Benefit Type	Medical Examination (Yes or No)	Vaccination (Yes or No)	Panel Physician or Civil Surgeon
Principal asylum applicants in the United States [15]	No	No	N/A
Applicants seeking derivative asylee status with DOS [16]	Yes	No	Panel physician
Refugee-based adjustment applicants [17]	May be required[18]	Yes	Civil surgeon[19]
Asylees applying for adjustment of status [20]	May be required[21]	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]	No	No	N/A
Children of returning residents entering the United States [23] or children of U.S. nationals	No	No	N/A
Internationally adopted orphans[24]	Yes	Yes (exception available)	Panel physician

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. Customs and Border Protection (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]

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]

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]

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]

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] 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]

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 forpurposes of admission to the United States. [31] 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]

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]

However, according to USCIS policy developed in consultation with the Centers for Disease Control and Prevention, 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 asyleehas 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]

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]

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]

Footnotes

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1. [^] Based on the conditions listed in INA 212(a)(1).

2. [^] See INA 212(d)(5)(A).

3. [^] See *Matter of Arthur (PDF)*, 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 302.2-3(A), Medical Examinations – Medical Examination for Fiancé(e)s.

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, Exception 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 (PDF), 124 Stat. 3058, 3058 (November 30, 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]

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]

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 the Centers for Disease Control and Prevention (CDC). [3] 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]

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] Only doctors of medicine (M.D.) and doctors of osteopathy (D.O.) who are currently licensed to practice as physicians may be designated. [6] 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 at uscis.gov/tools (via the Find a Doctor tool).

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]
- The form must be signed and dated by the designated civil surgeon who conducted the medical examination; [8]
- The form must be signed and dated by the applicant who was examined; [9]
- If applicable, the form must be signed and dated by the physician(s) completing referral evaluations; [10]
- The form must still be valid; [11] 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] 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] 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. Stamps of the physician's signature or other substitutes, or copies of the civil surgeon's original signature, are not acceptable (except for blanket-designated health departments or military physicians as described below).

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]

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]

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]

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]

An officer should follow the chart below to determine whether the applicant or a legal guardian must sign the form. [18]

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.
Under Age 14	Either the applicant, a parent, or legal guardian may sign the 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] 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 the health-related grounds of inadmissibility must establish that he or she is not inadmissible on health-related grounds. [20] 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 under the health-related grounds.

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 on health-related grounds if all of the following criteria are met:

- A USCIS-designated civil surgeon performed the immigration medical examination in accordance with HHS regulations;
- The civil surgeon and the applicant properly completed the current version of Form I-693; [21]
- The Form I-693 that the applicant submitted is signed by a civil surgeon no more than 60 days before the date the applicant filed an application for the underlying immigration benefit; [22]
- The Form I-693 establishes that the applicant does not have a Class A medical condition and has complied with the vaccination requirements or is granted a waiver; [23] and
- USCIS issues a decision on the underlying immigration benefit application no more than 2 years after the date the civil surgeon signed Form I-693. [24]

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 the applicant inadmissible to the United States on health-related grounds. In this case, the officer should follow standard operating procedures regarding issuance of a denial or an RFE or Notice of Intent to Deny (NOID) to address the deficiency.

Additionally, even if all of the above criteria are met, but the officer has reason to believe that the applicant's medical condition has changed since submission of the Form I-693 such that the applicant's admissibility could be affected, the officer, in his or her discretion, may request that the applicant submit a new Form I-693.

Special rules may apply to certain aliens 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 aliens usually do not need to repeat the full immigration medical exam in the United States for purposes of adjustment of status. [25]

Generally, the only acceptable version of Form I-693 is the version in use at the time of the medical examination. [26] Prior versions of Form I-693 are generally not acceptable because they may lack necessary information. [27]

Form I-693 Submitted to USCIS Before November 1, 2018

In 2018, USCIS revised its policy regarding the extent to which a Form I-693 retains its evidentiary value. This policy is effective November 1, 2018. Before November 1, 2018, the validity period policy provided Form I-693 retained its evidentiary value as long as it was submitted to USCIS within 1 year of the civil surgeon's signature and USCIS issued a final decision on the underlying immigration benefit application within a year of the Form I-693's submission to USCIS. This policy contained a maximum 2-year period during which Form I-693 retained its evidentiary value.

Due to increasing caseloads and more complex adjudications, USCIS observed an increasing number of cases where benefit applications could not be decided within 1 year from the date the Form I-693 was submitted. In these cases, USCIS would have to request a new Form I-693, further delaying the processing of the underlying application and inconveniencing the applicant.

The new policy, effective November 1, 2018, addresses these issues by realigning the existing 2-year period (during which Form I-693 retains its evidentiary value) to require applicants to complete their immigration medical examination closer in time to the filing of the underlying benefit application. This revised policy is intended to reduce the need for USCIS to request an updated Form I-693, thereby streamlining case processing and minimizing inconveniences to applicants.

Certain Form I-693 submitted to USCIS before November 1, 2018 may be subject to the previous validity period policy as noted in the section below.

