

26.

See INA 328(b)(2) and 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 N652).

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 Chapter 3, Naturalization Interview, Section A, Roles and Responsibilities [12 USCIS-PM B.3], 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] The officer issues a Notice of Examination Results (Form N-652).

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] See Part J, Oath of Allegiance [12 USCIS-PM J]. 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] See 8 CFR 335.5. See Chapter 5, Motion to Reopen [12 USCIS-PM B.5]. 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] The officer issues a request for evidence on Form N-14. In general, USCIS permits a period of 30 days for the applicant to respond to a request for evidence.[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).

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 period of time that 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] See 8 CFR 335.7.

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] See 8 CFR 312.5(a) and 8 CFR 335.3(b). 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] See Part E, English and Civics Testing and Exceptions, Chapter 2, English and Civics Testing [12 USCIS-PM E.2].

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

If an officer denies a naturalization application based on ineligibility or lack of prosecution, 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.[9] See INA 335(d). See 8 CFR 336.1(a). 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.[10] See 8 CFR 336.1(b). See Chapter 6, USCIS Hearing and Judicial Review [12 USCIS-PM B.6].

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, and 8 CFR 316.2(a)(2)
Continuous Residence	INA 316(a)(2), INA 316(b), and 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), and 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 Holding in Abeyance

1. Administrative Closure for Failing to Appear at Initial Interview

An applicant abandons his or her application if he or she fails to appear for his or her 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.[11] See 8 CFR 103.2(b)(13)(ii), 8 CFR 335.6(a), and 8 CFR 335.6(b). Generally, military applicants may file a motion to reopen at any time. See Part I, Military Members and their Families [12 USCIS-PM I].

An applicant may request to reopen an administratively closed application without fee by submitting a written request to USCIS within one year from the date the application was closed.[12] See 8 CFR 335.6(b). See Chapter 5, Motion to Reopen [12 USCIS-PM I.5]. 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.[13] See 8 CFR 335.6(b).

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

- Considers the naturalization application abandoned; and
- Dismisses the application without further notice to the applicant.[14] See 8 CFR 335.6(c).

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, officer must adjudicate the application on the merits.[15] See INA 335(e). See 8 CFR 335.7. 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.[16] See INA 335(e). See 8 CFR 335.10.

4. Holding Application in Abeyance if Applicant is in Removal Proceedings

USCIS cannot adjudicate the naturalization application of an applicant who is in removal proceedings.[17] See INA 318. This does not apply in cases involving naturalizations based on military service under INA 329 where the applicant may not be required to be lawfully admitted for permanent residence. In general, USCIS holds the application in abeyance until the immigration judge has either issued a final order of removal or terminates the removal proceedings. Field offices should follow the advice of local USCIS counsel on how to proceed with such cases.

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).

6.

See 8 CFR 335.7.

7.

See 8 CFR 312.5(a) and 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 335(d). See 8 CFR 336.1(a).

10.

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

11.

See 8 CFR 103.2(b)(13)(ii), 8 CFR 335.6(a), and 8 CFR 335.6(b). Generally, military applicants may file a motion to reopen at any time. See Part I, Military Members and their Families [12 USCIS-PM I].

12.

See 8 CFR 335.6(b). See Chapter 5, Motion to Reopen [12 USCIS-PM I.5].

13.

See 8 CFR 335.6(b).

14.

See 8 CFR 335.6(c).

15.

See INA 335(e). See 8 CFR 335.7.

16.

See INA 335(e). See 8 CFR 335.10.

17.

See INA 318. This does not apply in cases involving naturalizations based on military service under INA 329 where the applicant may not be required to be lawfully admitted for permanent residence.

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] See 8 CFR 335.5. or

- An applicant fails to appear for at least two ceremonies to take the Oath of Allegiance without good cause.[2] See 8 CFR 337.10.

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] See 8 CFR 335.5.

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] See 8 CFR 336.1.

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] See 8 CFR 337.10.

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 his or her application was administratively closed.[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)]. 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] See 8 CFR 335.6(b). 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.

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).

Chapter 6 - USCIS Hearing and Judicial Review

A. Hearing Request

An applicant or his or her authorized representative[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. 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] 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).

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] See 8 CFR 336.2(b).

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] See 8 CFR 336.2(b).

A *de novo* review means that the officer makes a new and full review of the naturalization application.[5] The term "de novo" is Latin for "anew." In this context, it means the starting over of the application's review.

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] 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), 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] See INA 312. See 8 CFR 312. See Part E, English and Civics Testing and Exceptions [12 USCIS-PM E]. 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] See 8 CFR 103.8(b).), 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] See 8 CFR 336.2(c)(2)(ii). 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] See 8 CFR 336.2(c)(2)(i).

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] See 8 CFR 103.5(a)(2).

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] See 8 CFR 103.5(a)(3).

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] 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. USCIS rejects these requests without refund of filing fee.[14] See 8 CFR 336.2(c)(1)(i).

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

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

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] See INA 310(c). See INA 336(a). 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).

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] See 6 CFR 15.3 for the applicable definitions relating to enforcement of nondiscrimination on the basis of disability DHS federal programs or activities. 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.

- 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.[2] See, for example, 6 CFR 15.50 and 6 CFR 15.60.

Applicants may request an accommodation at the time of filing their naturalization application or at any other time during the naturalization process.[3] 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].

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.[4] See Section 504 of the Rehabilitation Act of 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. USCIS does not exclude persons with disabilities from its programs or activities based on their disability. The Rehabilitation Act and the implemented DHS regulations[5] See 6 CFR 15. 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.[6] 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].

D. Legal Authorities

- Rehabilitation Act of 1973 (Sec. 504) – Ensures equal access to federal programs

- 29 U.S.C. 794 – Nondiscrimination under federal grants and programs
- 6 CFR 15 – DHS federal regulations on non-discrimination on the basis of disability of persons who access DHS programs or activities
- 8 CFR 334.4 – Examination and off-site visits for sick or disabled applicants

Footnotes

1.

See 6 CFR 15.3 for the applicable definitions relating to enforcement of nondiscrimination on the basis of disability DHS federal programs or activities.

2.

See, for example, 6 CFR 15.50 and 6 CFR 15.60.

3.

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].

4.

See Section 504 of the Rehabilitation Act of 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.

5.

See 6 CFR 15.

6.

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].

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 National Customer Service Center (NCSC) at 1-800-375-5283 (TDD: 1-800-767-1833) in order to request an accommodation, or may also 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] Officers should contact local USCIS counsel prior to contacting the applicant and his or her attorney or accredited representative for further information.

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.

Footnotes

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] The lists of accommodations in this chapter are not exhaustive. USCIS determines and provides accommodations on a case-by-case basis. 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 English 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	Presence of a relative may have a calming effect, and such persons may assist applicants who are

in Signing Forms	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 non-verbal 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 English sign language interpreter, the field office must provide an English sign language interpreter for a deaf or hard of hearing applicant upon his or her request.[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].

The Rehabilitation Act requires USCIS to make an effective accommodation for the customer's disability, and USCIS cannot transfer the accommodation burden back to the customer. For example, if the person uses the sign language Pidgeon English, USCIS must provide an interpreter who uses Pidgeon 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 Pigeon English and ASL.[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.

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] See 8 CFR 335.2. 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] See Part J, Oath of Allegiance [12 USCIS-PM J].

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 United States 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] See INA 335(b). 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] 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).

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.

Accommodations for the Naturalization Test	
Accommodation	**Explanation**
Providing Reading Tests in Large Print	Partially blind applicants may be unable to read small print
	Applicants with physical impairments or with

Oral Writing Test	limited use of their hands may be unable to write sentences in the test itself
Allowing Nonverbal Communication	Applicants may be unable to speak sufficiently to respond to questions but may be able to communicate in non-verbal ways
Providing English 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

An officer should provide the current reading naturalization test version in large print for applicants who are partially blind (have low vision).[8] Officers may photocopy the current versions of the test into larger print or increase the font electronically.

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.

Unless the applicant chooses to bring his or her own English sign language interpreter, the field office must provide an English sign language interpreter for a deaf or hard of hearing applicant upon his or her request.[9] 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].

The officer should use any communication aids for the deaf or hard of hearing where available, permit the applicant to read lips, and allowing 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.[10] See Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers [12 USCIS-PM J.3].

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 an English 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 an English 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.

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

9.

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].

10.

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] See INA 101(a)(23). There are various ways a foreign citizen or national may become a U.S. citizen through the process of naturalization. This chapter addresses the general naturalization requirements.[2] See INA 316. See relevant parts in Volume 12 [12 USCIS-PM] for other naturalization provisions and requirements.

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] See INA 316.

General Eligibility Requirements for Naturalization
The applicant must be age 18 or older at the time of filing for naturalization
The applicant must be an 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 – Prerequisites to Naturalization

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 - LPR Admission for Naturalization

A. LPR at Time of Filing and Naturalization

In general, an applicant for naturalization must be at least 18 years old and must establish that he or she has been lawfully admitted to the United States for permanent residence at the time of filing the naturalization application.[1] See INA 101(a)(20) and INA 334(b). See 8 CFR 316.2(a)(2). 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 mistake or fraud, or if the admission was otherwise not in compliance with the law.[2] See INA 318. See Matter of Koloamatangi, 23 I & N Dec 548, 550 (2003). 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).

In determining an applicant's eligibility for naturalization, USCIS must determine whether the LPR status was lawfully obtained, not just whether the applicant is in possession of a Permanent Resident Card (PRC). If the status was not lawfully obtained for any reason, the applicant is not lawfully admitted for permanent residence in accordance with all applicable provisions of the INA, and is ineligible for naturalization even though the applicant possesses a PRC.

An applicant must also reside continuously in the U.S. for at least five years as an LPR at the time of filing,[3] See Chapter 3, Continuous Residence [12 USCIS-PM D.3], though the applicant may file his or her application up to 90 days before reaching the five-year continuous residence period.[4] See Chapter 6, Jurisdiction, Place of Residence, and Early Filing [12 USCIS-PM D.6].

B. Conditional Residence in the General Requirements (INA 316)

A conditional permanent resident (CPR) filing for naturalization under the general provision on the basis of his or her permanent resident status for five years[5] See INA 316(a). must have met all of the applicable requirements of the conditional residence provisions.[6] See INA 216. CPRs are not eligible for naturalization unless the conditions on their 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.[7] See INA 216 and INA 318. Unless USCIS approves the applicant's Petition to Remove the Conditions of Residence (Form I-751), the applicant remains ineligible for naturalization.[8] See Part G, Spouses of U.S. Citizens [12 USCIS-PM G]; Part H, Children of U.S. Citizens [12 USCIS-PM H]; and Part I, Military Members and their Families [12 USCIS-PM I], for special circumstances under which where the applicant may not be required to have an approved petition to remove conditions prior naturalization.

C. Exceptions

1. Nationals of the United States

The law provides an exception to the LPR requirement for naturalization for non-citizen nationals of the United States . Currently, persons who are born in American Samoa or Swains Island, which are outlying possessions of the United States, are considered nationals of the United States.[9] See INA 101(a)(29) and INA 308.

A non-citizen national of the United States may be naturalized without establishing lawful admission for permanent residence if he or she becomes a resident of any State[10] See INA 325. See 8 CFR 325.2. Non-citizen nationals may satisfy the residence and physical presence requirements through their residence and presence within any of the outlying possessions of the United States. 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 Permanent Resident Card (PRC).[11] See INA 101(a)(20).

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

Certain members of the U.S. armed forces with service under specified conditions are also exempt from the LPR requirement.[12] See Part I, Military Members and their Families, Chapter 3, Military Service during Hostilities (INA 329) [12 USCIS-PM I.3].

D. Documentation and Evidence

USCIS issues a PRC to each person who has been lawfully admitted for permanent residence as evidence of his or her status. LPRs over 18 years of age are required to have their PRC in their possession as evidence of their status.[13] See INA 264(e). The PRC contains the date and the classification under which the person was accorded LPR status. The PRC alone, however, is insufficient to establish that the applicant has been lawfully admitted for permanent residence in accordance with all applicable provisions of the INA.[14] See Section A, LPR at Time of Filing and Naturalization [12 USCIS-PM D.2(A)].

Footnotes

1.

See INA 101(a)(20) and INA 334(b). See 8 CFR 316.2(a)(2).

2.

See INA 318. See *Matter of Koloamatangi*, 23 I & N Dec 548, 550 (2003). 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 (9 th Cir. 1986). See *Matter of Longstaff*, 716 F.2d 1439, 1441 (5th Cir. 1983).

3.

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

4.

See Chapter 6, Jurisdiction, Place of Residence, and Early Filing [12 USCIS-PM D.6].

5.

See INA 316(a).

6.

See INA 216.

7.

See INA 216 and INA 318.

8.

See Part G, Spouses of U.S. Citizens [12 USCIS-PM G]; Part H, Children of U.S. Citizens [12 USCIS-PM H]; and Part I, Military Members and their Families [12 USCIS-PM I], for special circumstances under which where the applicant may not be required to have an approved petition to remove conditions prior naturalization.

9.

See INA 101(a)(29) and INA 308.

10.

See INA 325. See 8 CFR 325.2. Non-citizen nationals may satisfy the residence and physical presence requirements through their residence and presence within any of the outlying possessions of the United States.

11.

See INA 101(a)(20).

12.

See Part I, Military Members and their Families, Chapter 3, Military Service during Hostilities (INA 329) [12 USCIS-PM I.3].

13.

See INA 264(e).

14.

See Section A, LPR at Time of Filing and Naturalization [12 USCIS-PM D.2(A)].

Chapter 3 - Continuous Residence

A. Continuous Residence Requirement

An applicant for naturalization under the general provision[1] See INA 316(a). must have resided continuously in the United States after his or her LPR admission for at least five 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 three months prior to filing.[2] See INA 316(a). See Chapter 6, Jurisdiction, Place of Residence, and Early Filing [12 USCIS-PM D.6].

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] See 8 CFR 316.5(a). 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] See Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence [12 USCIS-PM D.5]. These classes of applicants include certain military members and certain spouses of U.S. citizens.[5] See Part I, Military Members and their Families [12 USCIS-PM I].

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

B. Maintenance of Continuous Residence following LPR Status

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

Other examples that may raise a rebuttal 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] See 8 CFR 316.5(c)(2).

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. There are two types of absences from the United States that are automatically presumed to break the continuity of residence for purposes of naturalization.[9] See INA 316(b).

- Absences of more than 6 months but less than one year; and
- Absences of one year or more.

An officer may also review whether an applicant with multiple absences of less than 6 months will be able to satisfy the continuous residence and physical presence requirements. In some 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] See 8 CFR 316.5(a). See Chapter 3, Continuous Residence, Section A, Continuous Residence Requirements [12 USCIS-PM D.3(A)].

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

An absence of more than six months (more than 181 days but less than one year (less than 365 days)) during the period for which continuous residence is required is presumed to break the continuity of such residence. This includes any absence that takes place prior to filing the naturalization application or between filing and the applicant's admission to citizenship.[11] See INA 336 (Hearings on Denials of Applications for Naturalization).

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

An applicant may overcome the presumption of loss of his or her continuity of residence by providing evidence to establish that the applicant did not disrupt his or her residence. The evidence may include, but is not limited to, documentation that during the absence:[12] See 8 CFR 316.5(c)(1)(i).

- The applicant did not terminate his or her employment in the United States or obtain employment while abroad.
- The applicant's immediate family remained in the United States.

- The applicant retained full access to his or her United States abode.

2. Absence of One Year or More

An absence from the United States for a continuous period of one year or more (365 days or more) during the period for which continuous residence is required will break the continuity of residence. This applies whether the absence takes place prior to or after filing the naturalization application.[13] See INA 316(b).

The naturalization application of a person who is subject to the continuous residence requirement must be denied for failure to meet the continuous residence requirements if the person has been continuously absent for a period of one year or more without qualifying for the exception benefits of INA 316(b). An applicant who is absent for one year or more to engage in qualifying employment abroad may be permitted to preserve his or her residence.[14] See Section D, Preserving Residence for Naturalization (Form N-470) [12 USCIS-PM D.3(D)].

3. Eligibility after Break in Residence

An applicant who is required to establish continuous residence for at least five years[15] See INA 316(a). and whose application for naturalization is denied for an absence of one year or longer, may apply for naturalization four years and one day after returning to the United States to resume permanent residence. An applicant who is subject to the three-year continuous residence requirement[16] See INA 319(a). may apply two years and one day after returning to the United States to resume permanent residence.[17] See 8 CFR 316.5(c)(1)(ii).

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

Certain applicants[18] 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. may seek to preserve their residence for an absence of one year or more to engage in qualifying employment abroad.[19] The applicant may also need to apply for a reentry permit to be permitted to enter the United States. 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 one 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 one year.[20] See 8 CFR 316.5(d).

In addition, the applicant must have been:

- Employed with or under contract with the U.S. Government or an American institution of research[21] See 8 CFR 316.20. See www.uscis.gov/AIR for lists of recognized organizations. 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.[22] See INA 316(b). See 8 CFR 316.20.

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

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.[24] See Matter of Huang, 19 I&N Dec. 749 (BIA 1988). In removal proceedings, DHS 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.

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.[25] See INA 212(a)(7)(A). A PRC card, generally, is acceptable as a travel document only if the person has been absent for less than one year.[26] See 8 CFR 211.1(a)(2). If an LPR expects to be absent for more than one 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.[27] See 8 CFR 223.2(b)(1).

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.[28] 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 (48 U.S.C. 1806 note). 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 lawful permanent residents (LPR), 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.[29] See section 705(c) of the CNRA (48 U.S.C. 1806 note). See Eche v. Holder, 694 F.3d 1026 (9th Cir. 2012).

F. Documentation and Evidence

Mere possession of a Permanent Resident Card (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[30] See 8 CFR 211.5. for seven 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 Requirements [12 USCIS-PM D.3(A)].

11.

See INA 336 (Hearings on Denials of Applications for Naturalization).

12.

See 8 CFR 316.5(c)(1)(i).

13.

See INA 316(b).

14.

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

15.

See INA 316(a).

16.

See INA 319(a).

17.

See 8 CFR 316.5(c)(1)(ii).

18.

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.

19.

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

20.

See 8 CFR 316.5(d).

21.

See 8 CFR 316.20. See www.uscis.gov/AIR for lists of recognized organizations.

22.

See INA 316(b). See 8 CFR 316.20.

23.

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

24.

See *Matter of Huang,* 19 I&N Dec. 749 (BIA 1988). In removal proceedings, DHS 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.

25.

See INA 212(a)(7)(A).

26.

See 8 CFR 211.1(a)(2).

27.

See 8 CFR 223.2(b)(1).

28.

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 (48 U.S.C. 1806 note).

29.

See section 705(c) of the CNRA (48 U.S.C. 1806 note). See Eche v. Holder, 694 F.3d 1026 (9th Cir. 2012).

30.

See 8 CFR 211.5.

Chapter 4 - Physical Presence

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] See INA 316(a). See 8 CFR 316.2.

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] See Chapter 3, Continuous Residence [12 USCIS-PM D.3]. 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] USCIS will only count residence in the CNMI on or after November 28, 2009, as time counted for physical presence within the United States for naturalization purposes.

B. Documentation and Evidence

Mere possession of a 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 CNMI on or after November 28, 2009, as time counted for physical presence within the United States for naturalization purposes.

Chapter 5 - Modifications and Exceptions to Continuous Residence and Physical Presence

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 an 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		**Continuous**	

Vocation	Provision	Residence	Physical Presence
United States 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. 109163	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 Vocation	INA 317	Time residing abroad in religious vocation may count as residence and physical presence in United States	

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] 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 INA. See the Kate Puzey Peace Corps Volunteer Protection Act of 2011 (Puzey Act), Pub. L. 112-57 (November 21, 2011), 22 U.S.C. 2509(a)(5), amending section 10(a)(5) of the Peace Corps Act, Pub. L. 87-293 (September 22, 1961), 22 U.S.C. 3901. Prior to enactment of the Puzey Act, PSCs were not considered U.S. government employees. Such persons are exempt from the physical presence requirement.[2] See INA 316(b) and INA 316(c). 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] See INA 316(c).

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] USCIS has adopted the AAO decision in Matter of Chawathe. 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, 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. 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] See INA 316(b) and INA 316(c). See 8 CFR 316.20. See www.uscis.gov/AIR for a list of recognized organizations.

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

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] See INA 319(c). See 8 CFR 319.4.

3. Employed as an Interpreter, Translator, or Security-related Position (Executive or Manager)[8] **See section 1059(e) of the National Defense Authorization Act of 2006, Pub. L. 109-163 [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 (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 (December 28, 2012).**

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] 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 Adjudicator's Field Manual, Chapter 22.2(i)(3)(D) – (G) for further guidance on managerial and executive capacity and the evaluation of such positions. 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] Public Law 110-36 added section 1059(e) to the National Defense Authorization Act for Fiscal Year 2006, which added the interpreter and translator provisions.

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] 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 Adjudicator's Field Manual, Chapter 22.2(i)(3)(D) – (G) for further guidance on managerial and executive capacity and the evaluation of such positions. See Foreign Affairs Manual (FAM), 9 FAM 41.54, Intracompany Transferees (Executives, Managers, and Specialists).

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

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

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] 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 Adjudicator's Field Manual, Chapter 22.2(i)(3)(D) – (G) for further guidance on managerial and executive capacity and the evaluation of such positions. See Foreign Affairs Manual (FAM), 9 FAM 41.54, Intracompany Transferees (Executives, Managers, and Specialists).

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] See INA 101(a)(44)(C).

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] 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)].

4. Employed Abroad in Religious Vocation

LPRs who go abroad temporarily for the purpose of performing the ministerial or priestly functions of a religious denomination, or of serving as a missionary,[17] See INA 317. A missionary is a member of a religious group sent into an area to do religious teaching or evangelism. See Matter of Rhee 16 I&N Dec. 607 (BIA 1978) (The term "minister" means a person duly authorized by a recognized religious denomination having a bona fide organization in the United States to conduct religious worship, and to perform other duties usually performed by a regularly ordained pastor or clergy of such denomination). See 8 CFR 204.5(m)(5) and 8 CFR 214.2(r)(3). brother, nun, or sister for a

religious denomination or interdenominational mission having a bona fide organization within the United States, may treat such time abroad as continuous residence and physical presence in the United States for naturalization purposes.

LPRs must have been physically present and residing within the United States for an uninterrupted period of at least one year in order to qualify.[18] See INA 317.

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,[19] See 12 USCIS-PM I (Military Members and their Families). 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 – § 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,[20] 12 USCIS-PM G. for modifications and exceptions for spouses of certain U.S. citizens, to include:

- Spouse of U.S. Citizen for 3 Yrs – 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.[21] See Section 305 of the Intelligence Authorization Act of 1997, Pub. L. 204-293 (October 11, 1996).

See Part H, Children of U.S. Citizens,[22] 12 USCIS-PM H. 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.[23] See Section 305 of the Intelligence Authorization Act of 1997, Pub. L. 204-293 (October 11, 1996).

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	
Noncitizen Nationals	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 Nat'l Security	INA 316(f)	Exempt	

1. Citizens who Lost U.S. Citizenship through Foreign Military Service[24] See INA 327.

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.[25] See 8 CFR 327.1(f).

2. Noncitizen Nationals of the United States

The time a noncitizen national 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.[26] 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 a 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.

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.[27] See INA 330. See 8 CFR 330.1. 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.[28] See INA 316(f).

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 INA. See the Kate Puzey Peace Corps Volunteer Protection Act of 2011 (Puzey Act), Pub. L. 112-57 (November 21, 2011), 22 U.S.C. 2509(a)(5), amending section 10(a)(5) of the Peace Corps Act, Pub. L. 87-293 (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*. 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*, 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 www.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 [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 (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 (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 Adjudicator's Field Manual, Chapter 22.2(i)(3)(D) – (G) for further guidance on managerial and executive capacity and the evaluation of such positions.

10.

Public Law 110-36 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 Adjudicator's Field Manual, Chapter 22.2(i)(3)(D) – (G) for further guidance on managerial and executive capacity and the evaluation of such positions. See Foreign Affairs Manual (FAM), 9 FAM 41.54, Intracompany Transferees (Executives, Managers, and Specialists).

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 Adjudicator's Field Manual, Chapter 22.2(i)(3)(D) – (G) for

further guidance on managerial and executive capacity and the evaluation of such positions. See Foreign Affairs Manual (FAM), 9 FAM 41.54, Intracompany Transferees (Executives, Managers, and Specialists).

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. A missionary is a member of a religious group sent into an area to do religious teaching or evangelism. See *Matter of Rhee* 16 I&N Dec. 607 (BIA 1978) (The term "minister" means a person duly authorized by a recognized religious denomination having a bona fide organization in the United States to conduct religious worship, and to perform other duties usually performed by a regularly ordained pastor or clergy of such denomination). See 8 CFR 204.5(m)(5) and 8 CFR 214.2(r)(3).

18.

See INA 317.

19.

See 12 USCIS-PM I (Military Members and their Families).

20.

12 USCIS-PM G.

21.

See Section 305 of the Intelligence Authorization Act of 1997, Pub. L. 204-293 (October 11, 1996).

22.

12 USCIS-PM H.

23.

See Section 305 of the Intelligence Authorization Act of 1997, Pub. L. 204-293 (October 11, 1996).

24.

See INA 327.

25.

See 8 CFR 327.1(f).

26.

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 a 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.

27.

See INA 330. See 8 CFR 330.1.

28.

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.[1] See INA 101(a)(36). As of November 28, 2009, Commonwealth of the Northern Mariana Islands (CNMI) is part of the definition of United States. See Consolidated Natural Resources Act of 2008, Public Law 110-229. See Chapter 3, Continuous Residence, Section E, Residence in the Commonwealth of the Northern Mariana Islands [12 USCIS-PM D.3(E)]. The term "Service District" is defined as the geographical area over which a USCIS office has jurisdiction.[2] See 8 CFR 316.1.

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] See INA 101(a)(33). This is the same as the applicant's actual domicile. 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] See 8 CFR 316.5(a).

C. Place of Residence in Certain Cases

There are special considerations regarding the place of residence for the following applicants:[5] See 8 CFR 316.5(b).

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] 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].

- 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] 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]. 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] See 8 CFR 316.5(b)(2).

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] See 8 CFR 211.5. See 8 CFR 316.5(b)(3).

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] See 8 CFR 316.5(b)(4).

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

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] See 8 CFR 316.2(a)(5).

7. Noncitizen Nationals of the United States

A noncitizen national may naturalize if he or she becomes a resident of any State and is otherwise qualified.[13] See INA 325. See Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence [12 USCIS-PM D.5]. Noncitizen nationals 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] See INA 334(a). See 8 CFR 334.2(b). 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 an 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] See 8 CFR 316.2(a)(5).

E. Expediting Applications from Certain 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 alien number must be written at the top right of the SSA letter).

Footnotes

1.

See INA 101(a)(36). As of November 28, 2009, Commonwealth of the Northern Mariana Islands (CNMI) is part of the definition of United States. See Consolidated Natural Resources Act of 2008, Public Law 110-229. 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] See INA 316(a). See 8 CFR 316.11. "Attachment" is a stronger term than "well disposed" and implies a depth of conviction, which would lead to active support of the Constitution.[2] See In re Shanin, 278 F. 739 (D.C. Mass. 1922).

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] See Allan v. United States, 115 F.2d 804 (9th Cir. 1940).

In order 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] See INA 337. See 8 CFR 337.1. See Part J, Oath of Allegiance [12 USCIS-PM J]. In order 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;

- The applicant must understand that he or she is intending to make the United States his or her permanent home where he or she will fully assume residency; 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] The attachment to the Constitution and oath requirements may be modified for religious objections or waived for applicants with an inability to comprehend the oath. Prior to November 6, 2000, certain disabled applicants were precluded from naturalization because they could not personally express intent or voluntary assent to the oath requirement. However, subsequent legislation authorized USCIS to waive the attachment and the oath requirements for any individual who has a medical condition physical or developmental disability or mental impairment that makes him or her unable to understand or communicate an understanding of the meaning of the oath. See Pub. L. 106-448 (November 6, 2000). See Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers [12 USCIS-PM J.3].

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] See INA 316(a) and INA 337(a)(5)(A). See the Military Selective Service Act of 1940.

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] See www.sss.gov. Confirmation of registration may be obtained by calling (847) 688-6888 or online at www.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] Failure to register is not a permanent bar to naturalization. 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] See 50 U.S.C. App. 462. 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:

Applicants Under 26 Years of Age

The applicant is generally ineligible.

Applicants Between 26 and 31 Years of Age

The applicant may be ineligible for naturalization. USCIS will allow the applicant an opportunity to show that he did not knowingly or willfully fail to register, or that he was not required to do so.

Applicants Over 31 Years of Age

The applicant is eligible. This is the case even if the applicant knowingly and willfully failed to register because the applicant's failure to register would be outside of the statutory period.

3. Males Not Required to Register

The following classes of males are not required to register for Selective Service:

- Males over the age of 26;

- Males who did not live in the United States between the ages of 18 and 26 years;
- Males who lived in the United States between the ages of 18 and 26 years but who maintained lawful nonimmigrant status for the entire period; and
- Males born after March 29, 1957 and before December 31, 1959.[10] See Proc. No. 4771 of July 2, 1980 1-101, 94 Stat. 3775 (1980). See 50 U.S.C. App. 456(a). See Sec. 3(a) of the Military Selective Service Act [50 U.S.C. App. 453(a)].

C. Draft Evaders

In general, the law prohibits draft evaders and deserters from the U.S. armed forces during wartime from naturalizing for lack of attachment to the Constitution and favorable disposition to the good order of the United States.[11] See INA 316(a)(3).

A conviction by a court martial or a court of competent jurisdiction for a military desertion or a departure from the United States to avoid a military draft will preclude naturalization.[12] See INA 314. USCIS may obtain such information from the applicant's testimony during the naturalization examination (interview), security checks, and from the Request for Certification of Military or Naval Service (Form N-426).[13] See Part I, Military Members and their Families [12 USCIS-PM I].

An applicant who admits to desertion during wartime, but who has not been convicted of desertion by court martial or court of competent jurisdiction may still be eligible for naturalization.[14] See State v. Symonds, 57 Me. 148 (1869). See Holt v. Holt, 59 Me. 464 (1871). See McCafferty v. Guyer, 59 Pa. 109 (1868). An applicant's military record may list him or her as a deserter but without a final conviction.

D. Membership in Certain Organizations

The officer will review an applicant's record and testimony during the interview on the naturalization application to determine whether he or she was ever a member of or in any way associated (either directly or indirectly) with:

- The Communist Party;
- Any other totalitarian party; or
- A terrorist organization.

Current and previous membership in these organizations may indicate a lack of attachment to the Constitution and an indication that the applicant is not well disposed to the good order and happiness of the United States.[15] See INA 313 and INA 316. See 8 CFR 316. Membership in these organizations may also raise issues of lawful admission, good

moral character,[16] See Part F, Good Moral Character [12 USCIS-PM F]. or may even render the applicant removable.[17] See INA 237(a)(4).

The burden rests on the applicant to prove that he or she has an attachment to the Constitution and that he or she is well disposed to the good order and happiness of the United States, among the other naturalization requirements. An applicant who refuses to testify or provide documentation relating to membership in such organizations has not met the burden of proof. USCIS may still deny the naturalization application under such grounds in cases where such an applicant was not removed at the end of removal proceedings.[18] See INA 313. See the Legal Decisions and Opinions of the Office of Immigration Litigation Case Summaries - No. 93-380, Price v. U.S. Immigration and Naturalization Service, seeking review of Price v. U.S. Immigration Naturalization Service, 962 F.2d. 836 (9th Cir. 1992).

1. Communist Party Affiliation

An applicant cannot naturalize if any of the following are true within ten years immediately preceding his or her filing for naturalization and up until the time of the Oath of Allegiance:

- The applicant is or has been a member of or affiliated with the Communist Party or any other totalitarian party;
- The applicant is or has advocated communism or the establishment in the United States of a totalitarian dictatorship;
- The applicant is or has been a member of or affiliated with an organization that advocates communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterance or through any written or printed matter published by such organization;
- The applicant is or has been a subversive, or a member of, or affiliated with, a subversive organization;
- The applicant is knowingly publishing or has published any subversive written or printed matter, or written or printed matter advocating communism;
- The applicant is knowingly circulating or has circulated, or knowingly possesses or has possessed for the purpose of circulating, subversive written or printed matter, or written or printed matter advocating communism; or
- The applicant is or has been a member of, or affiliated with, any organization that publishes or circulates, or that possesses for the purpose of publishing or circulating, any subversive written or printed matter, or any written or printed matter advocating communism.

2. Exemptions to Communist Party Affiliation

The burden is on the applicant to establish eligibility for an exemption. An applicant may be eligible for naturalization if he or she establishes that:

- The applicant's membership or affiliation was involuntary;
- The applicant's membership or affiliation was without awareness of the nature or the aims of the organization, and was discontinued when the applicant became aware of the nature or aims of the organization;
- The applicant's membership or affiliation was terminated prior to his or her attaining the age of 16;
- The applicant's membership or affiliation was terminated more than 10 years prior to the filing for naturalization;
- The applicant's membership or affiliation was by operation of law; or
- The applicant's membership or affiliation was necessary for purposes of obtaining employment, food rations, or other essentials of living.[19] See INA 313(d).

Even if participating without awareness of the nature or the aims of the organization, the applicant's participation must have been minimal in nature. The applicant must also demonstrate that membership in the covered organization was necessary to obtain the essentials of living like food, shelter, clothing, employment, and an education, which were routinely available to the rest of the population.

For purposes of this exemption, higher education qualifies as an essential of living only if the applicant can establish the existence of special circumstances which convert the need for higher education into a need as basic as the need for food or employment, and that he or she participated only to the minimal extent necessary to receive the essentials of living.

However, unless the applicant can show special circumstances that establish a need for higher education as basic as the need for food or employment, membership to obtain a college education is not excusable for obtaining an essential of living.[20] See Langhammer v. Hamilton, 194 F. Supp. 854, 857 (1961).

3. Nazi Party Affiliation

Applicants who were affiliated with the Nazi Government of Germany or any government occupied by or allied with the Nazi government of Germany, either directly or indirectly, are ineligible for admission into the United States and permanently barred from naturalization.[21] See INA 212(a)(3)(E). The applicant is responsible for providing any evidence or documentation to support a claim that he or she is not ineligible for naturalization based on involvement in the Nazi Party.

4. Persecution and Genocide

An applicant who has engaged in persecution or genocide is permanently barred from naturalization because he or she is precluded from establishing good moral character.[22] See INA 101(a)(42), INA 101(f), and INA 208(b)(2)(A)(i). See Part F, Good Moral Character, Chapter 4, Permanent Bars to GMC, Section C, Persecution, Genocide, Torture, or Severe Violations of Religious Freedom [12 USCIS-PM F.4(C)]. Additionally, an applicant who engaged in persecution or genocide prior to admission as an LPR would have been inadmissible. Such an applicant would not have lawfully acquired LPR status in accordance with all applicable provisions and would be ineligible for naturalization.[23] See INA 318. See Chapter 2, LPR Admission for Naturalization [12 USCIS-PM D.2]. Such persons may also be deportable.[24] See INA 212(a)(3)(E).

5. Membership or Affiliation with Terrorist Organizations

Information concerning an applicant's membership in a terrorist organization implicates national security issues. Such information is important in determining the applicant's eligibility in terms of the good moral character (GMC) and attachment requirements.

Footnotes

1.

See INA 316(a). See 8 CFR 316.11.

2.

See *In re Shanin*, 278 F. 739 (D.C. Mass. 1922).

3.

See *Allan v. United States*, 115 F.2d 804 (9th Cir. 1940).

4.

See INA 337. See 8 CFR 337.1. See Part J, Oath of Allegiance [12 USCIS-PM J].

5.

The attachment to the Constitution and oath requirements may be modified for religious objections or waived for applicants with an inability to comprehend the oath. Prior to November 6, 2000, certain disabled applicants were precluded from naturalization because they could not personally express intent or voluntary assent to the oath requirement. However, subsequent legislation authorized USCIS to waive the attachment and the oath requirements for any individual who has a medical condition physical or developmental disability or mental impairment that makes him or her unable to understand or communicate an understanding of the meaning of the oath. See Pub. L. 106-448 (November 6, 2000). See Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers [12 USCIS-PM J.3].

6.

See INA 316(a) and INA 337(a)(5)(A). See the Military Selective Service Act of 1940.

7.

See www.sss.gov.

8.

Failure to register is not a permanent bar to naturalization.

9.

See 50 U.S.C. App. 462.

10.

See Proc. No. 4771 of July 2, 1980 1-101, 94 Stat. 3775 (1980). See 50 U.S.C. App. 456(a). See Sec. 3(a) of the Military Selective Service Act [50 U.S.C. App. 453(a)].

11.

See INA 316(a)(3).

12.

See INA 314.

13.

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

14.

See *State v. Symonds*, 57 Me. 148 (1869). See *Holt v. Holt,* 59 Me. 464 (1871). See *McCafferty v. Guyer*, 59 Pa. 109 (1868).

15.

See INA 313 and INA 316. See 8 CFR 316.

16.

See Part F, Good Moral Character [12 USCIS-PM F].

17.

See INA 237(a)(4).

18.

See INA 313. See the Legal Decisions and Opinions of the Office of Immigration Litigation Case Summaries - No. 93-380, *Price v. U.S. Immigration and Naturalization Service*, seeking review of *Price v. U.S. Immigration Naturalization Service*, 962 F.2d. 836 (9th Cir. 1992).

19.

See INA 313(d).

20.

See *Langhammer v. Hamilton*, 194 F. Supp. 854, 857 (1961).

21.

See INA 212(a)(3)(E).

22.

See INA 101(a)(42), INA 101(f), and INA 208(b)(2)(A)(i). See Part F, Good Moral Character, Chapter 4, Permanent Bars to GMC, Section C, Persecution, Genocide, Torture, or Severe Violations of Religious Freedom [12 USCIS-PM F.4(C)].

23.

See INA 318. See Chapter 2, LPR Admission for Naturalization [12 USCIS-PM D.2].

24.

See INA 212(a)(3)(E).

Chapter 8 - Educational Requirements

In general, applicants for naturalization must demonstrate an understanding of the English language, including an ability to read, write, and speak words in ordinary usage. Applicants must also demonstrate a knowledge and understanding of the fundamentals of the history and principles and form of government of the United States (civics). These are the English and civics requirements for naturalization.

An applicant may be eligible for an exception to the English requirements if he or she is a certain age and has been an LPR for a certain period of time. In addition, an applicant who has a physical or developmental disability or mental impairment may be eligible for a medical exception of both the English and civics requirements.[2] See INA 312 and 8 CFR 312. See Part E, English and Civics Testing and Exceptions [12 USCIS-PM E].

Footnotes

1.

See Part E, English and Civics Testing and Exceptions [12 USCIS-PM E] and Part B, Naturalization Examination [12 USCIS-PM B].

2.

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

Chapter 9 - Good Moral Character

One of the requirements for naturalization is good moral character (GMC). An applicant for naturalization must show that he or she has been, and continues to be, a person of good moral character. In general, the applicant must show GMC during the five-year period immediately preceding his or her application for naturalization and up to the time of the Oath of Allegiance. Conduct prior to the five-year period may also impact whether the applicant meets the requirement.[2] See Part F, Good Moral Character [12 USCIS-PM F].

Footnotes

1.

See Part F, Good Moral Character [12 USCIS-PM F], for guidance on the GMC requirement for naturalization.

2.

See Part F, Good Moral Character [12 USCIS-PM F].

Part E - English and Civics Testing and Exceptions

Chapter 1 - Purpose and Background

A. Purpose

In general, a naturalization applicant must demonstrate an understanding of the English language, including an ability to read, write, and speak words in ordinary usage. An applicant must also demonstrate a knowledge and understanding of the fundamentals of the history and principles and form of government of the United States (civics). These are the English and civics requirements for naturalization.[1] See INA 312. See 8 CFR 312.

B. Background

Prior to 1906, an applicant was not required to know English, history, civics, or understand the principles of the constitution to naturalize. If the court determined the applicant was a "thoroughly law-abiding and industrious man, of good moral character," the applicant became a U.S. citizen.[2] See In re Rodriguez, 81 F. 337 (W.D. Tex. 1897). As far back as 1908, the former Immigration Service and the Courts determined that a person could not establish the naturalization requirement of showing an attachment to the Constitution unless he or she had some understanding of its provisions.[3] See In re Meakins, 164 F. 334 (E.D. Wash. 1908). See In re Vasicek, 271 F. 326 (E.D. Mo. 1921).

In 1940, Congress made amendments to include an English language requirement and certain exemptions based on age and residence, as well as a provision for questioning applicants on their understanding of the principles of the Constitution.[4] See the Nationality Act of 1940, Pub. L. 76-853, 54 Stat. 1137. In 1994, Congress enacted legislation providing an exception to the naturalization educational requirements for applicants who cannot meet the requirements because of a medical disability. Congress also amended the exceptions to the English requirement based on age and residence that are current today.[5] See the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103-416 (October 25, 1994).

On October 1, 2008, USCIS implemented a redesigned English and civics test. With this redesigned test, USCIS ensures that all applicants have the same testing experience and have an equal opportunity to demonstrate their understanding of English and civics.

C. Legal Authorities

- INA 312; 8 CFR 312 – Educational requirements for naturalization
- INA 316; 8 CFR 316 – General requirements for naturalization

Footnotes

1.

See INA 312. See 8 CFR 312.

2.

See *In re Rodriguez*, 81 F. 337 (W.D. Tex. 1897).

3.

See *In re Meakins*, 164 F. 334 (E.D. Wash. 1908). See *In re Vasicek*, 271 F. 326 (E.D. Mo. 1921).

4.

See the Nationality Act of 1940, Pub. L. 76-853, 54 Stat. 1137.

5.

See the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103-416 (October 25, 1994).

Chapter 2 - English and Civics Testing

A. Educational Requirements

An officer administers a naturalization test to determine whether an applicant meets the English and civics requirements.

The naturalization test consists of two components:

- English language proficiency, which is determined by the applicant's ability to read, write, speak and understand English; and
- Knowledge of U.S. history and government, which is determined by a civics test.

An applicant has two opportunities to pass the English and civics tests: the initial examination and the re-examination interview. USCIS will deny the naturalization application if the applicant fails to pass any portion of the tests after two attempts. In cases where an applicant requests a USCIS hearing on the denial, officers must administer any failed portion of the tests.[1] Only one opportunity to pass the failed portion of the tests is provided at the hearing. See Part B, Naturalization Examination, Chapter 6, USCIS Hearing and Judicial Review, Section B, Review of Timely Filed Hearing Request [12 USCIS-PM B.6(B)].

Unless excused by USCIS, the applicant's failure to appear at the re-examination for testing or to take the tests at an examination or hearing counts as a failed attempt to pass the test.

B. Exceptions

An applicant may qualify for an exception from the English requirement, civics requirement, or both requirements. The table below serves as a quick reference guide on the exceptions to the English and civics requirements for naturalization.

Exceptions to English and Civics Requirements for Naturalization

Exceptions *INA 312(b)*	Educational Requirements	
	English **Read, write, speak and understand**	***Civics*** **Knowledge of U.S. history and government**
Age 50 or older and resided in U.S. as an LPR for at least 20 years at time of filing	Exempt	Still required. Applicants may take civics test in their language of choice using an interpreter.
Age 55 or older and resided in U.S. as an LPR for at least 15 years at time of filing	Exempt	
Age 65 or older and resided in U.S. as an LPR for at least 20 years at time of filing	Exempt	Still required but officers administer specially designated test forms. Applicants may take the civics test in their language of choice using an interpreter.
Medical Disability Exception **(Form N-648)**	May be exempt from English, civics, or both	

1. Age and Residency Exceptions to English

An applicant is exempt from the English language requirement but is still required to meet the civics requirement if:

- The applicant is age 50 or older at the time of filing for naturalization and has lived as an LPR in the United States for at least 20 years; or

- The applicant is age 55 or older at the time of filing for naturalization and has lived as an LPR in the United States for at least 15 years.

The applicant may take the civics test in his or her language of choice with the use of an interpreter.

2. Special Consideration for Civics Test

An applicant receives special consideration in the civics test if, at the time of filing the application, the applicant is 65 years of age or older and has been living in the United States for periods totaling at least 20 years subsequent to a lawful admission for permanent residence.[2] See INA 312(b)(3). An applicant who qualifies for special consideration is administered specific test forms.

3. Medical Disability Exception to English and Civics

An applicant who cannot meet the English and civics requirements because of a medical disability may be exempt from the English requirement, the civics requirement, or both requirements.

C. Meeting Requirements under IRCA 1986

The Immigration Reform and Control Act of 1986 (IRCA) mandated that persons legalized under INA 245A meet a basic citizenship skills requirement in order to be eligible for adjustment to LPR status. An applicant was permitted to demonstrate basic citizenship skills by:

- Passing the English and civics tests administered by legacy Immigration and Naturalization Service (INS); or
- Passing standardized English and civics tests administered by organizations then authorized by the INS.[3] The INS Standardized Citizenship Testing Program was conducted by five non-government companies on behalf of the INS. That program was established in 1991 and ended on August 30, 1998. See 63 FR 25080 (May 6, 1998).

At the time of the naturalization re-examination, the officer will only retest the applicant on any portion of the test that the applicant did not satisfy under IRCA. In all cases, the applicant must demonstrate the ability to speak English at the time of the naturalization examination, unless the applicant meets one of the age and time as resident exemptions of English or qualifies for a medical waiver.[4] See INA 245A(b)(1)(D)(iii). See 8 CFR 312.3.

D. English Portion of the Test

A naturalization applicant must only demonstrate an ability to read, write, speak, and understand words in ordinary usage.[5] See INA 312. See 8 CFR 312. Ordinary usage means comprehensible and pertinent communication through simple vocabulary and grammar, which may include noticeable errors in pronouncing, constructing, spelling, and understanding completely certain words, phrases, and sentences.

An applicant may ask for words to be repeated or rephrased and may make some errors in pronunciation, spelling, and grammar and still meet the English requirement for naturalization. An officer should repeat and rephrase questions until the officer is satisfied that the applicant either fully understands the question or is unable to understand English.[6] See 8 CFR 335.2(c).

1. Speaking Test

An officer determines an applicant's ability to speak and understand English based on the applicant's ability to respond to questions normally asked in the course of the naturalization examination. The officer's questions relate to eligibility and include questions provided in the naturalization application.[7] See 8 CFR 312.1(c)(1). The officer should repeat and rephrase questions during the naturalization examination until the officer is satisfied that the applicant either understands the questions or does not understand English.

An applicant who does not qualify for a waiver of the English requirement must be able to communicate in English about his or her application and eligibility for naturalization. An applicant does not need to understand every word or phrase on the application.

Passing the Speaking Test

If the applicant generally understands and responds meaningfully to questions relevant to his or her naturalization eligibility, then he or she has sufficiently demonstrated the ability to speak English.

Failing the Speaking Test

An applicant fails the speaking test when he or she does not understand sufficient English to be placed under oath or to answer the eligibility questions on his or her naturalization application.

The officer must still administer all other parts of the naturalization test, including the portions on reading, writing, and civics.

An officer cannot offer or accept a withdrawal of a naturalization application from an applicant who does not speak English unless the applicant has an interpreter present who is able to clearly understand the consequences of withdrawing the application.[8] See Part B, Naturalization Examination, Chapter 4, Results of the Naturalization Examination, Section D, Administrative Closure, Lack of Prosecution, Withdrawal, and Holding in Abeyance [12 USCIS-PM B.4(D)].

2. Reading Test

To sufficiently demonstrate the ability to read in English, applicants must read one sentence out of three sentences. The reading test is administered by the officer using standardized reading test forms. Once the applicant reads one of the three sentences correctly, the officer stops the reading test.

Passing the Reading Test

An applicant passes the reading test if the applicant reads one of the three sentences without extended pauses in a manner that the applicant is able to convey the meaning of the sentence and the officer is able to understand the sentence. In general, the applicant must read all content words but may omit short words or make pronunciation or intonation errors that do not interfere with the meaning.

Failing the Reading Test

An applicant fails the reading test if he or she does not successfully read at least one of the three sentences. An applicant fails to read a sentence successfully when he or she:

- Omits a content word or substitutes another word for a content word;
- Pauses for extended periods of time while reading the sentence; or
- Makes pronunciation or intonation errors to the extent that the applicant is not able to convey the meaning of the sentence and the officer is not able to understand the sentence.

3. Writing Test

To sufficiently demonstrate the ability to write in English, the applicant must write one sentence out of three sentences in a manner that the officer understands. The officer dictates the sentence to the applicant using standardized writing test forms. An applicant must not abbreviate any of the words. Once the applicant writes one of the three sentences in a manner that the officer understands, the officer stops the writing test.

An applicant does not fail the writing test because of spelling, capitalization, or punctuation errors, unless the errors interfere with the meaning of the sentence and the officer is unable to understand the sentence.

Passing the Writing Test

The applicant passes the writing test if the applicant is able to convey the meaning of one of the three sentences to the officer. The applicant's writing sample may have the following:

- Some grammatical, spelling, or capitalization errors;
- Omitted short words that do not interfere with meaning or
- Numbers spelled out or written as digits.

Failing the Writing Test

An applicant fails the writing test if he or she makes errors to a degree that the applicant does not convey the meaning of the sentence and the officer is not able to understand the sentence.

An applicant fails the writing test if he or she writes the following:

- A different sentence or words;
- An abbreviation for a dictated word;[9] An abbreviation for a dictated word may be accepted if the officer has approved the abbreviation.
- Nothing or only one or two isolated words; or
- A sentence that is completely illegible.

E. Civics Portion of the Test

A naturalization applicant must demonstrate a knowledge and understanding of the fundamentals of the history, the principles, and the form of government of the United States (civics).[10] See 8 CFR 312.2.

1. Civics Test

To sufficiently demonstrate knowledge of civics, the applicant must answer correctly at least six of ten questions from the standardized civics test form administered by an officer. The officer administers the test orally.[11] See 8 CFR 312.2(c)(1). Once the applicant answers six of the ten questions correctly, the officer stops the test.

Passing the Civics Test

An applicant passes the civics test if he or she provides a correct answer or provides an alternative phrasing of the correct answer for six of the ten questions.

Failing the Civics Test

An applicant fails the civics test if he or she provides an incorrect answer or fails to respond to six out of the ten questions from the standardized test form.

2. Special Consideration

An officer gives special consideration to an applicant who is 65 years of age or older and who has been living in the United States for periods totaling at least 20 years subsequent to a lawful admission for permanent residence.[12] See INA 312(b)(3). The age and time requirements must be met at the time of filing the naturalization application. An officer only asks questions from the three "65/20" test forms when administering the civics test to such applicants. The test forms only contain 20 specially designated civics questions from the usual list of 100 questions.

3. Due Consideration

An officer should exercise "due consideration" on a case-by-case basis in choosing subject matters, phrasing questions, and evaluating responses when administering the civics test. The officer's decision to exercise due consideration should be based on a review of the applicant's:

- Age;
- Background;
- Level of education;
- Length of residence in the United States;
- Opportunities available and efforts made to acquire the requisite knowledge; and
- Any other relevant factors relating to the applicant's knowledge and understanding.[13] See 8 CFR 312.2(c)(2).

F. Failure to Meet the English or Civics Requirements

If an applicant fails any portion of the English test, the civics test, or all tests during the initial naturalization examination, USCIS will reschedule the applicant to appear for a second examination between 60 and 90 days after the initial examination.[14] See 8 CFR 335.3(b) (Re-exam no earlier than 60 days from initial examination). See 8 CFR 312.5(a) (Re-examination no later than 90 days from initial examination).

In cases where the applicant appears for a re-examination, the reexamining officer must not administer the same English or civics test forms administered during the initial examination. The officer must only retest the applicant in those areas that the applicant previously failed. For example, if the applicant passed the English speaking, reading, and civics portions but failed the writing portion during the initial examination, the officer must only administer the English writing test during the re-examination.[15] See 8 CFR 312.5.

If an applicant fails any portion of the naturalization test a second time, the officer must deny the application based upon the applicant's failure to meet the educational requirements for naturalization. The officer also must address any other areas of ineligibility in the denial notice. An applicant who refuses to be tested or to respond to individual questions on the reading, writing, or civics test, or fails to respond to eligibility questions because he or she did not

understand the questions as asked or rephrased, fails to meet to the educational requirements. An officer should treat an applicant's refusal to be tested or to respond to test questions as a failure of the test.[16] See 8 CFR 312.5(b).

G. Documenting Test Results

All officers administering the English and civics tests are required to record the test results in the applicant's A-file. Officers are required to complete and provide to each applicant at the end of the naturalization examination the results of the examination and testing, unless the officer serves the applicant with a denial notice at that time.[17] Officers must use the Naturalization Interview Results (Form N652). The results include the results of the English and civics tests.

Footnotes

1.

Only one opportunity to pass the failed portion of the tests is provided at the hearing. See Part B, Naturalization Examination, Chapter 6, USCIS Hearing and Judicial Review, Section B, Review of Timely Filed Hearing Request [12 USCIS-PM B.6(B)].

2.

See INA 312(b)(3).

3.

The INS Standardized Citizenship Testing Program was conducted by five non-government companies on behalf of the INS. That program was established in 1991 and ended on August 30, 1998. See 63 FR 25080 (May 6, 1998).

4.

See INA 245A(b)(1)(D)(iii). See 8 CFR 312.3.

5.

See INA 312. See 8 CFR 312.

6.

See 8 CFR 335.2(c).

7.

See 8 CFR 312.1(c)(1).

8.

See Part B, Naturalization Examination, Chapter 4, Results of the Naturalization Examination, Section D, Administrative Closure, Lack of Prosecution, Withdrawal, and Holding in Abeyance [12 USCIS-PM B.4(D)].

9.

An abbreviation for a dictated word may be accepted if the officer has approved the abbreviation.

10.

See 8 CFR 312.2.

11.

See 8 CFR 312.2(c)(1).

12.

See INA 312(b)(3).

13.

See 8 CFR 312.2(c)(2).

14.

See 8 CFR 335.3(b) (Re-exam no earlier than 60 days from initial examination). See 8 CFR 312.5(a) (Re-examination no later than 90 days from initial examination).

15.

See 8 CFR 312.5.

16.

See 8 CFR 312.5(b).

17.

Officers must use the Naturalization Interview Results (Form N652).

Chapter 3 - Medical Disability Exception (Form N-648)

A. Medical Exception Requirements

In 1994, Congress enacted legislation providing an exception to the naturalization educational requirements for applicants who cannot meet the educational requirements because of a physical or developmental disability or mental impairment.[1] See Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103-416 (October 25, 1994). See INA 312(b). The "55/15" and "50/20" exceptions, as well as the "65/20" special consideration provisions were also added by the same legislation.

The English and civics requirements do not apply to naturalization applicants who are unable to comply due to a "medically determinable" physical or developmental disability or mental impairment that has lasted, or is expected to last, at least 12 months. The regulations define "medically determinable" as a determination made by acceptable clinical or laboratory techniques. [2] See INA 312(b). See 8 CFR 312.1(b)(3) and 8 CFR 312.2(b).

The applicant must demonstrate a disability or impairment that affects the functioning of the individual such that, even with reasonable accommodations, he or she is unable to demonstrate the educational requirements for naturalization. Illiteracy alone is not a valid reason to seek an exception to the educational requirements. In addition, advanced age, in and of itself, is not a medically determinable physical or developmental disability or mental impairment.

An applicant seeking an exception to the educational requirements submits a Medical Certification for Disability Exceptions (Form N-648) as an attachment to the naturalization application.[3] See 8 CFR 312.2(b)(2). The first edition of Form N-648 was made available to the public as an attachment to the final rule. See 62 FR 12915-12928 (March 19, 1997). See 74 Interpreter Releases 512-15 (March 24, 1997). A licensed medical professional must complete the form. The medical professional must certify that the applicant's medical condition prevents the applicant from meeting the English requirement, the civics requirement, or both requirements.

USCIS recognizes that certain circumstances may prevent concurrent filing of the naturalization application and the disability exception form. Accordingly, an applicant may file the disability exception form during any part of the naturalization process, including after the application is filed but before the first examination, during the first examination, during the re-examination if the applicant's first examination was rescheduled, and during the rehearing on a denied naturalization application.

B. Medical Exception Versus Accommodation

Requesting an exception to the English and civics requirements is different from requesting an accommodation to the naturalization examination process.[4] See Part C, Accommodations [12 USCIS-PM C]. An exception to the English and civics requirements exempts the applicant from the educational requirements completely. An accommodation, on the other hand, simply modifies the manner in which an applicant meets the educational requirements; it does not exempt the applicant from the educational requirements.

Reasonable accommodations include, but are not limited to, sign language interpreters, extended time for testing, and off-site testing. A disability exception requires an applicant to show that his or her medical condition prevents him or her from complying with the English and civics requirements even with reasonable accommodations.

C. Authorized Medical Professionals

USCIS only authorizes the following licensed medical professionals to certify the disability exception form:

- Medical doctors;
- Doctors of osteopathy; and
- Clinical psychologists.[5] See 8 CFR 312.2(b)(2).

These medical professionals must be licensed to practice in any state of the United States, Washington, D.C., Guam, Puerto Rico, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands.[6] Initially, the corresponding Notice of Proposed Rulemaking (NPRM) issued by legacy INS to address this legislation proposed that all exception eligibility determinations be based on individual assessments by civil surgeons or qualified individuals or entities designated by the Attorney General. The proposed rule suggested that the civil surgeon (or "authorized entity") provide their assessment in a one-page document. The assessment would attest to the origin, nature, and extent of the applicant's medical condition. INS removed the requirement for a civil surgeon determination in the final rule. See NPRM at 61 FR 44227-44230 (August 28, 1996).

The medical professional must:

- Conduct an in-person examination of the applicant;

- Explain the nature and extent of the medical condition on Form N-648;
- Explain how the medical condition relates to the applicant's inability to comply with the English and civics requirements;
- Attest that the medical condition has lasted or is expected to last at least 12 months; and
- Attest that the cause of the medical condition is not related to the illegal use of drugs.

The medical professional must complete the disability exception form using common terminology that a person without medical training can understand. While staff associated with the medical professional may assist in completing the form, the medical professional alone is responsible for verifying the accuracy of the form's content. The medical professional certifying the form may attach supporting documents, such as medical diagnostic reports and records. The attachments must not replace written responses to each question or item on the form.

D. Guidelines for Officer's Review

1. General Guidelines for Review

An officer must review the disability exception form to determine whether the applicant is eligible for the exception. The officer may reach one of the following outcomes after his or her review:

- The form sufficiently establishes that the applicant is eligible for the exception; or
- The form is insufficient in establishing that the applicant is eligible for the exception.

The tables below provide general guidelines on what an officer should and should not do when reviewing a disability exception form.

General Guidelines for Officer's Review of Form N-648
When reviewing the form, an officer SHOULD:
Determine whether the form has been properly completed, certified, and signed (the medical professional must have certified the form within six months of its submission). Once certified, the form is valid for the duration of the application.
Ensure that the form relates to the applicant and that there are no discrepancies between the form and other information, including biographic data, testimony during the interview, or information contained in the applicant's A-file

Determine whether the form fully addresses the underlying medical condition and its causal connection with the applicant's inability to comply with the requirements
Determine whether the form contains sufficient information to establish that the applicant is eligible for the exception by a preponderance of the evidence ("more likely than not")
When reviewing the form, an officer SHOULD NOT:
Assume responsibility or authority to determine the validity of the medical diagnosis or opinion on the applicant's ability to comply with the English and civics requirements
Refer an applicant to another medical professional solely because the applicant sought care from a professional who shares the same language, culture, ethnicity, or nationality
Conclude that the applicant does not have the medical condition because it was not previously recorded in other immigration related medical examinations or documents
Question an applicant about the applicant's ability to complete a certain activity if the form does not discuss that particular activity
Require that an applicant complete specific medical, clinical, or laboratory diagnostic techniques, tests, or methods
Develop and substitute his or her own diagnosis of the applicant's medical condition in lieu of the medical professional's diagnosis
Use questionnaires or tests to challenge each applicant's diagnosed medical condition
Question the applicant about his or her medical care, job duties, community and civic affairs, or daily living activities unless facts in the form or during the examination directly contradict facts in the A-file
Request to see an applicant's medical records or prescription medication solely to question whether there was a proper basis for the medical professional's diagnosis
Infer that the applicant is able to comply with all portions of the English and civics requirements in cases where an applicant only seeks an exception from certain portions

2. Review for Completeness of Form

An officer must verify that the submitted disability exception form is complete. The officer should verify that the medical professional has answered all of the required questions and has certified the form along with the applicant. If a question has not been answered completely or the medical professional or applicant does not sign the form, the officer must proceed with the examination in English as if the applicant had not submitted the form. The officer provides the applicant with an opportunity to take each portion of the English and civics test.

A complete form[7] See Medical Certification for Disability Exceptions (Form N-648). must contain all of the information requested on the form, to include the information listed in the table below.

Properly Completed Form N-648
All forms must contain the information requested on the form, to include:
Clinical diagnosis of the applicant's medical condition and its DSM code (if applicable)
Description of the medical condition forming the basis for the disability exception
Date the medical professional examined the applicant
Description of the doctor-patient relationship indicating whether the medical professional regularly treats the applicant for the cited conditions or an explanation of why he or she is certifying the disability form instead of the regularly treating medical professional
Statement that the medical condition has lasted, or is expected to last, at least 12 months
Statement whether the medical condition is the result of the illegal use of drugs
Explanation of what caused the medical condition, if known
Description of the clinical methods used to diagnose the medical condition
Description of the medical condition's effect on the applicant's ability to successfully complete the educational requirements for naturalization
Statement whether the medical professional used an interpreter to examine the applicant

The medical professional is not required to address the severity of the effects of the medical condition on the applicant's daily life.

3. Medical Examination and Nexus

In reviewing the request for the medical exception, the officer must focus on whether the medical professional has explained that the applicant has a disability or impairment and that there is a nexus (causal connection) between the disability or the impairment and the applicant's inability to demonstrate the educational requirements for naturalization. The medical professional must specifically explain how the applicant's disability or impairment prohibits the applicant from being able to demonstrate the educational requirements.

4. Missing Interpreter Certification

There may be instances where the interpreter certification on the disability exception form may not have been completed. In this instance, the officer should ask the applicant whether the medical professional used an interpreter during the medical examination that formed the basis of the medical exception form.

- The officer should not draw a negative inference if the medical professional did not use an interpreter if he or she examined the applicant in the applicant's native language.

- The officer may question the applicant about the applicant's visits with the medical professional and the nature of their relationship if the interpreter certification is not complete and the medical professional did not conduct the examination in the applicant's native language.

- The officer should question the applicant under oath in the applicant's language of choice with use of an interpreter to address the issues of concern related to the medical exception form.

5. Requesting a Supplemental Disability Determination

In general, an officer should not request a supplemental disability determination and should evaluate the original form on its own merits. If an officer questions the veracity of the information on the disability exception form, the officer should exercise caution when requesting an applicant to obtain a supplemental disability determination from another authorized medical professional.[8] See 8 CFR 312.2(b)(2). The officer must:

- Explain the reasons for doubting the veracity of the information on the original disability exception form;

- Consult with his or her supervisor and receive approval before requesting the applicant to undergo a supplemental disability determination; and

- Provide the applicant with the relevant state medical board contact information to facilitate the applicant's ability to find another medical professional.

E. Establishing Eligibility for the Exception

An officer determines a request for a medical exception is sufficient if:

- The medical exception form is properly completed; and

- The medical professional explains how the applicant's medical condition prohibits the applicant from meeting the English requirement, the civics requirement, or both requirements.

The table below provides the general procedures for cases where an applicant qualifies for a disability exception. The procedures apply to any phase of the naturalization examination, to include the initial or re-examination, or hearing on a denial.

General Procedures if Form N-648 Establishes Eligibility
If form is deemed sufficient at any naturalization examination or hearing:
The officer must proceed with the interview without administering the test, in the applicant's language of choice with the use of an interpreter, if the medical professional indicated on the form that the applicant was unable to comply with any of the educational requirements.
The officer must administer the tests for the other requirements, if the medical professional indicated on the form that the applicant was unable to comply with only some of the educational requirements. If the medical professional indicated that the applicant was unable to comply with the English speaking requirement, the interview can proceed in the applicant's language of choice with the use of an interpreter.
The officer must determine whether the applicant meets the rest of the applicable naturalization requirements and make a decision on the naturalization application.

F. Failing to Establish Eligibility for the Exception

An officer determines that a request for a medical exception is insufficient if:

- The N-648 form is not properly completed;

- The medical professional fails to explain how the applicant's medical condition prohibits the applicant from meeting the English requirement, the civics requirement, or both requirements; or

- The officer finds that the applicant listed on the form was not examined by the certifying medical professional or is not the same person as the naturalization applicant.

The table below provides the general procedures for cases where an applicant is ineligible for the disability exception. The procedures apply to any phase of the naturalization examination, to include the initial or re-examination or

hearing on a denial.

General Procedures if Form N-648 Fails to Establish Eligibility
If form is deemed insufficient at any naturalization examination or hearing:
The officer must proceed with the initial or re-examination, or hearing, in English as if the applicant had not submitted a disability exception form.
The officer must provide the applicant with an opportunity to take all portions of the English and civics testing.

1. Insufficient Request for Medical Exception at Initial Interview

Passing the English and Civics Tests

If an applicant fails to qualify for a disability exception but subsequently meets the English and civics requirements in the same examination:

- The officer should proceed with the naturalization examination to determine whether the applicant meets the rest of the applicable eligibility requirements for naturalization.
- The officer should not determine that the applicant engaged in fraud or lacks good moral character (GMC) for the sole reason that the applicant met the English and civics requirements after submitting a disability exception form.
- The officer may question the applicant further, however, on the reasons for submitting the form and the applicant's relationship to the medical professional.

Failing the English and Civics Tests

If an applicant fails to qualify for the disability exception and fails to meet the English and civics requirements:

- The officer must issue the applicant a request for evidence addressing the issues with the medical disability exception form.[9] The officer should issue a request for evidence on Form N-14.

- The USCIS office must reschedule the applicant to appear for a re-examination, to include a second opportunity to meet the English and civics requirements, between 60 and 90 days after the initial examination.

2. Insufficient Request for Medical Exception at Re-examination

If an officer determined that an applicant's disability exception form was insufficient at the initial examination, the officer should have issued a request for evidence addressing the deficiencies of the form. An officer conducting the re-examination should review the evidence submitted in response to the request for evidence issued at the initial examination.

The reexamining officer may review an applicant's disability exception form for the first time if the applicant is submitting the form for the first time at the re-examination.

If an applicant submits a medical exception form for the first time during the re-examination, the officer determines if the form is sufficient or insufficient. If the officer determines that the form is sufficient to establish eligibility for the disability exception, the officer must proceed with the naturalization examination with the use of an interpreter, exempting the applicant from the educational requirements.

If the officer determines that the form is insufficient, the officer must afford the applicant a second opportunity to take the English and civics tests. If the applicant fails any portion of the test or refuses to respond to test questions during the re-examination, the officer must deny the naturalization application based on the applicant's failure to meet the educational requirements for naturalization. In the denial notice, the officer must provide a detailed explanation for finding the medical exception form insufficient.

If an officer determines that the evidence submitted in response to the request for evidence is insufficient:

- The officer must proceed with the re-examination in English as if the applicant had not submitted a disability exception form.

- The officer must provide the applicant with a second opportunity to take any portion of the English and civics tests that the applicant previously failed.

- The officer must not provide the applicant a third opportunity to submit a disability exception form or to take the English and civics tests.

- If the applicant fails any portion of the testing, to include a refusal to be tested or to respond, the officer must deny the naturalization application based on the applicant's failure to meet the educational requirements for naturalization.

- The officer must provide a detailed explanation of the disability exception form's deficiencies in the naturalization application denial notice.

3. Insufficient Request for Medical Exception at Hearing on Denial

An officer may conduct a full *de novo* hearing on a denied naturalization application, including review of a previously submitted disability exception form during the hearing on the naturalization denial.[10] See 8 CFR 336.2. An applicant may submit additional documentation for review at the hearing, to include a new disability exception form.

If the applicant submits a new or initial form at the hearing, the hearing officer determines whether the form is sufficient for the medical exception. If the form is insufficient, the officer should retest the applicant on any portion of the English and civics tests previously failed by the applicant.[11] See Part B, Naturalization Examination, Chapter 6, USCIS Hearing and Judicial Review, Section B, Review of Timely Filed Hearing Request [12 USCIS-PM B.6(B)].

4. Discrepancies and Misrepresentation

Some cases may present questions about whether the certifying medical professional actually examined the applicant. An officer should find a disability exception form insufficient if the officer identifies any discrepancies or misrepresentations indicating:

- The applicant on the form was not examined by the certifying medical professional; or
- The applicant on the form is not the same person as the naturalization applicant.

G. Fraud Referrals

There may be cases where an officer suspects or determines that an applicant or medical professional has committed fraud in the process of seeking a medical disability exception. The officer should consult with his or her supervisor to determine whether to refer such a case to Fraud Detection and National Security (FDNS).

If an officer or the local FDNS office determines that an applicant or medical professional has committed fraud, the officer must explain the findings of fraud in the denial notice.

Footnotes

1.

See Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103-416 (October 25, 1994). See INA 312(b). The “55/15” and “50/20” exceptions, as well as the “65/20” special consideration provisions were also added by the same legislation.

2.

See INA 312(b). See 8 CFR 312.1(b)(3) and 8 CFR 312.2(b).

3.

See 8 CFR 312.2(b)(2). The first edition of Form N-648 was made available to the public as an attachment to the final rule. See 62 FR

12915-12928 (March 19, 1997). See 74 Interpreter Releases 512-15 (March 24, 1997).

4.

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

5.

See 8 CFR 312.2(b)(2).

6.

Initially, the corresponding Notice of Proposed Rulemaking (NPRM) issued by legacy INS to address this legislation proposed that all exception eligibility determinations be based on individual assessments by civil surgeons or qualified individuals or entities designated by the Attorney General. The proposed rule suggested that the civil surgeon (or "authorized entity") provide their assessment in a one-page document. The assessment would attest to the origin, nature, and extent of the applicant's medical condition. INS removed the requirement for a civil surgeon determination in the final rule. See NPRM at 61 FR 44227-44230 (August 28, 1996).

7.

See Medical Certification for Disability Exceptions (Form N-648).

8.

See 8 CFR 312.2(b)(2).

9.

The officer should issue a request for evidence on Form N-14.

10.

See 8 CFR 336.2.

11.

See Part B, Naturalization Examination, Chapter 6, USCIS Hearing and Judicial Review, Section B, Review of Timely Filed Hearing Request [12 USCIS-PM B.6(B)].

Part F - Good Moral Character

Chapter 1 - Purpose and Background

A. Purpose

One of the general requirements for naturalization is good moral character (GMC). GMC means character which measures up to the standards of average citizens of the community in which the applicant resides.[1] See 8 CFR 316.10(a)(2). See INA 101(f). See In re Mogus, 73 F. Supp. 150 (W.D. Pa. 1947) (Moral standard of average citizen). In general, an applicant must show that he or she has been and continues to be a person of GMC during the statutory period prior to filing and up to the time of the Oath of Allegiance.[2] See INA 316(a). See 8 CFR 316.10(a)(1).

The applicable naturalization provision under which the applicant files determines the period during which the applicant must demonstrate GMC.[3] See Chapter 2, Adjudicative Factors, Section A, Applicable Statutory Period [12 USCIS-PM F.2(A)]. The applicant's conduct outside the GMC period may also impact whether he or she meets the GMC requirement.[4] See INA 316(e). See 8 CFR 316.10(a)(2).

While USCIS determines whether an applicant has met the GMC requirement on a case-by-case basis, certain types of criminal conduct automatically preclude applicants from establishing GMC and may make the applicant subject to removal proceedings.[5] See INA 101(f). An applicant may also be found to lack GMC for other types of criminal conduct (or unlawful acts).

An officer's assessment of whether an applicant meets the GMC requirement includes an officer's review of:

- The applicant's record;
- Statements provided in the naturalization application; and
- Oral testimony provided during the interview.

There may be cases that are affected by specific jurisdictional case law. The officer should rely on local USCIS counsel in cases where there is a question about whether a particular offense rises to the level of precluding an applicant from establishing GMC. In addition, the offenses and conduct which affect the GMC determination may also render an applicant removable.

B. Background

The Naturalization Act of 1790 introduced the long-standing GMC requirement for naturalization. Any conduct or act that offends the accepted moral character standards of the community in which the applicant resides should be considered without regard to whether the applicant has been arrested or convicted of an offense.

In general, an applicant for naturalization must establish GMC throughout the requisite periods of continuous residence in the United States. In prescribing specific periods during which GMC must be established, Congress generally intended to make provision for the reformation and eventual naturalization of persons who were guilty of certain past misconduct.

C. Legal Authorities

- INA 101(f) – Good moral character definition
- INA 316; 8 CFR 316 – General naturalization requirements
- INA 316(e); 8 CFR 316.10 – Good moral character requirement
- INA 318 – Prerequisite to Naturalization, burden of proof

Footnotes

1.

See 8 CFR 316.10(a)(2). See INA 101(f). See *In re Mogus,* 73 F. Supp. 150 (W.D. Pa. 1947) (Moral standard of average citizen).

2.

See INA 316(a). See 8 CFR 316.10(a)(1).

3.

See Chapter 2, Adjudicative Factors, Section A, Applicable Statutory Period [12 USCIS-PM F.2(A)].

4.

See INA 316(e). See 8 CFR 316.10(a)(2).

5.

See INA 101(f).

Chapter 2 - Adjudicative Factors

A. Applicable Statutory Period

The applicable period during which an applicant must show that he or she has been a person of GMC depends on the corresponding naturalization provision.[1] See the relevant Volume 12 part for the specific statutory period pertaining to each naturalization provision. In general, the statutory period for GMC for an applicant filing under the general naturalization provision starts five years prior to the date of filing.[2] See Part D, General Naturalization Requirements, Chapter 1, Purpose and Background, Section B, General Eligibility Requirements [12 USCIS-PM D.1(B)]. See INA 316(a). See 8 CFR 316.2(a)(7).

The statutory period starts three years prior to the date of filing for certain spouses of U.S. citizens.[3] See Part G, Spouses of U.S. Citizens, Chapter 1, Purpose and Background, Section C, Table of General Provisions [12 USCIS-PM G.1(C)]. See INA 319(a) and 8 CFR 319.1(a)(7). The period during which certain service members or veterans must show GMC starts one or five years from the date of filing depending on the military provision.[4] 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 INA 328(c) and INA 329. See 8 CFR 328.2(d) and 8 CFR 329.2(d).

In all cases, the applicant must also show that he or she continues to be a person of GMC until the time of his or her naturalization.[5] See 8 CFR 316.10(a)(1).

B. Conduct Outside of the Statutory Period

USCIS is not limited to reviewing the applicant's conduct only during the applicable GMC period. An applicant’s conduct prior to the GMC period may affect the applicant’s ability to establish GMC if the applicant’s present conduct does not reflect a reformation of character or the earlier conduct is relevant to the applicant’s present moral character.

[6] See INA 316(e). See 8 CFR 316.10(a)(2).

In general, an officer must consider the totality of the circumstances and weigh all factors, favorable and unfavorable, when considering reformation of character in conjunction with GMC within the relevant period.[7] See Ralich v. United States, 185 F.2d 784 (1950) (Provided false testimony within the statutory period and operated a house of prostitution prior to the statutory period). See Marcantonio v. United States, 185 F.2d 934 (1950) (Applicant had rehabilitated his character after multiple arrests before statutory period). The following factors may be relevant in assessing an applicant's current moral character and reformation of character:

- Family ties and background;
- Absence or presence of other criminal history;
- Education;
- Employment history;
- Other law-abiding behavior (for example meeting financial obligations, paying taxes);
- Community involvement;
- Credibility of the applicant;
- Compliance with probation; and
- Length of time in United States.

C. Definition of Conviction

1. Statutory Definition of Conviction for Immigration Purposes

Most of the criminal offenses that preclude a finding of GMC require a conviction for the disqualifying offense or arrest. A "conviction" for immigration purposes means a formal judgment of guilt entered by the court. A conviction for immigration purposes also exists in cases where the adjudication of guilt is withheld if the following conditions are met:

- A judge or jury has found the alien guilty or the alien entered a plea of guilty or *nolo contendere*[8] *The term "nolo contendere" is Latin for "I do not wish to contest."* or has admitted sufficient facts to warrant a finding of guilt; and
- The judge has ordered some form of punishment, penalty, or imposed a restraint on the alien's liberty.[9] See INA 101(a)(48)(A).

It is not always clear if the outcome of the arrest resulted in a conviction. Various states have provisions for diminishing the effects of a conviction. In some states, adjudication may be deferred upon a finding or confession of guilt. Some states have a pretrial diversion program whereby the case is removed from the normal criminal proceedings. This way the person may enter into a counseling or treatment program and potentially avoid criminal prosecution.

If the accused is directed to attend a pre-trial diversion or intervention program, where no admission or finding of guilt is required, the order may not count as a conviction for immigration purposes.[10] See Matter of Grullon, 20 I&N Dec. 12 (BIA 1989).

2. Juvenile Convictions

In general, a guilty verdict, ruling, or judgment in a juvenile court does not constitute a conviction for immigration purposes.[11] See Matter of Devison-Charles, 22 I&N Dec. 1362 (BIA 2000). A conviction for a person who is under 18 years of age and who was charged as an adult constitutes a conviction for immigration purposes.

3. Court Martial Convictions

A general "court martial" is defined as a criminal proceeding under the governing laws of the U.S. armed forces. A judgment of guilt by a court martial has the same force and effect as a conviction by a criminal court.[12] See Matter of Rivera-Valencia, 24 I&N Dec. 484 (BIA 2008). However, disciplinary actions in lieu of a court martial are not convictions for immigration purposes.

4. Deferrals of Adjudication

In cases where adjudication is deferred, the original finding or confession of guilt and imposition of punishment is sufficient to establish a conviction for immigration purposes because both conditions establishing a conviction are met. If the court does not impose some form of punishment, then it is not considered a conviction even with a finding or confession of guilt. A decision or ruling of *nolle prosequi*[13] *The term "nolle prosequi" is Latin for "we shall no longer prosecute."* does not meet the definition of conviction.

5. Vacated Judgments

If a judgment is vacated for cause due to Constitutional defects, statutory defects, or pre-conviction errors affecting guilt, it is not considered a conviction for immigration purposes. The judgment is considered a conviction for immigration purposes if it was dismissed for any other reason, such as completion of a rehabilitative period (rather than on its merits) or to avoid adverse immigration consequences.[14] See Pickering v. Gonzales, 465 F.3d 263 (6th Cir. 2006).

A conviction vacated where a criminal court failed to advise a defendant of the immigration consequences of a plea, which resulted from a defect in the underlying criminal proceeding, is not a conviction for immigration purposes.[15]

See Matter of Adamiak, 23 I&N Dec. 878 (BIA 2006). See Alim v. Gonzales, 446 F.3d 1239 (11th Cir 2006).

6. Foreign Convictions

USCIS considers a foreign conviction to be a "conviction" in the immigration context if the conviction was the result of an offense deemed to be criminal by United States standards.[16] See Matter of Squires, 17 I&N Dec. 561 (BIA 1980). See Matter of McNaughton, 16 I&N Dec. 569 (BIA 1978). In addition, federal United States standards on sentencing govern the determination of whether the offense is a felony or a misdemeanor regardless of the punishment imposed by the foreign jurisdiction.[17] See Lennon v. INS, 527 F.2d 187 (2nd Cir. 1975). The officer may consult with local USCIS counsel in cases involving foreign convictions.

7. Pardons

An applicant who has received a full and unconditional executive pardon[18] Executive pardons are given by the President or a governor of the United States. prior to the start of the statutory period may establish GMC if the applicant shows that he or she has been reformed and rehabilitated prior to the statutory period.[19] See 8 CFR 316.10(c)(2)(i). If the applicant received a pardon during the statutory period, the applicant may establish GMC if he or she shows evidence of extenuating or exonerating circumstances that would establish his or her GMC.[20] See 8 CFR 316.10(c)(2)(ii).

Foreign pardons do not eliminate a conviction for immigration purposes.[21] See Marino v. INS, 537 F.2d 686 (2nd Cir. 1976). See Mullen-Cofee v. INS, 976 F.2d 1375 (11th Cir. 1992). See Matter of B-, 7 I&N Dec. 166 (BIA 1956) (Referring to amnesty).

8. Expunged Records

Expunged Records and the Underlying Conviction

A record of conviction that has been expunged does not remove the underlying conviction.[22] See Matter of Marroquin, 23 I&N Dec. 705 (AG 2005). For example, an expunged record of conviction for a controlled substance violation[23] For cases arising in the Ninth Circuit involving state law convictions for simple possession of a controlled substance, please consult local counsel as the date of the conviction may affect whether possible treatment under the Federal First Offender Act renders the conviction invalid for immigration purposes. See Nunez-Reyes v. Holder, 646 F.3d 684 (9th Cir 2011). or any crime involving Moral turpitude (CIMT) does not relieve the applicant from the conviction in the immigration context.[24] See 8 CFR 316.10(c)(3)(i) and 8 CFR 316.10(c)(3)(ii). In addition, foreign expungements are still considered convictions for immigration purposes.[25] See Danso v. Gonzales, 489 F.3d 709 (5th Cir. 2007). See Elkins v. Comfort, 392 F.3d 1159 (10th Cir. 2004).

The Board of Immigration Appeals (BIA) has held that a state court action to "expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute" has no effect on removing the underlying conviction for immigration purposes.[26] See In re Roldan-Santoyo, 22 I&N Dec. 512 (BIA 1999).

The officer may require the applicant to submit evidence of a conviction regardless of whether the record of the conviction has been expunged. It remains the applicant's responsibility to obtain his or her records regardless of

whether they have been expunged or sealed by the court. USCIS may file a motion with the court to obtain a copy of the record in states where the applicant is unable to obtain the record.

D. Effect of Probation

An officer may not approve a naturalization application while the applicant is on probation, parole, or under a suspended sentence.[27] See 8 CFR 316.10(c)(1). However, an applicant who has satisfactorily completed probation, parole, or a suspended sentence during the relevant statutory period is not automatically precluded from establishing GMC. The fact that an applicant was on probation, parole, or under a suspended sentence during the statutory period, however, may affect the overall GMC determination.

E. Admission of Certain Criminal Acts

An applicant may be unable to establish GMC if he or she admits committing certain offenses even if the applicant has never been formally charged, indicted, arrested or convicted.[28] See 8 CFR 316.10(b)(2)(iv). This applies to offenses involving "moral turpitude" or any violation of, or a conspiracy or attempt to violate, any law or regulation relating to a controlled substance.[29] See Chapter 5, Conditional Bars for Acts in Statutory Period [12 USCIS-PM F.5]. See 8 CFR 316.10(b)(2)(i) (Offenses involving "moral turpitude"). See 8 CFR 316.10(b)(2)(iii) (Violation of controlled substance law). When determining whether an applicant committed a particular offense, the officer must review the relevant statute in the jurisdiction where it is alleged to have been committed.

The officer must provide the applicant with a full explanation of the purpose of the questioning stemming from the applicant's declaration that he or she committed an offense. In order for the applicant's declaration to be considered an "admission," it must meet the long held requirements for a valid "admission" of an offense:[30] See Matter of K-, 7 I&N Dec. 594 (BIA 1957).

- The officer must provide the applicant the text of the specific law from the jurisdiction where the offense was committed;
- The officer must provide an explanation of the offense and its essential elements in "ordinary" language; and
- The applicant must voluntarily admit to having committed the particular elements of the offense under oath.[31] See Matter of J-, 2 I&N Dec. 285 (BIA 1945).

The officer must ensure that the applicant is under oath when taking the sworn statement to record the admission. The sworn statement must cover the requirements for a valid admission, to include the specifics of the act or acts that may prevent the applicant from establishing GMC. The officer may consult with his or her supervisor to ensure that sufficient written testimony has been received from the applicant prior to making a decision on the application.

F. "Purely Political Offense" Exception

There is an exception to certain conditional bars to GMC in cases where the offense was a "purely political offense" that resulted in conviction, or in conviction and imprisonment, outside of the United States.[32] See In re O'Cealleagh, 23 I. & N. Dec. 976 (BIA 2006) (finding that a CIMT offense must be completely or totally political for "purely political offense" exception to apply). Purely political offenses are generally offenses that "resulted in convictions obviously based on fabricated charges or predicated upon repressive measures against racial, religious or political minorities."[33] See 22 CFR 40.21(a)(6).

The "purely political offense" exception applies to the following conditional bars to GMC:[34] See Chapter 5, Conditional Bars for Acts in Statutory Period [12 USCIS-PM F.5], for further guidance on each bar to GMC.

- Conviction for one or more crimes involving moral turpitude (CIMTs);
  [35] See Chapter 5, Conditional Bars for Acts in Statutory Period, Section A, One or More Crimes Involving Moral Turpitude [12 USCIS-PM F.5(A)].
- Conviction of two or more offenses with a combined sentence of five years or more;[36] See Chapter 5, Conditional Bars for Acts in Statutory Period, Section B, Aggregate Sentence of Five Years or More [12 USCIS-PM F.5(B)]. and
- Incarceration for a total period of 180 days or more.[37] See Chapter 5, Conditional Bars for Acts in Statutory Period, Section D, Imprisonment for 180 Days or More [12 USCIS-PM F.5(D)].

These conditional bars to GMC do not apply if the underlying conviction was for a "purely political offense" abroad. The officer should rely on local USCIS counsel in cases where there is a question about whether a particular offense should be considered a "purely political offense."

G. Extenuating Circumstances

Certain conditional bars to GMC should not adversely affect the GMC determination if the applicant shows extenuating circumstances.[38] See 8 CFR 316.10(b)(3). The extenuating circumstance must precede or be contemporaneous with the commission of the offense. USCIS does not consider any conduct or equity (including evidence of reformation or rehabilitation) subsequent to the commission of the offense as an extenuating circumstance.

The "extenuating circumstances" provision applies to the following conditional bars to GMC:[39] See Chapter 5, Conditional Bars for Acts in Statutory Period [12 USCIS-PM F.5], for further guidance on extenuating circumstances.

- Failure to support dependents;[40] See Chapter 5, Conditional Bars for Acts in Statutory Period, Section K, Failure to Support Dependents [12 USCIS-PM F.5(K)].
- Adultery;[41] See Chapter 5, Conditional Bars for Acts in Statutory Period, Section L, Adultery [12 USCIS-PM F.5(L)]. and
- Unlawful acts.[42] See Chapter 5, Conditional Bars for Acts in Statutory Period, Section M, Unlawful Acts [12 USCIS-PM F.5(M)].

These conditional bars to GMC do not apply if the applicant shows extenuating circumstances. The officer should

provide the applicant with an opportunity during the interview to provide evidence and testimony of extenuating circumstances in relevant cases.

H. Removability and GMC

Certain permanent and conditional bars to GMC may warrant a recommendation that the applicant be placed in removal proceedings.[43] See INA 237 ("General classes of deportable aliens"). This depends on various factors specific to each case. Not all applicants who are found to lack GMC are removable. An applicant may be found to lack GMC and have his or her naturalization application denied under those grounds without necessitating a recommendation for removal proceedings. USCIS will not make a decision on any naturalization application from an applicant who is in removal proceedings.[44] See INA 318. See Part B, Naturalization Examination, Chapter 3, Naturalization Interview, Section B, Preliminary Review of Application [12 USCIS-PM B.3(B)].

Footnotes

1.

See the relevant Volume 12 part for the specific statutory period pertaining to each naturalization provision.

2.

See Part D, General Naturalization Requirements, Chapter 1, Purpose and Background, Section B, General Eligibility Requirements [12 USCIS-PM D.1(B)]. See INA 316(a). See 8 CFR 316.2(a)(7).

3.

See Part G, Spouses of U.S. Citizens, Chapter 1, Purpose and Background, Section C, Table of General Provisions [12 USCIS-PM G.1(C)]. See INA 319(a) and 8 CFR 319.1(a)(7).

4.

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 INA 328(c) and INA 329. See 8 CFR 328.2(d) and 8 CFR 329.2(d).

5.

See 8 CFR 316.10(a)(1).

6.

See INA 316(e). See 8 CFR 316.10(a)(2).

7.

See *Ralich v. United States*, 185 F.2d 784 (1950) (Provided false testimony within the statutory period and operated a house of prostitution prior to the statutory period). See *Marcantonio v. United States*, 185 F.2d 934 (1950) (Applicant had rehabilitated his character after multiple arrests before statutory period).

8.

The term "nolo contendere" is Latin for "I do not wish to contest."

9.

See INA 101(a)(48)(A).

10.

See *Matter of Grullon,* 20 I&N Dec. 12 (BIA 1989).

11.

See *Matter of Devison-Charles*, 22 I&N Dec. 1362 (BIA 2000).

12.

See *Matter of Rivera-Valencia,* 24 I&N Dec. 484 (BIA 2008).

13.

The term "nolle prosequi" is Latin for "we shall no longer prosecute."

14.

See *Pickering v. Gonzales*, 465 F.3d 263 (6th Cir. 2006).

15.

See *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006). See *Alim v. Gonzales*, 446 F.3d 1239 (11th Cir 2006).

16.

See *Matter of Squires*, 17 I&N Dec. 561 (BIA 1980). See *Matter of McNaughton,* 16 I&N Dec. 569 (BIA 1978).

17.

See *Lennon v. INS*, 527 F.2d 187 (2nd Cir. 1975).

18.

Executive pardons are given by the President or a governor of the United States.

19.

See 8 CFR 316.10(c)(2)(i).

20.

See 8 CFR 316.10(c)(2)(ii).

21.

See *Marino v. INS,* 537 F.2d 686 (2nd Cir. 1976). See *Mullen-Cofee v. INS,* 976 F.2d 1375 (11th Cir. 1992). See *Matter of B-*, 7 I&N Dec. 166 (BIA 1956) (Referring to amnesty).

22.

See *Matter of Marroquin*, 23 I&N Dec. 705 (AG 2005).

23.

For cases arising in the Ninth Circuit involving state law convictions for simple possession of a controlled substance, please consult local counsel as the date of the conviction may affect whether possible treatment under the Federal First Offender Act renders the conviction invalid for immigration purposes. See *Nunez-Reyes v. Holder*, 646 F.3d 684 (9th Cir 2011).

24.

See 8 CFR 316.10(c)(3)(i) and 8 CFR 316.10(c)(3)(ii).

25.

See *Danso v. Gonzales,* 489 F.3d 709 (5th Cir. 2007). See *Elkins v. Comfort,* 392 F.3d 1159 (10th Cir. 2004).

26.

See *In re Roldan-Santoyo*, 22 I&N Dec. 512 (BIA 1999).

27.

See 8 CFR 316.10(c)(1).

28.

See 8 CFR 316.10(b)(2)(iv).

29.

See Chapter 5, Conditional Bars for Acts in Statutory Period [12 USCIS-PM F.5]. See 8 CFR 316.10(b)(2)(i) (Offenses involving "moral turpitude"). See 8 CFR 316.10(b)(2)(iii) (Violation of controlled substance law).

30.

See *Matter of K-*, 7 I&N Dec. 594 (BIA 1957).

31.

See *Matter of J-*, 2 I&N Dec. 285 (BIA 1945).

32.

See *In re O'Cealleagh*, 23 I. & N. Dec. 976 (BIA 2006) (finding that a CIMT offense must be completely or totally political for "purely political offense" exception to apply).

33.

See 22 CFR 40.21(a)(6).

34.

See Chapter 5, Conditional Bars for Acts in Statutory Period [12 USCIS-PM F.5], for further guidance on each bar to GMC.

35.

See Chapter 5, Conditional Bars for Acts in Statutory Period, Section A, One or More Crimes Involving Moral Turpitude [12 USCIS-PM F.5(A)].

36.

See Chapter 5, Conditional Bars for Acts in Statutory Period, Section B, Aggregate Sentence of Five Years or More [12 USCIS-PM F.5(B)].

37.

See Chapter 5, Conditional Bars for Acts in Statutory Period, Section D, Imprisonment for 180 Days or More [12 USCIS-PM F.5(D)].

38.

See 8 CFR 316.10(b)(3).

39.

See Chapter 5, Conditional Bars for Acts in Statutory Period [12 USCIS-PM F.5], for further guidance on extenuating circumstances.

40.

See Chapter 5, Conditional Bars for Acts in Statutory Period, Section K, Failure to Support Dependents [12 USCIS-PM F.5(K)].

41.

See Chapter 5, Conditional Bars for Acts in Statutory Period, Section L, Adultery [12 USCIS-PM F.5(L)].

42.

See Chapter 5, Conditional Bars for Acts in Statutory Period, Section M, Unlawful Acts [12 USCIS-PM F.5(M)].

43.

See INA 237 ("General classes of deportable aliens").

44.

See INA 318. See Part B, Naturalization Examination, Chapter 3, Naturalization Interview, Section B, Preliminary Review of Application [12 USCIS-PM B.3(B)].

Chapter 3 - Evidence and the Record

A. Applicant Testimony

Issues relevant to the GMC requirement may arise at any time during the naturalization interview. The officer's questions during the interview should elicit a complete record of any criminal, unlawful, or questionable activity in which the applicant has ever engaged regardless of whether that information eventually proves to be material to the GMC determination.

The officer should take into consideration the education level of the applicant and his or her knowledge of the English language. The officer may rephrase questions and supplement the inquiry with additional questions to better ensure that the applicant understands the proceedings.[1] See Part E, English and Civics Testing and Exceptions, Chapter 2, English and Civics Testing [12 USCIS-PM E.2], for guidance on rephrasing questions.

The officer must take a sworn statement from an applicant when the applicant admits committing an offense for which the applicant has never been formally charged, indicted, arrested or convicted.[2] See 8 CFR 316.10(b)(2)(iv). See Chapter 2, Adjudicative Factors, Section E, Admission of Certain Criminal Acts [12 USCIS-PM F.2(E)].

B. Court Dispositions

In general, an officer has the authority to request the applicant to provide a court disposition for any criminal offense committed in the United States or abroad to properly determine whether the applicant meets the GMC requirement. USCIS requires applicants to provide court dispositions certified by the pertinent jurisdiction for any offense committed during the statutory period. In addition, USCIS may request any additional evidence that may affect a determination regarding the applicant's GMC. The burden is on the applicant to show that an offense does not prevent him or her from establishing GMC.

An applicant is required to provide a certified court disposition for any arrest involving the following offenses and circumstances, regardless of whether the arrest resulted in a conviction:

- Arrest for criminal act committed during the statutory period;
- Arrest that occurred on or after November 29, 1990, that may be an aggravated felony;[3] See INA 101(a)(43). See Chapter 4, Permanent Bars to GMC, Section B, Aggravated Felony [12 USCIS-PM F.4(B)].
- Arrest for murder;

- Arrest for any offense that would render the applicant removable;

- Arrest for offenses outside the statutory period, if when combined with other offenses inside the statutory period, the offense would preclude the applicant from establishing GMC; and

- Arrest for crime where the applicant would still be on probation at the time of adjudication of the naturalization application or may have been incarcerated for 180 days during the statutory period.

These procedures are not intended to limit the discretion of any officer in requesting documentation that the officer needs to properly assess an applicant's GMC.

In cases where a court disposition or police record is not available, the applicant must provide original or certified confirmation that the record is not available from the applicable law enforcement agency or court.

C. Failure to Respond to Request for Evidence

In cases where the initial naturalization examination has already been conducted, the officer should adjudicate the naturalization application on the merits where the applicant fails to respond to a request for additional evidence.[4] See Part B, Naturalization Examination, Chapter 4, Results of the Naturalization Examination [12 USCIS-PM B.4], for guidance on decisions on the application, to include cases where the applicant fails to respond. The officer should not deny the application for lack of prosecution after the initial naturalization examination.[5] See INA 335(e). See 8 CFR 335.7.

Footnotes

1.

See Part E, English and Civics Testing and Exceptions, Chapter 2, English and Civics Testing [12 USCIS-PM E.2], for guidance on rephrasing questions.

2.

See 8 CFR 316.10(b)(2)(iv). See Chapter 2, Adjudicative Factors, Section E, Admission of Certain Criminal Acts [12 USCIS-PM F.2(E)].

3.

See INA 101(a)(43). See Chapter 4, Permanent Bars to GMC, Section B, Aggravated Felony [12 USCIS-PM F.4(B)].

4.

See Part B, Naturalization Examination, Chapter 4, Results of the Naturalization Examination [12 USCIS-PM B.4], for guidance on decisions on the application, to include cases where the applicant fails to respond.

5.

See INA 335(e). See 8 CFR 335.7.

Chapter 4 - Permanent Bars to GMC

A. Murder

An applicant who has been convicted of murder at any time is permanently barred from establishing GMC for naturalization.[1] See 8 CFR 316.10(b)(1)(i).

B. Aggravated Felony

In 1996, Congress expanded the definition and type of offense considered an "aggravated felony" in the immigration context.[2] See INA 101(a)(43). See the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009-546 (September 30, 1996). An applicant who has been convicted of an "aggravated felony" on or after November 29, 1990, is permanently barred from establishing GMC for naturalization.[3] See 8 CFR 316.10(b)(1)(ii).

While an applicant who has been convicted of an aggravated felony prior to November 29, 1990, is not permanently barred from naturalization, the officer should consider the seriousness of the underlying offense (aggravated felony) along with the applicant's present moral character in determining whether the applicant meets the GMC requirement. If the applicant's actions during the statutory period do not reflect a reform of his or her character, then the applicant may not be able to establish GMC.[4] See 8 CFR 316.10(a)(2).

Some offenses require a minimum term of imprisonment of one year to qualify as an aggravated felony in the immigration context. The term of imprisonment is the period of confinement ordered by the court regardless of whether the court suspended the sentence.[5] See INA 101(a)(48)(B). See Matter of S-S-, 21 I&N Dec. 900 (BIA 1997). For example, an offense involving theft or a crime of violence is considered an aggravated felony if the term of imprisonment ordered by the court is one year or more, even if the court suspended the entire sentence.[6] See INA 101(a)(43)(F) and INA 101(a)(43)(G).

The table below serves as a quick reference guide listing aggravated felonies in the immigration context. The officer should review the specific statutory language for further information.

"Aggravated Felonies" in the Immigration Context	
Aggravated Felony	**Citation**
Murder, Rape, or Sexual Abuse of a Minor	INA 101(a)(43)(A)
Illicit Trafficking in Controlled Substance	INA 101(a)(43)(B)
Illicit Trafficking in Firearms or Destructive Devices	INA 101(a)(43)(C)
Money Laundering Offenses (over $10,000)	INA 101(a)(43)(D)
	INA 101(a)(43)(E)(i)–

Explosive Materials and Firearms Offenses	(iii)
Crime of Violence (imprisonment term of at least 1 yr)	INA 101(a)(43)(F)
Theft Offense (imprisonment term of at least 1 yr)	INA 101(a)(43)(G)
Demand for or Receipt of Ransom	INA 101(a)(43)(H)
Child Pornography Offense	INA 101(a)(43)(I)
Racketeering, Gambling (imprisonment term of at least 1 yr)	INA 101(a)(43)(J)
Prostitution Offenses (managing, transporting, trafficking)	INA 101(a)(43)(K)(i)–(iii)
Gathering or Transmitting Classified Information	INA 101(a)(43)(L)(i)–(iii)
Fraud or Deceit Offenses or Tax Evasion (over $10,000)	INA 101(a)(43)(M)(i), (ii)
Alien Smuggling	INA 101(a)(43)(N)
Illegal Entry or Reentry by Removed Aggravated Felon	INA 101(a)(43)(O)
Passport, Document Fraud (imprisonment term of at least 1 yr)	INA 101(a)(43)(P)
Failure to Appear Sentence (offense punishable by at least 5 yrs)	INA 101(a)(43)(Q)
Bribery, Counterfeiting, Forgery, or Trafficking in Vehicles	INA 101(a)(43)(R)
Obstruction of Justice, Perjury, Bribery of Witness	INA 101(a)(43)(S)
Failure to Appear to Court (offense punishable by at least 2 yrs)	INA 101(a)(43)(T)
Attempt or Conspiracy to Commit an Aggravated Felony	INA 101(a)(43)(U)

C. Persecution, Genocide, Torture, or Severe Violations of Religious Freedom

The applicant is responsible for providing any evidence or documentation to support a claim that he or she is not ineligible for naturalization based on involvement in any of the activities addressed in this section.

1. Nazi Persecutions

An applicant who ordered, incited, assisted, or otherwise participated in the persecution of any person or persons in association with the Nazi Government of Germany or any government in an area occupied by or allied with the Nazi government of Germany is permanently barred from establishing GMC for naturalization.[7] See INA 101(f)(9) and INA 212(a)(3)(E).