A completed Form I-693 submitted to USCIS before November 1, 2018 retains its evidentiary value to support a finding that an applicant is not inadmissible based on health-related grounds if it meets any of the following scenarios:

- The civil surgeon signs Form I-693 more than 60 days before the applicant files the underlying benefit application with USCIS, but the applicant submits Form I-693 to USCIS no more than 1 year after the civil surgeon signed Form I-693; and USCIS issues a decision on the underlying benefit application no more than 1 year after the date the applicant submitted Form I-693 to USCIS.
- The civil surgeon signs Form I-693 no more than 60 days before the applicant files the underlying benefit application with USCIS; and USCIS issues a decision on the underlying benefit application no more than 2 years after the date of the civil surgeon's signature.
- The civil surgeon signs Form I-693, and the applicant submits Form I-693, after the applicant files the benefit application with USCIS; and USCIS issues a decision on the underlying benefit application no more than 2 years after the date of the civil surgeon's signature.

In all cases, a Form I-693 submitted to USCIS more than 1 year after the date of the civil surgeon's signature is insufficient for evidentiary purposes as of the time of its submission to USCIS. The table below illustrates these scenarios.

Form I-693 Submitted to USCIS Before November 1, 2018

When did civil surgeon sign?	When was underlying benefit application filed with USCIS?	I-693 retains evidentiary value through
No more than 1 year before I-693 submitted to USCIS	More than 60 days after civil surgeon signed the I-693	1 year from date applicant submitted I-693 to USCIS
No more than 60 days before underlying benefit application filed with USCIS	No more than 60 days after civil surgeon signed the I-693	2 years from date civil surgeon signed I-693
After the benefit application was filed with USCIS	Before the civil surgeon signed the I-693	2 years from date civil surgeon signed I-693
More than 1 year before I-693 submitted to USCIS	N/A – I-693 not valid at time applicant submits I-693 to USCIS	

Form I-693 Submitted to USCIS On or After November 1, 2018

A completed Form I-693 submitted to USCIS on or after November 1, 2018 retains its evidentiary value to support a finding that an applicant is not inadmissible based on health-related grounds if it meets any of the following scenarios:

- The civil surgeon signs Form I-693 no more than 60 days before the applicant files the underlying benefit application with USCIS; and USCIS issues a decision on the underlying benefit application no more than 2 years after the date of the civil surgeon's signature.
- The civil surgeon signs the Form I-693, and the applicant submits Form I-693, after the applicant files the benefit application with USCIS; and USCIS issues a decision on the underlying benefit application no more than 2 years after the

date of the civil surgeon's signature.

In all cases, a Form I-693 signed by a civil surgeon more than 60 days before the applicant files the underlying benefit application is insufficient for evidentiary purposes as of the time of its submission to USCIS. The table below illustrates these scenarios.

Form I-693 Submitted to USCIS On or After November 1, 2018

When did civil surgeon sign?	I-693 retains evidentiary value through
No more than 60 days before applicant filed underlying benefit application with USCIS	2 years from date civil surgeon signed I-693
After applicant filed benefit application with USCIS	2 years from date civil surgeon signed I-693
More than 60 days before applicant filed benefit application with USCIS	N/A – I-693 not valid at time applicant submits I-693 to USCIS

Timing of the Submission of the Medical Examination Report

Applicants may submit the Form I-693 medical examination report to USCIS:

- Concurrently with the immigration benefit application; or
- At any time after filing the immigration benefit application but before USCIS finalizes adjudication of that application. If not submitted simultaneously with the immigration benefit application, applicants may bring the medical examination report to an interview or wait until USCIS issues an RFE requesting the medical examination report.

Place of Submission of the Medical Examination Report

The medical examination report should be submitted to the appropriate location. [28]

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. [^] For example, Form I-485. Certain Form I-693 submitted to USCIS before November 1, 2018 may be subject to the previous policy in effect. See below for more information.

23. [^] 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].

24. [^] USCIS considers the date the civil surgeon signed the Form I-693 as the date the civil surgeon completed the examination. Certain Form I-693s submitted to USCIS before November 1, 2018 may be subject to the previous policy in effect. See below for more information.

25. [^] See Chapter 3, Applicability of Medical Examination and Vaccination Requirement [8 USCIS-PM B.3] for more information on these special considerations.

26. [^] In other words, the Form I-693 must be a valid form version as of the date the civil surgeon signed the form.

27. [^] See uscis.gov/i-693 for the current and accepted version(s) of the form.

28. [^] See 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] The Department of Health and Human Services (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]

- Gonorrhea;
- Hansen's Disease (Leprosy), infectious;
- Syphilis, infectious stage; and

- Tuberculosis (TB), Active—Only a Class A TB diagnosis renders an applicant inadmissible to the United States. Under current Centers for Disease Control and Prevention (CDC)guidelines, Class A TB means TB that is clinically active and communicable.

What qualifies as a communicable disease of public health significance is determined by HHS, not by USCIS. Any regulatory updates HHS makes to its list of communicable diseases of public health significance are controlling over the list provided in this Part B.

1. Additional Communicable Diseases for Applicants Abroad

HHS regulations also list two additional general categories of communicable diseases of public health significance.[3] Currently, these provisions only apply to applicants outside the United States who have to be examined by panel physicians:[4]

- 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]
- 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, human immunodeficiency virus (HIV) infection is no longer defined as a communicable disease of public health significance according to HHS regulations.[6] 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

The civil surgeon must complete “Findings” boxes for all categories of communicable diseases of public health significance. The civil surgeon may add explanatory remarks; however, the officer should not issue a Request for Evidence (RFE) simply because there are no remarks.