2. Genocide

An applicant who has ordered, incited, assisted, or otherwise participated in genocide, at any time is permanently barred from establishing GMC for naturalization.[8] See INA 101(f)(9) and INA 212(a)(3)(E). See 18 U.S.C. 2340 and 18 U.S.C. 1091(a). The criminal offense of "genocide" includes any of the following acts committed in time of peace or time of war with the specific intent to destroy in whole or in substantial part a national, ethnic, racial, or religious group as such:

- Killing members of that group;
- Causing serious bodily injury to members of that group;
- Causing the permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques;
- Subjecting the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part;
- Imposing measures intended to prevent births within the group; or
- Transferring by force children of the group to another group.[9] See 18 U.S.C. 1091. See Article II of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide (78 U.N.T.S. 278 [Dec. 9, 1948]).

3. Torture or Extrajudicial Killings

An applicant who has committed, ordered, incited, assisted, or otherwise participated in the commission of any act of torture or under color of law of any foreign nation any extrajudicial killing is permanently barred from establishing GMC for naturalization.[10] See INA 101(f)(9) and INA 212(a)(3)(E).

"Torture" is defined as an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his or her custody or physical control.[11] See 18 U.S.C. 2340.

An "extrajudicial killing" is defined as a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees, which are recognized as indispensable by civilized peoples.[12] See 28 U.S.C. 1350 (Note). See Section 3(a) of the Torture Victim Protection Act of 1991.

4. Particularly Severe Violations of Religious Freedom

An applicant who was responsible for, or directly carried out, particularly severe violations of religious freedom while serving as a foreign government official at any time is not able to establish GMC.[13] See INA 101(f)(9) and INA 212(a)(2)(G). "Particularly severe violations of religious freedom" are defined as systematic, ongoing, egregious violations of religious freedom, including violations such as:

- Torture or cruel, inhuman, or degrading treatment or punishment;
- Prolonged detention without charges;
- Causing the disappearance of persons by the abduction or clandestine detention of those persons; or
- Other flagrant denial of the right to life, liberty, or the security of persons.[14] See 22 U.S.C. 6402.

Footnotes

1.

See 8 CFR 316.10(b)(1)(i).

2.

See INA 101(a)(43). See the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009-546 (September 30, 1996).

3.

See 8 CFR 316.10(b)(1)(ii).

4.

See 8 CFR 316.10(a)(2).

5.

See INA 101(a)(48)(B). See *Matter of S-S-*, 21 I&N Dec. 900 (BIA 1997).

6.

See INA 101(a)(43)(F) and INA 101(a)(43)(G).

7.

See INA 101(f)(9) and INA 212(a)(3)(E).

8.

See INA 101(f)(9) and INA 212(a)(3)(E). See 18 U.S.C. 2340 and 18 U.S.C. 1091(a).

9.

See 18 U.S.C. 1091. See Article II of the United Nations *Convention on the Prevention and Punishment of the Crime of Genocide* (78 U.N.T.S. 278 [Dec. 9, 1948]).

10.

See INA 101(f)(9) and INA 212(a)(3)(E).

11.

See 18 U.S.C. 2340.

12.

See 28 U.S.C. 1350 (Note). See Section 3(a) of the Torture Victim Protection Act of 1991.

13.

See INA 101(f)(9) and INA 212(a)(2)(G).

14.

See 22 U.S.C. 6402.

Chapter 5 - Conditional Bars for Acts in Statutory Period

In addition to the permanent bars to GMC, the INA and corresponding regulations include bars to GMC that are not permanent in nature. USCIS refers to these bars as "conditional bars." These bars are triggered by specific acts, offenses, activities, circumstances, or convictions within the statutory period for naturalization, including the period prior to filing and up to the time of the Oath of Allegiance.[1] See INA 316(a). See 8 CFR 316.10. An offense that does not fall within a permanent or conditional bar to GMC may nonetheless affect an applicant's ability to establish GMC.[2] See INA 101(f). See Chapter 1, Purpose and Background [12 USCIS-PM F.1].

With regard to bars to GMC requiring a conviction, the officer reviews the relevant federal or state law or regulation of the United States, or law or regulation of any foreign country to determine whether the applicant can establish GMC.

The table below serves as a quick reference guide on the general conditional bars to establishing GMC for acts occurring during the statutory period. The sections and paragraphs that follow the table provide further guidance on each bar and offense.

Conditional Bars to GMC for Acts Committed in Statutory Period		
Offense	**Citation**	**Description**

One or More CIMTs	8 CFR 316.10(b)(2)(i), (iv) INA 101(f)(3)	Conviction or admission of one or more CIMTs (other than political offense), except for one petty offense
Aggregate Sentence of Five Yrs or More	8 CFR 316.10(b)(2)(ii), (iv) INA 101(f)(3)	Conviction of two or more offenses with combined sentence of five years or more (other than political offense)
Controlled Substance Violation	8 CFR 316.10(b)(2)(iii), (iv) INA 101(f)(3)	Violation of any law on controlled substances, except for simple possession of 30g or less of marijuana
Incarceration for 180 Days	8 CFR 316.10(b)(2)(v) INA 101(f)(7)	Incarceration for a total period of 180 days or more, except political offense and ensuing confinement abroad
False Testimony under Oath	8 CFR 316.10(b)(2)(vi) INA 101(f)(6)	False testimony for the purpose of obtaining any immigration benefit
Prostitution Offenses	8 CFR 316.10(b)(2)(vii) INA 101(f)(3)	Engaged in prostitution, attempted or procured to import prostitution, or received proceeds from prostitution
Smuggling of a Person	8 CFR 316.10(b)(2)(viii) INA 101(f)(3)	Involved in smuggling of a person to enter or try to enter the United States in violation of law
Polygamy	8 CFR 316.10(b)(2)(ix) INA 101(f)(3)	Practiced or is practicing polygamy (the custom of having more than one spouse at the same time)
Gambling Offenses	8 CFR 316.10(b)(2)(x)–(xi) INA 101(f)(4)–(5)	Two or more gambling offenses or derives income principally from illegal gambling activities
Habitual Drunkard	8 CFR 316.10(b)(2)(xii) INA 101(f)(1)	Is or was a habitual drunkard
Failure to Support Dependents	8 CFR 316.10(b)(3)(i) INA 101(f)	Willful failure or refusal to support dependents, unless extenuating circumstances are established
Adultery	8 CFR 316.10(b)(3)(ii) INA 101(f)	Extramarital affair tending to destroy existing marriage, unless extenuating circumstances are established
Unlawful Acts	8 CFR 316.10(b)(3)(iii) INA 101(f)	Unlawful act that adversely reflect upon GMC, unless extenuating circumstances are established

A. One or More Crimes Involving Moral Turpitude

1. Crime Involving Moral Turpitude (CIMT)

"Crime involving moral turpitude" (CIMT) is a term used in the immigration context that has no statutory definition. Extensive case law, however, has provided sufficient guidance on whether an offense rises to the level of a CIMT. The courts have held that moral turpitude "refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general."[3] See Medina v. United States, 259 F.3d 220, 227 (4th Cir. 2001) quoting Matter of Danesh, 19 I&N Dec. 669, 670 (BIA 1988). See Matter of Perez-Contreras, 20 I&N Dec. 615, 618 (BIA 1992). See Matter of Flores, 17 I&N Dec. 225 (BIA 1980) (and cases cited therein).

Whether an offense is a CIMT is largely based on whether the offense involves willful conduct that is morally reprehensible and intrinsically wrong, the essence of which is a reckless, evil or malicious intent. The Attorney General has decreed that a finding of "moral turpitude" requires that the perpetrator committed a reprehensible act with some form of guilty knowledge.[4] See Matter of Silva-Trevino, 24 I&N Dec. 687, 688, 706 (A.G. 2008).

The officer should consider the nature of the offense in determining whether it is a CIMT.[5] See Matter of Esfandiary, 16 I&N Dec. 659 (BIA 1979). In many cases, the CIMT determination depends on whether the relevant state statute includes one of the elements that involves moral turpitude. For example, an offense or crime may be a CIMT in one state, but a similarly named crime in another state may not be a CIMT because of differences in the definition of the crime or offense. The officer may rely on local USCIS counsel in cases where there is a question about whether a particular offense is a CIMT.

The table below serves as a quick reference guide on the general categories of CIMTs and their respective elements or determining factors. The paragraphs that follow the table provide further guidance on each category.

General Categories of Crimes Involving Moral Turpitude (CIMTs)	
CIMT Category	**Elements of Crime**
Crimes against a person	Criminal intent or recklessness, or is defined as morally reprehensible by state (may include statutory rape)
Crimes against property	Involving fraud against the government or an individual (may include theft, forgery, robbery)
Sexual and family crimes	No one set of principles or elements; see further explanation below (may include spousal or child abuse)
Crimes against authority of the Government	Presence of fraud is the main determining factor (may include offering a bribe, counterfeiting)

Crimes Against a Person

Crimes against a person involve moral turpitude when the offense contains criminal intent or recklessness or when the crime is defined as morally reprehensible by state statute. Criminal intent or recklessness may be inferred from the presence of unjustified violence or the use of a dangerous weapon. For example, aggravated battery is usually, if not always, a CIMT. Simple assault and battery is not usually considered a CIMT.

Crimes Against Property

Moral turpitude attaches to any crime against property which involves fraud, whether it entails fraud against the government or against an individual. Certain crimes against property may require guilty knowledge or intent to permanently take property. Petty theft, grand theft, forgery, and robbery are CIMTs in some states.

Sexual and Family Crimes

It is difficult to discern a distinguishing set of principles that the courts apply to determine whether a particular offense involving sexual and family crimes is a CIMT. In some cases, the presence or absence of violence seems to be an important factor. The presence or absence of criminal intent may also be a determining factor. The CIMT determination depends upon state statutes and the controlling case law and must be considered on a case-by-case basis.

Offenses such as spousal or child abuse may rise to the level of a CIMT, while an offense involving a domestic simple assault generally does not. An offense relating to indecent exposure or abandonment of a minor child may or may not rise to the level of a CIMT. In general, if the person knew or should have known that the victim was a minor, any intentional sexual contact with a child involves moral turpitude.[6] See Matter of Silva-Trevino, 24 I&N Dec. 687 (AG 2008).

Crimes Against the Authority of the Government

The presence of fraud primarily determines the presence of moral turpitude in crimes against the authority of the government. Offering a bribe to a government official and offenses relating to counterfeiting are generally CIMTs. Offenses relating to possession of counterfeit securities without intent and contempt of court, however, are not generally CIMTs.

2. Committing One or More CIMTs in Statutory Period

An applicant who is convicted of or admits to committing one or more CIMTs during the statutory period cannot establish GMC for naturalization.[7] See INA 101(f)(3). See 8 CFR 316.10(b)(2)(i). If the applicant has only been convicted of (or admits to) one CIMT, the CIMT must have been committed within the statutory period as well. In cases of multiple CIMTs, only the commission and conviction (or admission) of one CIMT needs to be within the statutory period.

Petty Offense Exception

An applicant who has committed only one CIMT that is a considered a "petty offense," such as petty theft, may be eligible for an exception if all of the following conditions are met:

- The "petty offense" is the only CIMT the applicant has ever committed;
- The sentence imposed for the offense was six months or less; and
- The maximum possible sentence for the offense does not exceed one year.[8] See INA 212(a)(2)(A)(ii)(II).

The petty offense exception does not apply to an applicant who has been convicted of or who admits to committing more than one CIMT even if only one of the CIMTs was committed during the statutory period. An applicant who has committed more than one petty offense of which only one is a CIMT may be eligible for the petty offense exception.[9] See Matter of Garcia-Hernandez, 23 I&N Dec. 590, 594-95 (BIA 2003).

Purely Political Offense Exception

This bar to GMC does not apply to a conviction for a CIMT occurring outside of the United States for a purely political offense committed abroad.[10] See Chapter 2, Adjudicative Factors, Section F, "Purely Political Offense" Exception [12 USCIS-PM F.2(F)].

B. Aggregate Sentence of Five Years or More

An applicant may not establish GMC if he or she has been convicted of two or more offenses during the statutory period for which the combined, imposed sentence was five years or more.[11] See 8 CFR 316.10(b)(2)(ii). The underlying offenses must have been committed within the statutory period.

Purely Political Offense Exception

The GMC bar for having two or more convictions does not apply if the convictions and resulting sentence or imprisonment of five years or more occurred outside of the United States for purely political offenses committed abroad.[12] See Chapter 2, Adjudicative Factors, Section F, "Purely Political Offense" Exception [12 USCIS-PM F.2(F)].

C. Controlled Substance Violation

An applicant cannot establish GMC if he or she has been convicted of or admits to having violated any controlled substance-related federal or state law or regulation of the United States or law or regulation of any foreign country during the statutory period.[13] See INA 101(f)(3) and INA 212(a)(2)(A)(i)(II). See 8 CFR 316.10(b)(2)(iii) and 8 CFR 316.10(b)(2)(iv). See Chapter 2, Adjudicative Factors, Section E, Admission of Certain Criminal Acts [12 USCIS-PM F.2(E)]. This bar to establishing GMC also applies to an admission to committing acts which constitute the essential elements of any controlled substance violation.

Exception for Single Offense of Simple Possession

The conditional bar to GMC for a controlled substance violation does not apply if the violation was for a single offense of simple possession of 30 grams or less of marijuana.[14] See INA 101(f)(3). See 8 CFR 316.10(b)(2)(iii). While an offense for simple possession of 30 grams or less of marijuana is excluded from INA 101(f)(3), it may nonetheless affect GMC under the residual clause of the GMC definition. See INA 101(f). See 8 CFR 316.10(a)(2).

D. Imprisonment for 180 Days or More

An applicant cannot establish GMC if he or she is or was imprisoned for an aggregate period of 180 days or more during the statutory period based on a conviction.[15] See INA 101(f)(7). See 8 CFR 316.10(b)(2)(v). This bar to GMC does not apply if the conviction resulted only in a sentence to a period of probation with no sentence of incarceration for 180 days or more. This bar applies regardless of the reason for the conviction. For example, this bar still applies if the term of imprisonment results from a violation of probation rather than from the original sentence.[16] See Matter of Piroglu, 17 I&N Dec. 578 (BIA 1980).

The commission of the offense resulting in conviction and confinement does not need to have occurred during the statutory period for this bar to apply. Only the confinement needs to be within the statutory period for the applicant to be precluded from establishing GMC.

Purely Political Offense Exception

This bar to GMC does not apply to a conviction and resulting confinement of 180 days or more occurring outside of the United States for a purely political offense committed abroad.[17] See Chapter 2, Adjudicative Factors, Section F, "Purely Political Offense" Exception [12 USCIS-PM F.2(F)].

E. False Testimony

1. False Testimony in Statutory Period

An applicant who gives false testimony to obtain any immigration benefit during the statutory period cannot establish GMC.[18] See INA 101(f)(6). See 8 CFR 316.10(b)(2)(vi). False testimony occurs when the applicant deliberately intends to deceive the U.S. Government while under oath in order to obtain an immigration benefit. This holds true regardless of whether the information provided in the false testimony would have impacted the applicant's eligibility. The statute does not require that the benefit be obtained, only that the false testimony is given in an attempt to obtain the benefit.[19] See Matter of R-S-J-, 22 I&N Dec. 863 (BIA 1999).

While the most common occurrence of false testimony is failure to disclose a criminal or other adverse record, false testimony can occur in other areas. False testimony may include, but is not limited to, facts about lawful admission, absences, residence, marital status or infidelity, employment, organizational membership, or tax filing information.

2. Three Elements of False Testimony

There are three elements of false testimony established by the Supreme Court that must exist for a naturalization application to be denied on false testimony grounds:[20] See Kungys v. United States, 485 U.S. 759, 780-81 (1988).

Oral Statements

The "testimony" must be oral. False statements in a written application and falsified documents, whether or not under oath, do not constitute "testimony."[21] See Matter of L-D-E, 8 I&N Dec. 399 (BIA 1959). However, false information provided orally under oath to an officer in a question-and-answer statement relating to a written application is "testimony."[22] See Matter of Ngan, 10 I&N Dec. 725 (BIA 1964). See Matter of G-L-T-, 8 I&N Dec. 403 (BIA 1959). The oral statement must also be an affirmative misrepresentation. The Court makes it clear that there is no "false testimony" if facts are merely concealed, to include incomplete but otherwise truthful answers.

Oath

The oral statement must be made under oath in order to constitute false testimony.[23] See Matter of G-, 6 I&N Dec.

208 (BIA 1954). Oral statements to officers that are not under oath do not constitute false testimony.

Subjective Intent to Obtain an Immigration Benefit

The applicant must be providing the false testimony in order to obtain an immigration benefit. False testimony for any other reason does not preclude the applicant from establishing GMC.

F. Prostitution

An applicant may not establish GMC if he or she has engaged in prostitution, procured or attempted to procure or to import prostitutes or persons for the purpose of prostitution, or received proceeds from prostitution during the statutory period.[24] See INA 101(f)(3) and INA 212(a)(2)(D)(i) and INA 212(a)(2)(D)(ii). See 8 CFR 316.10(b)(2)(vii). The BIA has held that to "engage in" prostitution, one must have engaged in a regular pattern of behavior or conduct.[25] See Matter of T, 6 I&N Dec. 474 (BIA 1955). The BIA has also determined that a single act of soliciting prostitution on one's own behalf is not the same as procurement.[26] See Matter of Gonzalez-Zoquiapan, 24 I&N Dec. 549 (BIA 2008).

G. Smuggling of a Person

An applicant is prohibited from establishing GMC if he or she is or was involved in the smuggling of a person or persons by encouraging, inducing, assisting, abetting or aiding any alien to enter or try to enter the United States in violation of law during the statutory period.[27] See INA 101(f)(3) and INA 212(a)(6)(E). See 8 CFR 316.10(b)(2)(viii).

Family Reunification Exception

This bar to GMC does not apply in certain cases where the applicant was involved in the smuggling of his or her spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law before May 5, 1988.[28] See INA 212(a)(6)(E)(ii). See Sec. 301 of the Immigration Act of 1990 (IMMACT90), Pub. L. 101-649 (November 29, 1990).

H. Polygamy

An applicant who has practiced or is practicing polygamy during the statutory period is precluded from establishing GMC.[29] See INA 101(f)(3) and INA 212(a)(10)(A). See 8 CFR 316.10(b)(2)(ix). Polygamy is the custom of having more than one spouse at the same time.[30] Polygamy is not the same as bigamy. Bigamy is the crime of marrying a person while being legally married to someone else. An applicant who has committed bigamy may be susceptible to a denial under the "unlawful acts" provision. The officer should review documents in the file and any documents the applicant brings to the interview for information about the applicant's marital history, to include any visa petitions or applications, marriage and divorce certificates, and birth certificates of children.

I. Gambling

An applicant who has been convicted of committing two or more gambling offenses or who derives his or her income

principally from illegal gambling activities during the statutory period is precluded from establishing GMC.[31] See INA 101(f)(5). See 8 CFR 316.10(b)(2)(x) and 8 CFR 316.10(b)(2)(xi). The gambling offenses must have been committed within the statutory period.

J. Habitual Drunkard

An applicant who is or was a habitual drunkard during the statutory period is precluded from establishing GMC.[32] See INA 101(f)(1). See 8 CFR 316.10(b)(2)(xii). Certain documents may reveal habitual drunkenness, to include divorce decrees, employment records, and arrest records. In addition, termination of employment, unexplained periods of unemployment, and arrests or multiple convictions for public intoxication or driving under the influence may be indicators that the applicant is or was a habitual drunkard.

K. Failure to Support Dependents

An applicant who willfully failed or refused to support his or her dependents during the statutory period cannot establish GMC unless the applicant establishes extenuating circumstances.[33] See 8 CFR 316.10(b)(3)(i). See Hague Convention on the International Recovery of Child Support. The GMC determination for failure to support dependents includes consideration of whether the applicant has complied with his or her child support obligations abroad in cases where it is relevant.[34] See Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

Even if there is no court-ordered child support, the courts have concluded that parents have a moral and legal obligation to provide support for their minor children, and a willful failure to provide such support demonstrates that the individual lacks GMC.[35] See Brukiewicz v. Savoretti, 211 F.2d 541 (5th Cir. 1954). See Petition of Perdiak, 162 F. Supp. 76 (S.D. Cal. 1958). See Petition of Dobric, 189 F. Supp. 638 (D. Minn. 1960). See In re Malaszenko, 204 F. Supp. 744 (D.N.J. 1962) (and cases cited). See Petition of Dobric, 189 F. Supp. 638 (D. Minn. 1960). See In re Huymaier, 345 F. Supp. 339 (E.D. Pa. 1972). See In re Valad, 465 F. Supp. 120 (E.D. Va. 1979).

An applicant who fails to support dependents may lack GMC if he or she:

- Deserts a minor child;[36] See U.S. v. Harrison, 180 F.2d 981 (9th Cir. 1950).
- Fails to pay any support;[37] See In re Malaszenko, 204 F. Supp. 744 (D.N.J. 1962). See In re Mogus, 73 F. Supp. 150 (W.D. Pa. 1947). or
- Obviously pays an insufficient amount.[38] See In re Halas, 274 F. Supp. 604 (E.D. Pa. 1967). See Petition of Dobric, 189 F. Supp. 638 (D. Minn. 1960).

If the applicant has not complied with court-ordered child support and is in arrears, the applicant must identify the length of time of non-payment and the circumstances for the non-payment. An officer should review all court records regarding child support, and non-payment if applicable, in order to determine whether the applicant established GMC.[39] See 8 CFR 316.10(b)(3)(i).

Extenuating Circumstances

If the applicant shows extenuating circumstances, a failure to support dependents should not adversely affect the GMC determination.[40] See Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances [12 USCIS-PM F.2(G)].

The officer should consider the following circumstances:

- An applicant's unemployment and financial inability to pay the child support;[41] See In re Huymaier, 345 F. Supp. 339 (E.D. Pa. 1972).
- Cause of the unemployment and financial inability to support dependents;
- Evidence of a good-faith effort to reasonably provide for the support of the child;[42] See Petition of Perdiak, 162 F. Supp. 76 (S.D. Cal. 1958).
- Whether the nonpayment was due to an honest but mistaken belief that the duty to support a minor child had terminated;[43] See In re Valad, 465 F. Supp. 120 (E.D. Va. 1979). and
- Whether the nonpayment was due to a miscalculation of the court-ordered arrears.[44] See Etape v. Napolitano, 664 F.Supp.2d 498, 517 (D Md 2009).

L. Adultery

An applicant who has an extramarital affair during the statutory period that tended to destroy an existing marriage is precluded from establishing GMC.[45] See 8 CFR 316.10(b)(3)(ii).

Extenuating Circumstances

If the applicant shows extenuating circumstances, an offense of adultery should not adversely affect the GMC determination.[46] See Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances [12 USCIS-PM F.2(G)]. Extenuating circumstances may include instances where the applicant divorced his or her spouse but later the divorce was deemed invalid or the applicant and the spouse mutually separated and they were unable to obtain a divorce.[47] See In re Petition of Schroers, 336 F. Supp. 1348 (S.D.N.Y. 1971). See In re Petition of Russo, 259 F. Supp. 230 (S.D.N.Y. 1966). See Dickhoff v. Shaughnessy, 142 F. Supp. 535 (SDNY 1956).

M. Unlawful Acts

An applicant who has committed, was convicted, or imprisoned for an unlawful act or acts during the GMC period may be found to lack GMC.[48] See INA 101(f). See 8 CFR 316.10(b)(3)(iii). This provision may apply to cases where an offense is not specifically listed in the other relevant GMC provisions but rises to the level of preventing the applicant from establishing GMC.[49] See 8 CFR 316.10(b)(1) and 8 CFR 316.10(b)(2) (Other relevant GMC regulations). This provision does not require the applicant to have been charged or convicted of the offense.

An "unlawful act" includes any act that is against the law, illegal or against moral or ethical standards of the community. The fact that an act is a crime makes any commission thereof an unlawful act.[50] See U.S. v. Lekarczyk, 354 F. Supp. 2d 883 (W.D. Wis. 2005). See Jean-Baptiste v. United States, 395 F.3d 1190 (11th Cir.2005). Collateral estoppel bars a defendant who is convicted in a criminal trial from contesting this conviction in a subsequent civil action with respect to issues necessarily decided in the criminal trial. See Kennedy v. Mendoza-Martinez, 372 U.S. 144, 157 (1963).

Considering Extenuating Circumstances for Unlawful Acts

If the applicant shows extenuating circumstances, the commission of an unlawful act[51] See 8 CFR 316.10(b)(3)(iii).

or acts should not adversely affect the GMC determination.[52] See INA 101(f). See 8 CFR 316.10(b)(3)(iii). See Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances [12 USCIS-PM F.2(G)]. An extenuating circumstance must pertain to the unlawful act and must precede or be contemporaneous with the commission of the unlawful act.[53] See Jean-Baptiste v. United States, 395 F.3d 1190 (11th Cir.2005) citing Rico v. INS, 262 F. Supp.2d 6 (E.D.N.Y.2003).

An officer may not consider conduct or equities (including evidence of reformation or rehabilitation) subsequent to the commission of the unlawful act as an extenuating circumstance. Consequences after the fact and future hardship are not considered extenuating circumstances.[54] See Jean-Baptiste v. United States, 395 F.3d 1190 (11th Cir.2005). If a jury or a court acquitted the applicant, he or she has not committed an unlawful act.

The factors considered in the determination are included in the denial notices in cases that result in an unfavorable determination.

Examples of Unlawful Acts

The following are examples of offenses that may be considered under the unlawful acts regulation. Each GMC determination is made on a case-by-case basis, to include determinations involving an "unlawful act" consideration.

1. Unlawful Voting and False Claim to U.S. Citizenship for Voting

An applicant may fail to show GMC if he or she engaged in unlawful voting or falsely claimed U.S. citizenship for voting.[55] See 18 U.S.C. 611 (Voting by aliens). See 18 U.S.C. 1015(f) (False claim to U.S. citizenship). In September 1996, Congress enacted legislation to address unlawful voting and false claims to U.S. citizenship for purposes of registering to vote or voting.[56] See INA 212(a)(10)(D)(i) and INA 237(a)(6)(A) (Addressing unlawful voting). See INA 212(a)(6)(C)(ii)(I) and INA 237(a)(3)(D)(i) (Addressing false claims to U.S. citizenship). These provisions were added by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208 (September 30, 1996).

- A noncitizen who is convicted of unlawful voting may be fined, imprisoned up to one year, or both, and subject to removal.[57] See 18 U.S.C. 611 (Voting by aliens).

- A noncitizen who is convicted of making a false claim to U.S. citizenship to register to vote or vote may be fined, imprisoned up to five years, or both, and subject to removal.[58] See 18 U.S.C. 1015(f) (False claim to U.S. citizenship).

The officer may request the applicant to provide a sworn statement regarding his or her testimony on illegal voting or false claim to citizenship for voting. The officer may also require an applicant to obtain any relevant evidence, such as the voter registration card, applicable voter registration form, and voting record from the relevant board of elections commission.

The table below serves as a quick reference guide on the effect on GMC determinations by unlawful voting or for false claims to U.S. citizenship. Further guidance is provided below.

Effect on GMC by Unlawful Voting or

False Claim to U.S. Citizenship in Statutory Period				
Offense	**Penalty** *if Convicted*	**Effect on GMC**		
		If Convicted	***If Imprisoned***	***If Not Convicted***
Unlawful Voting **18 U.S.C. 611**	May be fined or imprisoned up to 1 yr, or both	Unlikely a CIMT and will not bar GMC by itself	Bars GMC if incarcerated for 180 days or more, or if sentence from convictions total 5 yrs or more	May bar GMC depending on totality of the circumstances, and on whether exceptions apply
False Claim to Citizenship **18 U.S.C. 1015(f)**	May be fined or imprisoned up to 5 yrs, or both	CIMT and will bar GMC (may be a felony)		

Offenses without Convictions

An officer may find the applicant to lack GMC if the applicant was not convicted of unlawful voting or false claim to citizenship for voting. The officer should consider the totality of the circumstances and weigh all favorable and unfavorable factors of each case, to include whether the applicant qualifies for an exception.

An applicant may only have engaged in unlawful voting if his or her conduct was unlawful under the relevant federal, state, or local election law. The officer should consider the controlling statutes in cases involving potential unlawful voting offenses, because some local municipalities permit lawful permanent residents (LPRs) or other noncitizens to vote in municipal elections.

The officer does not need to focus on the underlying election law for false claims to U.S. citizenship. An applicant may be considered to have made a false claim to U.S. citizenship if the following conditions have been met on or after September 30, 1996.

- The applicant actually falsely represented himself or herself as a U.S. citizen; and
- The applicant made such misrepresentation in order to register to vote or for voting.

Convictions

A conviction for unlawful voting, by itself, generally should not bar an applicant from establishing GMC because the conviction is unlikely to be a CIMT.[59] See 18 U.S.C. 611 (Voting by noncitizens). See 8 U.S.C. 1015(f) (False claim to U.S. citizenship). On the other hand, making a false claim to U.S. citizenship in order to register to vote or to

vote is a CIMT. An applicant who is convicted of a CIMT is generally precluded from establishing GMC.

A conviction for making a false claim to U.S. citizenship in order to register to vote or for voting is a felony and prevents an applicant from showing GMC unless an exception applies.[60] See INA 101(f)(3).

Imprisonment

Unless an applicant qualifies for an exception, the applicant is barred from establishing GMC if:

- The applicant was convicted and imprisoned for 180 days or more during the statutory period for unlawful voting or for making a false claim to U.S. citizenship;[61] See Chapter 5 Conditional Bars for Acts in Statutory Period, Section D, Imprisonment for 180 Days or More [12 USCIS-PM F.5(D)]. See INA 101(f)(7). or

- The applicant has multiple convictions with an aggregate sentence of five years or more, which include conviction(s) for unlawful voting or making a false claim to U.S. citizenship.[62] See Chapter 5 Conditional Bars for Acts in Statutory Period, Section B, Aggregate Sentence of Five Years or More [12 USCIS-PM F.5(B)]. See INA 101(f)(3).

Exceptions

In 2000, Congress added exceptions for GMC determinations and removal of noncitizens for unlawful voting and false claims to U.S. citizenship.[63] See INA 101(f). See INA 212(a)(10)(D)(ii) and INA 237(a)(6)(B) (Unlawful voting exception). See INA 212(a)(6)(C)(ii)(II) and INA 237(a)(3)(D)(i) (False claims to U.S. citizenship exception). These provisions were added by the Child Citizenship Act of 2000 (CCA), Pub. L. 106-395 (October 30, 2000). The exceptions only apply to convictions that became final on or after October 30, 2000.[64] See Section 201(d)(3) of the CCA, Pub. L. 106-395.

An applicant qualifies for an exception if the following conditions are met:

- The applicant's natural or adoptive parents are or were U.S. citizens at the time of the violation;[65] As a matter of policy, USCIS has determined that the applicant's parents had to be U.S. citizens at the time of the illegal voting or false claim to U.S. citizenship in order to meet the first prong of this exception.

- The applicant permanently resided in the United States prior to reaching the age of 16 years; and

- The applicant "reasonably believed" at the time of the violation that he or she was a U.S. citizen.

To assess whether the applicant "reasonably believed" that he or she was a U.S. citizen at the time of the violation, the officer must consider the totality of the circumstances in the case, weighing such factors as the length of time the applicant resided in the United States and the age when the applicant became an LPR.

2. Failure to File Tax Returns or Pay Taxes

An applicant who fails to file tax returns or pay his or her taxes may be precluded from establishing GMC. LPRs are generally taxed in the same way as U.S. citizens. This means that their worldwide income may be subject to U.S. tax and may need to be reported on their U.S. tax return. The income of LPRs is subject to the same graduated tax rates that apply to U.S. citizens.[66] See IRS Publication 519, U.S. Tax Guide for Aliens.

An applicant who did not originally file tax returns or did not pay the appropriate taxes may be able to establish GMC by submitting a letter from the tax authority indicating that:

- The applicant has filed the appropriate forms and returns; and
- The applicant has paid the required taxes, or has made arrangements for payment.

If the officer uncovers inconsistencies in facts submitted on the application for naturalization and material elements on the applicant's tax return, such as marital status, number of children, and employment, the applicant may be precluded from establishing GMC due to an attempt to defraud the Internal Revenue Service (IRS) by avoiding taxes.[67] The following involve defrauding the United States by avoiding taxes (a CIMT). See Matter of M, 8 I&N Dec. 535 (BIA 1960). See Matter of E, 9 I&N Dec. 421 (BIA 1961). See Carty v. Ashcroft, 395 F.3d 1081 (9th Cir. 2005) (State failure to pay taxes; evasion is same as fraud). See Wittgenstein v. INS, 124 F.3d 1244 (10th Cir. 1997) (State crime).

Footnotes

1.

See INA 316(a). See 8 CFR 316.10.

2.

See INA 101(f). See Chapter 1, Purpose and Background [12 USCIS-PM F.1].

3.

See *Medina v. United States*, 259 F.3d 220, 227 (4th Cir. 2001) quoting *Matter of Danesh*, 19 I&N Dec. 669, 670 (BIA 1988). See *Matter of Perez-Contreras*, 20 I&N Dec. 615, 618 (BIA 1992). See *Matter of Flores*, 17 I&N Dec. 225 (BIA 1980) (and cases cited therein).

4.

See *Matter of Silva-Trevino*, 24 I&N Dec. 687, 688, 706 (A.G. 2008).

5.

See *Matter of Esfandiary,* 16 I&N Dec. 659 (BIA 1979).

6.

See *Matter of Silva-Trevino*, 24 I&N Dec. 687 (AG 2008).

7.

See INA 101(f)(3). See 8 CFR 316.10(b)(2)(i).

8.

See INA 212(a)(2)(A)(ii)(II).

9.

See *Matter of Garcia-Hernandez*, 23 I&N Dec. 590, 594-95 (BIA 2003).

10.

See Chapter 2, Adjudicative Factors, Section F, "Purely Political Offense" Exception [12 USCIS-PM F.2(F)].

11.

See 8 CFR 316.10(b)(2)(ii).

12.

See Chapter 2, Adjudicative Factors, Section F, "Purely Political Offense" Exception [12 USCIS-PM F.2(F)].

13.

See INA 101(f)(3) and INA 212(a)(2)(A)(i)(II). See 8 CFR 316.10(b)(2)(iii) and 8 CFR 316.10(b)(2)(iv). See Chapter 2, Adjudicative Factors, Section E, Admission of Certain Criminal Acts [12 USCIS-PM F.2(E)].

14.

See INA 101(f)(3). See 8 CFR 316.10(b)(2)(iii). While an offense for simple possession of 30 grams or less of marijuana is excluded from INA 101(f)(3), it may nonetheless affect GMC under the residual clause of the GMC definition. See INA 101(f). See 8 CFR 316.10(a)(2).

15.

See INA 101(f)(7). See 8 CFR 316.10(b)(2)(v).

16.

See *Matter of Piroglu*, 17 I&N Dec. 578 (BIA 1980).

17.

See Chapter 2, Adjudicative Factors, Section F, "Purely Political Offense" Exception [12 USCIS-PM F.2(F)].

18.

See INA 101(f)(6). See 8 CFR 316.10(b)(2)(vi).

19.

See *Matter of R-S-J-*, 22 I&N Dec. 863 (BIA 1999).

20.

See *Kungys v. United States*, 485 U.S. 759, 780-81 (1988).

21.

See *Matter of L-D-E*, 8 I&N Dec. 399 (BIA 1959).

22.

See *Matter of Ngan*, 10 I&N Dec. 725 (BIA 1964). See *Matter of G-L-T-*, 8 I&N Dec. 403 (BIA 1959).

23.

See *Matter of G-*, 6 I&N Dec. 208 (BIA 1954).

24.

See INA 101(f)(3) and INA 212(a)(2)(D)(i) and INA 212(a)(2)(D)(ii). See 8 CFR 316.10(b)(2)(vii).

25.

See *Matter of T*, 6 I&N Dec. 474 (BIA 1955).

26.

See *Matter of Gonzalez-Zoquiapan*, 24 I&N Dec. 549 (BIA 2008).

27.

See INA 101(f)(3) and INA 212(a)(6)(E). See 8 CFR 316.10(b)(2)(viii).

28.

See INA 212(a)(6)(E)(ii). See Sec. 301 of the Immigration Act of 1990 (IMMACT90), Pub. L. 101-649 (November 29, 1990).

29.

See INA 101(f)(3) and INA 212(a)(10)(A). See 8 CFR 316.10(b)(2)(ix).

30.

Polygamy is not the same as bigamy. Bigamy is the crime of marrying a person while being legally married to someone else. An applicant who has committed bigamy may be susceptible to a denial under the "unlawful acts" provision.

31.

See INA 101(f)(5). See 8 CFR 316.10(b)(2)(x) and 8 CFR 316.10(b)(2)(xi).

32.

See INA 101(f)(1). See 8 CFR 316.10(b)(2)(xii).

33.

See 8 CFR 316.10(b)(3)(i). See Hague Convention on the International Recovery of Child Support.

34.

See Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

35.

See *Brukiewicz v. Savoretti*, 211 F.2d 541 (5th Cir. 1954). See *Petition of Perdiak*, 162 F. Supp. 76 (S.D. Cal. 1958). See *Petition of Dobric*, 189 F. Supp. 638 (D. Minn. 1960). See *In re Malaszenko*, 204 F. Supp. 744 (D.N.J. 1962) (and cases cited). See *Petition of Dobric*, 189 F. Supp. 638 (D. Minn. 1960). See *In re Huymaier*, 345 F. Supp. 339 (E.D. Pa. 1972). See *In re Valad*, 465 F. Supp. 120 (E.D. Va. 1979).

36.

See *U.S. v. Harrison*, 180 F.2d 981 (9th Cir. 1950).

37.

See *In re Malaszenko*, 204 F. Supp. 744 (D.N.J. 1962). See *In re Mogus*, 73 F. Supp. 150 (W.D. Pa. 1947).

38.

See *In re Halas*, 274 F. Supp. 604 (E.D. Pa. 1967). See *Petition of Dobric*, 189 F. Supp. 638 (D. Minn. 1960).

39.

See 8 CFR 316.10(b)(3)(i).

40.

See Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances [12 USCIS-PM F.2(G)].

41.

See *In re Huymaier*, 345 F. Supp. 339 (E.D. Pa. 1972).

42.

See *Petition of Perdiak*, 162 F. Supp. 76 (S.D. Cal. 1958).

43.

See *In re Valad*, 465 F. Supp. 120 (E.D. Va. 1979).

44.

See *Etape v. Napolitano*, 664 F.Supp.2d 498, 517 (D Md 2009).

45.

See 8 CFR 316.10(b)(3)(ii).

46.

See Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances [12 USCIS-PM F.2(G)].

47.

See In *re Petition of Schroers,* 336 F. Supp. 1348 (S.D.N.Y. 1971). See In *re Petition of Russo,* 259 F. Supp. 230 (S.D.N.Y. 1966). See *Dickhoff v. Shaughnessy*, 142 F. Supp. 535 (SDNY 1956).

48.

See INA 101(f). See 8 CFR 316.10(b)(3)(iii).

49.

See 8 CFR 316.10(b)(1) and 8 CFR 316.10(b)(2) (Other relevant GMC regulations).

50.

See *U.S. v. Lekarczyk*, 354 F. Supp. 2d 883 (W.D. Wis. 2005). See *Jean-Baptiste v. United States,* 395 F.3d 1190 (11th Cir.2005). Collateral estoppel bars a defendant who is convicted in a criminal trial from contesting this conviction in a subsequent civil action with respect to issues necessarily decided in the criminal trial. See *Kennedy v. Mendoza-Martinez,* 372 U.S. 144, 157 (1963).

51.

See 8 CFR 316.10(b)(3)(iii).

52.

See INA 101(f). See 8 CFR 316.10(b)(3)(iii). See Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances [12 USCIS-PM F.2(G)].

53.

See *Jean-Baptiste v. United States,* 395 F.3d 1190 (11th Cir.2005) citing *Rico v. INS,* 262 F. Supp.2d 6 (E.D.N.Y.2003).

54.

See *Jean-Baptiste v. United States,* 395 F.3d 1190 (11th Cir.2005).

55.

See 18 U.S.C. 611 (Voting by aliens). See 18 U.S.C. 1015(f) (False claim to U.S. citizenship).

56.

See INA 212(a)(10)(D)(i) and INA 237(a)(6)(A) (Addressing unlawful voting). See INA 212(a)(6)(C)(ii)(I) and INA 237(a)(3)(D)(i) (Addressing false claims to U.S. citizenship). These provisions were added by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208 (September 30, 1996).

57.

See 18 U.S.C. 611 (Voting by aliens).

58.

See 18 U.S.C. 1015(f) (False claim to U.S. citizenship).

59.

See 18 U.S.C. 611 (Voting by noncitizens). See 8 U.S.C. 1015(f) (False claim to U.S. citizenship).

60.

See INA 101(f)(3).

61.

See Chapter 5 Conditional Bars for Acts in Statutory Period, Section D, Imprisonment for 180 Days or More [12 USCIS-PM F.5(D)]. See INA 101(f)(7).

62.

See Chapter 5 Conditional Bars for Acts in Statutory Period, Section B, Aggregate Sentence of Five Years or More [12 USCIS-PM F.5(B)]. See INA 101(f)(3).

63.

See INA 101(f). See INA 212(a)(10)(D)(ii) and INA 237(a)(6)(B) (Unlawful voting exception). See INA 212(a)(6)(C)(ii)(II) and INA 237(a)(3)(D)(i) (False claims to U.S. citizenship exception). These provisions were added by the Child Citizenship Act of 2000 (CCA), Pub. L. 106-395 (October 30, 2000).

64.

See Section 201(d)(3) of the CCA, Pub. L. 106-395.

65.

As a matter of policy, USCIS has determined that the applicant's parents had to be U.S. citizens at the time of the illegal voting or false claim to U.S. citizenship in order to meet the first prong of this exception.

66.

See IRS Publication 519, U.S. Tax Guide for Aliens.

67.

The following involve defrauding the United States by avoiding taxes (a CIMT). See *Matter of M*, 8 I&N Dec. 535 (BIA 1960). See *Matter of E*, 9 I&N Dec. 421 (BIA 1961). See *Carty v. Ashcroft*, 395 F.3d 1081 (9th Cir. 2005) (State failure to pay taxes; evasion is same as fraud). See *Wittgenstein v. INS*, 124 F.3d 1244 (10th Cir. 1997) (State crime).

Part G - Spouses of U.S. Citizens

Chapter 1 - Purpose and Background

A. Purpose

Spouses of United States citizens may be eligible for naturalization on the basis of their marriage under special provisions of the Immigration and Nationality Act (INA), to include overseas processing. In general, spouses of U.S. citizens are required to meet the general naturalization requirements.[1] See INA 316. See 8 CFR 316. See Part D, General Naturalization Requirements [12 USCIS-PM D]. The special provisions, however, provide modifications to th ose requirements.

The spouse of a U.S. citizen may naturalize through various provisions:

- The spouse of a U.S. citizen may naturalize under the general naturalization provisions for applicants who have resided in the United States for at least five years after becoming a lawful permanent resident (LPR).[2] See INA 316(a). See Part D, General Naturalization Requirements [12 USCIS-PM D].

- The spouse of a U.S. citizen may naturalize after residing in the United States for three years after becoming an LPR, rather than five years as generally required.[3] See INA 319(a). See Chapter 3, Spouses of U.S. Citizens Residing in the United States [12 USCIS-PM G.3].

- The spouse of a U.S. citizen employed abroad who is working for the U.S. Government (including the armed forces) or other qualified entity may naturalize in the United States without any required period of residence or physical presence in the United States after becoming an LPR.[4] See INA 319(b). See Chapter 4, Spouses of U.S. Citizens Employed Abroad [12 USCIS-PM G.4].

- The spouse of a U.S. citizen who is serving abroad in the U.S. armed forces may naturalize abroad while residing with his or her spouse, and time spent abroad under these circumstances is considered residence and physical presence in the United States for purposes of the general five-year or three-year provision for spouses.[5] See INA 316(a), INA 319(a), and INA 319(e). See 8 U.S.C. 1443a. See Part I, Military Members and their Families [12 USCIS-PM I].

- The surviving spouse of a U.S. citizen who dies during a period of honorable service in an active-duty status in the U.S. armed forces or was granted citizenship posthumously may naturalize in the United States without any required period of residence or physical presence after becoming an LPR.[6] See INA 319(d). 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)].

In addition, spouses, former spouses, or intended spouses of U.S. citizens may naturalize if they obtained LPR status on the basis of having been battered or subjected to extreme cruelty by their citizen spouse.[7] See INA 319(a). See Chapter 3, Spouses of U.S. Citizens Residing in the United States [12 USCIS-PM G.3].

B. Background

The current naturalization provisions for spouses of U.S. citizens reflect legislation dating back to 1922. Congress considered it inefficient and undesirable to require the spouse of a U.S. citizen to wait five years before naturalization.[8] See H.R. REP. 67-1110, 2d Sess., p. 2. See Immigration Act of September 22, 1922. Congress made further amendments in 1934, to include a required period of three years of residence. In 1940, Congress incorporated provisions into the Nationality Act of 1940 that were substantially similar to those of the 1922 and 1934 acts. Today's statutes reflect Congress' long-standing aim to facilitate the naturalization process for spouses of U.S. citizens to provide spouses with the protections afforded by U.S. citizenship.

C. Table of General Provisions

The table below serves as a quick reference guide to the pertinent naturalization authorities for spouses of U.S.

citizens. The chapters that follow the table provide further guidance.

General Provisions for Applicants filing as Spouses of U.S. Citizens				
Provision	**Marriage and Marital Union**	**Continuous Residence**	**Physical Presence**	**Eligibility for Overseas Processing**
Spouses of U.S. Citizens Residing in United States **INA 319(a)**	Married and living in marital union for at least 3 years prior to filing	3 years after becoming an LPR	18 months during period of residence	Not applicable, except for spouses of military members who may complete entire process from abroad – INA 319(e)
Spouses of U.S. Citizens Employed Abroad **INA 319(b)**	Married prior to filing	Must be LPR at filing; no specified period required		Not applicable; all must be in U.S. for interview and Oath
Spouses of Deceased Service Members **INA 319(d)**	Must have been married and living in marital union at time of death	Must be LPR at filing; no specified period required		Not applicable; all must be in U.S. for interview and Oath

D. Legal Authorities

- INA 316; 8 CFR 316 – General requirements for naturalization
- INA 319; 8 CFR 319 – Spouses of U.S. citizens
- INA 319(e); 8 CFR 316.5(b)(6) and 8 CFR 316.6 – Residence, physical presence, and overseas naturalization for certain spouses of military personnel
- 8 U.S.C. 1443a – Overseas naturalization for service members and their family

Footnotes

1.

See INA 316. See 8 CFR 316. See Part D, General Naturalization Requirements [12 USCIS-PM D].

2.

See INA 316(a). See Part D, General Naturalization Requirements [12 USCIS-PM D].

3.

See INA 319(a). See Chapter 3, Spouses of U.S. Citizens Residing in the United States [12 USCIS-PM G.3].

4.

See INA 319(b). See Chapter 4, Spouses of U.S. Citizens Employed Abroad [12 USCIS-PM G.4].

5.

See INA 316(a), INA 319(a), and INA 319(e). See 8 U.S.C. 1443a. See Part I, Military Members and their Families [12 USCIS-PM I].

6.

See INA 319(d). 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)].

7.

See INA 319(a). See Chapter 3, Spouses of U.S. Citizens Residing in the United States [12 USCIS-PM G.3].

8.

See H.R. REP. 67-1110, 2d Sess., p. 2. See Immigration Act of September 22, 1922.

Chapter 2 - Marriage and Marital Union for Naturalization

A. Validity of Marriage

1. Validity of Marriages in the United States or Abroad

Validity of Marriage for Immigration Purposes

The applicant must establish validity of his or her marriage. In general, the legal validity of a marriage is determined by the law of the place where the marriage was celebrated ("place-of-celebration rule"). Under this rule, a marriage is valid for immigration purposes in cases where the marriage is valid under the law of the jurisdiction in which it is performed.[1] See, for example, Matter of Lovo-Lara, 23 I&N Dec. 746 (BIA 2005); Matter of Da Silva, 15 I&N Dec. 778 (BIA 1976); Matter of H-, 9 I&N Dec 640 (BIA 1962).

In all cases, the burden is on the applicant to establish that he or she has a valid marriage with his or her U.S. citizen

spouse for the required period of time.[2] See 8 CFR 319.1(b)(1). In most cases, a marriage certificate is prima facie evidence that the marriage was properly and legally performed.

USCIS does not recognize the following relationships as marriages, even if valid in the place of celebration:

- Polygamous marriages;[3] See Matter of H-, 9 I&N Dec. 640 (BIA 1962). Polygamous marriages are not recognized as a matter of federal public policy. However, note that battered spouses who had a bigamous marriage may still be eligible for naturalization. See INA 204(a)(1)(A)(iii)(II) and INA 319(a).

- Certain marriages that violate the strong public policy of the state of residence of the couple;[4] This is a narrow exception that under BIA case law generally has been limited to situations, such as certain incestuous marriages, where the marriage violates the criminal law of the state of residence. See Matter of Da Silva, 15 I&N Dec 778 (BIA 1976); Matter of Zappia, 12 I&N Dec. 439 (BIA 1967); Matter of Hirabayashi, 10 I&N Dec 722 (BIA 1964); Matter of M, 3 I&N Dec. 465 (BIA 1948). Note that as discussed below, if the state of residence has a public policy refusing to recognize same-sex marriage, this will not result in a same-sex marriage being considered invalid for immigration purposes if it is valid in the place of celebration.

- Civil unions, domestic partnerships, or other such relationships not recognized as marriages in the place of celebration;[5] If the relationship is treated as a marriage, however, such as a "common law marriage," it will be recognized.

- Relationships where one party is not present during the marriage ceremony (proxy marriages) unless the marriage has been consummated;[6] See INA 101(a)(35). or

- Relationships entered into for purposes of evading immigration laws of the United States.[7] See Matter of Laureano, 19 I&N Dec. 1 (BIA 1983); Matter of Phillis, 15 I&N Dec. 385 (BIA 1975; Matter of M-, 8 I&N Dec. 217 (BIA 1958).

Validity of Marriage Between Two Persons of the Same Sex

In June 2013, the Supreme Court held that section 3 of the Defense of Marriage Act (DOMA), which had limited the terms "marriage" and "spouse" to opposite-sex marriages for purposes of all federal laws, was unconstitutional.[8] See United States v. Windsor, 133 S. Ct. 2675 (2013). See 1 U.S.C. 7 (section 3 of DOMA). See the Defense of Marriage Act (DOMA), Pub. L. 104-199, 110 Stat. 2419 (Sept. 21, 1996). In accordance with the Supreme Court decision, USCIS determines the validity of a same-sex marriage by the place-of-celebration rule, just as USCIS applies this rule to determine the validity of an opposite-sex marriage.[9] Prior to the Supreme Court decision, United States v. Windsor, USCIS did not recognize relationships between two persons of the same sex as marriages or intended marriages in accordance with section 3 of DOMA.

Therefore, in cases of marriage between persons of the same sex, officers will review the laws of the jurisdiction in which the marriage took place to determine if the jurisdiction recognizes same-sex marriages and the marriage otherwise is legally valid.

Since the place-of-celebration rule governs same-sex marriages in exactly the same way that it governs opposite-sex marriages, unless the marriage is polygamous or otherwise falls within an exception to the place-of-celebration rule as discussed above, the legal validity of a same-sex marriage is determined exclusively by the law of the jurisdiction

where the marriage was celebrated.

If the same-sex couple now resides in a jurisdiction different from the one in which they celebrated their marriage, and that jurisdiction does not recognize same-sex marriages, the officer will look to the law of the state where the marriage was celebrated in order to determine the validity of the marriage. The domicile state's laws and policies on same-sex marriages will not affect whether USCIS will recognize a marriage as valid.

Validity of Marriage in Cases Involving Transgender Persons

USCIS accepts the validity of a marriage in cases involving transgender persons if the state or local jurisdiction in which the marriage took place recognizes the marriage as a valid marriage, subject to the exceptions described above (such as polygamy).[10] Officers should consult OCC in cases where the marriage was originally an opposite-sex marriage celebrated in a state that does not recognize same-sex marriage, and one of the spouses changed gender after the marriage.

2. Validity of Foreign Divorces and Subsequent Remarriages

The validity of a divorce abroad depends on the interpretation of the divorce laws of the foreign country that granted the divorce and the reciprocity laws in the state of the United States where the applicant remarried.[11] See Matter of Luna, 18 I&N Dec. 385 (BIA 1983). See Matter of Ma, 15 I&N Dec. 70 (BIA 1974). If the divorce is not final under the foreign law, remarriage to a U.S. citizen is not valid for immigration purposes.[12] See Matter of Ma, 15 I&N Dec. 70, 71 (BIA 1974). See Matter of Miraldo, 14 I&N Dec. 704 (BIA 1974).

An officer should ensure that the court issuing the divorce had jurisdiction to do so.[13] For example, law requires both parties to be domiciled in the country at the time of divorce, but that was not the case. See Matter of Hosseinian, 19 I& N Dec. 453 (BIA 1987). See Matter of Weaver, 16 I&N Dec. 730 (BIA 1979). See Matter of Luna, 18 I&N Dec. 385 (BIA 1983). Foreign divorce laws may allow for a final decree even when the applicants are not residing in the country. Some states, however, do not recognize these foreign divorces and do not provide reciprocity. The applicant and his or her former spouse's place of domicile at the time of the divorce is important in determining whether the court had jurisdiction.

3. Evidence

The burden is on the applicant to establish that he or she is in a valid marriage with his or her U.S. citizen spouse for the required period of time.[14] See 8 CFR 319.1(b)(1). A spouse of a U.S. citizen must submit with the naturalization application an official civil record to establish that the marriage is legal and valid. If an official civil record cannot be produced, secondary evidence may be accepted on a case-by-case basis. An officer has the right to request an original record if there is doubt as to the authenticity of the record.[15] See 8 CFR 103.2(b). See 8 CFR 319.1 and 8 CFR 319.2.

B. Common Law Marriage

The concept of common law marriage presupposes an honest good-faith intention on the part of two persons, free to marry, to live together as husband and wife from the inception of the relationship. Some states recognize common law marriages and consider the parties to be married.[16] For purposes of determining whether a common law marriage exists, see statutes and case law for the appropriate jurisdiction. In order for a common law marriage to be valid for immigration purposes:

- The parties must live in that jurisdiction; and
- The parties must meet the qualifications for common law marriage for that jurisdiction.

Other states may recognize a common law marriage contracted in another state even if the recognizing state does not accept common law marriage as a means for its own residents to contract marriage.

USCIS recognizes common law marriages for purposes of naturalization if the marriage was valid and recognized by the state in which the marriage was established.[17] The date a common law marriage commences is determined by laws of the relevant jurisdiction. This applies even if the naturalization application is filed in a jurisdiction that does not recognize or has never recognized the principle of common law marriage.

The officer should review the laws of the relevant jurisdiction on common law marriages to determine whether the applicant and spouse should be considered to be married for purposes of naturalization and when the marriage commenced.

C. U.S. Citizenship from Time of Filing until Oath

In order to take advantage of the special naturalization provisions for spouses of U.S. citizens, the applicant's spouse must be and remain a U.S. citizen from the time of filing until the time the applicant takes the Oath of Allegiance. An applicant is ineligible for naturalization under these provisions if his or her spouse is not a U.S. citizen or loses U.S. citizenship status by denaturalization or expatriation prior to the applicant taking the Oath of Allegiance.[18] See 8 CFR 319.1(b)(2)(i) and 8 CFR 319.2(c).

D. Marital Union and Living in Marital Union

1. Married and Living in Marital Union

In general, all naturalization applicants filing on the basis of marriage to a U.S. citizen must be the spouse of a U.S. c itizen from the time of filing the Application for Naturalization until the applicant takes the Oath of Allegiance. In addition, some spousal naturalization provisions require that the applicant "live in marital union" with his or her citizen spouse prior to filing the Application for Naturalization.[19] See INA 319(a). See 8 CFR 319.1(a)(3) and 8 CFR 319.1(b). USCIS considers an applicant to "live in marital union" with his or her citizen spouse if the applicant and the citizen actually reside together.

An applicant under the special provisions for spouses is ineligible for naturalization if:

- The applicant is not residing with his or her United States citizen spouse at the time of filing or during the time in which the applicant is required to be living in marital union with the citizen spouse; or

- If at any time prior to taking the Oath of Allegiance, the spousal relationship is terminated or altered to such an extent that neither the applicant nor the United States citizen spouse can be considered to be residing together as husband and wife.

There are limited circumstances where an applicant may be able to establish that he or she is living in marital union with his or her citizen spouse even though the applicant does not actually reside with the citizen spouse.[20] See guidance below on "Involuntary Separation" under the paragraph "Failure to be Living in Loss of Marital Union due to Separation."

In all cases where it is applicable, the burden is on the applicant to establish that he or she has lived in marital union with his or her U.S. citizen spouse for the required period of time.[21] See 8 CFR 319.1(b)(1).

2. Loss of Marital Union due to Death, Divorce, or Expatriation

Death of U.S. Citizen Spouse

An applicant is ineligible to naturalize as the spouse of a U.S. citizen if the U.S. citizen dies any time prior to the applicant taking the Oath of Allegiance.[22] See 8 CFR 319.1(b)(2)(i). See 8 CFR 319.2(c). However, if the applicant is the surviving spouse of a U.S. citizen who died during a period of honorable service in an active-duty status in the U.S. armed forces, the applicant may be eligible for naturalization based on his or her marriage under a special provision.[23] See INA 319(d). See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section D, Naturalization for Surviving Spouse, Child, or Parent of Service Member (INA 319(d)) [12 USCIS-PM I.9(D)].

Divorce or Annulment

A person's marital status may be terminated by a judicial divorce or by an annulment. A divorce or annulment breaks the marital relationship. The applicant is no longer the spouse of a U.S. citizen if the marriage is terminated by a divorce or annulment. Accordingly, such an applicant is ineligible to naturalize as the spouse of a U.S. citizen if the divorce or annulment occurs before or after the naturalization application is filed.[24] See 8 CFR 319.1(b)(2)(i) and 8 CFR 319.2(c).

The result of annulment is to declare a marriage null and void from its inception. An annulment is usually retroactive, meaning that the marriage is considered to be invalid from the beginning. A court's jurisdiction to grant an annulment is set forth in the various divorce statutes and generally requires residence or domicile of the parties in that jurisdiction. When a marriage has been annulled, it is documented by a court order or decree.

In contrast, the effect of a judicial divorce is to terminate the status as of the date on which the court entered the final decree of divorce. When a marriage is terminated by divorce, the termination is entered by the court with jurisdiction and is documented by a copy of the final divorce decree. USCIS determines the validity of a divorce by examining whether the state or country which granted the divorce properly assumed jurisdiction over the divorce proceeding.[25] See Matter of Hussein, 15 I&N Dec. 736 (BIA 1976). USCIS also determines whether the parties followed the proper legal formalities required by the state or country in which the divorce was obtained to determine if the divorce is legally binding.[26] See Matter of Luna, 18 I&N Dec. 385 (BIA 1983). In all cases, the divorce must be final.

An applicant's ineligibility for naturalization as the spouse of a U.S. citizen due to the death of the citizen spouse or to divorce is not cured by the subsequent marriage to another U.S. citizen.

Expatriation of U.S. Citizen Spouse

An applicant is ineligible to naturalize as the spouse of a U.S. citizen if the U.S. citizen has expatriated any time prior to the applicant taking the Oath of Allegiance for naturalization.[27] See 8 CFR 319.1(b)(2)(i). See 8 CFR 319.2(c). See INA 337.

3. Failure to be Living in Marital Union due to Separation

Legal Separation

A legal separation is a formal process by which the rights of a married couple are altered by a judicial decree but without eliminating the marital relationship.[28] See for example, Nehme v. INS, 252 F.3d 415, 422-27 (5th Cir. 2001) (Discussing legal separation for purposes of derivation of citizenship). In most cases, after a legal separation, the applicant will no longer be actually residing with his or her U.S. citizen spouse, and therefore will not be living in marital union with the U.S. citizen spouse.

However, if the applicant and the U.S. citizen spouse continue to reside in the same household, the marital relationship has been altered to such an extent by the legal separation that they will not be considered to be living together in marital union.

Accordingly, an applicant is not living in marital union with a U.S. citizen spouse during any period of time in which the spouses are legally separated.[29] See 8 CFR 319.1(b)(2)(ii)(A). An applicant who is legally separated from his or her spouse during the time period in which he or she must be living in marital union is ineligible to naturalize as the spouse of a U.S. citizen.

Informal Separation

In many instances, spouses will separate without obtaining a judicial order altering the marital relationship or formalizing the separation. An applicant who is no longer actually residing with his or her U.S. citizen spouse following an informal separation is not living in marital union with the U.S. citizen spouse.

However, if the U.S. citizen spouse and the applicant continue to reside in the same household, an officer must determine on a case-by-case basis whether an informal separation before the filing of the naturalization application renders an applicant ineligible for naturalization as the spouse of a U.S. citizen.[30] See 8 CFR 319.1(b)(2)(ii)(B). Under these circumstances, an applicant is not living in marital union with a U.S. citizen spouse during any period of time in which the spouses are informally separated if such separation suggests the possibility of marital disunity.

Factors to consider in making this determination may include:

- The length of separation;
- Whether the applicant and his or her spouse continue to support each other and their children (if any) during the separation;
- Whether the spouses intend to separate permanently; and
- Whether either spouse becomes involved in a relationship with others during the separation.[31] See U.S. v. Moses, 94 F. 3d 182 (5th Cir. 1996).

Involuntary Separation

Under very limited circumstances and where there is no indication of marital disunity, an applicant may be able to establish that he or she is living in marital union with his or her U.S. citizen spouse even though the applicant does not actually reside with citizen spouse. An applicant is not made ineligible for naturalization for not living in marital union if the separation is due to circumstances beyond his or her control, such as:[32] See 8 CFR 319.1(b)(2)(ii)(C).

- Service in the U.S. armed forces; or
- Required travel or relocation for employment.

USCIS does not consider incarceration during the time of required living in marital union to be an involuntary separation.

Footnotes

1.

See, for example, *Matter of Lovo-Lara*, 23 I&N Dec. 746 (BIA 2005); *Matter of Da Silva*, 15 I&N Dec. 778 (BIA 1976); *Matter of H-*, 9 I&N Dec 640 (BIA 1962).

2.

See 8 CFR 319.1(b)(1).

3.

See *Matter of H-*, 9 I&N Dec. 640 (BIA 1962). Polygamous marriages are not recognized as a matter of federal public policy. However, note that battered spouses who had a bigamous marriage may still be eligible for naturalization. See INA 204(a)(1)(A)(iii)(II) and INA 319(a).

4.

This is a narrow exception that under BIA case law generally has been limited to situations, such as certain incestuous marriages, where the marriage violates the criminal law of the state of residence. *See Matter of Da Silva*, 15 I&N Dec 778 (BIA 1976); *Matter of Zappia*, 12 I&N Dec. 439 (BIA 1967); *Matter of Hirabayashi*, 10 I&N Dec 722 (BIA 1964); *Matter of M*, 3 I&N Dec. 465 (BIA 1948). Note that as discussed below, if the state of residence has a public policy refusing to recognize same-sex marriage, this will not result in a same-sex marriage being considered invalid for immigration purposes if it is valid in the place of celebration.

5.

If the relationship is treated as a marriage, however, such as a "common law marriage," it will be recognized.

6.

See INA 101(a)(35).

7.

See *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Phillis*, 15 I&N Dec. 385 (BIA 1975; *Matter of M-*, 8 I&N Dec. 217 (BIA 1958).

8.

See *United States v. Windsor*, 133 S. Ct. 2675 (2013). See 1 U.S.C. 7 (section 3 of DOMA). See the Defense of Marriage Act (DOMA), Pub. L. 104-199, 110 Stat. 2419 (Sept. 21, 1996).

9.

Prior to the Supreme Court decision, *United States v. Windsor*, USCIS did not recognize relationships between two persons of the same sex as marriages or intended marriages in accordance with section 3 of DOMA.

10.

Officers should consult OCC in cases where the marriage was originally an opposite-sex marriage celebrated in a state that does not recognize same-sex marriage, and one of the spouses changed gender after the marriage.

11.

See *Matter of Luna*, 18 I&N Dec. 385 (BIA 1983). See *Matter of Ma,* 15 I&N Dec. 70 (BIA 1974).

12.

See *Matter of Ma*, 15 I&N Dec. 70, 71 (BIA 1974). See *Matter of Miraldo*, 14 I&N Dec. 704 (BIA 1974).

13.

For example, law requires both parties to be domiciled in the country at the time of divorce, but that was not the case. See *Matter of Hosseinian*, 19 I& N Dec. 453 (BIA 1987). See *Matter of Weaver*, 16 I&N Dec. 730 (BIA 1979). See *Matter of Luna*, 18 I&N Dec. 385 (BIA 1983).

14.

See 8 CFR 319.1(b)(1).

15.

See 8 CFR 103.2(b). See 8 CFR 319.1 and 8 CFR 319.2.

16.

For purposes of determining whether a common law marriage exists, see statutes and case law for the appropriate jurisdiction.

17.

The date a common law marriage commences is determined by laws of the relevant jurisdiction.

18.

See 8 CFR 319.1(b)(2)(i) and 8 CFR 319.2(c).

19.

See INA 319(a). See 8 CFR 319.1(a)(3) and 8 CFR 319.1(b).

20.

See guidance below on "Involuntary Separation" under the paragraph "Failure to be Living in Loss of Marital Union due to Separation."

21.

See 8 CFR 319.1(b)(1).

22.

See 8 CFR 319.1(b)(2)(i). See 8 CFR 319.2(c).

23.

See INA 319(d). See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section D, Naturalization for Surviving Spouse, Child, or Parent of Service Member (INA 319(d)) [12 USCIS-PM I.9(D)].

24.

See 8 CFR 319.1(b)(2)(i) and 8 CFR 319.2(c).

25.

See *Matter of Hussein*, 15 I&N Dec. 736 (BIA 1976).

26.

See *Matter of Luna*, 18 I&N Dec. 385 (BIA 1983).

27.

See 8 CFR 319.1(b)(2)(i). See 8 CFR 319.2(c). See INA 337.

28.

See for example, *Nehme v. INS*, 252 F.3d 415, 422-27 (5th Cir. 2001) (Discussing legal separation for purposes of derivation of citizenship).

29.

See 8 CFR 319.1(b)(2)(ii)(A).

30.

See 8 CFR 319.1(b)(2)(ii)(B).

31.

See *U.S. v. Moses*, 94 F. 3d 182 (5th Cir. 1996).

32.

See 8 CFR 319.1(b)(2)(ii)(C).

Chapter 3 - Spouses of U.S. Citizens Residing in the United States

A. General Eligibility for Spouses Residing in the United States

The spouse of a U.S. citizen who resides in the United States may be eligible for naturalization on the basis of his or her marriage.[1] See INA 319(a). See 8 CFR 319.1. The spouse must have continuously resided in the United States after becoming an LPR for at least three years immediately preceding the date of filing the naturalization application and must have lived in marital union with his or her citizen spouse for at least those three years.

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

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

- Attachment to the principles of the U.S. Constitution and well-disposed to the good order and happiness of the United States during all relevant periods under the law.

The spouse of a U.S. citizen residing in the United States may also naturalize under the general naturalization provisions for applicants who have been LPRs for at least five years.[2] See INA 316(a). See Part D, General Naturalization Requirements [12 USCIS-PM D]. In addition, in some instances the spouse of a member of the U.S. armed forces applying pursuant to INA 319(a) or INA 316(a) may be eligible for any naturalization proceeding abroad, to include interviews, filings, oaths, ceremonies, or other proceedings relating to naturalization.[3] See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits [12 USCIS-PM I.9].

B. Living in Marital Union for Spouses Residing in the United States

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

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

USCIS follows the language of the statute in requiring marital union only up until the time of filing.[4] See 8 CFR 319.1(a)(3). See Ali v. Smith, 39 F. Supp. 2d 1254. (W.D. Wash. 1999). Accordingly, only the existence of a legally valid marriage is required from the date of filing the application until the time of the applicant's naturalization.[5] See INA 319(a). See In re Petition of Olan, 257 F. Supp. 884 (1966). See Petition of Yao Quinn Lee, 480 F.2d 673 (C.A. 2, 1973). See Chapter 2, Marriage and Marital Union for Naturalization [12 USCIS-PM G.2].

A person who was a spouse subjected to battering or extreme cruelty by their citizen spouse is exempt from the marital union requirement.[6] See INA 319(a). See Section F, Eligibility for Persons Subjected to Battering or Extreme Cruelty [12 USCIS-PM G.3(F)].

C. Three Years of Continuous Residence

The spouse of a U.S. citizen residing in the United States must have continuously resided in the United States as an LPR for at least three years immediately preceding the date of the filing the application and up to the time of the Oath of Allegiance. Continuous residence involves the applicant maintaining a permanent dwelling place in the United States for the required period of time. The residence is the applicant's actual dwelling place regardless of his or her intentions to claim it as his or her residence.[7] See Part D, General Naturalization Requirements, Chapter 3, Continuous Residence [12 USCIS-PM D.3]. See 8 CFR 316.5(a).

D. Eighteen Months of Physical Presence

The spouse must have been physically present in the United States for at least 18 months (548 days) out of the 3 years immediately preceding the date of filing the application.[8] See 8 CFR 319.1(a)(2) and 8 CFR 319.1(a)(4). See Part D, General Naturalization Requirements, Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence [12 USCIS-PM D.5]. Physical presence refers to the number of days the applicant must physically be present in the United States during the statutory period up to the date of filing for naturalization.[9] See 8 CFR 319.1(a)(2) and 8 CFR 319.1(a)(4). See Part D, General Naturalization Requirements, Chapter 4, Physical Presence [12 USCIS-PM D.4].

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

The spouse of a U.S. citizen filing for naturalization on the basis of his or her marriage may file the naturalization application up to 90 days before the date he or she would first meet the required three-year period of continuous residence.[10] See INA 334(a). See 8 CFR 334.2(b). Although an applicant may file early and may be interviewed during that period, the applicant is not eligible for naturalization until he or she has satisfied the required three-year period of residence. All other requirements for naturalization must be met at the time of filing.

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

In cases where an applicant has filed early and the required three-month period of residence in a state or Service District falls within the required three-year period of continuous residence, jurisdiction is based on the three-month period immediately preceding the examination on the application (interview).[11] See 8 CFR 316.2(a)(5).

F. Eligibility for Persons Subjected to Battering or Extreme Cruelty

1. General Eligibility for Persons Subjected to Battering or Extreme Cruelty

On October 28, 2000, Congress expanded the naturalization provision on the basis of marriage to a U.S. citizen for persons who reside in the United States. The amendments added that spouses, former spouses, intended spouses,[12] See INA 101(a)(50) (Definition of intended spouse). and children of U.S. citizens may naturalize under this provision if they obtained LPR status on the basis of having been battered or subjected to extreme cruelty by their citizen spouse or parent.[13] See INA 319(a). See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386 (October 28, 2000). See Part H, Children of U.S. Citizens, Chapter 6, Special Provisions for the Naturalization of Children [12 USCIS-PM H.6].

Specifically, the person must have obtained LPR status on the basis of:

- An approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) as the spouse or child of a U.S. citizen;

- An approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) as the spouse or child of an LPR if the abusive spouse or parent naturalizes after the petition has been approved;[14] See INA 204(a)(1)(B)(ii) or INA 204(a)(1)(B)(iii).

- Cancellation of removal in cases where the applicant was the spouse, child, or intended spouse of a United States citizen who subjected him or her to battering or extreme cruelty;[15] See INA 240A(b)(2)(A)(i)(I) or INA 240A(b)(2)(A)(i)(III). or

- An approved waiver of the joint filing requirement for petitions to remove conditions for conditional LPRs, if the marriage was entered into in good faith and the spouse or child was subjected to battering or extreme cruelty by the citizen or LPR spouse or parent.[16] See INA 216(c)(4)(C).

2. Exception to Marital Union and U.S. Citizenship Requirements for Spouses

A person who was a spouse subjected to battering or extreme cruelty by their citizen spouse is exempt from the following naturalization requirements:

- Living in marital union with the citizen spouse for at least three years at the time of filing the naturalization application; and

- U.S. citizenship status of applicant's spouse from the time of filing until the time the applicant takes the Oath of Allegiance. [17] See 8 CFR 319.1(b)(2)(i) and 8 CFR 319.2(c).

The spouse must meet all other eligibility requirements for naturalization on the basis of marriage to a U.S. citizen.[18] See INA 319(a). See 8 CFR 319.2.

G. Application and Evidence

1. Application for Naturalization (Form N-400)

To apply for naturalization, the applicant must submit an Application for Naturalization (Form N-400) in accordance with the form instructions and with the required fee.[19] See 8 CFR 319.11(a). See 8 CFR 103.7(b)(1). The applicant should check the appropriate eligibility option on the naturalization application to indicate that he or she is applying on the basis of marriage to a U.S. citizen.

2. Evidence of Spouse's United States Citizenship

Under this provision, the burden is on the applicant to establish that he or she is married and living in marital union with a U.S. citizen.[20] See Chapter 2, Marriage and Marital Union for Naturalization [12 USCIS-PM G.2]. A spouse of a U.S. citizen must submit with the application evidence to establish the U.S. citizenship of his or her spouse.[21] See INA 319(a). See 8 CFR 319.1(a).

Evidence of U.S. citizenship may include:

- Certificate of birth in the United States;
- Department of State Consular Report of Birth Abroad (FS-240);
- Certificate of Citizenship;
- Certificate of Naturalization; and
- Valid and unexpired United States Passport.

If an official civil record cannot be produced, secondary evidence may be accepted on a case-by-case basis. An officer has the right to request an original record if there is doubt as to the authenticity of the record.[22] See 8 CFR 103.2(b)(5). See 8 CFR 319.1 and 8 CFR 319.2.

Footnotes

1.

See INA 319(a). See 8 CFR 319.1.

2.

See INA 316(a). See Part D, General Naturalization Requirements [12 USCIS-PM D].

3.

See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits [12 USCIS-PM I.9].

4.

See 8 CFR 319.1(a)(3). See *Ali v. Smith*, 39 F. Supp. 2d 1254. (W.D. Wash. 1999).

5.

See INA 319(a). See *In re Petition of Olan*, 257 F. Supp. 884 (1966). See *Petition of Yao Quinn Lee*, 480 F.2d 673 (C.A. 2, 1973). See Chapter 2, Marriage and Marital Union for Naturalization [12 USCIS-PM G.2].

6.

See INA 319(a). See Section F, Eligibility for Persons Subjected to Battering or Extreme Cruelty [12 USCIS-PM G.3(F)].

7.

See Part D, General Naturalization Requirements, Chapter 3, Continuous Residence [12 USCIS-PM D.3]. See 8 CFR 316.5(a).

8.

See 8 CFR 319.1(a)(2) and 8 CFR 319.1(a)(4). See Part D, General Naturalization Requirements, Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence [12 USCIS-PM D.5].

9.

See 8 CFR 319.1(a)(2) and 8 CFR 319.1(a)(4). See Part D, General Naturalization Requirements, Chapter 4, Physical Presence [12 USCIS-PM D.4].

10.

See INA 334(a). See 8 CFR 334.2(b).

11.

See 8 CFR 316.2(a)(5).

12.

See INA 101(a)(50) (Definition of intended spouse).

13.

See INA 319(a). See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386 (October 28, 2000). See Part H, Children of U.S. Citizens, Chapter 6, Special Provisions for the Naturalization of Children [12 USCIS-PM H.6].

14.

See INA 204(a)(1)(B)(ii) or INA 204(a)(1)(B)(iii).

15.

See INA 240A(b)(2)(A)(i)(I) or INA 240A(b)(2)(A)(i)(III).

16.

See INA 216(c)(4)(C).

17.

See 8 CFR 319.1(b)(2)(i) and 8 CFR 319.2(c).

18.

See INA 319(a). See 8 CFR 319.2.

19.

See 8 CFR 319.11(a). See 8 CFR 103.7(b)(1).

20.

See Chapter 2, Marriage and Marital Union for Naturalization [12 USCIS-PM G.2].

21.

See INA 319(a). See 8 CFR 319.1(a).

22.

See 8 CFR 103.2(b)(5). See 8 CFR 319.1 and 8 CFR 319.2.

Chapter 4 - Spouses of U.S. Citizens Employed Abroad

A. General Eligibility for Spouses of U.S. Citizens Employed Abroad

The spouse of a U.S. citizen who is "regularly stationed abroad" in qualifying employment may be eligible for naturalization on the basis of their marriage.[1] See INA 319(b). See 8 CFR 319.2. See Section C, Qualifying Employment Abroad [12 USCIS-PM G.4(C)]. Spouses otherwise eligible under this provision are exempt from the continuous residence and physical presence requirements for naturalization.[2] See INA 319(b). See 8 CFR 319.2(a)(6).

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

- Age 18 or older at the time of filing.
- LPR at the time of filing the naturalization application.
- Continue to be the spouse of the U.S. citizen up until the time the applicant takes the Oath of Allegiance.
- Married to a U.S. citizen spouse regularly stationed abroad in qualifying employment for at least one year.
- Has a good faith intent to reside abroad with the U.S. citizen spouse upon naturalization and to reside in the United States immediately upon the citizen spouse's termination of employment abroad.
- Establish that he or she will depart to join the citizen spouse within 30 to 45 days after the date of naturalization.[3] See 8 CFR 319.2(b).
- Understanding of basic English, including the ability to read, write, and speak.
- Knowledge of basic U.S. history and government.
- Demonstrate good moral character for at least three years prior to filing the application until the time of naturalization.[4] See INA 319(a). See 8 CFR 319.1(a)(7) and 8 CFR 319.2(a)(5).
- Attachment to the principles of the U.S. Constitution and well-disposed to the good order and happiness of the U.S. during all relevant periods under the law.

The period for showing good moral character (GMC) for spouses employed abroad is not specifically stated in the corresponding statute and regulation.[5] See INA 319(b). See 8 CFR 319.2(a)(5). USCIS follows the statutory three-

year GMC period preceding filing (until naturalization) specified for spouses of U.S. citizens residing in the United States.[6] See INA 319(a). See 8 CFR 319.1(a)(7).

In general, the spouse is required to be present in the United States after admission as an LPR for his or her naturalization examination and for taking the Oath of Allegiance for naturalization.[7] See INA 319(b). See 8 CFR 319.2.

A spouse of a member of the U.S. military applying under this provision may also qualify for naturalization under INA 316(a) or INA 319(a), which could permit him or her to be eligible for overseas processing of the naturalization application, to include interviews, filings, oaths, ceremonies, or other proceedings relating to naturalization.[8] 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 INA 319(e). See 8 U.S.C. 1443a.

B. Marital Union for Spouses Employed Abroad

The spouse of a U.S. citizen employed abroad is not required to have lived in marital union with his or her citizen spouse.[9] See INA 319(b). See 8 CFR 319.1(b)(1). See Chapter 2, Marriage and Marital Union for Naturalization [12 USCIS-PM G.2]. The spouse only needs to show that he or she is in a legally valid marriage with a U.S. citizen from the date of filing the application until the time of the Oath of Allegiance.[10] See Chapter 2, Marriage and Marital Union for Naturalization, Section A, Validity of Marriage [12 USCIS-PM G.2(A)]. Such spouses who are not living in marital union still have to show intent to reside abroad with the U.S. citizen spouse abroad and take up residence in the United States upon termination of the qualifying employment abroad.[11] See 8 CFR 319.2(a)(4).

C. Qualifying Employment Abroad

Qualifying employment abroad means to be under employment contract or orders and to assume the duties of employment in any of following entities or positions:[12] See INA 319(b)(1)(B).

- Government of the United States (including the U.S. armed forces);
- American institution of research recognized as such by the Attorney General;[13] See 8 CFR 316.20(a). See www.uscis.gov/AIR lists of recognized organizations.
- American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof;
- Public international organization in which the United States participates by treaty or statute;[14] See 8 CFR 319.5 and 8 CFR 316.20(b).
- Authorized to perform the ministerial or priestly functions of a religious denomination having a bona fide

organization within the United States; or

- Engaged solely as a missionary by a religious denomination or by an interdenominational mission organization having a bona fide organization within the United States.

D. Calculating Period "Regularly Stationed Abroad"

A person applying for naturalization based on marriage to a U.S. citizen employed abroad must establish that his or her citizen spouse is regularly stationed abroad. A citizen spouse is regularly stationed abroad if he or she engages in qualifying employment abroad for at least one year.[15] See INA 319(b)(1)(B) and INA 319(b)(1)(C). See 8 CFR 319.2(a)(1). See Section G, Application and Evidence [12 USCIS-PM G.4(G)]. Both the statute and its corresponding regulation are silent on when to begin calculating the specified period regularly stationed abroad.[16] See INA 319(b)(1)(B) and INA 319(b)(1)(C). See 8 CFR 319.2(a)(1).

As a matter of policy, USCIS calculates the period of qualifying employment abroad from the time the applicant spouse properly files for naturalization.[17] This policy is effective as of January 22, 2013, effective date of first publication of the USCIS Policy Manual and will not be applied retroactively. However, this policy does not alter the requirement that the applicant must intend to reside abroad with the U.S. citizen spouse after naturalization.[18] See 8 CFR 319.2(a)(4).

Accordingly, the spouse of the U.S. citizen employed abroad may naturalize if his or her U.S. citizen's qualifying employment abroad is scheduled to last for at least one year at the time of filing, even if less than one year of such employment remains at the time of the naturalization interview or Oath of Allegiance provided that the spouse remains employed abroad at the time of naturalization.

The burden is on the applicant to establish that his or her U.S. citizen's qualifying employment abroad is scheduled to last for at least one year from the time of filing.

E. Exception to Continuous Residence and Physical Presence Requirements

Spouses of U.S. citizens who are regularly stationed abroad under qualifying employment may be eligible to file for naturalization immediately after obtaining LPR status in the United States. Such spouses are not required to have any prior period of residence or specified period of physical presence within the United States in order to qualify for naturalization.[19] See INA 319(b)(3). See 8 CFR 319.2(a)(6). See Part D, General Naturalization Requirements, Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence [12 USCIS-PM D.5].

F. In the United States for Examination and Oath of Allegiance

A spouse of a U.S. citizen who is regularly stationed abroad under qualifying employment is required to be in the United States pursuant to an admission as an LPR for the naturalization examination and the Oath of Allegiance for naturalization.[20] See INA 319(b). See 8 CFR 319.2. Spouses of members of the U.S. armed forces may be eligible

for overseas processing. 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)].

G. Application and Evidence

Application for Naturalization (Form N-400)

To apply for naturalization, the spouse of a U.S. citizen employed abroad must submit an Application for Naturalization (Form N-400) in accordance with the form instructions and with the required fee.[21] See 8 CFR 319.11(a). See 8 CFR 103.7(b)(1). The applicant should check the "other" eligibility option on the naturalization application and indicate that he or she is applying pursuant to INA 319(b) on the basis of marriage to a U.S. citizen who is or will be regularly stationed abroad.

Evidence of Spouse's United States Citizenship

Under this provision, the burden is on the applicant to establish that he or she is married to a U.S. citizen.[22] See Chapter 2, Marriage and Marital Union for Naturalization [12 USCIS-PM G.2]. A spouse of a U.S. citizen must submit with the application evidence to establish the U.S. citizenship of his or her spouse.[23] See INA 319(b). See 8 CFR 319.2(a).

Evidence of U.S. citizenship may include:

- Certificate of birth in the United States;
- Department of State Consular Report of Birth Abroad (FS-240);
- Certificate of Citizenship;
- Certificate of Naturalization; and
- Valid and unexpired United States Passport.

If an official civil record cannot be produced, secondary evidence may be accepted on a case-by-case basis. An officer has the right to request an original record if there is doubt as to the authenticity of the record.[24] See 8 CFR 103.2(b)(5). See 8 CFR 319.1 and 8 CFR 319.2.

Evidence of Citizen Spouse's Employment Abroad

Along with his or her naturalization application, the applicant must submit evidence demonstrating the spouse's

qualifying employment abroad.[25] See INA 319(b). See 8 CFR 319.11(a).

Such evidence may include:

- The name of the employer and either the nature of the employer's business or the ministerial, religious, or missionary activity in which the employer is engaged;
- Whether the employing entity is owned in whole or in part by United States interests;
- Whether the employing entity is engaged in whole or in part in the development of the foreign trade and commerce of the United States;
- The nature of the activity in which the citizen spouse is engaged; and
- The anticipated period of employment abroad.

Evidence of Applicant's Intent to Reside Abroad with Citizen Spouse and Return to the United States Upon Termination of Qualifying Employment

Along with his or her naturalization application, an applicant for naturalization under INA 319(b) must submit a statement describing his or her intent to reside abroad with the citizen spouse and his or her intent to take up residence within the United States immediately upon the termination of such employment abroad of the citizen spouse.[26] See 8 CFR 319.2(a)(4).

Footnotes

1.

See INA 319(b). See 8 CFR 319.2. See Section C, Qualifying Employment Abroad [12 USCIS-PM G.4(C)].

2.

See INA 319(b). See 8 CFR 319.2(a)(6).

3.

See 8 CFR 319.2(b).

4.

See INA 319(a). See 8 CFR 319.1(a)(7) and 8 CFR 319.2(a)(5).

5.

See INA 319(b). See 8 CFR 319.2(a)(5).

6.

See INA 319(a). See 8 CFR 319.1(a)(7).

7.

See INA 319(b). See 8 CFR 319.2.

8.

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 INA 319(e). See 8 U.S.C. 1443a.

9.

See INA 319(b). See 8 CFR 319.1(b)(1). See Chapter 2, Marriage and Marital Union for Naturalization [12 USCIS-PM G.2].

10.

See Chapter 2, Marriage and Marital Union for Naturalization, Section A, Validity of Marriage [12 USCIS-PM G.2(A)].

11.

See 8 CFR 319.2(a)(4).

12.

See INA 319(b)(1)(B).

13.

See 8 CFR 316.20(a). See www.uscis.gov/AIR lists of recognized organizations.

14.

See 8 CFR 319.5 and 8 CFR 316.20(b).

15.

See INA 319(b)(1)(B) and INA 319(b)(1)(C). See 8 CFR 319.2(a)(1). See Section G, Application and Evidence [12 USCIS-PM G.4(G)].

16.

See INA 319(b)(1)(B) and INA 319(b)(1)(C). See 8 CFR 319.2(a)(1).

17.

This policy is effective as of January 22, 2013, effective date of first publication of the USCIS Policy Manual and will not be applied retroactively.

18.

See 8 CFR 319.2(a)(4).

19.

See INA 319(b)(3). See 8 CFR 319.2(a)(6). See Part D, General Naturalization Requirements, Chapter 5, Modifications and Exceptions to Continuous Residence and Physical Presence [12 USCIS-PM D.5].

20.

See INA 319(b). See 8 CFR 319.2. Spouses of members of the U.S. armed forces may be eligible for overseas processing. 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)].

21.

See 8 CFR 319.11(a). See 8 CFR 103.7(b)(1).

22.

See Chapter 2, Marriage and Marital Union for Naturalization [12 USCIS-PM G.2].

23.

See INA 319(b). See 8 CFR 319.2(a).

24.

See 8 CFR 103.2(b)(5). See 8 CFR 319.1 and 8 CFR 319.2.

25.

See INA 319(b). See 8 CFR 319.11(a).

26.

See 8 CFR 319.2(a)(4).

Chapter 5 - Conditional Permanent Resident Spouses and Naturalization

A. General Requirements for Conditional Permanent Residents

Since 1986, certain spouses of U.S. citizens have been admitted to the United States as LPRs on a conditional basis for a period of two years.[1] See INA 216. See Immigration Marriage Fraud Amendments of 1986, Pub. L. 99-639 (November 10, 1986). The time period spent as a CPR counts toward the satisfaction of the continuous residence and physical presence requirements for naturalization. See INA 216(e). In general, a conditional permanent resident (CPR) must jointly file with his or her petitioning spouse a Petition to Remove Conditions on Residence (Form I-751) with USCIS during the 90-day period immediately preceding the second anniversary of his or her admission as a CPR in order to remove the conditions.[2] See INA 216(c), INA 216(d), and INA 216(e). See H.R. REP. 99-906, 1986 U.S.C.C.A.N. 5978. An approval of a petition to remove conditions demonstrates the bona fides of the marital relationship.

In order for USCIS to approve the petition to remove conditions, the CPR must establish that:

- The marriage upon which the CPR admitted to the United States was valid;
- The marriage has not been terminated; and
- The marriage was not entered into for purposes of evading the immigration laws of the United States.[3] See INA 216(d)(1).

In general, USCIS requires that an applicant for naturalization must have an approved petition to remove conditions before an officer adjudicates the naturalization application. However, certain CPRs may be eligible for naturalization without filing a petition or having the conditions removed if applying for naturalization on the basis of:

- Marriage to a U.S. citizen employed abroad; or

- Qualifying military service.[4] See Section C, Spouses Eligible to Naturalize without Filing Petition to Remove Conditions [12 USCIS-PM G.5(C)].

B. Spouses who Must Have an Approved Petition Prior to Naturalization

In all cases, a CPR applying for naturalization on the basis of marriage must have an approved petition prior to naturalization if the CPR:

- Has a pending petition to remove conditions at the time of filing the Application for Naturalization; or

- Reaches the 90-day period to file the petition to remove conditions prior to taking the Oath of Allegiance.[5] See INA 216(d)(2).

1. Spouses who Reach Petition Filing Period Prior to Naturalization

In most cases, the 90-day period for filing the petition to remove conditions will have passed prior to an applicant becoming eligible to apply for naturalization. However, in some cases involving applicants whose citizen spouse is employed abroad and in cases in which a late filing of the petition to remove conditions is permitted, the 90-day filing period will start after filing for naturalization.

Under these circumstances, the applicant must file the petition to remove conditions and the petition must be adjudicated prior to or concurrently with the naturalization application.

2. Spouses with Pending Petitions and Naturalization Applications

An application for naturalization may not be approved if there is a pending petition for removal of conditions. If an applicant's petition to remove conditions is pending at the time of filing or is filed prior to the interview, USCIS will adjudicate the petition to remove conditions prior to or concurrently with the adjudication of the naturalization application.[6] An officer should conduct the naturalization examination even if the petition to remove conditions is not in the CPR spouse's A-file. The officer should follow internal procedures to request the petition. The officer must not approve the CPR spouse's naturalization application until the officer has reviewed and approved the petition to remove conditions.

3. Failure to File or Denial of the Petition to Remove Conditions

The CPR status of an applicant is terminated and he or she must be placed into removal proceedings if:

- The applicant fails to file the petition to remove conditions; or

- If the petition to remove conditions is filed, but the petition is denied.[7] See INA 216(c)(2) and INA 216(c)(3).

C. Spouses Eligible to Naturalize without Filing Petition to Remove Conditions

1. Conditional Residents Filing on the Basis of Qualifying Military Service

Applicants for naturalization who qualify on the basis of honorable military service in periods of hostilities may be naturalized whether or not they have been lawfully admitted for permanent residence.[8] See INA 329. See Part I, Military Members and their Families, Chapter 3, Military Service during Hostilities (INA 329), Section F, Conditional Permanent Residence and Naturalization during Hostilities [12 USCIS-PM I.3(F)]. For this reason, such applicants are not required to comply with all of the requirements for admission to the United States, including the requirements for removal of conditions.

Accordingly, CPRs who are filing on the basis of such qualifying military service are not required to file a petition to remove conditions and may be naturalized without the removal of conditions from their permanent resident status.

2. Conditional Residents Filing as the Spouse of a U.S. Citizen Employed Abroad

A spouse of a U.S. citizen employed abroad based on authorized employment is not required to have any specific period of residence or physical presence in order to naturalize.[9] See INA 319(b). See 8 CFR 319.2. Consequently, a CPR spouse is not required to file the petition to remove conditions if the spouse files his or her naturalization application before he or she reaches the 90-day filing period to remove the conditions on residence.[10] See INA 216(d)(2). Additionally, any conditional permanent resident who is otherwise eligible for naturalization under INA 329 (based on military service), and who is not required to be an LPR as provided for in INA 329, is exempt from all of the requirements of INA 216. See Part I, Military Members and their Families, Chapter 3, Military Service during Hostilities (INA 329) [12 USCIS-PM I.3].

A CPR spouse of a U.S. citizen employed abroad may naturalize without filing a petition to remove conditions if:

- The CPR spouse has been a CPR for less than one year and nine months; and

- The CPR spouse does not reach the 90-day filing period for the petition to remove conditions prior to the final adjudication of his or her naturalization application or the time of the Oath of Allegiance.[11] If the CPR spouse reaches the 90-day filing period prior to taking the Oath of Allegiance, the applicant must file the petition to remove conditions and it must be adjudicated prior to the taking of the Oath of Allegiance. See INA 319(b).

Even though the CPR spouse is not required to file the petition to remove conditions, he or she must satisfy the substantive requirements for removal of the conditions.[12] See INA 319(b) and INA 318. An applicant must satisfy

all naturalization requirements, including establishing he or she has been lawfully admitted for permanent residence in accordance with all applicable provisions of the INA. Therefore, the CPR spouse must establish that:

- The marriage was entered into in accordance with the laws of the place where the marriage occurred;
- The marriage has not been judicially annulled or terminated;
- The marriage was not entered into for the purpose of procuring an alien's admission as an immigrant; and
- No fee or other consideration was given (other than attorney's fees) for filing the immigrant or fiancé(e) visa petition that forms the basis for admission to the United States.[13] See INA 216. See 8 CFR 216.4(c).

An officer must not approve a CPR spouse's naturalization application unless the spouse meets these requirements.[14] See INA 319(b) and INA 318. An applicant must satisfy all naturalization requirements, including establishing he or she has been lawfully admitted for permanent residence in accordance with all applicable provisions.

D. Conditional Permanent Residents Admitted as Entrepreneurs

If a CPR spouse is admitted as alien entrepreneur,[15] See INA 216A (EB-5 alien entrepreneurs). USCIS will make a determination on the CPR's petition to remove conditions before approving the CPR's naturalization application.

Footnotes

1.

See INA 216. See Immigration Marriage Fraud Amendments of 1986, Pub. L. 99-639 (November 10, 1986). The time period spent as a CPR counts toward the satisfaction of the continuous residence and physical presence requirements for naturalization. See INA 216(e).

2.

See INA 216(c), INA 216(d), and INA 216(e). See H.R. REP. 99-906, 1986 U.S.C.C.A.N. 5978.

3.

See INA 216(d)(1).

4.

See Section C, Spouses Eligible to Naturalize without Filing Petition to Remove Conditions [12 USCIS-PM G.5(C)].

5.

See INA 216(d)(2).

6.

An officer should conduct the naturalization examination even if the petition to remove conditions is not in the CPR spouse's A-file. The officer should follow internal procedures to request the petition. The officer must not approve the CPR spouse's naturalization application until the officer has reviewed and approved the petition to remove conditions.

7

See INA 216(c)(2) and INA 216(c)(3).

8.

See INA 329. See Part I, Military Members and their Families, Chapter 3, Military Service during Hostilities (INA 329), Section F, Conditional Permanent Residence and Naturalization during Hostilities [12 USCIS-PM I.3(F)].

9.

See INA 319(b). See 8 CFR 319.2.

10.

See INA 216(d)(2). Additionally, any conditional permanent resident who is otherwise eligible for naturalization

under INA 329 (based on military service), and who is not required to be an LPR as provided for in INA 329, is exempt from all of the requirements of INA 216. See Part I, Military Members and their Families, Chapter 3, Military Service during Hostilities (INA 329) [12 USCIS-PM I.3].

11.

If the CPR spouse reaches the 90-day filing period prior to taking the Oath of Allegiance, the applicant must file the petition to remove conditions and it must be adjudicated prior to the taking of the Oath of Allegiance. See INA 319(b).

12.

See INA 319(b) and INA 318. An applicant must satisfy all naturalization requirements, including establishing he or she has been lawfully admitted for permanent residence in accordance with all applicable provisions of the INA.

13.

See INA 216. See 8 CFR 216.4(c).

14.

See INA 319(b) and INA 318. An applicant must satisfy all naturalization requirements, including establishing he or she has been lawfully admitted for permanent residence in accordance with all applicable provisions.

15.

See INA 216A (EB-5 alien entrepreneurs).

Part H - Children of U.S. Citizens

Chapter 1 - Purpose and Background

A. Purpose

United States laws allow for children to acquire U.S. citizenship other than through birth in the United States.[1] See INA 301, INA 320, and INA 322. Persons who were born outside of the United States to a U.S. citizen parent or parents may acquire or derive U.S. citizenship at birth. Persons may also acquire citizenship after birth, but before the age of 18, through their U.S. citizen parents.

Previously, acquisition of citizenship generally related to those persons who became U.S. citizens at the time of birth, and derivation of citizenship to those who became U.S. citizens after birth due to the naturalization of a parent.

In general, current nationality laws only refer to acquisition of citizenship for persons who automatically become U.S. citizens either at the time of birth or after. In general, a person must meet the applicable definition of child at the time he or she acquires citizenship and must be under 18 years of age.

B. Background

The law in effect at the time of birth determines whether someone born outside the United States to a U.S. citizen parent or parents is a U.S. citizen at birth. In general, these laws require a combination of at least one parent being a U.S. citizen when the child was born and having lived in the United States for a period of time. In addition, children born abroad may become U.S. citizens after birth. Citizenship laws have changed extensively over time with two major changes coming into effect in 1978 and 2001.

Prior to the Act of October 10, 1978, U.S. citizens who had acquired citizenship through birth abroad to one citizen parent had to meet certain physical presence requirements in order to retain citizenship.[2] See Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. This legislation removed all retention requirements. Prior to the Child Citizenship Act of 2000 (CCA), effective February 27, 2001, the INA had two provisions for derivation of citizenship.[3] See the Child Citizenship Act of 2000, Sec. 101, Pub. L. 106-395, 114 Stat 1631, October 30, 2000 (Effective February 27, 2001). The CCA removed one provision and revised the other making it the only method for children under 18 years of age in the United States to automatically acquire citizenship after birth.[4] The CCA amended INA 320 and removed INA 321 to create only one statutory provision and method for children in the United States to automatically acquire citizenship after birth. See INA 320. See Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320) [12 USCIS-PM H.4].

C. Table of General Provisions

A child born outside of the United States may acquire U.S. citizenship through various ways. The table below serves as a quick reference guide to the acquisition of citizenship provisions.[5] Except for the reference to INA 321, the references in the table are to the current statutory requirements for citizenship. Previous versions of the law may apply. The chapters that follow the table provide further guidance.

General Provisions for Acquisition of Citizenship for Children Born Abroad			
INA Section	**Status of Parents**	**Residence or Physical Presence Requirements**	**Child is a U.S. Citizen**
301(c)	Both parents are U.S. citizens	At least one U.S. citizen parent has resided in the United States or outlying possession prior to child's birth	At Birth
	One parent is a U.S.	U.S. citizen parent was physically present in the	

301(d)	citizen; other parent is U.S. national	United States or its outlying possession for one year prior to child's birth	At Birth
301(f)	Unknown parentage	Child is found in the United States while under 5 years of age	At Birth
301(g)	One parent is a U.S. citizen; other parent is a foreign national	U.S. citizen parent was physically present in United States or its outlying possessions for at least 5 years (2 after age 14) prior to child's birth	At Birth
301(h)	Mother is a U.S. citizen and father is a foreign national	U.S. citizen mother resided in the United States prior to child's birth	At Birth (only applies to birth prior to 1934)
309(a)	Out of wedlock birth, claiming citizenship through father	Requirements depend on applicable provision: INA 301(c), (d), (e), or (g)	At Birth (Out of wedlock)
309(c)	Out of wedlock birth, claiming citizenship through mother	U.S. citizen mother physically present in the U.S. or its outlying possessions for one year prior to the child's birth	At Birth (for birth after December 23, 1952)
320	At least one parent is a U.S. citizen (through birth or naturalization)	Child resides in the United States as a lawful permanent resident	At Time Criteria is Met
321 **Repealed by CCA**	Both parents naturalize, or in certain cases, one parent naturalizes	Child resides in the United States as a lawful permanent resident	At Time Criteria is Met
322	At least one parent is a U.S. citizen (through birth or naturalization)	Child resides outside of the United States and child's parent (or grandparent) was physically present in the U.S. or its outlying possessions for at least 5 years (2 after age 14)	At Time Oath is Administered

D. Legal Authorities

- INA 101(c) – Definition of child for citizenship and naturalization
- INA 301 – Nationals and citizens of the United States at birth
- INA 309 – Children born out of wedlock
- INA 320; 8 CFR 320 – Children residing permanently in the United States
- INA 322; 8 CFR 322 – Children residing outside the United States

Footnotes

1.

See INA 301, INA 320, and INA 322.

2.

See Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046.

3.

See the Child Citizenship Act of 2000, Sec. 101, Pub. L. 106-395, 114 Stat 1631, October 30, 2000 (Effective February 27, 2001).

4.

The CCA amended INA 320 and removed INA 321 to create only one statutory provision and method for children in the United States to automatically acquire citizenship after birth. See INA 320. See Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320) [12 USCIS-PM H.4].

5.

Except for the reference to INA 321, the references in the table are to the current statutory requirements for citizenship. Previous versions of the law may apply.