1. Tuberculosis

An initial tuberculosis (TB) screening test for showing an immune response to *Mycobacterium tuberculosis*[7] antigens is required for all applicants 2 years of age or older.[8] According to the Tuberculosis Technical Instructions for Civil Surgeons, applicants under 2 years of age are required to undergo an initial screening test only if the child has signs or symptoms suggestive of TB or has known human immunodeficiency virus (HIV) infection.

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 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.

Initial Screening Test Results

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[9] 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.

Positive Screening Results

If the initial screening test is positive, or if the applicant has signs or symptoms of TB or has known HIV infection, a chest X-ray must be performed. Applicants who have chest x-ray findings suggestive of TB, signs or symptoms of TB, or known HIV infection must be referred to the health department of jurisdiction for sputum testing. This referral, testing, and treatment can be a lengthy process, but 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.

Referral and Reporting to Health Departments

If a referral is required, the civil surgeon must not sign Form I-693 until the referral evaluation section has been completed and received back from the appropriate health department. If the referral evaluation section is not documented, the officer should issue an RFE for corrective action. Determining whether a referral is required is detailed in the TB Technical Instructions for Civil Surgeons.

2. Syphilis

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 details in the "Findings" portion of Form I-693.[10]

3. Gonorrhea

Testing for gonorrhea is required for applicants 15 years of age or older. Applicants under 15 years old may be tested by the civil surgeon if illness is suspected. The testing age is determined by the applicant's age on the date the civil surgeon signed the form, not the age at the time USCIS adjudicates the adjustment application. The civil surgeon must complete details about the testing and the "Findings" portion in Form I-693.[11]

4. Other Class A and Class B Conditions for Communicable Diseases of Public Health Significance

According to the Technical Instructions for Hansen's Disease (Leprosy) for Civil Surgeons, screening for Hansen's disease includes obtaining medical history with inquiries as to past and present diagnoses of Hansen's disease, history of skin lesions unresponsive to treatment, and family history of skin lesions or known Hansen's disease. The physical exam must include a

search for signs and lesions consistent with Hansen's disease, and the civil surgeon must complete the "Findings" portion in Form I-693.

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. [^] See Pub. L. 78-410, 58 Stat. 682, 703 (July 1, 1944), as amended, codified at 42 U.S.C. Chapter 6A. The current revised list of quarantinable communicable diseases is available at cdc.gov and archives.gov/federal-register.

6. [^] See the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008, Pub. L. 110-293 (PDF) (July 30, 2008). See 42 CFR 34.2(b) as amended by 74 FR 56547 (PDF) (Nov. 2, 2009).

7. [^] Bacteria that cause latent TB infection and TB disease.

8. [^] For acceptable tests and more information regarding procedures relating to the referral process, see the Tuberculosis Technical Instructions for Civil Surgeons.

9. [^] 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, see CDC's website at cdc.gov.

10. [^] For more detailed instructions regarding syphilis, see the Technical Instructions for Syphilis for Civil Surgeons.

11. [^] For more detailed instructions regarding gonorrhea, see the Technical Instructions for Gonorrhea for Civil Surgeons.

Chapter 7 - Physical or Mental Disorder with Associated Harmful Behavior

A. Physical or Mental Disorders with Associated Harmful Behavior [1]

Applicants who have physical or mental disorders and harmful behavior associated with those disorders are inadmissible. [2] 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 or 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.

A physical disorder is a currently accepted medical diagnosis as defined by the current edition of the Manual of International Classification of Diseases, Injuries, and Causes of Death published by the World Health Organization or by another authoritative

source as determined by the Director. [3] Officers should consult the Technical Instructions for additional information, if needed.

A mental disorder is a currently accepted psychiatric diagnosis, as defined by the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association or by another authoritative source as determined by the Director. [4] 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 Substances Act (with current associated harmful behavior or a history of associated harmful behavior judged likely to recur) is classified as a mental disorder. [5]

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. [6] 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. [7] 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 5 years[8]; or
- Two or more arrests/convictions for alcohol-related driving incidents within the preceding 10 years. [9]

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. [10]

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; or
- 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

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1. [^] See 42 CFR 34.2(n) (mental disorder). See 42 CFR 34.2(p) (physical disorder).

2. [^] See INA 212(a)(2)(A)(iii).

3. [^] HHS regulations define Director as the director of CDC or a designee as approved by the Director or Secretary of HHS. See 42 CFR 34.2(g).

4. [^] HHS regulations define Director as the director of CDC or a designee as approved by the Director or Secretary of HHS. See 42 CFR 34.2(g).

5. [^] See Title II of Pub. L. 91-513 (PDF), 84 Stat. 1242, 1247 (October 27, 1970), as amended, codified at 21 U.S.C. 801 et. seq.

6. [^] See Title II of Pub. L. 91-513 (PDF), 84 Stat. 1242, 1247 (October 27, 1970), as amended, codified at 21 U.S.C. 801 et. seq.

7. [^] See INA 212(a)(2).

8. [^] See CDC's Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-Related Disorders, available at cdc.gov/immigrantrefugeehealth/exams/ti/civil/mental-civil-technical-instructions.html.

9. [^] See CDC's Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-Related Disorders, available at cdc.gov/immigrantrefugeehealth/exams/ti/civil/mental-civil-technical-instructions.html.

10. [^] 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] Drug abuse and drug addiction are current substance-use disorders or substance-induced disorders of a controlled substance listed in Section 202 of the Controlled Substances Act, as defined in the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association or by another authoritative source as determined by the Director. [2]

In 2010, the Centers for Disease Control and Prevention (CDC) changed the Technical Instructions on how a civil surgeon determines whether an applicant is a drug abuser or drug addict. [3] The civil surgeon must now make this determination according to the DSM as specified in the Technical Instructions. [4]

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. [5] 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. [6]

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 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 the following documents:

- A cover letter indicating the request, reason(s) for the request, and the USCIS office making the request;
- 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.

Once the documents are received by CDC, CDC reviews the documents and forwards a response letter with results of the review to the USCIS office that submitted the request.

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 Title II of Pub. L. 91-513 (PDF), 84 Stat. 1242, 1247 (October 27, 1970), as amended, codified at 21 U.S.C. 801 et. seq. See 42 CFR 34.2(h) (drug abuse). See 42 CFR 34.2(i) (drug addiction). HHS regulations define Director as the Director of CDC or a designee as approved by the Director or Secretary of HHS. See 42 CFR 34.2(g).

3. [^] See CDC's Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-Related Disorders, available at cdc.gov/immigrantrefugeehealth/exams/ti/civil/mental-civil-technical-instructions.html.

4. [^] 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.

5. [^] 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 3 years, or non-medical use of a non-controlled substance within the past 2 years.

6. [^] 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 the Centers for Disease Control and Prevention (CDC) have determined they are in the interest of public health.[1]

The Immigration and Nationality Act (INA) [2] specifies the following vaccinations:

- Mumps, measles, rubella;
- Polio;
- Tetanus and diphtheria toxoids; [3]
- Pertussis;
- Haemophilius influenza type B; and
- Hepatitis B.

CDC requires the following additional vaccines for immigration purposes:

- Varicella;
- Influenza;
- Pneumococcal pneumonia;
- Rotavirus;
- Hepatitis A; and
- Meningococcal.

If the applicant has not received any of the listed vaccinations and the vaccinations are age appropriate and medically appropriate, the applicant has a Class A condition and 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]
- 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] 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] 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] 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]

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]

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]

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] 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]
Step 2	Verify that any vaccine that was required (age appropriate) [13] as of the date of the medical exam is marked as: • 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

USCIS officers should consult the chart in the Vaccination Technical Instructions to determine inadmissibility based on failure to meet the vaccination requirements.

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, human papillomavirus (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]

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] 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] and
- The child is seeking an immigrant visa as an immediate relative. [17]

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 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]

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]

Footnotes

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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/Tdapbooster 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 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 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 (PDF), 124 Stat. 3058, 3058 (November 30, 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]

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]

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]

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] and in standard public charge guidance. [5]

2. Criminal Grounds

An applicant may be inadmissible on criminal grounds if he or she has admitted to committing certain controlled substance violations. [6] 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] 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. [8]

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] 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

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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 (PDF) (Mar. 26, 1999).

6. [^] See INA 212(a)(2)(A).

7. [^] A valid admission (absent a conviction) for purposes of criminal inadmissibility grounds "requires that the [alien] 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, 597 (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 the Centers for Disease Control and Prevention.

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] 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. [2]

Footnotes

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1. [^] See Application for Waiver of Grounds of Inadmissibility (Form I-601), Application By Refugee for Waiver of Grounds of Excludability (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

USCIS designates eligible physicians as civil surgeons to perform medical examinations for immigration benefit applicants in the United States. [1] 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] 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] first granted the Secretary of the Treasury the authority to examine aliens 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]

The Immigration and Nationality Act (INA) of 1952, as amended by the Homeland Security Act of 2002, [5] 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] Since USPHS medical officers are rarely available today, civil surgeons generally provide all immigration medical examinations required of aliens in the United States.

The civil surgeon's primary role is to perform immigration medical examinations to assess whether aliens 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]

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. An alien 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] 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] 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]

Civil surgeons' responsibilities include: [11]

- 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]
- 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] 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]

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 302.2-3(E), Panel Physicians.

2. [^] See INA 212(a)(1).

3. [^] See 22 Stat. 214 (August 3, 1882).

4. [^] See Section 8 of the Immigration Act of 1891, 26 Stat. 1084, 1085 (March 3, 1891).

5. [^] See Pub. L. 107-296 (PDF), 116 Stat. 2135 (November 25, 2002).

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 cdc.gov/immigrantrefugeehealth/exams/ti/civil/technical-instructions-civil-surgeons.html.

13. [^] See uscis.gov/i-910 for more information on how to update contact information.

14. [^] Available online at 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] 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] 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]

USCIS will only accept [4] and consider complete applications for civil surgeon designation; applications must be submitted in accordance with the form instructions. [5]

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]

2. Filing Fee

The physician must include the required filing fee [7] 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]

- 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] 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]
- 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]

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 External Affairs Directorate (EXA) 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] 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]

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

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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 uscis.gov/I-910.

6. [^] The current version of the form and instructions can be accessed online at uscis.gov/i-910.

7. [^] See 8 CFR 103.7(b)(1)(i). The current filing fee can also be found at 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 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]

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] Through policy and in agreement with the Centers for Disease Control and Prevention (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]

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] 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]

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] 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] This blanket designation does not cover asylees seeking adjustment of status. [8]

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]

Refugees who require the entire medical exam, [10] will likewise need to visit a physician designated as a civil surgeon through the standard application process. [11]

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), a Request for Evidence (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] 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]

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] 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: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: 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]

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 National Benefits Center (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 the Centers for Disease Control and Prevention (CDC) to obtain expert medical advice.