Chapter 2 - Definition of Child for Citizenship and Naturalization

A. Definition of Child

The definition of "child" for citizenship and naturalization differs from the definition used for other parts of the INA.[1] See INA 101(b) and INA 101(c). The INA provides two different definitions of "child."

- One definition of child applies to approval of visa petitions, issuance of visas, and similar issues.[2] See INA 101(b).
- The other definition of child applies to citizenship and naturalization.[3] See INA 101(c).

The most significant difference between the two definitions of child is that a stepchild is not included in the definition relating to citizenship and naturalization. Although a stepchild may be the stepparent's "child" for purposes of visa issuance, the stepchild is not the stepparent's "child" for purposes of citizenship and naturalization. A stepchild is ineligible for citizenship or naturalization through the U.S. citizen stepparent, unless the stepchild is adopted and the adoption meets certain requirements.[4] See Section C, Adopted Child [12 USCIS-PM H.2(C)].

In general, a child for the citizenship and naturalization provisions is an unmarried person under 21 years of age who is:

- The genetic, legitimated,[5] A child can be legitimated under the laws of the child's residence or domicile, or under the law of the father's residence or domicile. See INA 101(c). A person's "residence" is his or her place of general abode, that is, his or her principal, actual dwelling place without regard to intent. See INA 101(a)(33). A person's "domicile" refers to a person's legal permanent home and principal establishment, to include an intent to return if absent. Black's Law Dictionary (9th ed. 2009). In most cases, a person's residence is the same as a person's domicile. or adopted son or daughter of a U.S. citizen; or

- The son or daughter of a non-genetic gestational U.S. citizen mother who is recognized by the relevant jurisdiction as the child's legal parent.

The term "genetic child" refers to a child who shares genetic material with his or her parent, and "gestational mother" is the person who carries and gives birth to the child. A genetic parent, as well as a non-genetic gestational mother who is recognized by the relevant jurisdiction as the child's legal parent, is included within the phrase "natural" parent as referenced in the INA.[6] See INA 101(b) and INA 101(c). In general, absent other evidence, USCIS considers a child's birth certificate as recorded by a proper authority as sufficient evidence to determine a child's genetic relationship to the parent (or parents). The child's parent (or parents) who is included in the birth certificate is presumed to have legal custody of the child absent other evidence.[7] In certain cases, a court may terminate a parent's parental rights or a parent may relinquish his or her parental rights depending on the laws of the relevant jurisdiction.

In addition to meeting the definition of a child, the child must also meet the particular requirements of the specific citizenship or naturalization provision, which may include references to birth in wedlock or out of wedlock, and which may require that certain conditions be met by 18 years of age, instead of 21.[8] See Chapter 3, United States Citizens at Birth (INA 301 and 309) [12 USCIS-PM H.3]; Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320) [12 USCIS-PM H.4]; and Chapter 5, Child Residing Outside of the United States (INA 322) [12 USCIS-PM H.5].

B. Legitimated Child

Legitimation means "placing a child born out of wedlock in the same legal position as a child born in wedlock."[9] See Matter of Moraga, 23 I&N Dec. 195, 197 (BIA 2001). The law of the child's residence or domicile, or the law of the father's residence or domicile, is the relevant law to determine whether a child has been legitimated.[10] See INA 101(c)(1). Generally, unless otherwise specified by the specific provision, if the father or child had various residences or domiciles before the child reached 16, 18 or 21 years of age (depending on the applicable provision), then the laws of the various places of residence or domicile must be analyzed to determine whether the requirements for legitimation have been met.[11] Importantly, certain citizenship provisions limit the place of legitimation to the child's residence. See INA 309(a)(4)(A). In such cases, only the law of the place of residence will be analyzed to determine whether the requirements for legitimation have been met.

A child is considered the legitimated child of his or her parent if:

- The child is legitimated in the United States or abroad under the law of either the child's residence or domicile, or the law of the child's father's residence or domicile, depending on the applicable provision;[12] See INA 101(a)(33), which defines the term "residence" as the "place of general abode." The place of general abode of a person means his or her "principal, actual dwelling place in fact, without regard to intent."

- The child is legitimated before he or she reaches 16 years of age (except for certain cases where the child may be legitimated before reaching 18 or 21 years of age);[13] For example, the current version of INA 309 allows for legitimation until the age of 18, while INA 101(c) requires legitimation by the age of 16. and

- The child is in the legal custody of the legitimating parent or parents at the time of the legitimation.[14] See INA 101(c)(1). See also Matter of Rivers, 17 I&N Dec. 419, 422 (BIA 1980) (presuming a legitimated child to be in the legal custody of the legitimating parent).

A non-genetic gestational mother may legitimate her child. While legitimation has been historically applied to father-child relationships, the gestational mother of a child conceived through Assisted Reproductive Technology (ART) may be required to take action after the birth of the child to formalize the legal relationship. Whether such action is required depends on the law of the relevant jurisdiction.

Post-birth formalization of the legal relationship between a gestational mother and her child should be viewed as relating back to the time of birth. This is because the relevant jurisdiction's recognition of the legal relationship between a non-genetic gestational mother and her child is based on the circumstances of the child's birth, including that she carried and bore the child of whom she is the legal parent. This rule applies unless it is otherwise specified in the law of the relevant jurisdiction.[15] See Section E, Child Born Abroad through Assisted Reproductive Technology [12 USCIS-PM H.2(E)].

An officer reviews the specific facts of a case when determining whether a child has been legitimated accordingly and to determine the appropriate citizenship provision.

C. Adopted Child

An adopted child means that the child has been adopted through a full, final, and complete adoption.[16] See 8 CFR 320.1. See 8 CFR 322.1. This includes certain siblings of adopted children who are permitted to be adopted while under 18 years of age.[17] See INA 101(b)(1)(E)(ii).

A child is an adopted son or daughter of his or her U.S. citizen parent if the following conditions are met:

- The child is adopted in the United States or abroad;

- The child is adopted before he or she reaches 16 years of age (except for certain cases where the child may be

adopted before reaching 18 years of age);[18] See INA 101(b)(1)(E)(ii) and INA 101(b)(1)(F)(ii). and

- The child is in the legal custody of the adopting parent or parents at the time of the adoption.[19] See INA 101(c)(1).

In general, the adoption must:

- Be valid under the law of the country or place granting the adoption;
- Create a legal permanent parent-child relationship between a child and someone who is not already the child's legal parent; and
- Terminate the legal parent-child relationship with the prior legal parent(s).[20] See Adjudicator's Field Manual, Chapter 21.15, Self Petitions by Parents of U.S. Citizens.

D. Orphan[21] See INA 101(b)(1).

In general, the definition for adopted children applies to adopted orphans. USCIS, however, does not consider an orphan adopted if any of the following conditions apply:

- The foreign adoption was not full and final;
- The foreign adoption was defective; or
- An unmarried U.S. citizen parent or a U.S. citizen parent and spouse jointly did not see and observe the child in person prior to or during the foreign adoption proceedings.[22] See 8 CFR 320.1. See 8 CFR 322.1.

If the orphan is not considered adopted:

- The child must be must be readopted in the United States; or
- The child must be adopted while under 16 years of age and must have been residing in the legal custody of the adopting parent or parents for at least two years.[23] See INA 101(b)(1)(E).

In all cases, the condition that the child must have been residing in the legal custody of the adopting parent or parents is not required if the child has been battered or subject to extreme cruelty by the adopting parent or by a family

member of the adopting parent residing in the same household.

E. Child Born Abroad through Assisted Reproductive Technology

1. Background

Assisted Reproductive Technology (ART)

A child may be born through ART. ART refers to fertility treatments where either the egg or sperm, or both, is handled outside the body. ART includes intrauterine insemination (IUI) and in vitro fertilization (IVF), among other reproductive technology procedures.[24] See Fertility Clinic Success Rate and Certification Act of 1992 (FCSRCA), Pub. L. No. 102-493, 106 Stat. 3146. In these procedures, the parent or parents may use a combination of his or her own genetic material or donated genetic material (donated egg, sperm, or both) in order to conceive a child.[25] In addition, a couple may use a gestational carrier (also called a gestational surrogate). A gestational surrogate is a woman, who gestates, or carries, an embryo that was formed from the egg of another woman on behalf of the intended parent or parents. The gestational carrier usually has a contractual obligation to return the infant to his or her intended legal parents. For additional information on ART, see the Centers for Disease Control (CDC) Web site.

ART and the Immigration and Nationality Act (INA)

ART was not considered at the time the INA and many of its subsequent amendments were enacted. One of the most significant impacts of ART is that ART allows for a woman to bear a child to whom she does not have a genetic relationship through the use of a donor egg. As such, a mother could have a biological relationship to her child but not a genetic relationship.

Children Born Abroad through ART

USCIS and the Department of State (DOS), who share authority over these issues, collaborated in the development of this policy. A non-genetic gestational mother (person who carried and gave birth to the child) who is also the child's legal mother may be recognized in the same way as genetic legal mothers are treated under the INA. A mother who is the gestational and legal parent of a child under the law of the relevant jurisdiction at the time of the child's birth consequently may transmit U.S. citizenship to the child if all other requirements are met.[26] Previously, a genetic relationship with a U.S. citizen parent was required in order for a child born abroad to acquire U.S. citizenship through that parent.

Child Born Abroad through ART in the Citizenship and Naturalization Contexts

A child born through ART may acquire U.S. citizenship from his or her non-genetic gestational mother at the time of birth, or after birth, depending on the applicable citizenship or naturalization provision, if:

- The child's gestational mother is recognized by the relevant jurisdiction as the child's legal parent at the time

of the child's birth; and

- The child meets all other applicable requirements under the relevant citizenship or naturalization provision.

2. Jurisdiction's Recognition of Mother-Child Relationship

The relevant jurisdiction must recognize the mother-child relationship as the legal parental relationship. Whether a parent is recognized as the legal parent is generally assessed under the jurisdiction of the child's birth at the time of birth. In some jurisdictions, the non-genetic gestational mother is recognized as the legal mother without her having to take any additional affirmative steps after birth. However, in other jurisdictions, a non-genetic gestational mother may be required to take certain action after the child's birth to establish the legal relationship.

Post-birth formalization of the legal relationship between a non-genetic gestational mother and her child should be viewed as relating back to the time of birth. This is because the relevant jurisdiction's recognition of the legal relationship between a non-genetic gestational mother and her child is based on the circumstances of the child's birth, including that she carried and bore the child of whom she is the legal parent. This rule applies unless it is otherwise specified in the law of the relevant jurisdiction.

In either case, the law of the relevant jurisdiction governs whether the non-genetic gestational mother is the legal mother for purposes of U.S. immigration law. Importantly, a non-genetic gestational mother who is not the legally recognized mother may not transmit U.S. citizenship to the child. USCIS will follow a court judgment of the relevant jurisdiction if parentage is disputed. In addition, USCIS will not adjudicate cases involving children whose legal parentage remains in dispute unless there has been a determination by a proper authority.

The applicable citizenship provision may depend upon whether the child is born in wedlock or out of wedlock. USCIS must determine whether a child born through ART is born in wedlock or out of wedlock and will treat a child born to a legal gestational mother in the same manner as a child born to a genetic mother when determining if the child is born in or out of wedlock.

Footnotes

1.

See INA 101(b) and INA 101(c).

2.

See INA 101(b).

3.

See INA 101(c).

4.

See Section C, Adopted Child [12 USCIS-PM H.2(C)].

5.

A child can be legitimated under the laws of the child's residence or domicile, or under the law of the father's residence or domicile. See

INA 101(c). A person's "residence" is his or her place of general abode, that is, his or her principal, actual dwelling place without regard to intent. See INA 101(a)(33). A person's "domicile" refers to a person's legal permanent home and principal establishment, to include an intent to return if absent. Black's Law Dictionary (9th ed. 2009). In most cases, a person's residence is the same as a person's domicile.

6.

See INA 101(b) and INA 101(c).

7.

In certain cases, a court may terminate a parent's parental rights or a parent may relinquish his or her parental rights depending on the laws of the relevant jurisdiction.

8.

See Chapter 3, United States Citizens at Birth (INA 301 and 309) [12 USCIS-PM H.3]; Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320) [12 USCIS-PM H.4]; and Chapter 5, Child Residing Outside of the United States (INA 322) [12 USCIS-PM H.5].

9.

See *Matter of Moraga*, 23 I&N Dec. 195, 197 (BIA 2001).

10.

See INA 101(c)(1).

11.

Importantly, certain citizenship provisions limit the place of legitimation to the child's residence. See INA 309(a)(4)(A). In such cases, only the law of the place of residence will be analyzed to determine whether the requirements for legitimation have been met.

12.

See INA 101(a)(33), which defines the term "residence" as the "place of general abode." The place of general abode of a person means his or her "principal, actual dwelling place in fact, without regard to intent."

13.

For example, the current version of INA 309 allows for legitimation until the age of 18, while INA 101(c) requires legitimation by the age of 16.

14.

See INA 101(c)(1). See also *Matter of Rivers*, 17 I&N Dec. 419, 422 (BIA 1980) (presuming a legitimated child to be in the legal custody of the legitimating parent).

15.

See Section E, Child Born Abroad through Assisted Reproductive Technology [12 USCIS-PM H.2(E)].

16.

See 8 CFR 320.1. See 8 CFR 322.1.

17.

See INA 101(b)(1)(E)(ii).

18.

See INA 101(b)(1)(E)(ii) and INA 101(b)(1)(F)(ii).

19.

See INA 101(c)(1).

20.

See Adjudicator's Field Manual, Chapter 21.15, Self Petitions by Parents of U.S. Citizens.

21.

See INA 101(b)(1).

22.

See 8 CFR 320.1. See 8 CFR 322.1.

23.

See INA 101(b)(1)(E).

24.

See Fertility Clinic Success Rate and Certification Act of 1992 (FCSRCA), Pub. L. No. 102-493, 106 Stat. 3146.

25.

In addition, a couple may use a gestational carrier (also called a gestational surrogate). A gestational surrogate is a woman, who gestates, or carries, an embryo that was formed from the egg of another woman on behalf of the intended parent or parents. The gestational carrier usually has a contractual obligation to return the infant to his or her intended legal parents. For additional information on ART, see the Centers for Disease Control (CDC) Web site.

26.

Previously, a genetic relationship with a U.S. citizen parent was required in order for a child born abroad to acquire U.S. citizenship through that parent.

Chapter 3 - United States Citizens at Birth (INA 301 and 309)

A. General Requirements for Acquisition of Citizenship at Birth

A person born in the United States who is subject to the jurisdiction of the United States is a U.S. citizen at birth, to include a person born to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe.[1] See INA 301(a) and INA 301(b). Children of certain diplomats who are born in the United States are not U.S. citizens at birth because they are not subject to the jurisdiction of the United States. See 8 CFR 101.3.

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.[2] Any time spent abroad in the U.S. armed forces or other qualifying organizations counts towards that physical presence requirement. See INA 301(g).

A person born abroad through Assisted Reproductive Technology (ART) to a U.S. citizen gestational mother who is not also the genetic mother acquires U.S. citizenship at birth under INA 301 or INA 309 if:

- The person's gestational mother is recognized by the relevant jurisdiction as the child's legal parent at the time of the person's birth; and

- The person meets all other applicable requirements under either INA 301 or INA 309.[3] For a more thorough discussion, see Chapter 2, Definition of Child for Citizenship and Naturalization, Section E, Child Born Abroad through Assisted Reproductive Technology [12 USCIS-PM H.2(E)].

Until the Act of October 10, 1978, persons who had acquired U.S. citizenship through birth outside of the United States to one U.S. citizen parent had to meet certain physical presence requirements to retain their citizenship. This legislation eliminated retention requirements for persons who were born after October 10, 1952. There may be cases where a person who was born before that date, and therefore subject to the retention requirements, may have failed to retain citizenship.[4] The Act of October 10, 1978, Pub. L. 95-432, repealed the retention requirements of former INA 301(b). The amending legislation was prospective only and did not restore citizenship to anyone who, prior to its enactment, had lost citizenship for failing to meet the retention requirements.

An officer should determine whether a person acquired citizenship at birth by referring to the applicable statutory provisions and conditions that existed at the time of the person's birth. These provisions have been modified extensively over the years.[5] Officers should use the Nationality Charts to assist with the adjudication of these applications. The following sections provide the current law.

B. Child Born in Wedlock[6] See INA 301. See Nationality Chart 1.

1. Child of Two U.S. Citizen Parents[7] See INA 301(c).

A child born outside of the United States and its outlying possessions acquires citizenship at birth if at the time of birth:

- Both of the child's parents are U.S. citizens; and

- At least one parent had resided in the United States or one of its outlying possessions.

2. Child of U.S. Citizen Parent and U.S. National[8] See INA 301(d).

A child born outside of the United States and its outlying possessions acquires citizenship at birth if at the time of birth:

- One parent is a U.S. citizen and the other parent is a U.S. national; and

- The U.S. citizen parent was physically present in the United States or one of its outlying possessions for a

continuous period of at least one year.

3. Child of U.S. Citizen Parent and Foreign National Parent[9] **See INA 301(g).**

A child born outside of the United States and its outlying possessions acquires citizenship at birth if at the time of birth:

- One parent is a foreign national and the other parent is a U.S. citizen; and
- The U.S. citizen parent was physically present in the United States for at least 5 years, including at least 2 years after 14 years of age.

Time abroad counts as physical presence in the United States if the time abroad was:

- As a member of the U.S. armed forces in honorable status;
- Under the employment of the U.S. government or other qualifying organizations; or
- As a dependent unmarried son or daughter of such persons.

4. Child of a U.S. Citizen Mother and Foreign National Father[10] **See INA 301(h).**

A child born outside of the United States and its outlying possessions acquires citizenship at birth if:

- The child was born before noon (Eastern Standard Time) May 24, 1934;
- The child's father is a foreign national;
- The child's mother was a U.S. citizen at the time of the child's birth; and
- The child's U.S. citizen mother resided in the United States prior to the child's birth.

C. Child Born Out of Wedlock[11] See INA 309. See Nationality Chart 2.

Child of a U.S. Citizen Father

The provisions listed above[12] See INA 301(c), INA 301(d), INA 301(e), and INA 301(g). for a child born in wedlock apply to a child born out of wedlock outside of the United States claiming citizenship through a U.S. citizen father if:

- A blood relationship between the child and the father is established by clear and convincing evidence;
- The child's father was a U.S. citizen at the time of the child's birth;
- The child's father (unless deceased) has agreed in writing to provide financial support for the child until the child reaches 18 years of age; and
- One of the following criteria is met before the child reaches 18 years of age:
  - The child is legitimated under the law of his or her residence or domicile;
  - The father acknowledges in writing and under oath the paternity of the child; or
  - The paternity of the child is established by adjudication of a competent court.

In addition, the residence or physical presence requirements contained in the relevant paragraph of INA 301 continue to apply to children born out of wedlock claiming citizenship through their fathers.

Child of a U.S. Citizen Mother

A child born out of wedlock outside of the United States and its outlying possessions acquires citizenship at birth if:

- The child was born after December 23, 1952;
- The child's mother was a U.S. citizen at the time of the child's birth; and
- The child's U.S. citizen mother was physically present in the United States or outlying possession for one continuous year prior to the child's birth.[13] See INA 309(c).

D. Application for Certificate of Citizenship (Form N-600)

A person born abroad who acquires U.S. citizenship at birth is not required to file an Application for Certificate of Citizenship (Form N-600). A person who seeks documentation of such status, however, must submit an application to obtain a Certificate of Citizenship from USCIS. A person may also apply for a U.S. Passport with the Department of State to serve as evidence of his or her U.S. citizenship.[14] See 8 CFR 341.1. The Secretary of State has jurisdiction

over claims of U.S. citizenship made by persons who are abroad, and the Secretary of Homeland Security has jurisdiction over the administration and enforcement of the INA within the United States. See INA 103(a)(1) and INA 104(a)(3). There is nothing precluding USCIS from accepting a Form N-600 filed under INA 301 or INA 309 by a person who does not live in the United States. See INA 341(a).

A person who is at least 18 years of age may submit the Application for Certificate of Citizenship on his or her own behalf. If the application is for a child who has not reached 18 years of age, the child's U.S. citizen parent or legal guardian must submit the application.[15] See 8 CFR 341.1.

USCIS will issue a proof of U.S. citizenship in the form of a Certificate of Citizenship if the Application for Certificate of Citizenship is approved and the person takes the Oath of Allegiance, if required to do so.[16] See Section F, Decision and Oath of Allegiance [12 USCIS-PM H.3(F)]. See 8 CFR 341.5(b).

E. Citizenship Interview and Waiver

In general, an applicant must appear in person for an interview before a USCIS officer after filing an Application for Certificate of Citizenship. This includes the U.S. citizen parent or legal guardian if the application is filed on behalf of a child under 18 years of age.[17] See 8 CFR 341.2(a)(2). USCIS, however, may waive the interview requirement if all the required documentation necessary to establish the applicant's eligibility is already included in USCIS administrative records, or if the application is accompanied by one of the following:

- Department of State Form FS-240 (Consular Report of Birth Abroad of a U.S. Citizen);
- Applicant’s unexpired U.S. Passport issued initially for a full five or ten-year period; or
- Certificate of Naturalization of the applicant's parent or parents.[18] See 8 CFR 341.2(a).

F. Decision and Oath of Allegiance

1. Approval of Application, Oath of Allegiance, and Waiver for Children under 14 Years of Age

If an officer approves the Application for Certificate of Citizenship, USCIS administers the Oath of Allegiance before issuing a Certificate of Citizenship.[19] See INA 337(a). See 8 CFR 341.5(b). See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance [12 USCIS-PM J.2].

However, the INA permits USCIS to waive the taking of the Oath of Allegiance if USCIS determines the person is unable to understand its meaning.[20] See INA 337(a). See 8 CFR 341.5(b). USCIS has determined that children under the age of 14 are generally unable to understand the meaning of the oath.

Accordingly, USCIS waives the oath requirement for a child younger than 14 years of age. If USCIS waives the oath

requirement, USCIS issues a Certificate of Citizenship after the officer approves the application.

2. Denial of Application

If an officer denies the Certificate of Citizenship application, the officer must notify the applicant in writing of the reasons for denial and include information on the right to appeal in the notice.[21] See 8 CFR 341.5(d) and 8 CFR 103.3(a). An applicant may file an appeal within 30 calendar days after service of the decision (33 days if the decision was mailed).

Footnotes

1.

See INA 301(a) and INA 301(b). Children of certain diplomats who are born in the United States are not U.S. citizens at birth because they are not subject to the jurisdiction of the United States. See 8 CFR 101.3.

2.

Any time spent abroad in the U.S. armed forces or other qualifying organizations counts towards that physical presence requirement. See INA 301(g).

3.

For a more thorough discussion, see Chapter 2, Definition of Child for Citizenship and Naturalization, Section E, Child Born Abroad through Assisted Reproductive Technology [12 USCIS-PM H.2(E)].

4.

The Act of October 10, 1978, Pub. L. 95-432, repealed the retention requirements of former INA 301(b). The amending legislation was prospective only and did not restore citizenship to anyone who, prior to its enactment, had lost citizenship for failing to meet the retention requirements.

5.

Officers should use the Nationality Charts to assist with the adjudication of these applications.

6.

See INA 301. See Nationality Chart 1.

7.

See INA 301(c).

8.

See INA 301(d).

9.

See INA 301(g).

10.

See INA 301(h).

11.

See INA 309. See Nationality Chart 2.

12.

See INA 301(c), INA 301(d), INA 301(e), and INA 301(g).

13.

See INA 309(c).

14.

See 8 CFR 341.1. The Secretary of State has jurisdiction over claims of U.S. citizenship made by persons who are abroad, and the Secretary of Homeland Security has jurisdiction over the administration and enforcement of the INA within the United States. See INA 103(a)(1) and INA 104(a)(3). There is nothing precluding USCIS from accepting a Form N-600 filed under INA 301 or INA 309 by a person who does not live in the United States. See INA 341(a).

15.

See 8 CFR 341.1.

16.

See Section F, Decision and Oath of Allegiance [12 USCIS-PM H.3(F)]. See 8 CFR 341.5(b).

17.

See 8 CFR 341.2(a)(2).

18.

See 8 CFR 341.2(a).

19.

See INA 337(a). See 8 CFR 341.5(b). See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance [12 USCIS-PM J.2].

20.

See INA 337(a). See 8 CFR 341.5(b).

21.

See 8 CFR 341.5(d) and 8 CFR 103.3(a).

Chapter 4 - Automatic Acquisition of Citizenship after Birth (INA 320)

A. General Requirements: Genetic, Legitimated, or Adopted Child Automatically Acquiring Citizenship after Birth[1] See INA 320. See Nationality Chart 3.

A child born outside of the United States automatically becomes a U.S. citizen when all of the following conditions have been met on or after February 27, 2001:[2] February 27, 2001 is the effective date for these CCA amendments.

- The child has at least one parent, including an adoptive parent[3] If the requirements of INA 101(b)(1)(E), INA 101(b)(1)(F), or INA 101(b)(1)(G) are met. who is a U.S. citizen by birth or through naturalization;

- The child is under 18 years of age;

- The child is an LPR; and

- The child is residing in the United States in the legal and physical custody of the U.S. citizen parent.[4] See INA 320. See 8 CFR 320.2. Children of U.S. Government employees temporarily stationed abroad are considered to be "residing in the United States" for purposes of acquisition of citizenship under INA 320.

A child born abroad through Assisted Reproductive Technology (ART) to a U.S. citizen gestational mother who is not also the genetic mother may acquire U.S. citizenship under INA 320 if:

- The child's gestational mother is recognized by the relevant jurisdiction as the child's legal parent at the time of the child's birth; and

- The child meets all other requirements under INA 320, including that the child is residing in the United States in the legal and physical custody of the U.S. citizen parent.[5] For a more thorough discussion, see Chapter 2, Definition of Child for Citizenship and Naturalization, Section E, Child Born Abroad through Assisted Reproductive Technology [12 USCIS-PM H.2(E)].

A stepchild who has not been adopted does not qualify for citizenship under this provision.

B. Legal and Physical Custody of U.S. Citizen Parent

Legal custody refers to the responsibility for and authority over a child. For purposes of this provision, USCIS presumes that a U.S. citizen parent has legal custody of a child and recognizes that the parent has lawful authority over the child, absent evidence to the contrary, in all of the following scenarios:[6] See 8 CFR 320.1.

- A biological child who currently resides with both biological parents who are married to each other, living in marital union, and not separated;

- A biological child who currently resides with a surviving biological parent, if the other parent is deceased;

- A biological child born out of wedlock who has been legitimated and currently resides with the parent;

- An adopted child with a final adoption decree who currently resides with the adoptive U.S. citizen parent;[7] If the requirements of INA 101(b)(1)(E), or INA 101(b)(1)(F), or INA 101(b)(1)(G) are met.

- A child of divorced or legally separated parents where a court of law or other appropriate government entity has awarded primary care, control, and maintenance of the child to a parent under the laws of the state or country of residence.

USCIS considers a U.S. citizen parent who has been awarded "joint custody" to have legal custody of a child. There may be other factual circumstances under which USCIS may find the U.S. citizen parent to have legal custody to be determined on a case-by-case basis.

C. Acquisition of Citizenship Prior to Child Citizenship Act of 2000

The CCA applies only to those children born on or after February 27, 2001, or those who were under 18 years of age as of that date. Persons who were 18 years of age or older on February 27, 2001, do not qualify for citizenship under INA 320. For such persons, the law in effect at the time the last condition was met before reaching 18 years of age is the relevant law to determine whether they acquired citizenship.[8] See Chapter 3, United States Citizens at Birth (INA 301 and 309) [12 USCIS-PM H.3].

In general, former INA 321 applies to children who were already 18 years of age on February 27, 2001, but who were under 18 years of age in 1952, when the current Immigration and Nationality Act became effective.

In general, a child born outside of the United States to two foreign national parents, or one foreign national parent and one U.S. citizen parent who subsequently lost U.S. citizenship, acquires citizenship under former INA 321 if:

- The child's parent(s) meet one of the following conditions:
    - Both parents naturalize;
    - One surviving parent naturalizes if the other parent is deceased;
    - One parent naturalizes who has legal custody of the child if there is a legal separation of the parents; or
    - The child's mother naturalizes if the child was born out of wedlock and paternity has not been established by legitimation
- The child is under 18 years of age when his or her parent(s) naturalize; and
- The child is residing in the United States pursuant to a lawful admission for permanent residence at the time the parent(s) naturalized or thereafter begins to reside permanently in the United States.

As originally enacted in 1952, this section did not apply to adopted children of naturalized citizens.[9] See INA of 1952, Sec. 321(b), 66 Stat. at 245. Beginning on October 5, 1978, however, INA 321 became generally applicable to an adopted child if the child was residing in the United States at the time the adoptive parent or parents naturalized and the child was in the custody of his or her adoptive parents pursuant to a lawful admission for permanent residence.[10] See Sec. 5 of the Act of October 5, 1978, Pub. L. 95-417. The 1978 amendment limited this benefit to a child adopted while under 16 years of age. This restriction was removed in

1981 by the Act of December 21, 1981 (Pub. L. 97-116) but is also included in the definition of "child" in INA 101(c).

D. Application for Certificate of Citizenship (Form N-600)

A person who automatically obtains citizenship is not required to file an Application for Certificate of Citizenship (Form N-600). A person who seeks documentation of such status, however, must submit an application to obtain a Certificate of Citizenship from USCIS. A person may also apply for a U.S. Passport with the Department of State to serve as evidence of his or her U.S. citizenship.

A person who is at least 18 years of age may submit the Application for Certificate of Citizenship on his or her own behalf. If the application is for a child who has not reached 18 years of age, the child's U.S. citizen biological parent, adoptive parent, or legal guardian must submit the application.[11] See 8 CFR 320.3(a).

USCIS will issue proof of U.S. citizenship in the form of a Certificate of Citizenship if the Application for Certificate of Citizenship is approved and the person takes the Oath of Allegiance, if required to do so.[12] See Section G, Decision and Oath of Allegiance [12 USCIS-PM H.4(G)]. See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance [12 USCIS-PM J.2].

E. Documentation and Evidence

The applicant must submit the following required documents unless such documents are already contained in USCIS administrative record or do not apply:[13] See 8 CFR 320.3(b).

- The child's birth certificate or record.
- Marriage certificate of child's parents, if applicable.
- Proof of termination of any previous marriage of each parent if either parent was previously married and divorced or widowed, for example:
    - Divorce Decree; or
    - Death Certificate.
- Evidence of United States citizenship of parent:
    - Birth Certificate;

- Naturalization Certificate;
- FS-240, Consular Report of Birth Abroad;
- A valid unexpired United States Passport; or
- Certificate of Citizenship.

- Documents verifying legitimation according to the laws of the child's residence or domicile or father's residence or domicile if the child was born out of wedlock.

- Documentation of legal custody in the case of divorce, legal separation, or adoption.

- Copy of Permanent Resident Card or Alien Registration Receipt Card or other evidence of lawful permanent resident status, such as an I-551 stamp in a valid foreign passport or travel document issued by USCIS.

- Copy of the full, final adoption decree, if applicable:

  - For an adopted child (not orphans or Hague Convention adoptees), evidence that the adoption took place before the age of 16 (or 18, as appropriate) and that the adoptive parent(s) had custody of, and lived with, the child for at least two years.[14] See INA 101(b)(1)(E). See Chapter 2, Definition of Child for Citizenship and Naturalization, Section C, Adopted Child [12 USCIS-PM H.2(C)].

  - For an adopted orphan, a copy of notice of approval of the orphan petition and supporting documentation for such petition (except the home study) or evidence that the child has been admitted for lawful permanent residence in the United States with the immigrant classification of IR-3 (Orphan adopted abroad by a U.S. citizen) or IR-4 (Orphan to be adopted by a U.S. citizen).[15] If admitted as an IR-4 because there was no adoption abroad, the parent(s) must have completed the adoption in the United States. If admitted as an IR-4 because the parent(s) obtained the foreign adoption without having seen the child, the parent(s) must establish that they have either "readopted" the child or obtained recognition of the foreign adoption in the State of residence (this requirement can be waived if there is a statute or precedent decision that clearly shows that the foreign adoption is recognized in the State of residence). See 8 CFR 320.1.

  - For a Hague Convention adoptee, a copy of the notice of approval of Convention adoptee petition and its supporting documentation, or evidence that the child has been admitted for lawful permanent residence in the United States with the immigrant classification of IH-3 (Hague Convention Orphan adopted abroad by a U.S. citizen) or IH-4 (Hague Convention Orphan to be adopted by a U.S. citizen).[16] If admitted as an IH-4, the parent(s) must have completed the adoption in the United States.

  - If the child was admitted as an LPR as an orphan or Hague Convention adoption[17] See INA 101(b)(1). (this evidence may already be in the child's A-file).

- Evidence of all legal name changes, if applicable, for the child and U.S. citizen parent.

An applicant does not need to submit documents that were submitted in connection with:

- An immigrant visa application retained by the American Consulate for inclusion in the immigrant visa package; or

- An immigrant petition or application and included in a USCIS administrative file.

If necessary, an officer may continue the application to request additional documentation to make a decision on the application.

F. Citizenship Interview and Waiver

In general, an applicant must appear in person for an interview before a USCIS officer after filing an Application for Certificate of Citizenship. This includes the U.S. citizen parent or parents if the application is filed on behalf of a child under 18 years of age.[18] See 8 CFR 320.4. USCIS, however, may waive the interview requirement if all the required documentation necessary to establish the applicant's eligibility is already included in USCIS administrative records or if the required documentation is submitted along with the application.[19] See 8 CFR 341.2. See Section E, Documentation and Evidence [12 USCIS-PM H.5(E)].

G. Decision and Oath of Allegiance

1. Approval of Application, Oath of Allegiance, and Waiver for Children under 14 Years of Age

If an officer approves the Application for Certificate of Citizenship, USCIS administers the Oath of Allegiance before issuing a Certificate of Citizenship.[20] See 8 CFR 320.5(a) and 8 CFR 337.1. See INA 337. See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance [12 USCIS-PM J.2].

However, the INA permits USCIS to waive the taking of the Oath of Allegiance if USCIS determines the person is unable to understand its meaning.[21] See INA 337(a). See 8 CFR 341.5(b). USCIS has determined that children under the age of 14 are generally unable to understand the meaning of the oath.

Accordingly, USCIS waives the oath requirement for a child younger than 14 years of age. If USCIS waives the oath requirement, USCIS issues a Certificate of Citizenship after the officer approves the application.

2. Denial of Application

If an officer denies the Certificate of Citizenship application, the officer must notify the applicant in writing of the reasons for denial and include information on the right to appeal in the notice.[22] See 8 CFR 320.5(b) and 8 CFR 103.3(a). An applicant may file an appeal within 30 calendar days after service of the decision (33 days if the decision was mailed).

Footnotes

1.

See INA 320. See Nationality Chart 3.

2.

February 27, 2001 is the effective date for these CCA amendments.

3.

If the requirements of INA 101(b)(1)(E), INA 101(b)(1)(F), or INA 101(b)(1)(G) are met.

4.

See INA 320. See 8 CFR 320.2. Children of U.S. Government employees temporarily stationed abroad are considered to be "residing in the United States" for purposes of acquisition of citizenship under INA 320.

5.

For a more thorough discussion, see Chapter 2, Definition of Child for Citizenship and Naturalization, Section E, Child Born Abroad through Assisted Reproductive Technology [12 USCIS-PM H.2(E)].

6.

See 8 CFR 320.1.

7.

If the requirements of INA 101(b)(1)(E), or INA 101(b)(1)(F), or INA 101(b)(1)(G) are met.

8.

See Chapter 3, United States Citizens at Birth (INA 301 and 309) [12 USCIS-PM H.3].

9.

See INA of 1952, Sec. 321(b), 66 Stat. at 245.

10.

See Sec. 5 of the Act of October 5, 1978, Pub. L. 95-417. The 1978 amendment limited this benefit to a child adopted while under 16 years of age. This restriction was removed in 1981 by the Act of December 21, 1981 (Pub. L. 97-116) but is also included in the definition of "child" in INA 101(c).

11.

See 8 CFR 320.3(a).

12.

See Section G, Decision and Oath of Allegiance [12 USCIS-PM H.4(G)]. See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance [12 USCIS-PM J.2].

13.

See 8 CFR 320.3(b).

14.

See INA 101(b)(1)(E). See Chapter 2, Definition of Child for Citizenship and Naturalization, Section C, Adopted Child [12 USCIS-PM H.2(C)].

15.

If admitted as an IR-4 because there was no adoption abroad, the parent(s) must have completed the adoption in the United States. If admitted as an IR-4 because the parent(s) obtained the foreign adoption without having seen the child, the parent(s) must establish that they have either "readopted" the child or obtained recognition of the foreign adoption in the State of residence (this requirement can be waived if there is a statute or precedent decision that clearly shows that the foreign adoption is recognized in the State of residence). See 8 CFR 320.1.

16.

If admitted as an IH-4, the parent(s) must have completed the adoption in the United States.

17.

See INA 101(b)(1).

18.

See 8 CFR 320.4.

19.

See 8 CFR 341.2. See Section E, Documentation and Evidence [12 USCIS-PM H.5(E)].

20.

See 8 CFR 320.5(a) and 8 CFR 337.1. See INA 337. See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance [12 USCIS-PM J.2].

21.

See INA 337(a). See 8 CFR 341.5(b).

22.

See 8 CFR 320.5(b) and 8 CFR 103.3(a).

Chapter 5 - Child Residing Outside of the United States (INA 322)

A. General Requirements: Genetic, Legitimated, or Adopted Child Residing Outside the United States[1] See Nationality Chart 4.

The Child Citizenship Act of 2000 (CCA) amended the INA to cover foreign-born children who did not automatically acquire citizenship under INA 320 and who generally reside outside the United States with a U.S. citizen parent.[2] See INA 322.

A genetic, legitimated, or adopted child who regularly resides outside of the United States is eligible for naturalization if all of the following conditions have been met:

- The child has at least one U.S. citizen parent by birth or through naturalization, (including an adoptive parent);

[3] Adoptive parent must meet requirements of either INA 101(b)(1)(E), INA 101(b)(1)(F), or INA 101(b)(1)(G).

- The child's U.S. citizen parent or citizen grandparent meets certain physical presence requirements in the United States or an outlying possession;[4] See Section C, Physical Presence of U.S. Citizen Parent or Grandparent [12 USCIS-PM H.5(C)].

- The child is under 18 years of age;

- The child is residing outside of the United States in the legal and physical custody of the U.S. citizen parent, or of a person who does not object to the application if the U.S. citizen parent is deceased; and

- The child is lawfully admitted, physically present, and maintaining a lawful status in the United States at the time the application is approved and the time of naturalization.

A child born abroad through Assisted Reproductive Technology (ART) may be eligible for naturalization under INA 322 based on a relationship with his or her U.S. citizen gestational mother under INA 322 if:

- The child's gestational mother is recognized by the relevant jurisdiction as the child's legal parent at the time of the child's birth; and

- The child meets all other requirements under INA 322, including that the child is residing outside of the United States in the legal and physical custody of the U.S. citizen parent, or a person who does not object to the application if the U.S. citizen parent is deceased.[5] For a more thorough discussion, see Chapter 2, Definition of Child for Citizenship and Naturalization, Section E, Child Born Abroad through Assisted Reproductive Technology [12 USCIS-PM H.2(E)].

There are certain exceptions to these requirements for children of U.S. citizens in the U.S. armed forces accompanying their parent abroad on official orders.

B. Eligibility to Apply on the Child's Behalf

Typically, a child's U.S. citizen parent files a Certificate of Citizenship application on the child's behalf. If the U.S. citizen parent has died, the child's citizen grandparent or the child's U.S. citizen legal guardian may file the application on the child's behalf within five years of the parent's death.[6] As of November 2, 2002, a U.S. citizen grandparent or U.S. citizen legal guardian became eligible to apply for naturalization under this provision on behalf of a child. See the 21st Century Department of Justice Appropriations Authorization Act for Fiscal 2002, Pub. L. 107-273 (November 2, 2002), which amended INA 322 to permit U.S. citizen grandparents or U.S. citizen legal guardians to apply for naturalization on behalf of a child if the child's U.S. citizen parent has died.

C. Physical Presence of the U.S. Citizen Parent or Grandparent[7] See INA 322(a)(2). See 8 CFR 322.2(a)(2).

1. Physical Presence of Child's U.S. Citizen Parent

A child's U.S. citizen parent must meet the following physical presence requirements:

- The parent has been physically present in the United States or its outlying possessions for at least five years; and

- The parent met such physical presence for at least 2 years after he or she reached 14 years of age.

A parent's physical presence is calculated in the aggregate and includes time accrued in the United States during periods when the parent was not a U.S. citizen.

2. Exception for U.S. Citizen Member of the U.S. Armed Forces

The child's U.S. citizen service member parent may count any period of time he or she has resided abroad on official orders as physical presence in the United States.[8] See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section C, Children of Military Members [12 USCIS-PM I.9(C)]. See INA 322(d). See 8 CFR 322.2(c).

3. Reliance on Physical Presence of Child's U.S. Citizen Grandparent

If the child's parent does not meet the physical presence requirement, the child may rely on the physical presence of the child's U.S. citizen grandparent to meet the requirement. In such cases, the officer first must verify that the citizen grandparent, the citizen parent's mother or father, is a U.S. citizen at the time of filing. If the grandparent has died, the grandparent must have been a U.S. citizen and met the physical presence requirements at the time of his or her death.

Like in the case of the citizen parent, the officer also must ensure that:

- The U.S. citizen grandparent has been physically present in the United States or its outlying possessions for at least five years; and

- The U.S. citizen grandparent met such physical presence for at least 2 years after he or she reached 14 years of age.

Like the citizen parent, a grandparent's physical presence is calculated in the aggregate and includes time accrued in the United States during periods when the grandparent was not a U.S. citizen.

D. Temporary Presence by Lawful Admission and Status in United States

1. Temporary Presence and Status Requirements

In most cases, the citizenship process for a child residing abroad cannot take place solely overseas.

- The child is required to be lawfully admitted to United States, in any status, and be physically present in the United States;[9] See INA 322(a)(5). See 8 CFR 322.2(a)(5).
- The child is required to maintain the lawful status that he or she was admitted under while in the United States;[10] See INA 322(a)(5). and
- The child is required to take the Oath of Allegiance in the United States unless the oath requirement is waived.[11] See INA 322(b). See Section G, Decision and Oath of Allegiance [12 USCIS-PM H.5(G)].

2. Exception for Child of U.S. Citizen Service Member of the U.S. Armed Forces

Certain children of U.S. citizen members of the U.S. armed forces are not required to be lawfully admitted to or physically present in the United States.[12] See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits [12 USCIS-PM I.9]. See INA 322(d). See 8 CFR 322.2(c).

E. Application for Citizenship and Issuance of Certificate under Section 322 (Form N-600K)

A U.S. citizen parent of a biological, legitimated, or adopted child born outside of the United States who did not acquire citizenship automatically may file an Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K) for the child to become a U.S. citizen and obtain a Certificate of Citizenship. The application may be filed from outside of the United States.

If the U.S. citizen parent has died, the child's U.S. citizen grandparent or U.S. citizen legal guardian may submit the application, provided the application is filed not more than five years after the death of the U.S. citizen parent.[13] See 8 CFR 322.3(a).

The child of a U.S. citizen member of the U.S. armed forces accompanying his or her parent abroad on official orders may be eligible to complete all aspects of the naturalization proceedings abroad. This includes interviews, filings, oaths, ceremonies, or other proceedings relating to citizenship and naturalization.

F. Documentation and Evidence

The applicant must submit the following required documents unless such documents are already contained in USCIS administrative record or do not apply.[14] See 8 CFR 322.3(b).

- The child's birth certificate or record.
- Marriage certificate of child's parents, if applicable.
- Proof of termination of any previous marriage of each parent if either parent was previously married and divorced or widowed, for example:
    - Divorce Decree; or
    - Death Certificate.
- Evidence of United States citizenship of parent:
    - Birth Certificate;
    - Naturalization Certificate;
    - FS-240, Consular Report of Birth Abroad;
    - A valid unexpired United States Passport; or
    - Certificate of Citizenship.
- Documents verifying legitimation according to the laws of the child's residence or domicile or father's residence or domicile if the child was born out of wedlock.
- Documentation of legal custody in the case of divorce, legal separation, or adoption.
- Documentation establishing that the U.S. citizen parent or U.S. citizen grandparent meets the required physical presence requirements, such as school records, military records, utility bills, medical records, deeds, mortgages, contracts, insurance policies, receipts, or attestations by churches, unions, or other organizations.
- Evidence that the child is present in the United States pursuant to a lawful admission and is maintaining such lawful status or evidence establishing that the child qualifies for an exception to these requirements as

provided for children of members of the U.S. armed forces.[15] See INA 322(d)(2). Such evidence may be presented at the time of interview when appropriate.

- Copy of the full, final adoption decree, if applicable

  - For an adopted child (not orphans or Hague Convention adoptees), evidence that the adoption took place before the age of 16 (or 18, as appropriate) and that the adoptive parents have had custody of, and lived with, the child for at least two years.[16] See INA 101(b)(1)(E). See Chapter 2, Definition of Child for Citizenship and Naturalization, Section C, Adopted Child [12 USCIS-PM H.2].

  - For an adopted orphan, a copy of notice of approval of the orphan petition and supporting documentation for such petition (except the home study) or evidence that the child has been admitted for lawful permanent residence in the United States with the immigrant classification of IR-3 (Orphan adopted abroad by a U.S. citizen) or IR-4 (Orphan to be adopted by a U.S. citizen).[17] If admitted as an IR-4 because there was no adoption abroad, the parent(s) must have completed the adoption in the United States. If admitted as an IR-4 because the parent(s) obtained the foreign adoption without having seen the child, the parent(s) must establish that they have either "readopted" the child or obtained recognition of the foreign adoption in the State of residence (this requirement can be waived if there is a statute or precedent decision that clearly shows that the foreign adoption is recognized in the State of residence). See 8 CFR 320.1.

  - For a Hague Convention adoptee applying under INA 322, a copy of the notice of approval of Convention adoptee petition and its supporting documentation, or evidence that the child has been admitted for lawful permanent residence in the United States with the immigrant classification of IH-3 (Hague Convention Orphan adopted abroad by a U.S. citizen) or IH-4 (Hague Convention Orphan to be adopted by a U.S. citizen).[18] If admitted as an IH-4, the parent(s) must have completed the adoption in the United States.

- Evidence of all legal name changes, if applicable, for the child, U.S. citizen parent, U.S. citizen grandparent or U.S. citizen legal guardian.

An applicant does not need to submit documents that were submitted in connection with:

- An immigrant visa application retained by the American Consulate for inclusion in the immigrant visa package, or

- An immigrant petition or application and included in a USCIS administrative file.

If necessary, an officer may continue the application to request additional documentation to make a decision on the application.

G. Citizenship Interview and Waiver

In general, an applicant must appear in person for an interview before a USCIS officer after filing an Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K). This includes the U.S. citizen parent or parents if the application is filed on behalf of a child under 18 years of age.[19] See 8 CFR 322.4. USCIS, however, waives the interview requirement if all the required documentation necessary to establish the applicant's eligibility is already included in USCIS administrative records or if any of the following documentation is submitted along with the application.[20] See 8 CFR 341.2. See Section F, Documentation and Evidence [12 USCIS-PM H.5(F)].

H. Decision and Oath of Allegiance

1. Approval of Application, Oath of Allegiance, and Waiver for Children under 14 Years of Age

If an officer approves the Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K), USCIS administers the Oath of Allegiance before issuing a Certificate of Citizenship.[21] See 8 CFR 322.5(a) and 8 CFR 337.1. See INA 337. See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance [12 USCIS-PM J.2].

However, the INA permits USCIS to waive the taking of the Oath of Allegiance if USCIS determines the person is unable to understand its meaning.[22] See INA 337(a). See 8 CFR 341.5(b). USCIS has determined that children under the age of 14 are generally unable to understand the meaning of the oath.

Accordingly, USCIS waives the oath requirement for a child younger than 14 years of age. If USCIS waives the oath requirement, USCIS issues a Certificate of Citizenship after the officer approves the application.

2. Denial of Application

If an officer denies the Certificate of Citizenship application, the officer must notify the applicant in writing of the reasons for denial and include information on the right to appeal in the notice.[23] See 8 CFR 322.5(b) and 8 CFR 103.3(a). An applicant may file an appeal within 30 days of service of the decision.

Footnotes

1.

See Nationality Chart 4.

2.

See INA 322.

3.

Adoptive parent must meet requirements of either INA 101(b)(1)(E), INA 101(b)(1)(F), or INA 101(b)(1)(G).

4.

See Section C, Physical Presence of U.S. Citizen Parent or Grandparent [12 USCIS-PM H.5(C)].

5.

For a more thorough discussion, see Chapter 2, Definition of Child for Citizenship and Naturalization, Section E, Child Born Abroad through Assisted Reproductive Technology [12 USCIS-PM H.2(E)].

6.

As of November 2, 2002, a U.S. citizen grandparent or U.S. citizen legal guardian became eligible to apply for naturalization under this provision on behalf of a child. See the 21st Century Department of Justice Appropriations Authorization Act for Fiscal 2002, Pub. L. 107-273 (November 2, 2002), which amended INA 322 to permit U.S. citizen grandparents or U.S. citizen legal guardians to apply for naturalization on behalf of a child if the child's U.S. citizen parent has died.

7.

See INA 322(a)(2). See 8 CFR 322.2(a)(2).

8.

See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section C, Children of Military Members [12 USCIS-PM I.9(C)]. See INA 322(d). See 8 CFR 322.2(c).

9.

See INA 322(a)(5). See 8 CFR 322.2(a)(5).

10.

See INA 322(a)(5).

11.

See INA 322(b). See Section G, Decision and Oath of Allegiance [12 USCIS-PM H.5(G)].

12.

See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits [12 USCIS-PM I.9]. See INA 322(d). See 8 CFR 322.2(c).

13.

See 8 CFR 322.3(a).

14.

See 8 CFR 322.3(b).

15.

See INA 322(d)(2).

16.

See INA 101(b)(1)(E). See Chapter 2, Definition of Child for Citizenship and Naturalization, Section C, Adopted Child [12 USCIS-PM H.2].

17.

If admitted as an IR-4 because there was no adoption abroad, the parent(s) must have completed the adoption in the United States. If admitted as an IR-4 because the parent(s) obtained the foreign adoption without having seen the child, the parent(s) must establish that they have either "readopted" the child or obtained recognition of the foreign adoption in the State of residence (this requirement can be waived if there is a statute or precedent decision that clearly shows that the foreign adoption is recognized in the State of residence). See 8 CFR 320.1.