An officer may refer a proposed revocation of civil surgeon designation to USCIS counsel for review. When referring a case to USCIS counsel, the officer should include the reasons for the intended revocation and a copy 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] 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]

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] 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]

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]

Footnotes

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1. [^] For more information on where to send a request to terminate one's designation, visit the USCIS website.

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 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 USCIS Contact 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]

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 National Benefits Center (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] 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 a Request for Evidence (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 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 D - Criminal and Related Grounds of Inadmissibility

Part E - Terrorism

Part F - National Security

Part G - Public Charge Ground of Inadmissibility

Part H - Labor Certification and Select Immigrant Qualifications

Part I - Illegal Entrants and Other Immigration Violators

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 person 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]

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]

B. Background

The 1924 Immigration Act [3] 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]

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]

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 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] Substantive changes to the inadmissibility ground did not come until 1996, when Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). [8]

With the passage of IIRIRA, Congress created two separate inadmissibility grounds that remain unchanged to this day: [9]

- Fraud or willful misrepresentation made in connection with obtaining an immigration benefit; [10] and
- False claim to U.S. citizenship made on or after September 30, 1996. [11]

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.

Aliens 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] IIRIRA made this ground applicable only to false claims made on or after September 30, 1996. [13]

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]

C. Scope

This guidance addresses inadmissibility for fraud and willful misrepresentation [15] 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

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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 Sections 22(b) and 22(c) of the Immigration Act of 1924, Pub. L. 68-139 (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." See the Immigration and Nationality Act of 1952, Pub. L. 82-414 (PDF) (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 Section 6(a) of the Immigration Marriage Fraud Amendments of 1986, Pub. L. 99-639 (PDF), 100 Stat. 3537, 3543 (November 10, 1986).

7. [^] See Section 601(a) of the Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978, 5067 (November 29, 1990).

8. [^] See Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Division C of Pub. L. 104-208 (September 30, 1996).

9. [^] See Section 344(a) of IIRIRA, Division C of Pub. L. 104-208, 110 Stat. 3009, 3009-637 (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 Section 344(a) of IIRIRA, Division C of Pub. L. 104-208 (PDF) (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 Immigration and Nationality Act (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]

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] 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]

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] 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]

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]

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]
- 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] and
- The U.S. government official believed and acted upon the false representation by granting the benefit. [9]

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] 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] 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 and acted upon the false representation.	*Not Applicable*	x *(Not applicable if 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] 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]

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]

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.

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].

Chapter 3 - Adjudicating Inadmissibility

A. Evidence and Burden of Proof

1. Evidence

To find a person inadmissible for fraud or willful misrepresentation, [1] 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]

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] 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]

If there is no evidence the applicant obtained or sought to obtain a benefit under the Immigration and Nationality Act (INA) by fraud or willful misrepresentation, USCIS should find that the applicant has met the burden of proving that he or she is not inadmissible under this ground. [5]

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. In these cases, USCIS considers the applicant inadmissible for fraud or willful misrepresentation, unless the applicant is able to successfully rebut the officer's inadmissibility finding.

Special issues may arise if evidence indicates that an applicant is violating, or has violated, his or her nonimmigrant status or is otherwise engaging, or has engaged, in conduct in the United States that is inconsistent with representations the applicant made to a consular or DHS officer when applying for admission, a visa, or another immigration benefit. Although conduct inconsistent with one's nonimmigrant status and prior representations does not automatically mean there is a misrepresentation, such evidence permits a reasonable person to conclude that the applicant may be inadmissible for fraud or willful misrepresentation, especially if the violation or conduct occurred shortly after the U.S. Department of State (DOS) visa interview or after admission. The officer should carefully assess the circumstances of the applicant's case. [6]

If the officer's finding of inadmissibility is based on evidence that the applicant obtained or sought to obtain a benefit under the INA through 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]

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 90-Day Rule [8]

DOS developed a 90-day "rule" to assist consular officers in evaluating willful misrepresentation in cases involving an applicant who violated his or her nonimmigrant status or whose conduct is inconsistent with representations made to either the consular officer at the time of the visa application or to the immigration officer at the port of entry. The DOS 90-day rule creates a presumption of willful misrepresentation if an applicant engages in such conduct within 90 days of admission to the United States.

Although referred to by DOS as a "rule" in its Foreign Affairs Manual (FAM), the 90-day rule is not a regulation. It is DOS guidance to its officers, and as such, the 90-day rule is not binding on USCIS officers. However, USCIS officers must examine all of the factors in an applicant's case. After such review, USCIS officers may find that an applicant made a willful misrepresentation, especially if the violation or inconsistent conduct occurred shortly after the consular interview or admission to the United States. [9] Officers should carefully assess each situation and continue to evaluate cases for potential fraud indicators. When appropriate, officers should also refer cases to Fraud Detection and National Security, according to existing procedures.

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. [10]

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. [11] 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; [12]
- Change of nonimmigrant status; [13]
- Permission to re-enter the United States;
- Waiver of the 2-year foreign residency requirement; [14]
- Employment authorization; [15]
- Parole; [16]
- Voluntary departure; [17]
- Adjustment of status; [18] and
- Requests for stay of deportation. [19]

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. [20]

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. [21] However, fraud or willful misrepresentation made in connection with another's immigration benefit may make the person inadmissible for alien smuggling. [22]

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. [23] 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. [24]

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. [25]

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.[26] 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. [27]

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. [28]

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. [29]

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. [30] 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. [31] 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. [32] 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. [33] 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. [34]

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. [35]

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. [36] 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; [37] 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. [38]

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. [39] 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. [40] 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. [41] 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. [42]

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. [43] Fraud or willful misrepresentation made to a private person or entity would not make one inadmissible under this ground. [44]

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), [45] 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. [46]

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. [47]

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

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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. [^] For more information on willfulness, see Section D, Willfulness [8 USCIS-PM J.3(D)].

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, see 9 FAM 302.9-4, Misrepresentation – INA 212(a)(6)(C).

9. [^] For more information on how to assess an applicant's conduct in the United States that is inconsistent with prior representations made, see Subsection 2, Burden of Proof [8 USCIS-PM J.3(A)(2)].

10. [^] 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).

11. [^] See *Matter of M-y R-,* 6 I&N Dec. 315 (BIA 1954). See 9 FAM 302.9-4(B)(7), Interpretation of the Terms "Other Documentation" or "Other Benefit."

12. [^] See 8 CFR 214.1.

13. [^] See INA 248. See 8 CFR 248.

14. [^] See INA 212(e).

15. [^] See INA 274A. See 8 CFR 274a.12.

16. [^] See INA 212(d)(5). See 8 CFR 212.5.

17. [^] See INA 240B. See 8 CFR 240.25 and 8 CFR 1240.26.

18. [^] See INA 245.

19. [^] See 9 FAM 302.9-4(B)(7), Interpretation of the Terms "Other Documentation" or "Other Benefit."

20. [^] See legacy Immigration and Naturalization Service General Counsel Opinion 91-39. See 9 FAM 302.9-4(B)(3), Interpretation of the Term Misrepresentation.

21. [^] 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)).

22. [^] See INA 212(a)(6)(E).

23. [^] See *Matter of Healy and Goodchild,* 17 I&N Dec. 22 (BIA 1979).

24. [^] 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).

25. [^] 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).

26. [^] 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 302.9-4(B)(3), Interpretation of the Term Misrepresentation, Differentiation Between Misrepresentation and Failure to Volunteer Information.

27. [^] See *Fedorenko v. United States,* 449 U.S. 490 (1981).

28. [^] 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).

29. [^] See 9 FAM 302.9-4(B)(4), Interpretation of Term Willfully. 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)].

30. [^] 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)).

31. [^] "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).

32. [^] See *Matter of Namio,* 14 I&N Dec. 412 (BIA 1973).

33. [^] See *Matter of Namio,* 14 I&N Dec. 412 (BIA 1973).

34. [^] See *Llanos-Senarrilos v. United States,* 177 F.2d 164, 165 (9th Cir. 1949).

35. [^] 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.

36. [^] See *Kungys v. United States,* 485 U.S. 759, 770 (1988) (proceeding to revoke a person's naturalization).

37. [^] 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).

38. [^] 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).

39. [^] 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).

40. [^] See *Matter of S- and B-C-,* 9 I&N Dec. 436, 448 (A.G. 1961).

41. [^] 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.

42. [^] See *Matter of S- and B-C-,* 9 I&N Dec. 436 (A.G. 1961).

43. [^] See *Matter of Y-G-,* 20 I&N Dec. 794, 796 (BIA 1994).

44. [^] See *Matter of Y-G-,* 20 I&N Dec. 794 (BIA 1994). See *Matter of L-L-,* 9 I&N Dec. 324 (BIA 1961).

45. [^] See 8 USCIS-PM J.2(B).

46. [^] 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).

47. [^] 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)].

Part K - False Claim to U.S. Citizenship

Chapter 1 - Purpose and Background

A. Purpose

U.S. citizenship confers important rights and responsibilities, including the right to vote and to hold public office. U.S. citizens also have an unqualified right to live in the United States. In recognition of these principles, Congress provided a specific ground of inadmissibility to address when an alien falsely claims to be a U.S. citizen for any purpose or benefit under the Immigration and Nationality Act (INA) or any other federal or state law. Indeed, the immigration consequences for falsely claiming U.S. citizenship are severe. [1] The alien is permanently barred from admission. [2]

There are exceptions and waivers to this ground of inadmissibility. The Department of Homeland Security has the authority to waive inadmissibility for purposes of a nonimmigrant admission. A waiver is not available, however, to most aliens seeking lawful permanent resident (LPR) status.

B. Background

Congress added the ground of inadmissibility for falsely claiming U.S. citizenship with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). [3] Prior to the passage of IIRIRA, an alien who falsely claimed U.S. citizenship for purposes of immigration benefits was inadmissible because of fraud and willful misrepresentation. [4] Concerned about non-citizens' increased use of fraud to access various federal benefits, [5] Congress divided the provision into two separate inadmissibility grounds including: [6]

- Fraud or willful misrepresentation made in connection with obtaining an immigration benefit; [7] and
- False claim to U.S. citizenship made on or after September 30, 1996 in connection with obtaining any benefit or for any purpose under federal or state law, including immigration law. [8]

These two grounds differ significantly. This part only addresses the inadmissibility determination for false claims to U.S. citizenship made on or after September 30, 1996, the date that the new inadmissibility ground for falsely claiming U.S. citizenship became effective.