18.

If admitted as an IH-4, the parent(s) must have completed the adoption in the United States.

19.

See 8 CFR 322.4.

20.

See 8 CFR 341.2. See Section F, Documentation and Evidence [12 USCIS-PM H.5(F)].

21.

See 8 CFR 322.5(a) and 8 CFR 337.1. See INA 337. See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance [12 USCIS-PM J.2].

22.

See INA 337(a). See 8 CFR 341.5(b).

23.

See 8 CFR 322.5(b) and 8 CFR 103.3(a).

Chapter 6 - Special Provisions for the Naturalization of Children

A. Battered Children

The child of a U.S. citizen may naturalize if he or she obtained LPR status on the basis of having been battered or subjected to extreme cruelty by their citizen spouse or parent.[1] For a more thorough discussion of this provision, see Part G, Spouses of U.S. Citizens, Chapter 3, Spouses of U.S. Citizens Residing in the United States, Section F, Eligibility for Persons Subjected to Battering or Extreme Cruelty [12 USCIS-PM G.3(F)].

B. Surviving Child of Members of the Armed Forces

The surviving child of a member of the U.S. armed forces may naturalize if his or her citizen parent dies during a period of honorable military service.[2] For a more detailed discussion of this provision, see Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section D, Naturalization for Surviving Spouse, Child, or Parent of Service Member (INA 319(d)) [12 USCIS-PM I.9(D)].

Footnotes

1.

For a more thorough discussion of this provision, see Part G, Spouses of U.S. Citizens, Chapter 3, Spouses of U.S. Citizens Residing in the United States, Section F, Eligibility for Persons Subjected to Battering or Extreme Cruelty [12 USCIS-PM G.3(F)].

2.

For a more detailed discussion of this provision, see Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section D, Naturalization for Surviving Spouse, Child, or Parent of Service Member (INA 319(d)) [12 USCIS-PM I.9(D)].

Part I - Military Members and their Families

Chapter 1 - Purpose and Background

A. Purpose

Service members, certain veterans of the U.S. armed forces, and certain military family members may be eligible to become citizens of the United States[1] The "United States" means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. See INA 101(a)(38). under special provisions of the Immigration and Nationality Act (INA), to include expedited and overseas processing.

There are general requirements and qualifications that an applicant for naturalization must meet in order to become a U.S. citizen. These general requirements include:

- Good Moral Character (GMC);
- Residence and physical presence in the U.S.;
- Knowledge of the English language;
- Knowledge of U.S. government and history; and
- Attachment to the principles of the U.S. Constitution.

The periods of residence and physical presence in the United States normally required for naturalization may not apply to military members and certain military family members. In addition, qualifying children of military members may not need to be present in the United States to acquire citizenship. Finally, qualifying members of the military and their family members may be able to complete the entire process from overseas.

B. Background

Special naturalization provisions for members of the U.S. armed forces date back at least to the Civil War.[2] See Appendix 1 for a table listing legislation affecting military members and their families. Currently, the special naturalization provisions provide for expedited naturalization through military service during peacetime[3] See Chapter 2, One Year of Military Service during Peacetime (INA 328) [12 USCIS-PM I.2]. or during designated periods of hostilities.[4] See Chapter 3, Military Service during Hostilities (INA 329) [12 USCIS-PM I.3]. In addition, some provisions benefit certain relatives of members of the U.S. armed forces.

As of March 6, 1990, citizenship may be granted posthumously to service members who died as a direct result of a combat-related injury or disease.[5] See INA 329A. See the Posthumous Citizenship for Active-Duty Service Act of 1989, Pub. L. 101-249, 104 Stat. 94. Posthumous citizenship under INA 329A was not initiated until 2004 through subsequent legislation, thereby providing substantive benefits to survivors (the amendments were retroactive to 2001). See the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108-136, 117 Stat. 1392. Before this legislation, posthumous citizenship could only be granted through the enactment of private legislation for specific individuals.

Congress and the President have continued to express interest in legislation to expand the citizenship benefits of non-U.S. citizens serving in the military since the events of September 11, 2001. Legislation to benefit service members and their family members has increased considerably since 2003.

1. Executive Order Designating Period since September 11, 2001 as a Period of Hostility

On July 3, 2002, then President, George W. Bush, officially designated by Executive Order the period beginning on September 11, 2001 as a "period of hostilities." The Executive Order triggered immediate naturalization eligibility for qualifying service members.[6] See Executive Order 13269 signed on July 3, 2002 (67 FR 45287, July 8, 2002). See INA 329.

At the time of the designation, the Department of Defense (DOD) and legacy INS announced that they would work together to ensure that military naturalization applications would be processed expeditiously. USCIS adjudication procedures for military naturalization applications reflect that commitment.

2. Legislation Affecting Service Period, Overseas Naturalization, and Benefits for Relatives

On November 24, 2003, Congress enacted legislation[7] See the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108-136, 117 Stat. 1392. to:

- Reduce the period of service required for military naturalization based on peacetime service from three years to one year.[8] See INA 328(a).
- Add service in the Selected Reserve of the Ready Reserve during periods of hostilities as a basis to qualify for naturalization.[9] See INA 329(a).
- Expand the immigration benefits available to the spouses, children, and parents of U.S. citizens who die from injuries or illnesses resulting from or aggravated by serving in combat. These benefits extend to such relatives of service members who were granted citizenship posthumously.
- Waive fees for naturalization applications based on military service during peacetime or during periods of hostilities.[10] See INA 328(b) and INA 329(b) (Fee exemptions).
- Permit naturalization processing overseas in U.S. embassies, consulates, and military bases for members of the U.S. armed forces.[11] See 8 U.S.C. 1443a (Permitting overseas proceedings).

Efforts since the 2003 legislation have focused on further streamlining procedures or extending immigration benefits to immediate relatives of service members.

3. Legislation Affecting Residence, Physical Presence, and Naturalization while Abroad for Spouses and Children

On January 28, 2008, Congress amended existing statutes to allow residence abroad to qualify as "continuous residence" and "physical presence" in the United States for a spouse or child of a service member who is authorized to accompany the service member by official orders and is residing abroad with the service member.[12] See the National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181, 122 Stat. 3, which amended INA 284, INA 319, and INA 322.

Under certain conditions, a spouse or child of a service member may count any period of time that he or she is residing (or has resided) abroad with the service member as residence and physical presence in the United States. This legislation also prescribes that such a spouse or child may be eligible to have any or all of their naturalization proceedings conducted abroad. Before this legislation, the law only permitted eligible service members to participate in naturalization proceedings abroad.

- INA 284(b) limits the circumstances under which the LPR spouse or child is considered to be seeking admission to the United States. This means that the spouse or child will not be deemed to have abandoned or relinquished his or her LPR status while residing abroad with the service member. The provision ensures reentry into the United States by LPR spouses and children whose presence abroad might otherwise be deemed as abandonment of LPR status.

- INA 319(e) allows certain LPR spouses to count any qualifying time abroad as continuous residence and physical presence in the United States and permits eligible spouses to naturalize overseas.

- INA 322(d) allows the U.S. citizen parent of a child filing for naturalization to count time abroad as physical presence and allows the child to naturalize overseas.

4. Fingerprint Requirement (Kendell Frederick Citizenship Assistance Act)

On June 26, 2008, Congress mandated that USCIS use enlistment fingerprints or previously submitted USCIS fingerprints to satisfy the naturalization background check requirements unless a more efficient method is available.[13] See Chapter 6, Required Background Checks [12 USCIS-PM I.6]. See the Kendell Frederick Citizenship Assistance Act of 2008, Pub. L. 110-251, 122 Stat. 2319.

5. Expedited Application Processing (Military Personnel Citizenship Processing Act)

On October 9, 2008, Congress amended existing statutes to mandate USCIS to process and adjudicate naturalization applications filed under certain military-related provisions within six months of the receipt date or provide the applicant with an explanation for why his or her application is still pending and an estimated adjudication completion date.[14] This legislation affects naturalization applications under INA 328(a), INA 329(a), INA 329A, INA 329(b), and surviving spouses and children who qualify under INA 319(b), or INA 319(d). See the Military Personnel Citizenship Processing Act of 2008, Pub. L. 110-382, 122 Stat. 4087.

C. Legal Authorities

- INA 319; 8 CFR 319 – Spouses of U.S. Citizens
- INA 322; 8 CFR 322 – Children born outside of the United States

  INA 328; 8 CFR 328 – Naturalization through peacetime military service for one year
- INA 329; 8 CFR 329 – Naturalization through military Service during hostilities
- INA 329A; 8 CFR 392 – Posthumous citizenship
- 8 U.S.C. 1443a – Overseas naturalization for service members and their qualifying spouses and children

Footnotes

1.

The "United States" means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. See INA 101(a)(38).

2.

See Appendix 1 for a table listing legislation affecting military members and their families.

3.

See Chapter 2, One Year of Military Service during Peacetime (INA 328) [12 USCIS-PM I.2].

4.

See Chapter 3, Military Service during Hostilities (INA 329) [12 USCIS-PM I.3].

5.

See INA 329A. See the Posthumous Citizenship for Active-Duty Service Act of 1989, Pub. L. 101-249, 104 Stat. 94. Posthumous citizenship under INA 329A was not initiated until 2004 through subsequent legislation, thereby providing substantive benefits to survivors (the amendments were retroactive to 2001). See the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108-136, 117 Stat. 1392.

6.

See Executive Order 13269 signed on July 3, 2002 (67 FR 45287, July 8, 2002). See INA 329.

7.

See the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108-136, 117 Stat. 1392.

8.

See INA 328(a).

9.

See INA 329(a).

10.

See INA 328(b) and INA 329(b) (Fee exemptions).

11.

See 8 U.S.C. 1443a (Permitting overseas proceedings).

12.

See the National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181, 122 Stat. 3, which amended INA 284, INA 319, and INA 322.

13.

See Chapter 6, Required Background Checks [12 USCIS-PM I.6]. See the Kendell Frederick Citizenship Assistance Act of 2008, Pub. L. 110-251, 122 Stat. 2319.

14.

This legislation affects naturalization applications under INA 328(a), INA 329(a), INA 329A, INA 329(b), and surviving spouses and children who qualify under INA 319(b), or INA 319(d). See the Military Personnel Citizenship Processing Act of 2008, Pub. L. 110-382, 122 Stat. 4087.

Chapter 2 - One Year of Military Service during Peacetime (INA 328)

A. General Eligibility through One Year of Military Service during Peacetime

A person who has served honorably in the U.S. armed forces for one year at any time may be eligible to apply for naturalization, which is sometimes referred to as "peacetime naturalization."[1] See INA 328. While some of the general naturalization requirements apply to qualifying members or veterans of the U.S. armed forces seeking to naturalize based on one year of service,[2] See INA 316(a) for the general naturalization requirements. See Part D, General Naturalization Requirements [12 USCIS-PM D]. other requirements may not apply or are reduced.

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

- The applicant must be 18 years of age or older.
- The applicant must have served honorably in the U.S. armed forces for at least one year.
- The applicant must be a lawful permanent resident (LPR) at the time of examination on the naturalization application.
- The applicant must meet certain residence and physical presence requirements.
- The applicant must demonstrate an ability to understand English including an ability to read, write, and speak English.
- The applicant must demonstrate knowledge of U.S. history and government.

- The applicant must demonstrate good moral character for at least five years prior to filing the application until the time of his or her naturalization.

- 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 U.S. during all relevant periods under the law.

B. Honorable Service

Qualifying military service is honorable active or reserve service in the U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, or service in a National Guard unit. Honorable service means only service in the U.S. armed forces that is designated as honorable service by the executive department under which the applicant performed that military service.

Both "Honorable" and "General-Under Honorable Conditions" discharge types qualify as honorable service for immigration purposes. Other discharge types, such as "Other Than Honorable," do not qualify as honorable service.

C. National Guard Service

Honorable service as a member of the National Guard is limited to service in a National Guard unit during such time as the unit is federally recognized as a reserve component of the U.S. armed forces. This applies to applicants for naturalization on the basis of one year of military service.[3] See INA 328. The National Guard and Reserve service requirements under INA 329 differ from those under INA 328. See Chapter 3, Military Service during Hostilities (INA 329), Section C, National Guard Service [12 USCIS-PM I.3(C)].

D. Continuous Residence and Physical Presence Requirements

An applicant who files on the basis of one year of military service while he or she is still serving in the U.S. armed forces or within six months of an honorable discharge is exempt from the residence and physical presence requirements for naturalization.[4] See INA 328. See 8 CFR 328.2.

An applicant who files six months or more from his or her separation from the U.S. armed forces must have continuously resided in the United States for at least five years. In addition, the applicant must have been physically present in the United States for at least 30 months out of the five years immediately preceding the date of filing the application.[5] See INA 316(a) and INA 328(d). See Part D, General Naturalization Requirements [12 USCIS-PM D]. However, any honorable service within the five years immediately preceding the date of filing the application will be considered towards residence and physical presence within the United States.[6] See INA 328(d).

An applicant with military service who does not qualify on the basis of one year of military service[7] See INA 328. may be eligible under another non-military naturalization provision. The period that the applicant has resided outside of the United States on official military orders does not break his or her continuous residence. USCIS will treat such time abroad as time in the United States.[8] Special provisions also exist regarding the "place of residence" for applicants who are serving in the U.S. armed forces but who do not qualify for naturalization through the military provisions. See 8 CFR 316.5(b). See Part D, General Naturalization Requirements, Chapter 6, Jurisdiction, Place of Residence, and Early Filing [12 USCIS-PM D.6].

Footnotes

1.

See INA 328.

2.

See INA 316(a) for the general naturalization requirements. See Part D, General Naturalization Requirements [12 USCIS-PM D].

3.

See INA 328. The National Guard and Reserve service requirements under INA 329 differ from those under INA 328. See Chapter 3, Military Service during Hostilities (INA 329), Section C, National Guard Service [12 USCIS-PM I.3(C)].

4.

See INA 328. See 8 CFR 328.2.

5.

See INA 316(a) and INA 328(d). See Part D, General Naturalization Requirements [12 USCIS-PM D].

6.

See INA 328(d).

7.

See INA 328.

8.

Special provisions also exist regarding the "place of residence" for applicants who are serving in the U.S. armed forces but who do not qualify for naturalization through the military provisions. See 8 CFR 316.5(b). See Part D, General Naturalization Requirements, Chapter 6, Jurisdiction, Place of Residence, and Early Filing [12 USCIS-PM D.6].

Chapter 3 - Military Service during Hostilities (INA 329)

A. General Eligibility through Military Service during Hostilities

Members of the U.S. armed forces who serve honorably for any period of time during specifically designated periods of hostilities may be eligible to naturalize.[1] See INA 329. In 2009, the DOD authorized the Military Accessions Vital to the National Interest (MAVNI) pilot program as a recruitment pilot to enlist certain foreign nationals with skills considered to be "vital to national interest." The pilot program applies to certain health care professionals and individuals fluent in certain foreign languages. A MAVNI enlistee may apply for naturalization upon enlistment. See the DOD MAVNI program fact sheet for further details. One day of qualifying service is sufficient in establishing eligibility.

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

- The applicant may be of any age.

- The applicant must have served honorably in the U.S. armed forces during a designated period of hostility.
- The applicant must either be an LPR or have been physically present at the time of enlistment, reenlistment, or extension of service or induction into the U.S. armed forces:
    - In the United States or its outlying possessions, including the Canal Zone, American Samoa, or Swains Island, or
    - On board a public vessel owned or operated by the United States for noncommercial service.
- The applicant must be able to read, write, and speak basic English.
- The applicant must demonstrate knowledge of U.S. history and government.
- The applicant must demonstrate good moral character for at least one year prior to filing the application until the time of his or her naturalization.
- 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 U.S. during all relevant periods under the law.

An applicant who files on the basis of military service during hostilities is exempt from the general naturalization requirements of continuous residence and physical presence.[2] See INA 329(b). See 8 CFR 329.2(e).

B. Honorable Service

Qualifying military service is honorable service in the Selected Reserve of the Ready Reserve or active duty service in the U.S. Army, Navy, Marine Corps, Air Force, or Coast Guard. Service in a National Guard Unit may also qualify.[3] See Section C, National Guard Service [12 USCIS-PM I.3(C)].

Honorable service means only service in the U.S. armed forces that is designated as honorable service by the executive department under which the applicant performed that military service.

Both “Honorable” and “General-Under Honorable Conditions” discharge types qualify as honorable service for immigration purposes. Other discharge types, such as “Other Than Honorable,” do not qualify as honorable service.

C. National Guard Service

An applicant filing on the basis of military service during hostilities[4] See INA 329. who has National Guard service may qualify if he or she has honorable service in either the U.S. armed forces or in the Selected Reserve of the Ready Reserve.[5] See 8 CFR 329.1. See 10 U.S.C. 10143 for more information on Selected Reserve of the Ready Reserve. USCIS does not require proof of federal activation for a National Guard applicant if the applicant served in the

Selected Reserve of the Ready Reserve during a designated period of hostility.[6] The National Guard and Reserve service requirements under INA 329 differ from those under INA 328. See Chapter 2, One Year of Military Service during Peacetime (INA 328), Section C, National Guard Service [12 USCIS-PM I.2(C)].

D. Designated Periods of Hostilities

The INA and Presidential Executive Orders have designated the following military engagements and ranges of dates as periods of hostilities.

Designated Periods of Hostilities			
World War I	April 6, 1917	→	November 11, 1918
World War II	September 1, 1939	→	December 31, 1946
Korea	June 25, 1950	→	July 1, 1955
Vietnam	February 28, 1961	→	October 15, 1978
Persian Gulf	August 2, 1990	→	April 11, 1991
Enduring Freedom	September 11, 2001	→	**Present**

The current period starting on September 11, 2001 will continue to be considered a designated period of hostilities until the President issues an Executive Order to terminate the designation.

E. Eligibility as Permanent Resident or if Present in United States at Induction or Enlistment

In general, an applicant who files on the basis of military service during hostilities[7] See INA 329. is not required to be an LPR if he or she was physically present at the time of induction, enlistment, reenlistment, or extension of service in the U.S. armed forces:

- In the United States, the Canal Zone, American Samoa, or Swains Island; or
- On board a public vessel owned or operated by the United States for noncommercial service.

In addition, an applicant who is lawfully admitted for permanent residence after enlistment or induction is also eligible for naturalization under this provision regardless of the place of enlistment or induction.

F. Conditional Permanent Residence and Naturalization during Hostilities

If the applicant is a conditional permanent resident and is eligible to naturalize on the basis of military service during hostilities[8] See INA 329. without being an LPR based on being in the United States during enlistment or induction, the applicant is not required to file or have an approved Petition to Remove the Conditions on Residence (Form I-751) before his or her Application for Naturalization (Form N-400) may be approved.

Footnotes

1.

See INA 329. In 2009, the DOD authorized the Military Accessions Vital to the National Interest (MAVNI) pilot program as a recruitment pilot to enlist certain foreign nationals with skills considered to be "vital to national interest." The pilot program applies to certain health care professionals and individuals fluent in certain foreign languages. A MAVNI enlistee may apply for naturalization upon enlistment. See the DOD MAVNI program fact sheet for further details.

2.

See INA 329(b). See 8 CFR 329.2(e).

3.

See Section C, National Guard Service [12 USCIS-PM I.3(C)].

4.

See INA 329.

5.

See 8 CFR 329.1. See 10 U.S.C. 10143 for more information on Selected Reserve of the Ready Reserve.

6.

The National Guard and Reserve service requirements under INA 329 differ from those under INA 328. See Chapter 2, One Year of Military Service during Peacetime (INA 328), Section C, National Guard Service [12 USCIS-PM I.2(C)].

7.

See INA 329.

8.

See INA 329.

Chapter 4 - Permanent Bars to Naturalization

A. Exemption or Discharge from Military Service Because of Foreign Nationality

1. Permanent Bar for Exemption or Discharge from Military Service

An applicant who requested, applied for, and obtained a discharge or exemption from military service from the U.S.

armed forces on the ground that he or she is an alien or foreign national ("alienage discharge") is permanently ineligible for naturalization unless he or she qualifies for an exception (discussed below).[1] See INA 315. See 8 CFR 315.2.

An exemption from military service is either a permanent exemption from induction into the U.S. armed services or the release or discharge from military training or service in the U.S. armed forces.[2] See 8 CFR 315.1. The Ninth Circuit has found that an exemption from voluntary military service is not a permanent bar under INA 315. See Gallarde v. I.N.S., 486 F.3d 1136 (9th Cir 2007). INA 329 has similar language about exemptions, and that language has been found to cover discharges based on alienage even in cases of voluntary enlistment. See Sakarapanee v. USCIS, 616 F.3d 595, (6th Cir 2010). Officers should consult with local OCC counsel in handling discharges based on alienage. Induction means compulsory entrance into military service of the United States by conscription or by enlistment after being notified of a pending conscription.

Until 1975, applicants were required to register for the military draft. The failure to register for the draft or to comply with an induction notice is relevant to the determination of whether the applicant was liable for military service, especially in cases where an exemption was based on foreign nationality.

Certain persons were granted exemptions from the draft for reasons other than foreign nationality, including medical disability and conscientious objector. An applicant may present a draft registration card with an exempt classification under circumstances that do not relate to foreign nationality.

2. Exceptions to Permanent Bar

There are exceptions to the permanent bar to naturalization for obtaining a discharge or exemption from military service on the ground of alienage.[3] See 8 CFR 315.2(b).

The permanent bar does not apply to the applicant if he or she establishes by clear and convincing evidence that:

- The applicant had no liability for military service (even in the absence of an exemption) at the time he or she requested an exemption from military service;
- The applicant did not request or apply for the exemption from military service, but such exemption was automatically granted by the U.S. Government;[4] See In re Watson, 502 F. Supp. 145 (D.C. 1980).
- The exemption from military service was based upon a ground other than the applicant's alienage;
- The applicant was unable to make an intelligent choice between an exemption from military service and citizenship because he or she was misled by an authority from the U.S. Government or from the government of his or her country of nationality;
- The applicant applied for and received an exemption from military service on the basis of alienage, but was

subsequently inducted into the U.S. armed forces or the National Security Training Corps;[5] However, an applicant who voluntarily enlists in and serves in the U.S. armed forces after applying for and receiving an exemption from military service on the basis of alienage is not exempt from the permanent bar.

- Prior to requesting the exemption from military service, the applicant served a minimum of eighteen months in the armed forces of a nation that was a member of the North Atlantic Treaty Organization at the time of his or her service, or the applicant served a minimum of twelve months and applied for registration with the Selective Service Administration after September 28, 1971; or

- Prior to requesting the exemption from military service, the applicant was a "treaty national"[6] "Treaty national" means a person who is a national of a country with which the United States has a treaty relating to the reciprocal exemption of aliens from military training or military service. who had served in the armed forces of the country of which he or she was a national.[7] See 8 CFR 315.2(b).

3. Countries with Treaties Providing Reciprocal Exemption from Military Service

The tables below provide lists of countries that currently have (or previously had) effective treaties providing reciprocal exemption from military service.[8] See 8 CFR 315.4.

Countries with Effective Treaties Providing Reciprocal Exemption from Military Service	
Argentina	Art. X, 10 Stat. 1005, 1009, effective 1853
Austria	Art. VI, 47 Stat. 1876, 1880, effective 1928
China	Art. XIV, 63 Stat. 1299, 1311, effective 1946
Costa Rica	Art. IX, 10 Stat. 916, 921, effective 1851
Estonia	Art. VI, 44 Stat. 2379, 2381, effective 1925
Honduras	Art. VI, 45 Stat. 2618, 2622, effective 1927
Ireland	Art. III, 1 US 785, 789, effective 1950
Italy	Art. XIII, 63 Stat. 2255, 2272, effective 1948
Latvia	Art. VI, 45 Stat. 2641, 2643, effective 1928

Liberia	Art. VI, 54 Stat. 1739, 1742, effective 1938
Norway	Art. VI, 47 Stat. 2135, 2139, effective 1928
Paraguay	Art. XI, 12 Stat. 1091, 1096, effective 1859
Spain	Art. V, 33 Stat. 2105, 2108, effective 1902
Switzerland	Art. II, 11 Stat. 587, 589, effective 1850
Yugoslavia Serbia	Art. IV, 22 Stat. 963, 964, effective 1881

Countries with Expired Treaties Providing Reciprocal Exemption from Military Service	
El Salvador	Art. VI, 46 Stat. 2817, 2821 (effective 1926 to February 8, 1958)
Germany	Art. VI, 44 Stat. 2132, 2136 (effective 1923 to June 2, 1954)
Hungary	Art. VI, 44 Stat, 2441, 2445 (effective 1925 to July 5, 1952)
Thailand (Siam)	Art. 1, 53 Stat. 1731, 1732 (effective 1937 to June 8, 1968)

4. Documentation and Evidence

The Application for Naturalization (Form N-400) and Request for Certification of Military or Naval Service (Form N-426) contain questions pertaining to discharge due to alienage or foreign nationality. The fact that an applicant is exempted or discharged from service in the U.S. armed forces on the grounds that he or she is a foreign national (alien) may impact the applicant's eligibility for naturalization.

Selective Service and military department records are conclusive evidence of service and discharge.[9] See 8 CFR 315.3. Proof of an applicant's request and approval for an exemption or discharge from military service because the applicant is a foreign national may be grounds for denial of the naturalization application.[10] See INA 315. See 8 CFR 315.2.

B. Deserters or Persons Absent Without Official Leave (AWOL)

An applicant who is convicted by court martial as a deserter may be permanently barred from naturalization.[11] See INA 314. A person not ultimately court martialed for being a deserter or for being Absent without Official Leave (AWOL), however, is not permanently barred from naturalization.

An applicant who deserted or was AWOL during the relevant period for good moral character may be ineligible for naturalization under the "unlawful acts" provision.[12] See Part F, Good Moral Character, Chapter 5, Conditional Bars for Acts in Statutory Period, Section M, Unlawful Acts [12 USCIS-PM F.5(M)].

Footnotes

1.

See INA 315. See 8 CFR 315.2.

2.

See 8 CFR 315.1. The Ninth Circuit has found that an exemption from voluntary military service is not a permanent bar under INA 315. See *Gallarde v. I.N.S.*, 486 F.3d 1136 (9th Cir 2007). INA 329 has similar language about exemptions, and that language has been found to cover discharges based on alienage even in cases of voluntary enlistment. See *Sakarapanee v. USCIS,* 616 F.3d 595, (6th Cir 2010). Officers should consult with local OCC counsel in handling discharges based on alienage.

3.

See 8 CFR 315.2(b).

4.

See *In re Watson*, 502 F. Supp. 145 (D.C. 1980).

5.

However, an applicant who voluntarily enlists in and serves in the U.S. armed forces after applying for and receiving an exemption from military service on the basis of alienage is not exempt from the permanent bar.

6.

"Treaty national" means a person who is a national of a country with which the United States has a treaty relating to the reciprocal exemption of aliens from military training or military service.

7.

See 8 CFR 315.2(b).

8.

See 8 CFR 315.4.

9.

See 8 CFR 315.3.

10.

See INA 315. See 8 CFR 315.2.

11.

See INA 314.

12.

See Part F, Good Moral Character, Chapter 5, Conditional Bars for Acts in Statutory Period, Section M, Unlawful Acts [12 USCIS-PM F.5(M)].

Chapter 5 - Application and Filing for Service Members (INA 328 and 329)

This section provides relevant information for applying for naturalization on the basis of military service.[1] See INA 328 and INA 329. Service members should file their applications in accordance with the instructions for the Application for Naturalization (Form N-400) and other required forms.

A. Required Forms

An applicant filing for naturalization based on one year of honorable military service during peacetime[2] See INA 328. or honorable service during a designated period of hostility[3] See INA 329. must complete and submit all of the following to USCIS:

Form N-400, Application for Naturalization

The applicant should check the appropriate eligibility option on the Application for Naturalization to indicate that he or she is applying on the basis of qualifying military service. The applicant should file the application in accordance with the form instructions.

Form N-426, Request for Certification of Military or Naval Service

The Request for Certification of Military or Naval Service confirms whether the applicant served honorably in an active duty status or in the Selected Reserve of the Ready Reserve. The form may also establish whether the applicant has ever been released from military service on the grounds that he or she is an alien or foreign national. Only those applicants applying under INA 328 or INA 329 are required to submit the form. An applicant applying under a different naturalization provision is not required to submit the form, even if the applicant has prior military service.

The military must complete and certify (sign) the Request for Certification of Military or Naval Service before it is submitted to USCIS. USCIS, however, will accept a completed but uncertified form submitted by an applicant who has separated from the U.S. armed forces if:

- The applicant submitted a photocopy of his or her Certificate or Release from Active Duty (DD Form 214) or National Guard Report of Separation and Record of Service (NGB Form 22) for applicable periods of service listed on Form N-426; and

- The DD Form 214 or NGB Form 22 lists information on the type of separation and character of service. Such information is typically found on page “Member-4” of DD Form 214 or Block 24 of NGB Form 22.

Most military installations have a designated office that serves as a point-of-contact to assist service members with their naturalization application packets. Service members should inquire through their chain of command for the appropriate office to assist with preparing the naturalization packet.

B. Fee Exemptions

- USCIS charges no fees for filing an Application for Naturalization (Form N-400) or for biometrics capturing for applications filed under INA 328 or INA 329.

- There is no fee for filing a Request for a Hearing on a Decision in Naturalization Proceedings (Form N-336) for applicants whose naturalization application filed under INA 328 or INA 329 has been denied.[4] See USCIS Fee Schedule Final Rule (75 FR 58962, Sept. 24, 2010).

- There is no filing fee for current and former service members for an Application for Certificate of Citizenship (Form N-600).[5] See USCIS Fee Schedule Final Rule (75 FR 58962, Sept. 24, 2010).

C. Filing Location and Initial Processing

Naturalization applications filed on the basis of military service should be filed in accordance with the form instructions.[6] See INA 328 and INA 329. USCIS will permit an applicant residing abroad the option to file his or her application for naturalization with the USCIS overseas office having jurisdiction over his or her place of residence, as practicable.

An applicant serving abroad may complete all aspects of the naturalization process, including fingerprinting, interviews and oath ceremonies while residing abroad on official orders.[7] See 8 U.S.C. 1443a. The applicant may request overseas processing at any time of the naturalization process.

Footnotes

1.

See INA 328 and INA 329.

2.

See INA 328.

3.

See INA 329.

4.

See USCIS Fee Schedule Final Rule (75 FR 58962, Sept. 24, 2010).

5.

See USCIS Fee Schedule Final Rule (75 FR 58962, Sept. 24, 2010).

6.

See INA 328 and INA 329.

7.

See 8 U.S.C. 1443a.

Chapter 6 - Required Background Checks

USCIS conducts security and background checks on all applicants for naturalization. Members or former members of the U.S. armed forces applying for naturalization must comply with those requirements. This chapter provides information on specific background checks required of such applicants. This chapter also provides information on the ways service members may meet the fingerprint requirement for naturalization.

A. Defense Clearance Investigative Index (DCII) Query

USCIS must conduct a Defense Clearance Investigative Index (DCII) query with the DOD as part of the background check process on any applicant with military service regardless of the section of law under which he or she is applying for naturalization. The DCII check is valid for 15 months from the initial response. The DCII check should show whether the applicant has any derogatory information in his or her military records.[1] Previously, a military applicant was required to submit Form G-325B, Biographic Information, which USCIS used to initiate the DCII query. USCIS determined, however, that the information collected on Form N-400 is sufficient to perform the queries and deemed Form G-325B obsolete. As of February 18, 2010, Form G-325B is no longer required for any pending naturalization application.

B. Fingerprint Requirement and the Kendell Frederick Citizenship Assistance Act

USCIS must collect fingerprint records as part of the background check process on most applicants for naturalization. The Kendell Frederick Citizenship Assistance Act (KFCAA) mandates USCIS to use enlistment fingerprints or previously submitted USCIS fingerprints to satisfy the fingerprint requirement for service members unless a more efficient method is available.

If DHS determines that new biometrics would "result in more timely and effective adjudication of the individual's naturalization application," DHS must inform the applicant of this determination and provide the applicant with information on how to submit fingerprints.[2] See the Kendell Frederick Citizenship Assistance Act of 2008, Pub. L. No. 110-251, 122 Stat. 2319.

C. Ways Service Members may Meet Fingerprint Requirement

The table below provides the ways in which a service member may meet the fingerprint requirement for naturalization on the basis of military service.[3] See INA 328 or INA 329. See 8 CFR 335.2(b). Such applicants may meet the

requirement through any of the following ways provided in the table. These procedures aim at USCIS compliance with the KFCAA.

Ways Service Members may meet Fingerprint Requirement for Naturalization
• The service member may appear at any stateside USCIS Application Support Center (ASC) for fingerprint capture with or without an appointment
• The service member may have his or her fingerprints taken by USCIS personnel at select military installations in the United States via mobile fingerprinting equipment
• USCIS may re-submit the service member's fingerprints for up-to-date records if such records are on file with USCIS
• USCIS may acquire and use the service member's fingerprints taken at the time of enlistment into the military ("OPM fingerprints")
• The service member may have his or her fingerprints taken using the FD-258 fingerprint cards at a U.S. military installation (or U.S. embassy or consulate if overseas)
• USCIS will accept FD-258 fingerprint cards or comparable DOD fingerprint cards from domestic or overseas military installations (However, fingerprints captured electronically, either at an ASC or through a mobile fingerprinting unit, remain the more advantageous method for both the applicant and USCIS)

USCIS will consider an applicant's naturalization application to be abandoned and will deny the application for failure to appear for biometrics capture (fingerprinting)[4] See 8 CFR 103.2(b)(13)(ii). if all of the following conditions are true:

- The NSC is unable to locate the applicant or three days have elapsed from the last day of the time period allotted for the applicant to appear for fingerprinting (as stated on the second ASC appointment notice);
- The applicant is stationed stateside (and is otherwise able to report to an ASC) and has not submitted FD-258 fingerprint cards;
- The applicant has not fulfilled the fingerprint requirement; and
- USCIS has determined that the enlistment fingerprints are unavailable or are unclassifiable.

Any subsequent correspondence from an affected applicant whose application was denied for failure to appear for fingerprinting within one year is considered a Service motion to reopen.[5] See 8 CFR 103.5(a)(5). USCIS grants the motion and continues with the processing of the naturalization application. USCIS does not deny an application for abandonment for failure to provide fingerprints if USCIS has evidence that the applicant is deployed inside the United States or overseas and is unable to be fingerprinted.

Footnotes

1.

Previously, a military applicant was required to submit Form G-325B, Biographic Information, which USCIS used to initiate the DCII query. USCIS determined, however, that the information collected on Form N-400 is sufficient to perform the queries and deemed Form G-325B obsolete. As of February 18, 2010, Form G-325B is no longer required for any pending naturalization application.

2.

See the Kendell Frederick Citizenship Assistance Act of 2008, Pub. L. No. 110-251, 122 Stat. 2319.

3.

See INA 328 or INA 329. See 8 CFR 335.2(b).

4.

See 8 CFR 103.2(b)(13)(ii).

5.

See 8 CFR 103.5(a)(5).

Chapter 7 - Revocation of Naturalization

A military member whose naturalization was granted on the basis of military service on or after November 24, 2003 may be subject to revocation of naturalization if he or she was separated from the U.S. armed forces under other than honorable conditions before he or she has served honorably for a period or periods totaling at least five years.[1] See INA 328(f), INA 329(c), and INA 340. See Pub. L. 108-136. Such cases should be referred to U.S. Immigration and Customs Enforcement (ICE).

Footnotes

1.

See INA 328(f), INA 329(c), and INA 340. See Pub. L. 108-136. Such cases should be referred to U.S. Immigration and Customs Enforcement (ICE).

Chapter 8 - Posthumous Citizenship (INA 329A)

A. Eligibility for Posthumous Citizenship

In general, a person who serves honorably in the U.S. armed forces during designated periods of hostilities and dies as a result of injury or disease incurred in or aggravated by that service may be eligible for posthumous citizenship.[1] See Chapter 3, Military Service during Hostilities (INA 329), Section D, Designated Periods of Hostilities [12 USCIS-PM I.3(D)]. Posthumous citizenship establishes that the deceased service member is considered a citizen of the United States as of the date of his or her death.[2] See INA 329A and 8 CFR 392.

The military branch under which the deceased service member served will determine whether he or she served honorably in an active-duty status during a qualified period and whether the death was combat related.

Spouses and children of U.S. citizen service members who qualify for posthumous citizenship may be eligible for immigration benefits under special provisions of the INA.[3] See Chapter 9, Spouses, Children, and Surviving Family Benefits [12 USCIS-PM I.9].

B. Application and Filing

The service member's next of kin, the Secretary of Defense, or the Secretary's designee in USCIS must submit an Application for Posthumous Citizenship (Form N-644) within two years of the service member's death and in accordance with the form instructions and with appropriate fee.[4] See 8 CFR 103.7. USCIS uses the posthumous citizenship application to verify the deceased service member's place of induction, enlistment or reenlistment; military service; and service-connected death.[5] See 8 CFR 392.2.

The following documents should be submitted along with the completed Application for Posthumous Citizenship, if available:

- DD Form 214, Certificate of Release or Discharge from Active Duty
- DD Form 1300, Report of Casualty/Military Death Certificate (or other military or State issued death certificate)
- Any other military or state issued certificate of the decedent's death

C. Adjudication

USCIS will issue a Certificate of Citizenship (Form N-645) in the name of the deceased service member establishing posthumously that he or she was a U.S. citizen on the date of his or her death if the Application for Posthumous Citizenship is approved.[6] See 8 CFR 392.4. See Part K, Certificates of Citizenship and Naturalization, Chapter 2, Certificate of Citizenship [12 USCIS-PM K.2]. In cases where USCIS denies the Form N-644, USCIS will notify the applicant of the decision and the reason(s) for denial. There is no appeal for a denied posthumous citizenship application.[7] See 8 CFR 392.3(d).

Footnotes

1.

See Chapter 3, Military Service during Hostilities (INA 329), Section D, Designated Periods of Hostilities [12 USCIS-PM I.3(D)].

2.

See INA 329A and 8 CFR 392.

3.

See Chapter 9, Spouses, Children, and Surviving Family Benefits [12 USCIS-PM I.9].

4.

See 8 CFR 103.7.

5.

See 8 CFR 392.2.

6.

See 8 CFR 392.4. See Part K, Certificates of Citizenship and Naturalization, Chapter 2, Certificate of Citizenship [12 USCIS-PM K.2].

7.

See 8 CFR 392.3(d).

Chapter 9 - Spouses, Children, and Surviving Family Benefits

A. General Provisions for Spouses, Children, and Parents of Military Members

1. Benefits for Family Members

Spouses and children of U.S. citizen service members may be eligible for naturalization under special provisions in the INA. Certain spouses may be eligible for expedited naturalization in the United States and may not be required to establish any prior period of residence or specified period of physical presence within the United States, as generally required for naturalization.

The surviving spouse, child, or parent of a U.S. citizen who dies during a period of honorable service in an active duty status in the U.S. armed forces may be eligible for naturalization. Surviving family members seeking immigration benefits are given special consideration in the processing of their applications for permanent residence or for classification as an immediate relative.

On January 28, 2008, legislation was enacted to permit a spouse or child to count any period of time that he or she is residing abroad with the service member as authorized by official orders as residence and physical presence in the United States, under certain conditions.[1] See the National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181, 122 Stat. 3, which amended INA 284, INA 319, and INA 322. The same legislation also prescribes that such a spouse or child may be eligible for overseas proceedings relating to naturalization, as previously only permitted for an eligible member of the U.S. armed forces.

Specifically, one provision limits the circumstances under which the LPR spouse or child is considered to be seeking admission to the United States.[2] See INA 284(b). Another provision allows the LPR spouse to count any qualifying time abroad as continuous residence and physical presence in the United States and permits the spouse to naturalize overseas.[3] See INA 319(e). Another provision allows the U.S. citizen parent of a child filing for naturalization to count time abroad as physical presence and permits the child to naturalize overseas.[4] See INA 322(d).

2. Documenting "Official Orders"

In order to count any qualifying time abroad as continuous residence and physical presence in the United States, a spouse or child of a member of the U.S. armed forces must have official military orders authorizing him or her to accompany his or her service member spouse or parent abroad, and must accompany or live with that service member as provided in those orders.[5] See INA 319(e) and INA 322(d).

USCIS will only accept the following documents issued by the U.S. armed forces as "official orders:"

- Copy of Permanent Change of Station (PCS) orders issued to a service member for permanent tour of duty overseas that specifically name the spouse or child applying for naturalization; or
- If the submitted PCS orders do not specifically name the applicant beyond reference to "spouse," "child," or "dependent," then the applicant must submit:
    - PCS orders (copy);
    - Form DD-1278 (Certificate of Overseas Assignment to Support Application to File Petition for Naturalization); and
    - Service member's Form DD1172 (Application for Uniformed Services Identification Card DEERS Enrollment) naming dependents.

B. Spouses of Military Members[6] This section describes certain benefits on residence, physical presence, and overseas naturalization for spouses of service members. See Part G, Spouses of U.S. Citizens [12 USCIS-PM G], for guidance on the general spousal naturalization provisions.

The table below serves as a quick reference guide to certain residence, physical presence, and overseas naturalization provisions for spouses of service members. The paragraphs that follow the table provide further guidance on each provision.

Residence, Physical Presence, and Overseas Naturalization

for Spouses of Members of the U.S. Armed Forces				
INA Section	**Residence**	**Physical Presence**	**Treatment of Time Residing Abroad**	**Overseas Naturalization**
316(a)	LPR for 5 years	30 months	Time residing with U.S. citizen spouse serving abroad may be treated as residence and physical presence in the United States (INA 319(e))	May complete entire naturalization process from abroad
319(a)	LPR for 3 years	18 months		
319(b)	Must be LPR but no specified period of residence or physical presence is required			Must complete interview and oath in United States

1. Spouses of Service Members (INA 316(a) and INA 319(a))

Spouses of service members may qualify for naturalization through the general naturalization provision or on the basis of their marriage to a U.S. citizen.[7] See INA 316(a). See Part G, Spouses of U.S. Citizens [12 USCIS-PM G]. The general provision applies to spouses who have been LPRs for five years immediately preceding the date of filing the naturalization application.[8] See INA 316(a). See Part D, General Naturalization Requirements [12 USCIS-PM D]. Naturalization on the basis of marriage applies to spouses of U.S. citizens who have been LPRs for three years immediately preceding the date of filing the naturalization application and who have lived in marital union with their citizen spouses for those three years.[9] See INA 319(a).

2. Spouses of Military Members who are or will be Stationed or Deployed Abroad (INA 319(b))

The law permits expedited naturalization in the United States for eligible spouses of U.S. citizen service members who are or will be stationed or deployed abroad.[10] See INA 319(b). This provision does not require any prior period of residence or specified period of physical presence within the United States for any LPR spouse of a U.S. citizen who is an employee of the United States Government (including a member of the U.S. armed forces) or recognized nonprofit organization who is stationed abroad in such employment for at least one year.[11] See Part G, Spouses of U.S. Citizens, Chapter 4, Spouses of U.S. Citizens Employed Abroad [12 USCIS-PM G.4].

In general, the applicant is required to be in the United States for his or her naturalization examination or interview and for taking the Oath of Allegiance for naturalization.[12] See INA 319(b). See 8 CFR 319.2.

Spouses of service members already accompanying and residing abroad with their military spouse may also qualify for naturalization through the general provision[13] See INA 316(a). or on the basis of their marriage to a U.S. citizen for three years.[14] See INA 319(a). Such spouses may be eligible for any naturalization proceeding abroad, to include interviews, filings, oaths, ceremonies, or other proceedings relating to naturalization.[15] See Part G, Spouses of U.S.

Citizens [12 USCIS-PM G]. See 8 U.S.C. 1443a.

3. Continuous Residence and Physical Presence while Residing Abroad (INA 319(e))

Certain eligible spouses of service members may count qualifying residence abroad as residence and physical presence in the United States for purposes of naturalization.[16] See INA 319(e). See 8 CFR 316.5(b)(6). See 8 CFR 316.6. This provision does not provide an independent basis for naturalization. The benefits of this provision only apply to an LPR who is eligible for naturalization through the general provision[17] See INA 316(a). or on the basis of his or her marriage to a U.S. citizen for three years.[18] See INA 319(a).

The spouse must meet all of the following conditions during such time abroad:

- The LPR is the spouse of a member of the U.S. armed forces;
- The LPR is authorized to accompany and reside abroad with the service member pursuant to the service member's official orders;[19] See Section A, General Provisions for Spouses, Children, and Parents of Military Members [12 USCIS-PM I.9(A)], for guidance on "official orders." and
- The LPR is accompanying and residing abroad with the service member in marital union.[20] See 8 CFR 316.5(b)(6). See 8 CFR 316.6.

The spouse is not required to be abroad at the time the officer makes such determination. For example, an applicant who is currently residing in the United States, but had previously resided abroad during the statutory residency or physical presence period, may count the time abroad as continuous residence and physical presence, if he or she meets the eligibility criteria.

The spouse of a service member who has been an LPR for five years and is applying for naturalization through the general provision does not need to establish that the service member is a U.S. citizen.[21] See INA 316. An applicant who is no longer married to a service member at the time of filing may still meet the residence and physical presence requirements if the LPR was married to the service member and met all the conditions above during the period of time in question.

The spouse of a service member who has been an LPR for three years and who is applying on the basis of his or her marriage for three years must establish that the service member has been a U.S. citizen for the required period.[22] See INA 319(a).

4. Overseas Naturalization for Spouses of Service Members

In addition to allowing certain time abroad to count towards the residence and physical presence requirements, INA 319(e) permits eligible spouses of service members to naturalize abroad without traveling to the United States for any

part of the naturalization process.

In general, to be eligible to naturalize abroad, the LPR spouse of a service member must:

- Be authorized to accompany the service member abroad per the service member's official orders;
- Be residing abroad with the service member in marital union; and
- Meet the requirements of either INA 316(a) or INA 319(a) at the time of filing the naturalization application, except for the residence and physical presence requirements.

Prior to the enactment of the overseas provisions in 2008, with some exceptions, a service member's LPR spouse residing abroad with the service member had to apply for naturalization through expedited naturalization provisions.[23] See INA 319(b). This applied to a spouse who was eligible through the general provision[24] See INA 316. or through three years of marriage to a U.S. citizen[25] See INA 319(a). but whose time abroad rendered him or her unable to meet the respective continuous residence or physical presence requirements.

An LPR filing as the spouse of a service member residing abroad[26] See INA 319(b). was exempt from the continuous residence and physical presence requirements, but he or she was still required to return to the United States for his or her interview, naturalization, and any other related procedure.[27] See Part G, Spouses of U.S. Citizens, Chapter 4, Spouses of U.S. Citizens Employed Abroad, Section F, In the United States for Examination and Oath of Allegiance [12 USCIS-PM G.4(F)]. The overseas naturalization provisions allows such an LPR spouse to apply for naturalization from abroad and complete any procedure relating to his or her application for naturalization while residing abroad.[28] See 8 U.S.C. 1443a.

5. Application and Filing

Form N-400, Application for Naturalization

Eligible spouses of members of the U.S. armed forces who live abroad and want to naturalize abroad should submit an Application for Naturalization (Form N-400) in accordance with the instructions on the form and with appropriate fee.[29] See 8 CFR 103.7.

Spouses should indicate that they seek to naturalize through the general provision[30] See INA 316(a). or on the basis of their marriage to a U.S. citizen for three years[31] See INA 319(a). and to rely on INA 319(e) to meet the applicable continuous residence and physical presence requirements. Spouses should also write in: "319(e) Overseas Naturalization," if so desired. Only those eligible spouses who prefer naturalization abroad should apply for that option. Spouses who prefer to apply for naturalization in the United States may still elect to do so.

Form DD-1278, Certificate of Overseas Assignment to Support Application to File Petition for Naturalization

Spouses should include Form DD-1278 along with their naturalization application. Form DD-1278 must be completed and signed by the military official certifying the applicant has "concurrent travel orders" and is authorized to join their spouse military service member abroad.

Fingerprint Cards (FD258)

The spouse should submit two completed fingerprint cards (FD-258). Spouses applying overseas must have their fingerprints taken at a U.S. military base, an overseas USCIS field office, or an American Embassy/Consulate. Spouses applying in the United States must have their fingerprints taken at a USCIS Application Support Center.

Filing Location

The spouse should review and submit his or her application in accordance with the form instructions. USCIS will permit spouses who are residing abroad and eligible for the provisions under INA 319(e) to file their naturalization applications with the USCIS overseas office having jurisdiction over the spouse's overseas residence.

C. Children of Military Members[32] This section describes certain benefits on residence, lawful admission, and overseas naturalization for children of service members. See Part H, Children of U.S. Citizens [12 USCIS-PM H], for guidance on the general naturalization and acquisition of citizenship provisions.

The table below serves as a quick reference guide to certain residence, physical presence, and overseas naturalization provisions for children of service members. The paragraphs that follow the table provide further guidance on each provision.

Residence, Lawful Admission, and Overseas Naturalization for Children of Members of the U.S. Armed Forces				
INA Section [33] **See 8 CFR 320.2 and 8 CFR 322.2.**	**Place of Residence**	**Lawful Admission**	**Treatment of Time Residing Abroad**	**Automatic Citizenship or Overseas Naturalization**
320	United States or Abroad	Must be LPR	Residence with U.S. citizen parent serving is treated as residence in United States	May acquire automatic citizenship (must take oath in the United States)
		No lawful	Must reside with U.S.	May complete entire

322	Abroad	admission required	citizen parent serving abroad	naturalization process from abroad

1. Children of Service Members Residing in the United States (INA 320)

Children of members of the U.S. armed forces residing in the United States may automatically acquire citizenship.[34] See INA 320. The child must be under 18 years of age and must be an LPR in order to qualify. In order to obtain a Certificate of Citizenship, a child who has automatically acquired citizenship must follow the instructions on the Application for Certificate of Citizenship (Form N-600).[35] See Part H, Children of U.S. Citizens, Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320) [12 USCIS-PM H.4].

2. Children of Service Members Residing Abroad (INA 322)

In general, INA 322 provides that a parent who is a U.S. citizen (or, if the citizen parent has died during the preceding five years, a citizen grandparent or citizen legal guardian) may apply for naturalization on behalf of a child born and residing outside of the United States who has not acquired citizenship automatically under INA 320. The child must naturalize before he or she reaches 18 years of age.

The general criteria to qualify under INA 322 include that the child must be temporarily present in the United States pursuant to a lawful admission in order to complete the naturalization. The child's qualifying U.S. citizen parent must also have been physically present in the United States or its outlying possessions for at least 5 years (2 of which after the age of 14).[36] See Part H, Children of U.S. Citizens, Chapter 5, Child Residing Outside of the United States (INA 322), Section C, Physical Presence of the U.S. Citizen Parent or Grandparent [12 USCIS-PM H.5(C)].

On January 28, 2008, INA 322 was amended to permit certain eligible children of members of the armed forces to become naturalized U.S. citizens without having to travel to the United States for any part of the naturalization process.[37] See the National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181, 122 Stat. 3.

The amendments benefit children of U.S. citizen members of the military who are accompanying their parent abroad on official orders.[38] See Section A, General Provisions for Spouses, Children, and Parents of Military Members [12 USCIS-PM I.9(A)], for guidance on "official orders." Specifically, INA 322(d) provides that:

- Such children are not required to have a lawful admission or be present in the United States; and
- The U.S. citizen service member who is the child's parent may count any period of time he or she has resided abroad on official orders as physical presence in the United States.

These benefits are available only to biological, legitimated, or adopted children of U.S. citizen members of the U.S. armed forces and do not apply to step-children of the U.S. citizen parent. This is because the definition of "child" applicable to citizenship and naturalization provisions does not include step-children. The biological or legitimated child of a U.S. citizen parent (and member of the U.S. armed forces) must meet the requirements in INA 101(c)(1). An adopted child must meet the requirements for adopted children.[39] See Part H, Children of U.S. Citizens, Chapter

2, Definition of Child for Citizenship and Naturalization [12 USCIS-PM H.2]. See INA 101(b)(1)(E), (F), or (G).

USCIS will ensure that the child of a member of the U.S. armed forces is not already a U.S. citizen (has not acquired automatic citizenship[40] See INA 320.) prior to making a determination that he or she qualifies for naturalization through INA 322.

3. Lawful Admission and Maintenance Status Not Required (INA 322(d))

The child of a service member who is residing abroad with the service member per official orders is exempt from the temporary physical presence, lawful admission, and maintenance of lawful status requirements.[41] See INA 322(d). See INA 322(a)(5) for the physical presence, lawful admission, and maintenance of lawful status requirements.

4. Treatment of Physical Presence of U.S. Citizen Parent Residing Abroad

Any period of time the U.S. citizen service member who is the child's parent is residing or has resided abroad will be treated as physical presence in the United States if:

- The child is authorized to accompany and reside abroad with the service member per official orders;
- The child is accompanying and residing abroad with the service member; and
- The service member is residing or has resided abroad per official orders.

The first two conditions above are the triggering events that allow any period of time abroad to count as physical presence in the United States for the U.S. citizen parent.[42] See INA 322(a)(2)(A).

If the child is residing abroad with his or her U.S. citizen parent per official orders at the time of filing the Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K), then any previous time the parent has resided abroad on official orders will be treated as physical presence in the United States regardless of whether the child resided with the parent.

5. Overseas Naturalization for Children Eligible under INA 322

The child of a service member who is on official orders authorizing the child to accompany and reside with that parent is not required to be an LPR or to have any other kind of lawful admission in the United States. The child may complete his or her entire naturalization process, to include filing and oath, while residing abroad.[43] See INA 322(d).

6. Application and Filing

Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322

To apply for citizenship for eligible children who live abroad and meet the requirements under INA 322, applicants must submit an Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K) in accordance with the instructions on the form and with appropriate fee.[44] See 8 CFR 103.7.

Evidence of Residence Abroad

The applicant may show that the child resides abroad on official orders with the U.S. citizen-parent service member by submitting a copy of the Permanent Change of Station (PCS) orders that include the child's name.

If the PCS orders do not specifically name the applicant beyond reference to "child" or "dependent," then also include a copy of the service member's Form DD1172 (DEERS Enrollment), naming the child.

Filing Location

Applicants must submit Form N-600K in accordance with the instructions on the form. USCIS will permit such applications to be filed with the USCIS overseas office having jurisdiction over the applicant's overseas residence.[45] See 8 U.S.C. 1443a.

D. Naturalization for Surviving Spouse, Child, or Parent of Service Member (INA 319(d))

The spouse, child, or parent of a deceased U.S. citizen member of the U.S. armed forces who died as the result of his or her honorable service may be eligible for naturalization as the surviving relative of the service member. This includes surviving relatives of service members who were granted posthumous citizenship.[46] See INA 319(d).

The surviving spouse must have been living in marital union with the U.S. citizen service member spouse and must not have been legally separated at the time of his or her death. The spouse, however, remains eligible for naturalization if the spouse has remarried since the service member's death.[47] See 8 CFR 319.3.

The surviving spouse, child, or parent must meet the general naturalization requirements, except for the residence or physical presence requirements in the United States.

Appendix 1

The table below provides some of the major legislative amendments that have aimed at assisting qualified military personnel and their eligible family members to become U.S. citizens or to acquire other immigration benefits, or both.

Some Legislative Amendments Assisting Military Members and their Eligible Relatives to Become U.S. Citizens or to Acquire Other Immigration Benefits
Act of May 9, 1918 (40 Stat. 512)
- Accorded World War I servicemen certain exemptions from the then existing naturalization requirements - First statute to provide for overseas processing; however, petitions that were filed and not acted upon by the courts were declared invalid before May 25, 1932[48] See Application of Campbell, 5 F.2d 247 (E.D. Wash. 1925). See Op. Sol. of Labor, Jan, 1926, CO file 79/9.
Modifications of 1918 Act[49] See Acts of July 19 and November 6, 1919, May 26, 1926, March 4, 1929, May 25, 1932, June 24, 1935, August 23, 1937, June 21, 1939, December 7, 1942.
- Under certain circumstances resident aliens who had departed from the United States and had served honorable in the military or naval forces of an allied country during World War I were granted special naturalization
Second War Powers Act of March 27, 1942 (amending Nationality Act of 1940)
- Provided for the expeditious naturalization of members of the U.S. armed forces serving in the United States and abroad - Provided for the naturalization of non-citizens serving during the war; the law permitted naturalization of those who did not meet requirements - Section 702, authorized the actual naturalization of World War II servicemen outside the United States - First time the Service had administrative authority to conduct naturalizations
Legislation of December 7, 1942 (amending Nationality Act of 1940)
- Addition of section 323a - Granted special naturalization privileges to World War I veterans - Embraced persons who served with the United States military or naval forces at any time after April 20, 1898, and before July 5, 1902 (Spanish-American War), as well as persons who served on the Mexican border between June 1916 and April 1917 as members of the Regular Army or National Guard (expired December 8, 1943)
Act of June 1, 1948; Immigration and Nationality Act

- Added section 324A to the Act of October 14, 1940 (Nationality Act of 1940)
- Revised, modified, and made permanent the earlier provisions for the expeditious naturalization of persons who served honorably in the United States armed forces during either World War I or II

Lodge Act, June 30, 1950 (64 Stat. 316)

- Was periodically extended during the 1950s, finally expiring on July 1, 1959
- The Act authorized naturalization under INA 329 of an alien who enlisted or reenlisted overseas under the terms of the Act; subsequently entered the United States, American Samoa, Swains Island, or the Canal Zone pursuant to military orders; completed five years of service; and was honorably discharged

Korean Hostilities; Act of June 30, 1953 (Pub. L. 86)

- Provided for the expeditious judicial naturalization of aliens, upon completion of at least 90 days' active and honorable service in the United States Armed Forces during a specified period (June 25, 1950 - July 1, 1955) extending beyond the termination date of the Korean conflict
- Under the statute, all petitions had to be filed before January 1, 1956

Vietnam Hostilities Act of October 24, 1968 (82 Stat. 1343)

- Including Vietnam Hostilities to add as qualifying, service during a period beginning February 28, 1961, and ending on the termination fixed by the President
- By Executive Order 12081, September 18, 1978, the President terminated the period of Vietnam hostilities as of October 15, 1978
- Allowed the designation by executive order such periods when the armed forces of the United States are engaged in armed conflict with a hostile foreign force

Grenada 15 Executive Order 12582 (February 2, 1987)[50] See Executive Order 12582 signed on February 2, 1987 (52 FR 3395, February 4, 1987). In consideration of Matter of Reyes, 910 F. 2d 611 (9th Cir. 1990), Executive Order 12582 was revoked by Executive Order 12913, effective February 2, 1987, (59 FR 23115, May 4, 1994).

- Although President Reagan designated the Grenada campaign as a period of hostilities, a federal court invalidated it entirely because, in contravention of statutory guidelines for such designations, the executive order attempted to limit the expedited naturalization benefit to persons who served in certain geographic areas and the record showed that the President would not have designated the campaign as a period of hostilities without the geographic limitations

Naturalization of Natives of the Philippines (WWII Service), Sec. 405 of Pub. L. 101-649

- Addressed by Congress in 1990 by amending INA 329 (IMMACT90)

- Such veterans were exempted from the requirement of having been admitted to lawful permanent residence to the United States or having enlisted or reenlisted in the United States
- Subsequent amendments enabled naturalization processing to be conducted in the Philippines
- Only applied to applications filed by February 2, 1995

Hmong Veterans' Naturalization Act of 2000

- For Hmong guerilla units that aided the U.S. military during the Vietnam War era.
- Provided an exemption from the English language requirement and special consideration for civics testing for Laotian refugees who supported the U.S. armed forces as members of guerrilla or irregular forces in Laos during the Vietnam War period of hostilities
- Only applied to naturalization applications filed by a veteran or spouse, within three years after May 26, 2000, or by a veteran's widow within three years after November 1, 2000

National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136)

- Pub. L. 108-136 was enacted on November 24 ,2003 and amended certain military-related immigration provisions of the INA, to include:
- Reduced the required period of military service from three years to one year under INA 328
- Exempted all fees from naturalization applications filed under INA 328 and 329 by eligible service members and certain veterans
- Added provision that citizenship obtained through INA 328 and 329 may be revoked if the person is separated from the U.S. armed forces under other than honorable conditions before the person has served for a period or periods aggregating five years
- Added under 8 U.S.C. 1443a that DHS must ensure that any filings, interviews, oath ceremonies, or other proceedings relating to naturalization of service members and certain military family members are available abroad through U.S. embassies, consulates, and U.S. military installations overseas as practical
- Extended benefits under INA 329(a) to those who serve or served as a member of the Selected Reserve of the Ready Reserve
- Extended certain immigration benefits to surviving spouses, children and parents of U.S. citizen service members (including those granted citizenship posthumously under INA 329A)[51] See Sec. 1703 of PL 108-136.

National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181)

- Pub. L. 110-181 was enacted on January 28, 2008 and amended certain military-related immigration provisions of the INA focused on qualifying spouses or children of members of the U.S. armed forces, to include:
- Added INA 284(b) to make clear that the Lawful Permanent Resident status of a service member's spouse or child is not jeopardized because the spouse or child

resided abroad, as authorized by official orders, with the service member. This provision clarifies that USCIS must not treat such absences as abandonment or relinquishment of the spouse or child's Lawful Permanent Resident (LPR) Status.[52] See Sec. 673 of PL 110-181.

- Added INA 319(e) to allow the LPR spouse of a service member to count any qualifying time spent abroad on official orders as continuous residence and physical presence in the United States. Also permits the spouse to complete the naturalization process overseas
- Added INA 322(d) to allow the U.S. citizen parent and service member of a child filing for naturalization to count time abroad under military orders as physical presence in the United States. Also permits the child to complete the naturalization process overseas

Kendell Frederick Citizenship Assistance Act (KFCAA) (Pub. L. 110-251)

- The KFCAA was enacted on June 26, 2008
- Requires DHS to use the fingerprints provided by an individual at the time the individual enlisted in the U.S. armed forces (referred to as "OPM" or "enlistment" fingerprints) or fingerprints the applicant previously submitted to USCIS for another application to satisfy the fingerprint requirement
- If DHS determines that new biometrics would result in more timely and effective adjudication of the individual's naturalization application, DHS must inform the applicant of this determination and provide the applicant with information on how to submit fingerprints.
- Requires USCIS to adjudicate applications for naturalization filed by active-duty members of the U.S. armed forces serving abroad within 180 days of the receipt of responses to all background checks

Military Personnel Citizenship Processing Act (MPCPA) (Pub. L. 110-382)

- The MPCPA was enacted on October 9, 2008
- Requires USCIS to complete applications for naturalization filed by service members (and certain spouses) within six months of receipt or notify the applicant of the delay
- Six-month notification letters must include the reason for delay and an estimated adjudication date

Footnotes

1.

See the National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181, 122 Stat. 3, which amended INA 284, INA 319, and INA 322.

2.

See INA 284(b).

3.

See INA 319(e).

4.

See INA 322(d).

5.

See INA 319(e) and INA 322(d).

6.

This section describes certain benefits on residence, physical presence, and overseas naturalization for spouses of service members. See Part G, Spouses of U.S. Citizens [12 USCIS-PM G], for guidance on the general spousal naturalization provisions.

7.

See INA 316(a). See Part G, Spouses of U.S. Citizens [12 USCIS-PM G].

8.

See INA 316(a). See Part D, General Naturalization Requirements [12 USCIS-PM D].

9.

See INA 319(a).

10.

See INA 319(b).

11.

See Part G, Spouses of U.S. Citizens, Chapter 4, Spouses of U.S. Citizens Employed Abroad [12 USCIS-PM G.4].

12.

See INA 319(b). See 8 CFR 319.2.

13.

See INA 316(a).

14.

See INA 319(a).

15.

See Part G, Spouses of U.S. Citizens [12 USCIS-PM G]. See 8 U.S.C. 1443a.

16.

See INA 319(e). See 8 CFR 316.5(b)(6). See 8 CFR 316.6.

17.

See INA 316(a).

18.

See INA 319(a).

19.

See Section A, General Provisions for Spouses, Children, and Parents of Military Members [12 USCIS-PM I.9(A)], for guidance on “official orders.”

20.

See 8 CFR 316.5(b)(6). See 8 CFR 316.6.

21.

See INA 316.

22.

See INA 319(a).

23.

See INA 319(b).

24.

See INA 316.

25.

See INA 319(a).

26.

See INA 319(b).

27.

See Part G, Spouses of U.S. Citizens, Chapter 4, Spouses of U.S. Citizens Employed Abroad, Section F, In the United States for Examination and Oath of Allegiance [12 USCIS-PM G.4(F)].

28.

See 8 U.S.C. 1443a.

29.

See 8 CFR 103.7.

30.

See INA 316(a).

31.

See INA 319(a).

32.

This section describes certain benefits on residence, lawful admission, and overseas naturalization for children of service members. See Part H, Children of U.S. Citizens [12 USCIS-PM H], for guidance on the general naturalization and acquisition of citizenship provisions.

33.

See 8 CFR 320.2 and 8 CFR 322.2.

34.

See INA 320.

35.

See Part H, Children of U.S. Citizens, Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320) [12 USCIS-PM H.4].

36.

See Part H, Children of U.S. Citizens, Chapter 5, Child Residing Outside of the United States (INA 322), Section C, Physical Presence of the U.S. Citizen Parent or Grandparent [12 USCIS-PM H.5(C)].

37.

See the National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181, 122 Stat. 3.

38.

See Section A, General Provisions for Spouses, Children, and Parents of Military Members [12 USCIS-PM I.9(A)], for guidance on "official orders."

39.

See Part H, Children of U.S. Citizens, Chapter 2, Definition of Child for Citizenship and Naturalization [12 USCIS-PM H.2]. See INA 101(b)(1)(E), (F), or (G).

40.

See INA 320.

41.

See INA 322(d). See INA 322(a)(5) for the physical presence, lawful admission, and maintenance of lawful status requirements.

42.

See INA 322(a)(2)(A).

43.

See INA 322(d).

44.

See 8 CFR 103.7.

45.

See 8 U.S.C. 1443a.

46.

See INA 319(d).

47.

See 8 CFR 319.3.

48.

See *Application of Campbell,* 5 F.2d 247 (E.D. Wash. 1925). See *Op. Sol. of Labor*, Jan, 1926, CO file 79/9.

49.

See Acts of July 19 and November 6, 1919, May 26, 1926, March 4, 1929, May 25, 1932, June 24, 1935, August 23, 1937, June 21, 1939, December 7, 1942.

50.

See Executive Order 12582 signed on February 2, 1987 (52 FR 3395, February 4, 1987). In consideration of *Matter of Reyes*, 910 F. 2d 611 (9th Cir. 1990), Executive Order 12582 was revoked by Executive Order 12913, effective February 2, 1987, (59 FR 23115, May 4, 1994).

51.

See Sec. 1703 of PL 108-136.

52.

See Sec. 673 of PL 110-181.

Part J - Oath of Allegiance

Chapter 1 - Purpose and Background

A. Purpose

Before becoming a United States citizen, an eligible naturalization applicant must take an oath of renunciation and allegiance (Oath of Allegiance) in a public ceremony.[1] See INA 337. See 8 CFR 337.1(a). The applicant must establish that it is his or her intention, in good faith, to assume and discharge the obligations of the Oath of Allegiance.[2] See INA 337. See 8 CFR 337.1(c). Under certain circumstances, an "Affirmation of Allegiance" is the same as an Oath of Allegiance. See 8 CFR 337.1(b). The applicant must also establish that his or her attitude toward the Constitution and laws of the United States makes the applicant capable of fulfilling the obligations of the oath.[3] See 8 CFR 337.1(c).

B. Background

During the naturalization interview, the applicant signs the naturalization application to acknowledge his or her willingness and ability to take the Oath of Allegiance and to accept certain obligations of United States citizenship. Under certain circumstances, an applicant may qualify for a modification or waiver of the oath.[4] See Chapter 3, Oath of Allegiance Modifications and Waivers [12 USCIS-PM J.3]. In such cases, an officer draws a line through the designated modified portions of the oath and the applicant is not required to recite the deleted portions.[5] See 8 CFR 337.1(b).

Applicants must generally recite the Oath of Allegiance orally during a public ceremony. Merely signing the naturalization application and a copy of the oath does not make the applicant a U.S. citizen.

C. Legal Authorities

- INA 310; 8 CFR 310.1 – Naturalization authority
- INA 337; 8 CFR 337 – Oath of Renunciation and Allegiance
- Public Law 106-448 – Waiver of Oath of Renunciation and Allegiance for Naturalization of Aliens having Certain Disabilities Act of 2000

Footnotes

1.

See INA 337. See 8 CFR 337.1(a).

2.

See INA 337. See 8 CFR 337.1(c). Under certain circumstances, an "Affirmation of Allegiance" is the same as an Oath of Allegiance. See 8 CFR 337.1(b).

3.

See 8 CFR 337.1(c).

4.

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

5.

See 8 CFR 337.1(b).

Chapter 2 - The Oath of Allegiance

A. Oath of Allegiance

In general, naturalization applicants take the following oath in order to complete the naturalization process:

"I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God."[1] See INA 337(a). See 8 CFR 337.1(a).

The Oath of Allegiance is administered in the English language, regardless of whether the applicant was eligible for a language waiver. However, an applicant may have a translator to translate the oath during the ceremony. In addition, an applicant may request a modification to the oath because of a religious objection or an inability or unwillingness to take an oath or recite the words "under God."[2] See Chapter 3, Oath of Allegiance Modifications and Waivers [12 USCIS-PM J.3]. An applicant or a designated representative may request an oath waiver when the applicant is unable to understand the meaning of the oath.

B. Authority to Administer the Oath

The following persons have the authority to administer the Oath of Allegiance:

- The Director;
- The Deputy Director;

- District Director;
- Field Office Director; or
- Courts.[3] See INA 310(b). The authority to administer the Oath of Allegiance is delegated by the Secretary of Homeland Security

Other USCIS supervisory officers may act on behalf of the District Director or Field Office Director on a temporary basis in case of absence or if the position is vacant.[4] See INA 310(a). See 8 CFR 310.1(b) and 8 CFR 337.2. In addition, Immigration Judges may also administer the Oath of Allegiance in administrative ceremonies.

C. Renunciation of Title or Order of Nobility

Any applicant who has any titles of heredity or positions of nobility in any foreign state must renounce the title or the position. The applicant must expressly renounce the title in a public ceremony and USCIS must record the renunciation as part of the proceedings.[5] See INA 337. Failure to renounce the title of position shows a lack of attachment to the Constitution.

In order to renounce a title or position, the applicant must add one of the following phrases to the Oath of Allegiance:

- I further renounce the title of (give title or titles) which I have heretofore held; or
- I further renounce the order of nobility (give the order of nobility) to which I have heretofore belonged.[6] See 8 CFR 337.1(d).

An applicant whose country of former nationality or origin abolished the title by law, or who no longer possesses a title, is not required to drop that portion of his or her name that originally designated such title as a part of his or her naturalization.[7] See Society Vinicole de Champagne v. Mumm, 143 F. 2d 240 (1944).

Footnotes

1.

See INA 337(a). See 8 CFR 337.1(a).

2.

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

3.

See INA 310(b). The authority to administer the Oath of Allegiance is delegated by the Secretary of Homeland Security

4.

See INA 310(a). See 8 CFR 310.1(b) and 8 CFR 337.2.

5.

See INA 337.

6.

See 8 CFR 337.1(d).

7.

See *Society Vinicole de Champagne v. Mumm*, 143 F. 2d 240 (1944).

Chapter 3 - Oath of Allegiance Modifications and Waivers

The table below serves as a quick reference guide on general requirements for oath modifications and oath waiver. The sections and paragraphs that follow the table provide further guidance on each modification and oath waiver.

Oath of Allegiance Modifications and Waiver		
Request	**Permitted Modifications to Oath**	**Testimony or Evidence**
Modified Oath for Religious or Conscientious Objections	Deletion of either or both of the following clauses: Bearing arms on behalf of the United States if required by law [INA 337(a)(5)(A)]; and Performing noncombatant service in the U.S. armed forces when required by law [INA 337(a)(5)(B)]	Must show opposition to clause (or clauses) based on religious training and belief or deeply held moral or ethical code. Applicant may provide an attestation or witness statement.
Affirmation of Allegiance in Lieu of Oath	Substitution of the words "solemnly affirm" for the words "on oath" and no recitation of the words "so help me God" [8 CFR 337.1(b)]	Not Required

Waiver of the Oath	Requirement to take the Oath of Allegiance may be waived	Evaluation by medical professional stating inability to understand (or communicate) the meaning of the oath due to a medical condition

A. Modified Oath for Religious or Conscientious Objections

1. General Modifications to the Oath

An applicant may request a modified oath that does not contain one or both of the following clauses:

- To bear arms on behalf of the United States when required by the law; and
- To perform noncombatant service in the U.S. armed forces when required by the law.[1] See INA 337(a)(5)(A) and INA 337(a)(5)(B).

In order to modify the oath, the applicant must demonstrate, by clear and convincing evidence, that he or she is unwilling or unable to affirm to these sections of the oath based on his or her religious training and belief, which may include a deeply held moral or ethical code.[2] The Supreme Court has addressed the meaning of "religious training and belief" in the context of exemptions from military service under section 6(j) of the Universal Military Training and Service Act." See Welsh v. United States, 398 U.S. 333 (1970) (holding that Welsh, who characterized his beliefs as nonreligious and expressed doubt in the existence of a Supreme Being, was entitled to a conscientious objector exemption to military service because his beliefs occupied a parallel place in his life to that of religious convictions); United States. v. Seeger, 380 U.S. 163 (1965) (stating that the applicable test for determining whether someone's belief was based on religious training and belief was whether the belief was sincere and meaningful and "occup[ied] in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption"). See INA 337(a) which contains virtually the same language regarding religious training and belief as was addressed by the Supreme Court in Welsh and Seeger.

There is no exemption from the clause "to perform work of national importance under civilian direction when required by the law."[3] See INA 337(a)(5)(C).

2. Qualifying for Modification to the Oath

Three-part Test

In order for an applicant to qualify for a modification based on his or her "religious training and belief," the applicant must satisfy a three-part test. An applicant must establish that:

- He or she is opposed to bearing arms in the armed forces or opposed to any type of Service in the armed forces;
- The objection is grounded in his or her religious principles, to include other belief systems similar to traditional religion or a deeply held moral or ethical code; and
- His or her beliefs are sincere, meaningful, and deeply held.[4] See INA 337. See Welsh v. United States, 398 U.S. 333 (1970). See United States. v. Seeger, 380 U.S. 163 (1965).

The applicant is not eligible for a modified oath when he or she is opposed to a specific war. Religious training or belief does not include essentially political, sociological, or philosophical views. An applicant whose objection to war is based upon opinions or beliefs about public policy and the practicality or desirability of combat, or whose beliefs are not deeply held, does not qualify for the modification of the oath.

Applicant is Not Required to Belong to a Church or Religion

In addition, qualification for the exemption is not dependent upon membership in a particular religious group, nor does membership in a specific religious group provide an automatic modification to the oath. The applicant is not required to:

- Belong to a specific church or religious denomination;
- Follow a particular theology or belief; or
- Have religious training.

However, the applicant must have a sincere and meaningful belief that has a place in the applicant's life that is equivalent to that of a religious belief.[5] See Welsh v. United States, 398 U.S. 333 (1970). See United States. v. Seeger, 380 U.S. 163 (1965). Because of this belief, for example, the applicant's conscience may not rest or be at peace if allowed to become an instrument of war.[6] See Welsh v. United States, 398 U.S. 333 (1970).

Evidence Establishing Eligibility

An applicant may provide, but is not required to provide, an attestation from a religious organization (or similar organization), witness statement, or any other evidence to establish eligibility. An applicant's oral testimony or written statement may be sufficient to qualify for the modification. An officer may ask an applicant questions regarding the applicant's beliefs in order to determine whether the applicant is eligible for the modification of the oath, to include, a review of the following factors:

- General pattern of pertinent conduct and experiences;
- Nature of applicant's objection and principles on which objection is based;
- Training in the home or a religious organization;
- Participation in religious or other similar activities; and
- Whether the applicant gained his or her ethical or moral beliefs through training, study, self-contemplation, or other activities comparable to formulating traditional religious beliefs in the home or through a religious organization.

An officer must not question the validity of what an applicant believes or the existence or truth of the concepts in which the applicant believes.[7] See United States. v. Seeger, 380 U.S. 163 (1965): "The validity of what he believes cannot be questioned. Some theologians, and indeed some examiners, might be tempted to question the existence of the registrant's 'Supreme Being' or the truth of his concepts. But these are inquiries foreclosed to Government."

Results

Depending on the specific modified oath, USCIS deletes the relevant clauses and the applicant recites the modified form of the oath at the regularly scheduled public naturalization ceremony.[8] See Chapter 1, Purpose and Background, Section A, Purpose [12 USCIS-PM J.1(A)]. See INA 337. See 8 CFR 337.1(b). An applicant is required to take the full oath if the applicant does not qualify for the modification. Otherwise, the applicant is not eligible for naturalization.

B. Affirmation of Allegiance in Lieu of Oath

An applicant may request an affirmation in lieu of an oath. The applicant may request this affirmation in lieu of an oath for any reason.[9] The INA indicates that the affirmation is requested "by reason of religious training and belief (or individual interpretation thereof), or for other reasons of good conscience." See INA 337(a). In these cases:

- The applicant substitutes the words "solemnly affirm" for the words "on oath"; and
- The applicant does not recite the words "so help me God."[10] See 8 CFR 337.1(b).

USCIS grants this modification solely upon the applicant's request. The applicant is not required to establish that the request is based solely on his or her religious training and belief. Applicants are not required to provide any documentary evidence or testimony to support a request to substitute the words "on oath" or "so help me God."

USCIS must not require the applicant to recite the deleted portions of the Oath of Allegiance at the ceremony. The officer informs the applicant that he or she is not required to recite the deleted portions and that the applicant may take the oath in the modified form.

C. Waiver of the Oath

1. Oath of Allegiance Waiver

Oath Waiver Based on a Medical Disability

USCIS may waive the Oath of Allegiance for an applicant who is unable to understand or to communicate an understanding of its meaning because of a physical or developmental disability or mental impairment.[11] See INA 337(a). See Pub. L. 106-448 enacted on July 12, 2000.

An applicant for whom USCIS granted an oath waiver is considered to have met the requirement of attachment to the principles of the Constitution of the United States, and be well disposed to the good order and happiness of the United States for the required period.

In order for USCIS to adjudicate a request for an oath waiver because of a medical condition, an applicant with the assistance of a legal guardian, surrogate, or designated representative must provide a written request and a written evaluation by a certified medical professional. An applicant is not required to submit a specific form to request an oath waiver.[12] The oath waiver requirements are distinct from the requirements for the medical exception to the English and civics requirements for naturalization under INA 312(b), which requires an applicant to submit a medical exception form. See Part E, English and Civics Testing and Exceptions, Chapter 3, Medical Disability Exception (Form N-648) [12 USCIS-PM E.3]. USCIS accepts an oath waiver request at any point of the naturalization process.

Oath Waiver for Children under 14 Years of Age

The INA permits USCIS to waive the taking of the Oath of Allegiance if USCIS determines the person is unable to understand its meaning.[13] See INA 337(a). See 8 CFR 341.5(b). USCIS has determined that children under the age of 14 are generally unable to understand the meaning of the oath. Accordingly, USCIS waives the oath requirement for a child younger than 14 years of age. If USCIS waives the oath requirement, USCIS issues a Certificate of Citizenship after the officer approves the application.[14] See Part H, Children of U.S. Citizens [12 USCIS-PM H].

2. Legal Guardian, Surrogate, or Designated Representative

When 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. USCIS waives the Oath of Allegiance and the legal guardian, surrogate or designated representative attests to the applicant's eligibility for naturalization.[15] See Chapter 3, Oath

of Allegiance Modifications and Waivers [12 USCIS-PM J.3]. In addition to oath waiver, this process may require accommodations including off-site examinations.

In order for USCIS to adjudicate a request for an oath waiver, an applicant, with the assistance of a legal guardian, surrogate, or designated representative must provide a written request and a written evaluation by a certified medical professional. USCIS accepts a request for the waiver at any point in the naturalization process until the time of the oath ceremony. As an accommodation, field offices should work with the legal guardian, surrogate or designated representative before the initial examination to obtain all the necessary documentation.

When an oath waiver is provided, a legal guardian or surrogate, or designated representative[16] See Chapter 3, Oath of Allegiance Modifications and Waivers [12 USCIS-PM J.3]. signs on behalf of an applicant who is unable to understand or communicate an understanding of the Oath of Allegiance because of a disability. The guardian, surrogate, or representative acts on behalf of an applicant with a disability at every stage of the naturalization examination. The guardian, surrogate, or representative files the application on behalf of the applicant and must have knowledge of the facts supporting the applicant's eligibility for naturalization.

The guardian, surrogate, or representative addresses every requirement for naturalization and bears the burden of establishing the applicant's eligibility for naturalization.

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;[17] A legal guardian or surrogate may act on behalf of an applicant regardless of the legal guardian or surrogate's immigration status or whether he or she is a family member. 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:[18] If there is a conflict in priority between two or more persons seeking to represent the applicant, and the individuals share the same degree of familial relationship, USCIS gives priority to the person who is older.

- 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)

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.

USCIS continues an application where the family member acting as a designated representative is not a U.S. citizen. USCIS explains to the family member why he or she is not qualified to act as a designated representative and offers the applicant an opportunity to bring another person who may qualify.

3. Written Evaluation

In general, USCIS requires a written evaluation to establish the applicant's inability to take the Oath of Allegiance. An applicant or designated representative requesting an oath waiver submits a written evaluation completed by a medical professional licensed to practice in the United States.

The written evaluation must:

- Be completed by the medical professional who has had the longest relationship with the applicant or is most familiar with the applicant's medical history;
- Express the applicant's medical condition and disability in terms that an officer and the designated representative can understand (except for medical definitions or terms to describe the disability);
- State why and how the applicant is unable to understand or communicate an understanding of the meaning of the Oath of Allegiance because of the disability;
- Indicate the likelihood of the applicant being able to communicate or demonstrate an understanding of the meaning of the Oath of Allegiance in the near future; and
- Be signed by the medical professional completing the written evaluation and contain his or her state license number authorizing the medical professional to practice in the United States.

USCIS will not require medical professionals to provide an explanation of how they reached their diagnosis, a listing of clinical or laboratory techniques used to reach the diagnosis, or supporting documentation to establish the claimed disability. USCIS, however, will require the medical professional to provide a thorough explanation of how the applicant's disability impairs his or her functioning so severely that the applicant is unable to demonstrate an understanding of the oath requirements or communicate an understanding of its meaning.

USCIS reserves the right to request documentation if there is a question upon examination about the applicant's disability and ability to understand the oath requirement. If USCIS approves the oath waiver, USCIS does not require the applicant to appear in a public ceremony.

Footnotes

1.

See INA 337(a)(5)(A) and INA 337(a)(5)(B).

2.

The Supreme Court has addressed the meaning of "religious training and belief" in the context of exemptions from military service under section 6(j) of the Universal Military Training and Service Act." See *Welsh v. United States*, 398 U.S. 333 (1970) (holding that Welsh, who characterized his beliefs as nonreligious and expressed doubt in the existence of a Supreme Being, was entitled to a conscientious objector exemption to military service because his beliefs occupied a parallel place in his life to that of religious convictions); *United States. v. Seeger*, 380 U.S. 163 (1965) (stating that the applicable test for determining whether someone's belief was based on religious training and belief was whether the belief was sincere and meaningful and "occup[ied] in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption"). See INA 337(a) which contains virtually the same language regarding religious training and belief as was addressed by the Supreme Court in Welsh and Seeger.

3.

See INA 337(a)(5)(C).

4.

See INA 337. See *Welsh v. United States*, 398 U.S. 333 (1970). See *United States. v. Seeger*, 380 U.S. 163 (1965).

5.

See *Welsh v. United States*, 398 U.S. 333 (1970). See *United States. v. Seeger*, 380 U.S. 163 (1965).

6.

See *Welsh v. United States*, 398 U.S. 333 (1970).

7.

See *United States. v. Seeger*, 380 U.S. 163 (1965): "The validity of what he believes cannot be questioned. Some theologians, and indeed some examiners, might be tempted to question the existence of the registrant's 'Supreme Being' or the truth of his concepts. But these are inquiries foreclosed to Government."

8.

See Chapter 1, Purpose and Background, Section A, Purpose [12 USCIS-PM J.1(A)]. See INA 337. See 8 CFR 337.1(b).

9.

The INA indicates that the affirmation is requested "by reason of religious training and belief (or individual interpretation thereof), or for other reasons of good conscience." See INA 337(a).

10.

See 8 CFR 337.1(b).

11.

See INA 337(a). See Pub. L. 106-448 enacted on July 12, 2000.

12.

The oath waiver requirements are distinct from the requirements for the medical exception to the English and civics requirements for naturalization under INA 312(b), which requires an applicant to submit a medical exception form. See Part E, English and Civics Testing and Exceptions, Chapter 3, Medical Disability Exception (Form N-648) [12 USCIS-PM E.3].

13.

See INA 337(a). See 8 CFR 341.5(b).

14.

See Part H, Children of U.S. Citizens [12 USCIS-PM H].

15.

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

16.

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

17.

A legal guardian or surrogate may act on behalf of an applicant regardless of the legal guardian or surrogate's immigration status or whether he or she is a family member.

18.

If there is a conflict in priority between two or more persons seeking to represent the applicant, and the individuals share the same degree of familial relationship, USCIS gives priority to the person who is older.

Chapter 4 - General Considerations for All Oath Ceremonies

A. USCIS Administrative Ceremony

USCIS field offices conduct administrative ceremonies at regular intervals as frequently as is necessary. USCIS must conduct ceremonies in such a manner as to preserve the dignity and significance of the occasion. In some instances, USCIS offices may conduct daily ceremonies where the examination, adjudication, and the oath take place on the same day. District Directors and Field Office Directors must ensure that administrative ceremonies conducted by USCIS in their districts comply with the USCIS "Model Plan for Naturalization Ceremonies."[1] See Chapter 5, Model Plan for Administrative Naturalization Ceremonies [12 USCIS-PM J.5].

An applicant must appear in person at a public ceremony unless USCIS excuses the appearance. USCIS designates the time and place for the ceremony and conducts the ceremony within the proper jurisdiction. USCIS presumes an applicant to have abandoned his or her naturalization application when the applicant fails to appear for more than one oath ceremony.[2] See 8 CFR 337.10. In such cases, USCIS executes and issues a motion to reopen and may deny the application if the applicant has not responded within 15 days.[3] See Part B, Naturalization Examination, Chapter 5, Motion to Reopen [12 USCIS-PM B.5]. See 8 CFR 335.3(a) and 8 CFR 337.

B. Derogatory Information Received before Oath or Failure to Appear

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;[4] See 8 CFR 335.5. or

- An applicant fails to appear for at least two ceremonies to take the Oath of Allegiance without good cause.[5] See 8 CFR 337.10.

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.[6] See 8 CFR 335.5.

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.

If the applicant overcomes the derogatory information and qualifies for naturalization, the officer approves the application 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.[7] See 8 CFR 336.1.

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.[8] See 8 CFR 337.10.

Footnotes

1.

See Chapter 5, Model Plan for Administrative Naturalization Ceremonies [12 USCIS-PM J.5].

2.

See 8 CFR 337.10.

3.

See Part B, Naturalization Examination, Chapter 5, Motion to Reopen [12 USCIS-PM B.5]. See 8 CFR 335.3(a) and 8 CFR 337.

4.

See 8 CFR 335.5.

5.

See 8 CFR 337.10.

6.

See 8 CFR 335.5.

7.

See 8 CFR 336.1.

8.

See 8 CFR 337.10.

Chapter 5 - Model Plan for Administrative Naturalization Ceremonies

The naturalization ceremony is a pivotal milestone in the naturalization process. USCIS aims to make administrative naturalization ceremonies positive, memorable moments in the lives of the participants. The significance of the Oath of Allegiance will be honored by USCIS policies and practices that reflect the special, unique nature of the occasion.

The following guidance provides USCIS officials with the Model Plan for Administrative Naturalization Ceremonies (model plan) for conducting administrative naturalization ceremonies in a meaningful and consistent manner.[1] This model plan applies only to administrative naturalization ceremonies involving an Application for Naturalization (Form N-400) where a USCIS designated official or an Immigration Judge administers the Oath of Allegiance. The model plan does not apply to administrative ceremonies involving children obtaining evidence of citizenship (Application for Citizenship, Form N-600, or Application for Citizenship and Issuance of Certificate Under Section 322, Form N-600K) or judicial naturalization ceremonies where a federal, state or local court administers the Oath of Allegiance.

A. U.S. Citizenship Welcome Packet

1. Contents of U.S. Citizenship Welcome Packet

To standardize the experience at naturalization ceremonies, USCIS created the U.S. Citizenship Welcome Packet (Form M-771) for distribution to every naturalization candidate participating in an administrative ceremony in the United States.[2] To the extent practicable, U.S. Citizenship Welcome Packet (Form M-771) will also be distributed to candidates participating in naturalization ceremonies overseas, subject to circumstances such as the location of the ceremony and the capacity of active military to carry the necessary materials in an active war zone.

The U.S. Citizenship Welcome Packet consists of the following:

- President’s Congratulatory Letter and Envelope;
- Department of State Form DS-11, Passport Application;
- Form M-767, Important Information for New Citizens;
- Form M-789, Oath of Allegiance/The Star Spangled Banner/Pledge of Allegiance Flier;
- Certificate Holder; and
- A Voter’s Guide to Federal Elections.

2. Distribution of U.S. Citizenship Welcome Packet

USCIS distributes the welcome packet to each person being naturalized either during the check-in process or after the ceremony program.[3] See Section B, Ceremony Check-in Process [12 USCIS-PM J.5(B)], and Section C, Ceremony Program [12 USCIS-PM J.5(C)]. USCIS can distribute the welcome packet before the naturalization candidate has been administered the Oath of Allegiance but only after a USCIS officer has determined that the applicant is eligible to take the Oath of Allegiance on the day of the ceremony.

Because the welcome packet contains information for naturalized citizens, USCIS employees must:

- Make a statement that an applicant does not become a U.S. citizen until he or she takes the Oath of Allegiance, regardless of the contents of the welcome packet, whenever distributed;
- Make a general statement about the contents of the welcome packet; and
- Answer the candidates' naturalization-related questions.

The welcome packet includes the official congratulatory letter of the President of the United States. That letter is the only congratulatory letter USCIS distributes nationwide at naturalization ceremonies. If the U.S. flag is distributed, it should be distributed exclusively to naturalization candidates.

USCIS field office leadership will determine, in consultation with the USCIS Ethics Office, whether materials and publications outside of the U.S. flag and the contents of the welcome packet are appropriate for distribution. Partisan publications, publications referencing a specific political group, and materials that contain commercial or religious solicitation or promotion of any kind must never be distributed to new citizens.

Other governmental entities and non-governmental entities must not distribute their materials and publications until after the USCIS official has concluded the administrative naturalization ceremony and has released the new citizens. Field leadership will determine, in consultation with the USCIS Ethics Office, whether outside organizations' materials are appropriate for distribution.[4] The Citizen's Almanac (Form M-76) and the Pocket-size Declaration of Independence and Constitution of the United States (Form M-654) must be made available to all interested naturalization candidates or newly naturalized citizens.

3. Citizen's Almanac and Pocket-size Declaration of Independence and Constitution

In addition, the Citizen's Almanac (Form M-76) and the Pocket-size Declaration of Independence and Constitution of the United States (Form M-654) must be made available to all interested naturalization candidates or newly naturalized citizens at the:

- Check-in process;
- Conclusion of the oath ceremony program; or
- Conclusion of the naturalization interview.

The preferred distribution method for on-site and off-site ceremonies is during the check-in process or at the conclusion of the oath ceremony. The items may be placed on a table in an area accessible to the naturalization candidates.

B. Ceremony Check-In Process

USCIS officers perform the ceremony check-in process before the start of the ceremony program. A USCIS officer reviews the responses on each naturalization candidate's Notice of Naturalization Oath Ceremony (Form N-445) and updates responses as necessary. Once each candidate's eligibility for naturalization is verified, the officer collects from each candidate any and all USCIS-issued travel documents and lawful permanent resident cards.

C. Ceremony Program

To standardize the naturalization ceremony experience, unless exempted, USCIS offices will implement these steps in all administrative ceremonies:[5] USCIS offices are exempt from implementing the ceremony program when conducting a home visit, or an expedited administrative naturalization ceremony. See Chapter 6, Judicial and Expedited Oath Ceremonies [12 USCIS-PM J.6].

- Play "Faces of America";[6] See USCIS Naturalization Ceremony Video for the Faces of America segment.
- Play the National Anthem, The Star Spangled Banner, instrumental or vocal version;[7] See USCIS Naturalization Ceremony Video for instrumental or vocal version of the National Anthem. USCIS offices may incorporate a live performance as an alternative to the version on the video.
- Opening (welcoming) remarks by Master of Ceremonies;[8] Opening (welcoming) remarks include, but are not limited to, an introduction of ceremony principals and an overview of the ceremony program.
- Announce the "call of countries";[9] The designated official reads aloud a list of countries represented by the naturalization candidates' former nationalities.
- Administer the Oath of Allegiance to the naturalization candidates;[10] See Chapter 2, The Oath of Allegiance [12 USCIS-PM J.2]. See INA 337. See 8 CFR 337.1(a).
- Keynote remarks by USCIS field leadership or guest speaker;[11] Keynote remarks must be politically neutral and may include, but are not limited to, the privileges, responsibilities, and importance of U.S. citizenship; the importance of civic principles within the U.S. government; the significance of swearing allegiance to the United States; and the theme of the ceremony.
- Play Presidential Congratulatory Remarks;[12] See USCIS Naturalization Ceremony Video for Presidential Congratulatory Remarks.
- Recite the Pledge of Allegiance;

- Concluding remarks by Master of Ceremonies or USCIS field leadership;[13] Concluding remarks may include, but are not limited to, expressing appreciation to those family and friends in attendance, acknowledging the achievement of the naturalized citizens, announcing the services of those governmental and non-governmental entities in attendance, and explaining the distribution method for the certificates of naturalization. and

- Present the Certificate of Naturalization (Form N-550).[14] USCIS field leadership and staff presents the Certificates of Naturalization to the naturalized U.S. citizens.

Field offices may also enhance the ceremony program with additional appropriate elements, such as with a rendition of "America the Beautiful."

D. Guest Speakers at Naturalization Ceremonies

USCIS welcomes participation from distinguished community members. A guest speaker may be a civic, governmental, or military leader, a Member of Congress, a judge, a DHS official, or person whom USCIS deems appropriate for the occasion.

USCIS field leadership of the USCIS office conducting the ceremony must review the qualifications of any potential guest speaker who is not a Department of Homeland Security (DHS) employee and approve of his or her role in the program before he or she speaks at an administrative naturalization ceremony. If USCIS headquarters selects a person to be a guest speaker at a USCIS field office's administrative naturalization ceremony, headquarters will review the person's qualifications before making the recommendation.

It is the responsibility of field leadership of the USCIS office conducting the administrative naturalization ceremony to preserve the solemnity and dignity of the occasion. When the guest speaker is selected and scheduled, field leadership must send the speaker written notice describing USCIS's expectations that appropriate remarks will focus on:

- Importance of U.S citizenship;

- New privileges (such as the ability to travel with a U.S. Passport, apply for a position in the Federal government, and to vote in federal elections);

- Responsibilities of U.S. citizenship (such as applying for a U.S. passport and registering to vote);

- Civic principles within the U.S. government;

- Significance of swearing allegiance to the United States; or

- Theme of the ceremony.[15] See internal USCIS guidance for further guidance on guest speakers.

Inappropriate remarks, including political (partisan or otherwise), commercial or religious statements, are not permitted.[16] If a guest speaker makes inappropriate remarks during an administrative naturalization ceremony, field Leadership should inform the speaker and elevate the issue up the field leadership chain. If the guest speaker does not indicate a willingness to modify his or her remarks in the future, field leadership should not accept requests from the person to speak at future administrative naturalization ceremonies.

USCIS must uphold the integrity of each administrative naturalization ceremony and ensure that it is a politically neutral event. The presence of candidates for public office at a naturalization ceremony may create a perception inconsistent with USCIS's obligation of neutrality. Accordingly, candidates for public office generally may not speak at or participate in an administrative naturalization ceremony within the three months before an election for that office, including both primary and general elections.[17] For example, if the state primary elections are on February 7, 2012, a candidate for public office standing in those primary elections may not be a guest speaker or have another formal participatory role any time between November 7, 2011 and February 7, 2012. The three-month rule does not apply to the President or Vice President of the United States. In addition, in exceptional circumstances, the USCIS Ethics Office may authorize exceptions to the three-month rule if the candidate's participation, subject to any appropriate conditions, would not unduly compromise the ceremony's political neutrality and would serve both USCIS's and the ceremony's best interests. If any additional questions arise related to the three-month rule, Field Leadership should contact their designated Ethics Officer.

E. Voter Registration at Naturalization Ceremonies

1. Voter Registration

The ability to vote in federal elections is both a right and responsibility that comes with U.S. citizenship. All newly naturalized citizens will have the opportunity to receive a voter registration application at administrative naturalization ceremonies. The mechanism for distribution may vary by ceremony location, but in every case must take place only after the conclusion of the ceremony.

The options for distribution of voter registration applications are (in preferential order):

- State or local government election offices may distribute and collect voter registration applications for an Election Official to review and officially register the person to vote;
- Non-governmental organizations may distribute and collect voter registration applications for an Election Official to review and officially register the person to vote (if qualified and approved according to the criteria identified below); or
- In the absence of the above options, USCIS will provide voter registration applications to all new citizens – USCIS is not responsible for the collection of applications or any other activities related to voter registration.

If no space is available for governmental or non-governmental entities to provide on-site voter registration services, the USCIS field office will distribute voter registration applications, whenever feasible, to each newly naturalized citizen.[18] If a field office is unable to distribute voter registration forms in any of the above three (3) vehicles, field leadership must notify their chain of command within the Field Operations Directorate.

2. Registration by Non-governmental Organizations

In-person voter registration services by the state or local election office is the optimal mechanism for distribution. If state or local election officials are unable to participate, all interested non-governmental groups may seek the privilege of offering voter registration services at the conclusion of administrative naturalization ceremonies.

Field leadership must consider requests from all interested organizations seeking to participate in the ceremony and must offer equal, non-preferential opportunities to all qualified and approved non-governmental organizations.

To qualify, non-governmental organizations must be both non-profit and non-partisan. Organizations must be deemed qualified by USCIS field leadership. All interested organizations seeking to offer voter registration services at the conclusion of a USCIS administrative naturalization ceremony must submit a request in writing to the local USCIS Field Office Director to be considered. Field leadership will provide a written response, only after consultation with the USCIS Office of Chief Counsel's Ethics Office, within 60 days from receipt of the organization's written request. [19] Approval may be granted on a one-time or standing basis, but may be removed at any time if the participation requirements are not met.

When USCIS determines that an organization is qualified and is chosen to participate in voter registration services at an administrative naturalization ceremony, field leadership will send the organization a letter, listing specific selected requirements. [20] See internal USCIS guidance for further guidance on voter registration by non-governmental organizations. Field leadership will then contact the organization to determine its availability to participate in scheduled administrative ceremonies.

While participating, non-governmental organizations and their representatives MUST NOT:

- Participate in any political activity, partisan or otherwise, while participating in voter registration activities during administrative naturalization ceremonies, regardless of whether the ceremonies take place on federal or non-federal property; [21] Political activity includes activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group. For this purpose, political activity also includes advocacy for particular referenda or other political propositions. For example, a non-governmental group participating in voter registration activities at an administrative naturalization ceremony may not provide information for or against a state immigration law or proposition. The organization's activities while participating must also comply with the Hatch Act, 5 U.S.C. 7321-26.

- Engage in commercial or religious solicitation or promotion of any kind; or

- Discriminate on the basis of race, color, gender, religion, age, sexual orientation, national or ethnic origin, disability, marital status or veteran status.

While participating, non-governmental organizations and their representatives MUST:

- Safeguard all personal information new citizens provide for voter registration and are prohibited from using this information for any purpose other than voter registration;

- Follow scheduling and logistical requirements set forth by USCIS field leadership;

- Wear professional attire and represent themselves and their organization professionally;

- Have received proper training on how to register voters;

- Receive an on-site briefing from field leadership regarding rules for that particular venue; and

- Wear name tags that include the name of the organization while registering voters (no other identification of the organization may be worn or displayed).

3. Failure to Comply with Requirements for Voter Registration by Non-governmental Organizations

If a non-governmental entity fails to comply with the above requirements for participation, field leadership, in consultation with the USCIS Ethics Office, may revoke this privilege and exclude the entity from participating in future administrative naturalization ceremonies that occur on or outside of the administrative ceremony location.