The officer cannot make a finding of inadmissibility under the false claim to U.S. citizenship ground of inadmissibility for aliens who made a false claim to U.S. citizenship prior to September 30, 1996. [9] In those cases, the officer must analyze the alien's inadmissibility according to the fraud and willful misrepresentation ground of inadmissibility. [10]

This distinction is important, because aliens who made a false claim to U.S. citizenship before September 30, 1996, may apply for a waiver of the ground of inadmissibility for fraud and misrepresentation. [11] Aliens who made a false claim to U.S. citizenship on or after September 30, 1996, generally are not eligible for waivers if they seek permanent resident status. [12]

The chart below outlines the distinctions between the inadmissibility grounds of fraud or willful misrepresentation [13] and falsely claiming U.S. citizenship. [14]

Comparing Fraud or Willful Misrepresentation and False Claim to U.S. Citizenship

Inadmissibility Ground	Offense	Description	Made To	Waiver
Fraud or Willful Misrepresentation INA 212(a)(6)(C)(i)	Fraud or willful misrepresentation anytime or false claim to U.S. citizenship made ***before*** September 30, 1996	Misrepresentation material for any purpose or benefit under INA (immigration benefit)	Government official exercising authority under the immigration and nationality laws [15]	Waiver available for most applicants

Inadmissibility Ground	Offense	Description	Made To	Waiver
False Claim to U.S. Citizenship INA 212(a)(6)(C)(ii)	False claim to U.S. citizenship made ***on or after*** September 30, 1996	Misrepresentation of U.S. citizenship for any purpose or benefit under INA ***or any other federal or state law***	Any government or non-government official [16]	Waiver ***not*** available for most applicants

C. Scope

This guidance addresses inadmissibility for falsely claiming U.S. citizenship [17] for any purpose or benefit under the INA or any other federal or state law, made on or after September 30, 1996.

D. Legal Authorities

- INA 212(a)(6)(C)(ii) – Illegal entrants and immigration violators – falsely claiming citizenship

Footnotes

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1. [^] Falsely claiming U.S. citizenship is also a criminal offense under 18 U.S.C. 911. This Part K does not address the criminal consequences of falsely claiming U.S. citizenship but addresses when a criminal conviction is evidence for purposes of the inadmissibility determination.

2. [^] See INA 212(d)(3). If the alien needs a nonimmigrant visa, then the Department of State (DOS) must concur in the waiver.

3. [^] See Pub. L. 104-208 (September 30, 1996).

4. [^] See INA 212(a)(6)(C). For more information on fraud and willful misrepresentation, see Part J, Fraud and Willful Misrepresentation [8 USCIS-PM J].

5. [^] See H.R. Rep. 104-861, p. 50 (Sept. 28, 1996). See 142 Cong. Rec. S11503 (daily ed. September 27, 1996) (statement of Sen. Hatch). See H.R. Rep. 104-828, p. 199 (Sept. 24, 1996) (Conf. Rep.) (Joint Explanatory Statement). See *Matter of Richmond*, 26 I&N Dec. 779 (BIA 2016).

6. [^] See Section 344(a) of IIRIRA, Division C of Pub. L. 104-208, 110 Stat. 3009, 3009-637 (September 30, 1996).

7. [^] See INA 212(a)(6)(C)(i).

8. [^] See INA 212(a)(6)(C)(ii). See *Matter of Richmond*, 26 I&N Dec. 779 (BIA 2016).

9. [^] See INA 212(a)(6)(C)(ii). See Section 344(c) of IIRIRA, Pub. L. 104-208, 110 Stat. 3009-546, 3009-637 (September 30, 1996).

10. [^] For more information, see Part J, Fraud and Willful Misrepresentation [8 USCIS-PM J].

11. [^] See INA 212(a)(6)(C)(i) and INA 212(i).

12. [^] Depending on the immigration benefit the applicant is seeking, the applicant may have a waiver available; however, aliens seeking to immigrate as immediate relatives, under a preference category, or based on the diversity visa lottery do not have a waiver available.

13. [^] See INA 212(a)(6)(C)(i).

14. [^] See INA 212(a)(6)(C)(ii).

15. [^] For example, a Customs and Border Protection, Immigration and Customs Enforcement, or USCIS officer, a consular officer, or an immigration judge.

16. [^] For example, a private employer, lender, school, or other entity.

17. [^] See INA 212(a)(6)(C)(ii). Inadmissibility for fraud or willful misrepresentation or falsely claiming U.S. citizenship before September 30, 1996, is a separate inadmissibility ground. See INA 212(a)(6)(C)(i).

Chapter 2 - Determining False Claim to U.S. Citizenship

For an alien to be inadmissible based on false claim to U.S. citizenship, an officer must find all of the following elements:

- The alien made a representation of U.S. citizenship;
- The representation was false;
- The alien made the false representation knowingly; and
- The alien made the false representation for any purpose or benefit under the Immigration and Nationality Act (INA) or any other federal or state law.