In addition, if a USCIS official receives a complaint from a newly naturalized citizen, guest or family member of a newly naturalized citizen, or the state or local election office regarding an entity's inappropriate behavior or lack of ability to properly provide voter registration services, field leadership, in consultation with the USCIS Ethics Office, may revoke the privilege upon appropriate inquiry and review of the circumstances.[22] See internal USCIS guidance for further guidance on voter registration by non-governmental organizations.

4. Points-of-Contact for Voting and Voter Registration

If naturalized citizens have questions regarding voting and voter registration, USCIS should refer them to:

- The governmental or non-governmental entity offering voter registration services on-site;

- Other information resources within the local area; or

- The official U.S. government Web site www.usa.gov.

F. Participation from Other Government Entities

Federal, state, and local governmental entities, such as the Department of State's Passport Services Division, and the Social Security Administration, may be authorized to provide information and make services available to newly naturalized citizens and their guests at the conclusion of the administrative naturalization ceremony. Governmental entities that desire representation at administrative naturalization ceremonies must seek advance approval from field leadership of the USCIS office conducting the ceremony.

G. Participation from Volunteers and Civic Organizations

Field leadership may enlist individual volunteers, community-based organizations, and civic organizations to participate in various roles during the administrative naturalization ceremony. For example, Field leadership may have the U.S. armed forces Color Guard perform the presentation of colors and the national anthem or have volunteers lead the Pledge of Allegiance.

Field leadership must consider requests from all interested, qualified volunteers and organizations so that all have an equal opportunity to participate in the ceremony. Field leadership will determine the appropriate level of participation for the occasion; however, under no circumstances will any non-USCIS employee perform any USCIS function.[23] For example, volunteers must not perform any of the USCIS employee's duties within the ceremony check-in process.

Field leadership must review the qualifications, designate the level of participation, and oversee the participation of all volunteers and organizations during the administrative naturalization ceremony. In addition, non-USCIS participants must not engage in political, commercial, or religious activity of any kind.

H. Offers to Donate Use of Venues for Naturalization Ceremonies

USCIS employees must not solicit a gift (including donated use of a venue to hold an administrative naturalization ceremony) from any non-Federal entity.[24] See internal USCIS guidance for further guidance on offers to donate venues for ceremonies. An unsolicited gift, however, may be accepted with the concurrence of the USCIS Ethics Office and approval of the USCIS Director.[25] This process is not required when non-government entities host USCIS for conducting citizenship outreach initiatives and workshops.

Footnotes

1.

This model plan applies only to administrative naturalization ceremonies involving an Application for Naturalization (Form N-400) where a USCIS designated official or an Immigration Judge administers the Oath of Allegiance. The model plan does not apply to administrative ceremonies involving children obtaining evidence of citizenship (Application for Citizenship, Form N-600, or Application for Citizenship and Issuance of Certificate Under Section 322, Form N-600K) or judicial naturalization ceremonies where a federal, state or local court administers the Oath of Allegiance.

2.

To the extent practicable, U.S. Citizenship Welcome Packet (Form M-771) will also be distributed to candidates participating in naturalization ceremonies overseas, subject to circumstances such as the location of the ceremony and the capacity of active military to carry the necessary materials in an active war zone.

3

See Section B, Ceremony Check-in Process [12 USCIS-PM J.5(B)], and Section C, Ceremony Program [12 USCIS-PM J.5(C)].

4.

The Citizen's Almanac (Form M-76) and the Pocket-size Declaration of Independence and Constitution of the United States (Form M-654) must be made available to all interested naturalization candidates or newly naturalized citizens.

5.

USCIS offices are exempt from implementing the ceremony program when conducting a home visit, or an expedited administrative naturalization ceremony. See Chapter 6, Judicial and Expedited Oath Ceremonies [12 USCIS-PM J.6].

6.

See USCIS Naturalization Ceremony Video for the Faces of America segment.

7.

See USCIS Naturalization Ceremony Video for instrumental or vocal version of the National Anthem. USCIS offices may incorporate a live performance as an alternative to the version on the video.

8.

Opening (welcoming) remarks include, but are not limited to, an introduction of ceremony principals and an overview of the ceremony program.

9.

The designated official reads aloud a list of countries represented by the naturalization candidates' former nationalities.

10.

See Chapter 2, The Oath of Allegiance [12 USCIS-PM J.2]. See INA 337. See 8 CFR 337.1(a).

11.

Keynote remarks must be politically neutral and may include, but are not limited to, the privileges, responsibilities, and importance of U.S. citizenship; the importance of civic principles within the U.S. government; the significance of swearing allegiance to the United States; and the theme of the ceremony.

12.

See USCIS Naturalization Ceremony Video for Presidential Congratulatory Remarks.

13.

Concluding remarks may include, but are not limited to, expressing appreciation to those family and friends in attendance, acknowledging the achievement of the naturalized citizens, announcing the services of those governmental and non-governmental entities in attendance, and explaining the distribution method for the certificates of naturalization.

14.

USCIS field leadership and staff presents the Certificates of Naturalization to the naturalized U.S. citizens.

15.

See internal USCIS guidance for further guidance on guest speakers.

16.

If a guest speaker makes inappropriate remarks during an administrative naturalization ceremony, field Leadership should inform the speaker and elevate the issue up the field leadership chain. If the guest speaker does not indicate a willingness to modify his or her remarks in the future, field leadership should not accept requests from the person to speak at future administrative naturalization ceremonies.

17.

For example, if the state primary elections are on February 7, 2012, a candidate for public office standing in those primary elections may not be a guest speaker or have another formal participatory role any time between November 7, 2011 and February 7, 2012. The three-month rule does not apply to the President or Vice President of the United States. In addition, in exceptional circumstances, the USCIS Ethics Office may authorize exceptions to the three-month rule if the candidate's participation, subject to any appropriate conditions, would not unduly compromise the ceremony's political neutrality and would serve both USCIS's and the ceremony's best interests. If any additional questions arise related to the three-month rule, Field Leadership should contact their designated Ethics Officer.

18.

If a field office is unable to distribute voter registration forms in any of the above three (3) vehicles, field leadership must notify their chain of command within the Field Operations Directorate.

19.

Approval may be granted on a one-time or standing basis, but may be removed at any time if the participation requirements are not met.

20.

See internal USCIS guidance for further guidance on voter registration by non-governmental organizations.

21.

Political activity includes activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group. For this purpose, political activity also includes advocacy for particular referenda or other political propositions. For example, a non-governmental group participating in voter registration activities at an administrative naturalization ceremony may not provide information for or against a state immigration law or proposition. The organization's activities while participating must also comply with the Hatch Act, 5 U.S.C. 7321-26.

22.

See internal USCIS guidance for further guidance on voter registration by non-governmental organizations.

23.

For example, volunteers must not perform any of the USCIS employee's duties within the ceremony check-in process.

24.

See internal USCIS guidance for further guidance on offers to donate venues for ceremonies.

25.

This process is not required when non-government entities host USCIS for conducting citizenship outreach initiatives and workshops.

Chapter 6 - Judicial and Expedited Oath Ceremonies

A. Judicial Oath Ceremony

An applicant may elect to have his or her Oath of Allegiance administered by the court or the court may have exclusive authority to administer the oath.[1] See INA 310(b). In these instances, USCIS must notify the clerk of court, in writing, that the Secretary of Homeland Security has determined that the applicant is eligible to naturalize.

After administering the Oath of Allegiance, the clerk of court must issue each person who appeared for the ceremony a document indicating the court administered the oath. In addition, the clerk must issue a document indicating that the court changed the applicant's name (if applicable).

B. Expedited Oath Ceremony

An applicant may request, with sufficient cause, that either USCIS or the court grant an expedited oath ceremony.[2] See INA 337(c). See 8 CFR 337.3(a). In determining whether to grant an expedited oath ceremony, the court or the USCIS District Director may consider special circumstances of a compelling or humanitarian nature. Special circumstances may include but are not limited to:

- A serious illness of the applicant or a member of the applicant's family;
- A permanent disability of the applicant sufficiently incapacitating as to prevent the applicant's personal appearance at a scheduled ceremony;
- The developmental disability or advanced age of the applicant which would make appearance at a scheduled ceremony improper; or
- An urgent or compelling circumstances relating to travel or employment determined by the court or USCIS to be sufficiently meritorious to warrant special consideration.[3] See 8 CFR 337.3(c).

USCIS may seek verification of the validity of the information provided in the request. If the applicant is waiting for a court ceremony, USCIS must promptly provide the court with a copy of the request without reaching a decision on whether to grant or deny the request.

Courts exercising exclusive authority may either hold an expedited oath ceremony or, if an expedited judicial oath ceremony is impractical, refer the applicant to USCIS. In addition, the court must inform the District Director, in writing, of the court's decision to grant the applicant an expedited oath ceremony and that the court has relinquished exclusive jurisdiction as to that applicant.

Footnotes

1. See INA 310(b).

2. See INA 337(c). See 8 CFR 337.3(a).

3. See 8 CFR 337.3(c).

Part K - Certificates of Citizenship and Naturalization

Chapter 1 - Purpose and Background

A. Purpose

All applicants who meet the eligibility requirements to derive or acquire citizenship or to become naturalized[1] The Immigration and Nationality Act (INA) defines naturalization as the "conferring of nationality of a state upon a person after birth, by any means whatsoever." See INA 101(a)(23). Accordingly, any person who obtains citizenship after birth, even if that citizenship is obtained by automatic operation of law, such as under INA 320, is a "naturalized" citizen under the law. For ease of reference, this volume uses the term naturalized citizen to refer to those persons who do not acquire automatically but instead file an Application for Naturalization (Form N-400) and proceed through the naturalization process in their own right. United States citizens are eligible to receive a certificate from USCIS documenting their U.S. citizenship.[2] A person who automatically acquires citizenship may also apply for a U.S. Passport with the Department of State to serve as evidence of his or her U.S. citizenship. The burden of proof is on the applicant to establish that he or she has met all of the pertinent eligibility requirements for issuance of a certificate.

- The Certificate of Citizenship is an official record that the applicant has acquired citizenship at the time of birth or derived citizenship after birth.[3] See Part H, Children of U.S. Citizens [12 USCIS-PM H].

- The Certificate of Naturalization is the official record that the applicant is a naturalized U.S. citizen.[4] See the relevant Volume 12 [12 USCIS-PM] part for the specific eligibility requirements pertaining to the particular naturalization provision, to include Part D, General Naturalization Requirements [12 USCIS-PM D]; Part G, Spouses of U.S. Citizens [12 USCIS-PM G]; and Part I, Military Members and their Families [12 USCIS-PM I].

USCIS strictly guards the physical security of the certificates to minimize the unlawful distribution and fraudulent use of certificates.

B. Background

In general, in order to obtain either a Certificate of Citizenship or a Certificate of Naturalization from USCIS, a person must:

- File the appropriate form and supporting evidence;
- Appear for an interview before an officer, if required;
- Meet the pertinent eligibility requirements, as evidenced by USCIS approval of the form; and
- Take the Oath of Allegiance, if required.

USCIS District Directors, Field Office Directors, and other USCIS officers acting on their behalf, have delegated authority to administer the Oath of Allegiance in USCIS administrative oath ceremonies and to issue certificates.[5] See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance, Section B, Authority to Administer the Oath [12 USCIS-PM J.2(B)].

C. Legal Authorities

- INA 310(b)(4); 8 CFR 310 – Naturalization authority and issuance of certificates
- INA 332(e); 8 CFR 332 – Issuance of Certificates of Citizenship and Naturalization
- INA 338; 8 CFR 338 – Contents and issuance of Certificate of Naturalization
- INA 340(f); 8 CFR 340 – Cancellation of certificate after revocation of naturalization
- INA 341; 8 CFR 341 – Certificates of Citizenship
- INA 342; 8 CFR 342 – Administrative cancellation of certificates, documents, or records

Footnotes

1.

The Immigration and Nationality Act (INA) defines naturalization as the "conferring of nationality of a state upon a person after birth, by any means whatsoever." See INA 101(a)(23). Accordingly, any person who obtains citizenship after birth, even if that citizenship is obtained by automatic operation of law, such as under INA 320, is a "naturalized" citizen under the law. For ease of reference, this volume uses the term naturalized citizen to refer to those persons who do not acquire automatically but instead file an Application for Naturalization (Form N-400) and proceed through the naturalization process in their own right.

2.

A person who automatically acquires citizenship may also apply for a U.S. Passport with the Department of State to serve as evidence of his or her U.S. citizenship.

3.

See Part H, Children of U.S. Citizens [12 USCIS-PM H].

4.

See the relevant Volume 12 [12 USCIS-PM] part for the specific eligibility requirements pertaining to the particular naturalization provision, to include Part D, General Naturalization Requirements [12 USCIS-PM D]; Part G, Spouses of U.S. Citizens [12 USCIS-PM G]; and Part I, Military Members and their Families [12 USCIS-PM I].

5.

See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance, Section B, Authority to Administer the Oath [12 USCIS-PM J.2(B)].

Chapter 2 - Certificate of Citizenship

A. Eligibility for Certificate of Citizenship

In order to obtain a Certificate of Citizenship, an applicant submits to USCIS:

- An Application for Certificate of Citizenship (Form N-600), if the applicant is residing in the United States and automatically acquired or derived citizenship at birth or after birth;[1] This volume uses the terms "acquired" or "derived" citizenship in cases where citizenship automatically attaches to a person regardless of any affirmative action by that person to document his or her citizenship. or

- An Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K) for a child of a United States citizen residing outside of the United States.

The application must be submitted in accordance with the form instructions and with the appropriate fee.[2] See 8 CFR 103.7. In addition, applications must include any supporting evidence. An Application for Citizenship and Issuance of Certificate Under Section 322 may only be filed if the child is under 18 years of age. An Application for Certificate of Citizenship may be filed either before or after the child turns 18 years of age.

If the person claiming citizenship is 18 years of age or older, the person must establish that he or she has met the eligibility requirements for U.S. citizenship and issuance of the certificate. If the application is for a child under 18 years of age, the person applying on behalf of the child must establish that the child has met the pertinent eligibility requirements.[3] See Part H, Children of U.S. Citizens [12 USCIS-PM H].

B. Contents of Certificate of Citizenship

1. Information about the Applicant on Certificates of Citizenship

The Certificate of Citizenship contains information identifying the person and confirming his or her U.S. citizenship. Specifically, the Certificate of Citizenship contains:

- USCIS registration number (A-number);

- Complete name;

- Marital status;

- Place of residence;

- Country of birth;[4] An applicant who was born in Taiwan may indicate Taiwan as the country of birth on their Form N-400 if he or she shows supporting evidence. Such applicants' Certificates of Citizenship are issued showing Taiwan as country of birth. USCIS does not issue certificates showing "Taiwan, PRC," "Taiwan, China," "Taiwan, Republic of China," or "Taiwan, ROC." People's Republic of China (PRC) is the country name used for applicants born in the PRC.

- Photograph;

- Signature of applicant; and

- Other descriptors: sex, date of birth, and height.

2. Additional Information on Certificates of Citizenship

- Certificate number;
- Statement by the USCIS Director indicating that the applicant has complied with all the eligibility requirements for citizenship under the laws of the United States;
- Date on which the person became a U.S. citizen;
- Date of issuance; and
- DHS seal and Director's signature as the authority under which the certificate is issued.

3. Changes to Names or Dates of Birth per Court Order

Change to Date of Birth on Certificate of Citizenship

USCIS recognizes that the dates of birth of children born abroad are not always accurately recorded in the countries in which they were born. For example, an adopted child whose date of birth (DOB) was unknown may have been assigned an estimated DOB, or the DOB may have been incorrectly recorded or translated from a non-Gregorian calendar.[5] Most western countries follow the Gregorian calendar. Other countries follow different calendars including the Hebrew (lunisolar calendar); Islamic (lunar calendar); and Julian (solar calendar). The calendars differ on days, months, and years.

In these cases, the incorrect or estimated DOB is reported on the child's foreign record of birth and becomes part of the USCIS record. Once in the United States, parents may obtain medical evidence indicating that the DOB on the foreign record of birth and the USCIS record is incorrect and they may choose to obtain evidence of a corrected DOB from the state of residence.

USCIS will issue a Certificate of Citizenship with the corrected DOB in cases where the applicant, or if the applicant is under age 18, the parent or legal guardian has obtained a state-issued document from the child's state of residence with a corrected DOB.[6] See INA 320(c) (relating to cases where individuals automatically acquire citizenship under INA 320 based on an adoption or re-adoption in the United States), subsection (c) added to INA 320 by the Accuracy for Adoptees Act, Pub. L. 113-74 (Jan. 16, 2014). Cases where the requested DOB would result in the applicant being ineligible for citizenship because the applicant would have aged out should be raised through appropriate channels for consultation with the Office of Chief Counsel (OCC). Additionally, any cases involving particular concerns based on the corrected DOB should also be raised through appropriate channels for consultation with OCC. A state-issued document includes a:

- Court order;
- Birth certificate;
- Certificate recognizing the foreign birth;
- Certificate of birth abroad; or
- Other similar state vital record issued by the child's state of residence.

In cases where USCIS has already issued the Certificate of Citizenship, the applicant may request a replacement Certificate of Citizenship with a corrected DOB by filing an Application for Replacement Naturalization/Citizenship Document (Form N-565) with the appropriate fee.[7] See Chapter 4, Replacement of Certificate of Citizenship or Naturalization [12 USCIS-PM K.4].

Change of Legal Name on Certificate of Citizenship

In general, a Certificate of Citizenship includes an applicant's full legal name.[8] A full legal name includes the person's first name, middle name(s) (if any), and family name (or surname) without any initials or nicknames. See 6 CFR 37.3; Real ID Act of 2005, Pub. L. 109-13, 49 U.S.C. 30301. as the name appears on the applicant's foreign record of birth. USCIS will issue a Certificate of Citizenship with a name other than that on the applicant's foreign record of birth in cases where the applicant, or if the applicant is under age 18, the parent or legal guardian, has obtained a U.S. state court order evidencing a legal name change.[9] See 8 CFR 320.3(b)(1)(ix) and 8 CFR 322.3(b)(1)(xiii).

If USCIS has already issued the Certificate of Citizenship, the applicant may request a replacement Certificate of Citizenship by filing an Application for Replacement Naturalization/Citizenship Document (Form N-565) with the appropriate fee.[10] See Chapter 4, Replacement of Certificate of Citizenship or Naturalization [12 USCIS-PM K.4].

USCIS does not assist with the processing of name change petitions through the courts for applicants filing an Application for Certificate of Citizenship (Form N-600). An applicant, parent, or legal guardian must file a name change petition with the court having jurisdiction over the matter.

C. Issuance of Certificate of Citizenship

In general, USCIS issues a Certificate of Citizenship after an officer approves the person's application and the person has taken the Oath of Allegiance, if applicable, before a designated USCIS officer. USCIS will not issue a Certificate of Citizenship to a person who has not surrendered his or her Permanent Resident Card (PRC) or Alien Registration Card (ARC) evidencing the person's lawful permanent residence. If the person established that his or her card was lost or destroyed, USCIS may waive the requirement of surrendering the card.[11] See 8 CFR 341.4. The requirement to surrender the PRC or ARC does not apply to applicants naturalizing under INA 322.

If USCIS waives the oath requirement for a person, USCIS issues the certificate after approval of his or her

application for the certificate. In such cases, USCIS issues the certificate in person or by certified mail to the parent or guardian in cases involving children under 18 years of age, or to the person (or guardian if applicable) in cases involving persons 18 years of age or older.[12] See 8 CFR 341.5. See Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers [12 USCIS-PM J.3].

Footnotes

1.

This volume uses the terms "acquired" or "derived" citizenship in cases where citizenship automatically attaches to a person regardless of any affirmative action by that person to document his or her citizenship.

2.

See 8 CFR 103.7.

3.

See Part H, Children of U.S. Citizens [12 USCIS-PM H].

4.

An applicant who was born in Taiwan may indicate Taiwan as the country of birth on their Form N-400 if he or she shows supporting evidence. Such applicants' Certificates of Citizenship are issued showing Taiwan as country of birth. USCIS does not issue certificates showing "Taiwan, PRC," "Taiwan, China," "Taiwan, Republic of China," or "Taiwan, ROC." People's Republic of China (PRC) is the country name used for applicants born in the PRC.

5.

Most western countries follow the Gregorian calendar. Other countries follow different calendars including the Hebrew (lunisolar calendar); Islamic (lunar calendar); and Julian (solar calendar). The calendars differ on days, months, and years.

6.

See INA 320(c) (relating to cases where individuals automatically acquire citizenship under INA 320 based on an adoption or re-adoption in the United States), subsection (c) added to INA 320 by the Accuracy for Adoptees Act, Pub. L. 113-74 (Jan. 16, 2014). Cases where the requested DOB would result in the applicant being ineligible for citizenship because the applicant would have aged out should be raised through appropriate channels for consultation with the Office of Chief Counsel (OCC). Additionally, any cases involving particular concerns based on the corrected DOB should also be raised through appropriate channels for consultation with OCC.

7.

See Chapter 4, Replacement of Certificate of Citizenship or Naturalization [12 USCIS-PM K.4].

8.

A full legal name includes the person's first name, middle name(s) (if any), and family name (or surname) without any initials or nicknames. See 6 CFR 37.3; Real ID Act of 2005, Pub. L. 109-13, 49 U.S.C. 30301.

9.

See 8 CFR 320.3(b)(1)(ix) and 8 CFR 322.3(b)(1)(xiii).

10.

See Chapter 4, Replacement of Certificate of Citizenship or Naturalization [12 USCIS-PM K.4].

11.

See 8 CFR 341.4. The requirement to surrender the PRC or ARC does not apply to applicants naturalizing under INA 322.

12.

See 8 CFR 341.5. See Part J, Oath of Allegiance, Chapter 3, Oath of Allegiance Modifications and Waivers [12 USCIS-PM J.3].

Chapter 3 - Certificate of Naturalization

A. Eligibility for Certificate of Naturalization

An applicant submits to USCIS an Application for Naturalization (Form N-400) along with supporting evidence to establish eligibility for naturalization. The application must be submitted in accordance with the form instructions and with appropriate fee.[1] See 8 CFR 103.7. The applicant must establish that he or she has met all of the pertinent naturalization eligibility requirements for issuance of a Certificate of Naturalization.[2] See the relevant Volume 12 part for the specific eligibility requirements pertaining to the particular citizenship or naturalization provision, to include Part D, General Naturalization Requirements [12 USCIS-PM D], Part G, Spouses of U.S. Citizens [12 USCIS-PM G]; and Part I, Military Members and their Families [12 USCIS-PM I].

B. Contents of Certificate of Naturalization

1. Information about the Applicant on Certificates of Citizenship

The Certificate of Naturalization contains certain required information identifying the person and confirming his or her U.S. citizenship through naturalization. Specifically, the Certificate of Naturalization contains:

- USCIS registration number (A-number);
- Complete name;
- Marital status;
- Place of residence;
- Country of former nationality;[3] Applicants with Taiwan passports may indicate Taiwan as country of nationality on their Form N-400 (Taiwan passports show "Republic of China"). Such applicants' Certificates of Naturalization are issued showing Taiwan as country of former nationality. USCIS does not issue certificates showing "Taiwan, PRC," "Taiwan, China," "Taiwan, Republic of China," or "Taiwan, ROC." People's Republic of China (PRC) is the country name used for applicants with PRC passports.
- Photograph;
- Signature of applicant; and
- Other descriptors: sex, date of birth, and height

2. Additional Information on Certificates of Naturalization

- Certificate number;
- Statement by the USCIS Director indicating that the applicant complied with all the eligibility requirements for naturalization under the laws of the United States;
- Date of issuance, which is the date the holder became a U.S. citizen through naturalization; and
- DHS seal and Director's signature as the authority under which the certificate is issued.[4] See INA 338. See 8 CFR 338.

3. Changes to Names per Court Order

Change of Legal Name on Certificate of Naturalization

In general, a Certificate of Naturalization includes an applicant's full legal name as the name appears on the applicant's Form N-400.[5] A full legal name includes the person's first name, middle name(s) (if any), and family name (or surname) without any initials or nicknames. See 6 CFR 37.3; Real ID Act of 2005, Pub. L. 109-13, 49 U.S.C. 30301. Before naturalization, the applicant may present a valid court order or other proof that the applicant has legally changed his or her name in the manner authorized by the law of the applicant's place of residence. If the applicant submits such evidence, then USCIS will issue the Certificate of Naturalization in the new name.

If a naturalized individual changes his or her legal name after naturalizing, the individual may file an Application for Replacement Naturalization/Citizenship Document (Form N-565), together with the required fees and proof of the legal change of name. However, USCIS is prohibited from making any changes to an applicant's name on a Certificate of Naturalization if the applicant now claims that the name sworn to during the naturalization process was not his or her correct name, unless the applicant obtains a legal name change as described above.[6] See 8 CFR 338.5(e).

C. Issuance of Certificate of Naturalization

In general, USCIS issues a Certificate of Naturalization after an officer approves the Application for Naturalization and the applicant has taken the Oath of Allegiance.[7] See INA 338. See 8 CFR 338. USCIS will not issue a Certificate of Naturalization to a person who has not surrendered his or her Permanent Resident Card (PRC) or Alien Registration Card (ARC) evidencing the person's lawful permanent residence. If the person established that his or her card was lost or destroyed, USCIS may waive the requirement of surrendering the card.[8] See 8 CFR 338.3. The requirement to surrender the PRC or ARC does not apply to applicants naturalizing under INA 329 who qualify for naturalization without being permanent residents.

An applicant is not required to take the Oath of Allegiance or appear at the oath ceremony if USCIS waives the oath requirement due to the applicant's medical disability. In these cases, USCIS issues the certificate in person or by certified mail to the person or his or her legal guardian, surrogate, or designated representative.[9] See Part J, Oath of

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

Footnotes

1.

See 8 CFR 103.7.

2.

See the relevant Volume 12 part for the specific eligibility requirements pertaining to the particular citizenship or naturalization provision, to include Part D, General Naturalization Requirements [12 USCIS-PM D], Part G, Spouses of U.S. Citizens [12 USCIS-PM G]; and Part I, Military Members and their Families [12 USCIS-PM I].

3.

Applicants with Taiwan passports may indicate Taiwan as country of nationality on their Form N-400 (Taiwan passports show "Republic of China"). Such applicants' Certificates of Naturalization are issued showing Taiwan as country of former nationality. USCIS does not issue certificates showing "Taiwan, PRC," "Taiwan, China," "Taiwan, Republic of China," or "Taiwan, ROC." People's Republic of China (PRC) is the country name used for applicants with PRC passports.

4.

See INA 338. See 8 CFR 338.

5.

A full legal name includes the person's first name, middle name(s) (if any), and family name (or surname) without any initials or nicknames. See 6 CFR 37.3; Real ID Act of 2005, Pub. L. 109-13, 49 U.S.C. 30301.

6.

See 8 CFR 338.5(e).

7.

See INA 338. See 8 CFR 338.

8.

See 8 CFR 338.3. The requirement to surrender the PRC or ARC does not apply to applicants naturalizing under INA 329 who qualify for naturalization without being permanent residents.

9.

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

Chapter 4 - Replacement of Certificate of Citizenship or Naturalization

The table below serves as a quick reference guide for requests to replace certificates of citizenship or naturalization. The sections and paragraphs that follow the table provide further guidance.

Basis for Requests of Replacement	Certificate of Citizenship or Naturalization | Form N-565

Certificate	Correct USCIS Clerical Error	Date of Birth Correction *No clerical error*	Legal Name Change	Lost or Mutilated Certificate	Legal Gender Change
Certificate of Citizenship	Permitted; no fee required	Permitted if correction through U.S. state court order or similar state vital record (fee required)	Permitted if name change through court order or operation of law (fee required)	Permitted (fee required)	
Certificate of Naturalization	Permitted; no fee required	Not permitted (8 CFR 338.5)		Permitted (fee required)	

A. General Requests to Replace Certificate of Citizenship or Naturalization

In general, an applicant submits to USCIS an Application for Replacement Naturalization/Citizenship Document (Form N-565) to request a replacement Certificate of Citizenship or Certificate of Naturalization. The application must be submitted with the appropriate fee and in accordance with the form instructions.[1] See 8 CFR 103.7.

A person may request a replacement certificate to replace a lost or mutilated certificate. A person may also request a replacement certificate, without fee, in cases where:

- USCIS issued a certificate that does not conform to the supportable facts shown on the applicant's citizenship or naturalization application; or
- USCIS committed a clerical error in preparing the certificate.[2] See 8 CFR 338.5(a).

An applicant may submit a request to update his or her name on a Certificate of Naturalization based on a name change ordered by a state court with jurisdiction or due to marriage or divorce.[3] See INA 343(c). In addition, an applicant who has legally changed his or her gender may apply for a replacement certificate reflecting the new gender.[4] A request to change the gender on a certificate may also affect the marital status already listed on the certificate. See Adjudicator's Field Manual (AFM) Chapter 10.22, Document Issuance Involving Status and Identity for Transgender Individuals. If the gender change results in the individual now being in a valid same-sex marriage, then the certificate must reflect his or her marital status as "married."

Unless there is a USCIS clerical error, regulations prohibit USCIS from making any changes to a date of birth on a Certificate of Naturalization if the applicant has completed the naturalization process and sworn to the facts of the

application, including the DOB.[5] See 8 CFR 338.5(e). The regulation at 8 CFR 338.5(e) specifically provides that USCIS will not deem a request to change a DOB justified if the naturalization certificate contains the DOB provided by the applicant at the time of naturalization.

B. Replacement of Certificate of Citizenship

An applicant may submit an Application for Replacement Naturalization/Citizenship Document (Form N-565) to request issuance of a replacement Certificate of Citizenship to correct the DOB or name if the applicant has obtained a state-issued document with a corrected DOB or name. Along with his or her application and the appropriate fee, the applicant must submit the court order or other state vital record.[6] See Chapter 2, Certificate of Citizenship, Section B, Contents of Certificate of Citizenship, Subsection 3, Changes to Names or Dates of Birth per Court Order [12 USCIS-PM K.2(B)(3)].

An applicant may submit an Application for Replacement Naturalization/Citizenship Document (Form N-565) to request issuance of a replacement Certificate of Naturalization to correct the date of birth (DOB) if the correction is justified due to USCIS error.[7] See 8 CFR 338.5(a), 8 CFR 338.5(c), and 8 CFR 338.5(e). For pre-1991 judicial naturalization cases, the regulations provide that USCIS can "authorize" the court to make a change on the certificate if it is the result of clerical error. However, USCIS plays a minimal role in these cases. See 8 CFR 338.5(b) and 8 CFR 338.5(e). No filing fee is required when an application is filed based on a USCIS error.

Footnotes

1.

See 8 CFR 103.7.

2.

See 8 CFR 338.5(a).

3.

See INA 343(c).

4.

A request to change the gender on a certificate may also affect the marital status already listed on the certificate. See Adjudicator's Field Manual (AFM) Chapter 10.22, Document Issuance Involving Status and Identity for Transgender Individuals. If the gender change results in the individual now being in a valid same-sex marriage, then the certificate must reflect his or her marital status as "married."

5.

See 8 CFR 338.5(e). The regulation at 8 CFR 338.5(e) specifically provides that USCIS will not deem a request to change a DOB justified if the naturalization certificate contains the DOB provided by the applicant at the time of naturalization.

6.

See Chapter 2, Certificate of Citizenship, Section B, Contents of Certificate of Citizenship, Subsection 3, Changes to Names or Dates of Birth per Court Order [12 USCIS-PM K.2(B)(3)].

7.

See 8 CFR 338.5(a), 8 CFR 338.5(c), and 8 CFR 338.5(e). For pre-1991 judicial naturalization cases, the regulations provide that USCIS can "authorize" the court to make a change on the certificate if it is the result of clerical error. However, USCIS plays a minimal role in these cases. See 8 CFR 338.5(b) and 8 CFR 338.5(e).

Chapter 5 - Cancellation of Certificate of Citizenship or Naturalization

A. Administrative Cancellation of Certificates[1] See Part L, Revocation of Naturalization, Chapter 3, Effects of Revocation of Naturalization [12 USCIS-PM L.3]. A Certificate of Naturalization issued to a person who lawfully filed an Application for Naturalization and proceeded through the naturalization process to the Oath of Allegiance cannot be canceled under INA 342. Officers should consult with local USCIS counsel in such cases.

USCIS is authorized to cancel any Certificate of Citizenship or Certificate of Naturalization in cases where USCIS considers that the certificate was:

- Illegally or fraudulently obtained; or
- Created through illegality or by fraud.[2] See INA 342. Under the same conditions, USCIS may also cancel any copy of a declaration of intention, or other certificate, document, or record issued by USCIS or legacy INS.

USCIS issues the person a written notice of the intention to cancel the certificate. The notice must include the reason or reasons for the intent to cancel the certificate. The person has 60 days from the date the notice was issued to respond with reasons as to why the certificate should not be cancelled or to request a hearing.[3] See 8 CFR 342.1. A cancellation of certificate under this provision only cancels the certificate and does not affect the underlying citizenship status of the person, if any, in whose name the certificate was issued.

When considering whether to initiate cancellation proceedings, it is important to distinguish between Certificates of Citizenship and Certificates of Naturalization. In general, USCIS issues Certificates of Citizenship to persons who automatically acquire citizenship by operation of law. If it is determined that the person in whose name the Certificate of Citizenship was issued did not lawfully acquire citizenship, USCIS can initiate cancellation proceedings.[4] See INA 342.

However, such a person may have an additional basis upon which to claim automatic acquisition of citizenship. Accordingly, if that person's Certificate of Citizenship is cancelled by USCIS, but the person subsequently provides evidence that he or she automatically acquired citizenship through some other basis, the cancellation of the first Certificate of Citizenship does not affect the new citizenship claim.

By contrast, a Certificate of Naturalization cannot be cancelled if issued to a person who lawfully filed an Application for Naturalization and proceeded through the entire naturalization process to the Oath of Allegiance. In such cases, the person obtained citizenship though the entire naturalization process and his or her citizenship status must first be revoked before the Certificate of Naturalization can be cancelled. However, a Certificate of Naturalization illegally or fraudulently obtained by a person who did not lawfully file an Application for Naturalization or who did not proceed through the naturalization process may be cancelled.[5] See INA 342.

B. Cancellation of Certificate after Revocation of Naturalization

If a court revokes a person's U.S. citizenship obtained through naturalization, the court enters an order revoking the person's naturalization and cancelling the person's Certificate of Naturalization. In such cases, the person must

surrender his or her Certificate of Naturalization. Once USCIS obtains the court's order revoking citizenship and cancelling the certificate, USCIS updates its records, including electronic records, and notifies the Department of State of the person's revocation of naturalization.[6] See Part L, Revocation of Naturalization, Chapter 3, Effects of Revocation of Naturalization [12 USCIS-PM L.3]. All cases relating to cancellation of certificates should be coordinated through the USCIS OCC office with jurisdiction.

Footnotes

1.

See Part L, Revocation of Naturalization, Chapter 3, Effects of Revocation of Naturalization [12 USCIS-PM L.3]. A Certificate of Naturalization issued to a person who lawfully filed an Application for Naturalization and proceeded through the naturalization process to the Oath of Allegiance cannot be canceled under INA 342. Officers should consult with local USCIS counsel in such cases.

2.

See INA 342. Under the same conditions, USCIS may also cancel any copy of a declaration of intention, or other certificate, document, or record issued by USCIS or legacy INS.

3.

See 8 CFR 342.1.

4.

See INA 342.

5.

See INA 342.

6.

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

Part L - Revocation of Naturalization

Chapter 1 - Purpose and Background

A. Purpose

Revocation of naturalization is sometimes referred to as "denaturalization." Unlike most other immigration proceedings that USCIS handles in an administrative setting, revocation of naturalization can only occur in federal court.

A person's naturalization can be revoked either by civil proceeding or pursuant to a criminal conviction. For civil revocation of naturalization, the United States Attorney's Office must file the revocation of naturalization actions in Federal District Court.[1] See INA 340(a). For criminal revocation of naturalization, the U.S. Attorney's Office files criminal charges in Federal District Court.[2] A criminal conviction under 18 U.S.C. 1425 results in automatic revocation of naturalization under INA 340(e).

The government holds a high burden of proof when attempting to revoke a person's naturalization. For civil revocation of naturalization, the burden of proof is clear, convincing, and unequivocal evidence which does not leave

the issue in doubt.[3] See Kungys v. United States, 485 U.S. 759, 767 (1988). For criminal revocation of naturalization the burden of proof is the same as for every other criminal case, proof beyond a reasonable doubt.

USCIS refers cases for civil revocation of naturalization when there is sufficient evidence to establish that the person is subject to one of the grounds of revocation.

The general grounds for civil revocation of naturalization are:

- Illegal procurement of naturalization; or
- Concealment of a material fact or willful misrepresentation.

Another ground for revocation of naturalization exists in cases where the person naturalized under the military provisions. In those cases, the person may also be subject to revocation of naturalization if he or she is discharged under other than honorable conditions before serving honorably for five years.

B. Background

On February 14, 2001, a District Court issued a nationwide injunction based on a finding that USCIS has no statutory authority to administratively revoke naturalization.[4] See Order Granting Order for Permanent Injunction, Gorbach v. Reno, 2001 WL 34145464 (February 14, 2001) (Entering order pursuant to Gorbach v. Reno, 219 F.3d 1087 (9th Cir. 2000)). A person's naturalization can only be revoked after a final order in a judicial proceeding to revoke his or her naturalization.[5] See INA 340(a). During a revocation of naturalization proceeding, all related documentation from the A-file is subject to discovery.

C. Difference between Revocation and Cancellation of Certificate

USCIS is authorized to cancel any Certificate of Citizenship or Certificate of Naturalization in cases where USCIS considers that the certificate itself was obtained or created illegally or fraudulently.[6] See INA 342. See Part K, Certificates of Citizenship and Naturalization, Chapter 5, Cancellation of Certificate of Citizenship or Naturalization [12 USCIS-PM K.5]. Cancellation of a certificate under this provision only cancels the certificate and does not affect the citizenship status of the person in whose name the certificate was issued.

If someone was unlawfully naturalized or misrepresented or concealed facts during the naturalization process, civil or criminal proceedings must be instituted to revoke the naturalization and the status of the person as a citizen. Once the naturalization is revoked, the court also cancels the person's Certificate of Naturalization.

The main difference between cancellation and revocation proceedings is that cancellation only affects the document, not the person's underlying status. For this reason, cancellation is only effective against persons who are not citizens, either because they have not complied with the entire naturalization process or because they did not acquire citizenship under law, but who nonetheless have evidence of citizenship which was fraudulently or illegally obtained.

Where USCIS has affirmatively granted naturalization to a person, that person is a citizen unless and until that person's citizenship is revoked.[7] The revocation must have been pursuant to INA 340(e) or 18 U.S.C. 1425. Revocation, therefore, is appropriate when:

- The person filed an Application for Naturalization (Form N-400);

  The person appeared at the naturalization interview;

- The naturalization application was approved; and

- The person took the Oath of Allegiance for naturalization.

By contrast, a person who illegally obtained a Certificate of Naturalization without going through the naturalization process, and was therefore never naturalized by USCIS, is not a citizen of the United States. While the person has a certificate as evidence of U.S. citizenship, the certificate in and of itself, does not confer the status of citizenship.

In such cases, USCIS can initiate proceedings to cancel the Certificate of Naturalization.[8] See INA 342. Because the person holding this certificate did not obtain citizenship based on a USCIS process, the person maintains whatever immigration status he or she had.

D. Legal Authorities

- INA 340; 8 CFR 340 – Revocation of naturalization

- INA 342; 8 CFR 342 – Administrative cancellation of certificates, documents, or records

Footnotes

1.

See INA 340(a).

2.

A criminal conviction under 18 U.S.C. 1425 results in automatic revocation of naturalization under INA 340(e).

3.

See *Kungys v. United States*, 485 U.S. 759, 767 (1988).

4.

See Order Granting Order for Permanent Injunction, *Gorbach v. Reno*, 2001 WL 34145464 (February 14, 2001) (Entering order pursuant to *Gorbach v. Reno*, 219 F.3d 1087 (9th Cir. 2000)).

5.

See INA 340(a).

6.

See INA 342. See Part K, Certificates of Citizenship and Naturalization, Chapter 5, Cancellation of Certificate of Citizenship or Naturalization [12 USCIS-PM K.5].

7.

The revocation must have been pursuant to INA 340(e) or 18 U.S.C. 1425.

8.

See INA 342.

Chapter 2 - Grounds for Revocation of Naturalization

In general, a person is subject to revocation of naturalization on the following grounds:

A. Person Procures Naturalization Illegally

A person is subject to revocation of naturalization if he or she procured naturalization illegally. Procuring naturalization illegally simply means that the person was not eligible for naturalization in the first place. Accordingly, any eligibility requirement for naturalization that was not met can form the basis for an action to revoke the naturalization of a person. This includes the requirements of residence, physical presence, lawful admission for permanent residence, good moral character, and attachment to the U.S. Constitution.[1] See INA 316.

Discovery that a person failed to comply with any of the requirements for naturalization at the time the person became a U.S. citizen renders his or her naturalization illegally procured. This applies even if the person is innocent of any willful deception or misrepresentation.[2] See INA 340(a).

B. Concealment of Material Fact or Willful Misrepresentation[3] See INA 340(a). See Kungys v. United States, 485 U.S. 759, 767 (1988). See United States v. Nunez-Garcia, 262 F. Supp.2d 1073 (C.D. Cal. 2003) United States v. Reve, 241 F. Supp.2d 470 (D. N.J. 2003). See United States v. Ekpin, 214 F. Supp.2d 707 (S.D. Tex. 2002). See United States v. Tarango-Pena, 173 F. Supp.2d 588 (E.D. Tex. 2001).

1. Concealment of Material Fact or Willful Misrepresentation

A person is subject to revocation of naturalization if there is deliberate deceit on the part of the person in misrepresenting or failing to disclose a material fact or facts on his or her naturalization application and subsequent examination.

In general, a person is subject to revocation of naturalization on this basis if:

- The naturalized U.S. citizen misrepresented or concealed some fact;
- The misrepresentation or concealment was willful;
- The misrepresented or concealed fact or facts were material; and
- The naturalized U.S. citizen procured citizenship as a result of the misrepresentation or concealment.[4] See Kungys v. United States, 485 U.S. 759, 767 (1988).

This ground of revocation includes omissions as well as affirmative misrepresentations. The misrepresentations can be oral testimony provided during the naturalization interview or can include information contained on the application submitted by the applicant. The courts determine whether the misrepresented or concealed fact or facts were material. The test for materiality is whether the misrepresentations or concealment had a tendency to affect the decision. It is not necessary that the information, if disclosed, would have precluded naturalization.[5] See Kungys v. United States, 485 U.S. 759, 767 (1988).

2. Membership or Affiliation with Certain Organizations

A person is subject to revocation of naturalization if the person becomes a member of, or affiliated with, the Communist party, other totalitarian party, or terrorist organization within five years of his or her naturalization.[6] See INA 313 and INA 340(c). In general, a person who is involved with such organizations cannot establish the naturalization requirements of having an attachment to the Constitution and of being well-disposed to the good order and happiness of the United States.[7] See INA 316(a)(3). See Part D, General Naturalization Requirements [12 USCIS-PM D].

The fact that a person becomes involved with such an organization within five years after the date of naturalization is prima facie evidence that he or she concealed or willfully misrepresented material evidence that would have prevented the person's naturalization.

C. Other than Honorable Discharge before Five Years of Honorable Service after Naturalization

A person is subject to revocation of naturalization if:

- The person became a United States citizen through naturalization on the basis of honorable service in the U.S. armed forces;[8] See INA 328(a). See INA 329(a). See Part I, Military Members and their Families [12 USCIS-PM I].
- The person subsequently separates from the U.S. armed forces under other than honorable conditions; and
- The other than honorable discharge occurs before the person has served honorably for a period or periods aggregating at least five years.[9] See INA 328(f) and INA 329(c).

Footnotes

1.

See INA 316.

2.

See INA 340(a).

3.

See INA 340(a). See *Kungys v. United States*, 485 U.S. 759, 767 (1988). See *United States v. Nunez-Garcia*, 262 F. Supp.2d 1073 (C.D. Cal. 2003) *United States v. Reve*, 241 F. Supp.2d 470 (D. N.J. 2003). See *United States v. Ekpin*, 214 F. Supp.2d 707 (S.D. Tex. 2002). See *United States v. Tarango-Pena*, 173 F. Supp.2d 588 (E.D. Tex. 2001).

4.

See *Kungys v. United States*, 485 U.S. 759, 767 (1988).

5.

See *Kungys v. United States*, 485 U.S. 759, 767 (1988).

6.

See INA 313 and INA 340(c).

7.

See INA 316(a)(3). See Part D, General Naturalization Requirements [12 USCIS-PM D].

8.

See INA 328(a). See INA 329(a). See Part I, Military Members and their Families [12 USCIS-PM I].

9.

See INA 328(f) and INA 329(c).

Chapter 3 - Effects of Revocation of Naturalization

A. Effective Date of Revocation of Naturalization

The revocation of a person's U.S. citizenship obtained through naturalization is effective as of the original date of naturalization.[1] See INA 340(a). The person returns to his or her immigration status before becoming a U.S. citizen as of the date of naturalization shown on the person's Certificate of Naturalization.

B. Cancellation of Certificate of Naturalization

If a court revokes a person's U.S. citizenship obtained through naturalization, the court enters an order revoking the persons naturalization and cancelling the person's Certificate of Naturalization. In such cases, the person must

surrender his or her Certificate of Naturalization. Once USCIS obtains the court's order revoking citizenship and cancelling the certificate, USCIS updates its records, including electronic records, and notifies the Department of State of the person's revocation of naturalization. All cases relating to cancellation of certificates should be coordinated through the USCIS OCC office with jurisdiction.[2] See Part K, Certificates of Citizenship and Naturalization, Chapter 5, Cancellation of Certificate of Citizenship or Naturalization [12 USCIS-PM K.5].

C. Effects of Revocation on Citizenship of Certain Spouses and Children[3] USCIS counsel should be contacted in all cases involving possible loss of citizenship by spouses or children of persons whose naturalization has been revoked.

1. General Effects of Person's Revocation on Citizenship of Spouse or Child

In general, certain spouses and children of persons who naturalize may become U.S. citizens through their spouses or parents' citizenship. A spouse may become a U.S. citizen through the special spousal provisions for naturalization.[4] See INA 319(a) and INA 319(b). See Part G, Spouses of U.S. Citizens [12 USCIS-PM G]. A child residing in the United States or abroad may become a U.S. citizen through his or her parent's naturalization.[5] See INA 320 and INA 322. See Part H, Children of U.S. Citizens [12 USCIS-PM H]. In general, the spouse or child of a person whose citizenship has been revoked cannot become a U.S. citizen on the basis that he or she is the spouse or child of that person.[6] See Rosenberg v. United States, 60 F.2d 475 (3rd Cir. 1932).

In addition, the citizen spouse or citizen child of a person whose citizenship has been revoked may lose his or her citizenship upon the parent or spouse's revocation of naturalization. This depends on the basis of the revocation, and in some cases, on whether the spouse or child resides in the United States at the time of the revocation.

For example, the citizenship of a spouse or child who became a United States citizen through the naturalization of his or her parent or spouse is not lost if the revocation was based on illegal procurement of naturalization. The spouse or child's citizenship may be lost, however, if the revocation was based on other grounds (see below).

In cases where the spouse or child loses his or her citizenship, the spouse or child loses any right or privilege of U.S. citizenship which he or she has, may have, or may acquire through the parent or spouse's naturalization. The spouse or child returns to the status that he or she had before becoming a U.S. citizen.[7] Officers should consult with local USCIS OCC counsel in any cases involving a spouse's or child's revocation of citizenship under this provision.

2. Citizenship of Spouse or Child is Lost if Revocation for Concealment or Misrepresentation

The spouse or child of a person whose U.S. citizenship is revoked loses his or her U.S. citizenship at the time of revocation in cases where:

- The spouse or child became a United States citizen through the naturalization of his or her parent or spouse whose citizenship has been revoked; and

- The parent or spouse's citizenship was revoked on the ground that his or her naturalization was procured by concealment of a material fact or by willful misrepresentation.[8] See INA 340(a) and INA 340(d).

This provision applies regardless of whether the spouse or child is residing in the United States or abroad at the time of the revocation of naturalization.[9] See INA 340(d).

3. Citizenship of Spouse or Child Residing Abroad is Lost if Revocation on Certain Grounds

The spouse or child of a person whose U.S. citizenship is revoked may lose his or her U.S. citizenship if the spouse or child is residing outside of the United States at the time of revocation.[10] See INA 340(d). This applies if the revocation was based on becoming a member of certain organizations after naturalization or for separating from the military under less than honorable conditions before serving honorably for five years.

The spouse or child of a person whose U.S. citizenship is revoked under these sections may lose his or her U.S. citizenship at the time of revocation in cases where:

- The spouse or child became a United States citizen through the naturalization of his or her parent or spouse whose citizenship has been revoked;

- The spouse or child resided outside of the United States at the time of revocation; and

- The parent or spouse's citizenship was revoked on the basis that:

    - The person became involved with the Communist party, other totalitarian party, or terrorist organization within five years of his or her naturalization;[11] See INA 313 and INA 340(c). See Part D, General Naturalization Requirements [12 USCIS-PM D]. or

    - The person naturalized on the basis of service in the U.S. armed forces but separated from the military under other than honorable conditions before serving honorably for a period or periods totaling at least five years.[12] See INA 328(f) and INA 329(c). See Part I, Military Members and their Families [12 USCIS-PM I].

The spouse or child's loss of citizenship under this provision does not apply if the spouse or child was residing in the United States at the time of revocation.[13] See INA 340(d).

Footnotes

1.

See INA 340(a).

2.

See Part K, Certificates of Citizenship and Naturalization, Chapter 5, Cancellation of Certificate of Citizenship or Naturalization [12 USCIS-PM K.5].

3.

USCIS counsel should be contacted in all cases involving possible loss of citizenship by spouses or children of persons whose naturalization has been revoked.

4.

See INA 319(a) and INA 319(b). See Part G, Spouses of U.S. Citizens [12 USCIS-PM G].

5.

See INA 320 and INA 322. See Part H, Children of U.S. Citizens [12 USCIS-PM H].

6.

See *Rosenberg v. United States*, 60 F.2d 475 (3rd Cir. 1932).

7.

Officers should consult with local USCIS OCC counsel in any cases involving a spouse's or child's revocation of citizenship under this provision.

8.

See INA 340(a) and INA 340(d).

9.

See INA 340(d).

10.

See INA 340(d).

11.

See INA 313 and INA 340(c). See Part D, General Naturalization Requirements [12 USCIS-PM D].

12.

See INA 328(f) and INA 329(c). See Part I, Military Members and their Families [12 USCIS-PM I].

13.

See INA 340(d).