A. Overview of Admissibility Determination

The officer should examine all facts and circumstances when evaluating inadmissibility for falsely claiming U.S. citizenship. 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 alien claimed to be a U.S. citizen.	Section B, Claim to U.S. Citizenship [8 USCIS-PM K.2(B)]
Step 2	Determine whether alien made the representation on or after September 30, 1996.	Section C, Claim Made On or After September 30, 1996 [8 USCIS-PM K.2(C)]

Step		For More Information
Step 3	Determine whether the representation was false.	Section D, Knowledge that Claim Was False [8 USCIS-PM K.2(D)]
Step 4	Determine whether alien knew the claim to U.S. citizenship was false. [1]	Section D, Knowledge that Claim Was False [8 USCIS-PM K.2(D)]
Step 5	Determine whether alien's false claim to U.S. citizenship was for the purpose of obtaining a benefit under the INA or under any other federal or state law.	Section E, Purpose or Benefit under INA or Any State or Federal Law [8 USCIS-PM K.2(E)]
Step 6	Determine whether alien timely retracted the false claim to U.S. citizenship.	Section F, Timely Retraction [8 USCIS-PM K.2(F)]
Step 7	Determine whether alien is exempt from inadmissibility because a statutory exception applies. [2]	Chapter 4, Exceptions and Waivers, Section A, Applicability [8 USCIS-PM K.4(A)] and Section B, Exception [8 USCIS-PM K.4(B)]
Step 8	Determine whether a waiver of inadmissibility is available.	Chapter 4, Exceptions and Waivers, Section C, Waiver [8 USCIS-PM K.4(C)]

B. Claim to U.S. Citizenship

An officer should first determine whether an alien claimed to be a U.S. citizen.

1. Form of Claim

An alien may claim to be a U.S. citizen in oral interviews, written applications, or by submitting evidence. It is irrelevant whether or not the alien made the claim under oath.

2. Representation Before Government Official Not Necessary

Unlike inadmissibility for fraud and misrepresentation, [3] an alien does not have to make the claim of U.S. citizenship to a U.S. government official exercising authority under the immigration and nationality laws. The alien can make the claim to any other federal, state, or local official, or even to a private person, such as an employer. [4]

3. Distinction between a U.S. Citizen and a U.S. National

U.S. citizen status is related to, but is not the same as, U.S. national status. A U.S. national is any person owing permanent allegiance to the United States and may include a U.S. citizen or a non-citizen U.S. national. [5] A non-citizen U.S. national owes

permanent allegiance to the United States and is entitled to live in the United States but is not a citizen. [6] A U.S. citizen is any person born in the United States or who otherwise acquires U.S. citizenship at or after birth. [7]

4. Claiming to be a U.S. National

An alien who falsely claims to be a U.S. national but not a U.S. citizen is not inadmissible for false claim to U.S. citizenship. [8] The alien, however, may be inadmissible for fraud or willful misrepresentation if all other elements for that ground are met.[9]

The Employment Eligibility Verification form (Form I-9) used prior to April 3, 2009, asked the person completing it whether the person is a "citizen or national" of the United States and required checking a box corresponding to the answer. The fact that an alien marked "Yes" on an earlier edition of the Employment Eligibility Verification does not necessarily subject the alien to inadmissibility for falsely claiming U.S. citizenship, because the earlier edition of the form did not distinguish a claim of "nationality" from a claim of "citizenship." [10]

An affirmative answer to this question does not, by itself, provide sufficient evidence that would permit a reasonable person to find the alien falsely represented U.S. citizenship because of the question's ambiguity. [11]

In these cases, the applicant must demonstrate to an officer that he or she understands the distinction between a U.S. citizen and non-U.S. citizen national. [12] The applicant has the burden of showing that he or she was claiming to be a non-U.S. citizen national as opposed to a U.S. citizen. The applicant's inadmissibility for a false claim to U.S. citizenship depends on whether the applicant meets the burden of showing that he or she intended to claim to be a U.S. national when completing the Form I-9.

This inquiry is not necessary if the applicant used the April 3, 2009, edition or any later edition of the Form I-9, because these editions clearly differentiate between "Citizen of the United States" and "Non-citizen National of the United States."

C. Claim Made On or After September 30, 1996 [13]

An officer should determine whether the claim to U.S. citizenship occurred on or after September 30, 1996. [14] If an applicant claimed U.S. citizenship before September 30, 1996, the applicant may be inadmissible for fraud or willful misrepresentation [15] but not for falsely claiming U.S. citizenship. [16]

D. Knowledge that Claim Was False

If an applicant claimed to be a U.S. citizen on or after September 30, 1996, then an officer should determine whether the claim was false and whether the applicant knew the claim was false.

1. False Representation

A false representation or misrepresentation is an assertion or manifestation that is not in accordance with the true facts.

2. Knowledge of False Claim

For USCIS to consider the claim to U.S. citizenship to be false, the applicant must knowingly misrepresent the fact that the applicant is a citizen of the United States. The applicant must have known that he or she was not a U.S. citizen at the time he or she made the claim. [17]

Knowledge that the claim was false, however, is not an element that the government must prove. As long as there is some evidence in the record that reasonably calls the alien's admissibility into question, the alien has the burden to prove the alien is

not inadmissible.

The alien's assertion that he or she did not know the claim to citizenship was false is therefore a defense. The alien must establish clearly and beyond a doubt that he or she did not know the claim was false. The alien's lack of knowledge about the claim being false is an individualized inquiry and depends on the unique circumstances of each particular case.

3. Refusal to Respond to Questions [18]

An alien's refusal to answer a question does not necessarily mean that he or she knowingly made a false representation. An alien's refusal to answer an officer's question during an admissibility determination, however, could result in the officer finding that the applicant failed to establish admissibility. [19]

4. Lack of Capacity

Factors to Consider

Inherent in the knowledge requirement is that the alien has the capacity for such knowledge. An officer cannot make a finding of inadmissibility for false claim to U.S. citizenship if the alien lacks the capacity to knowingly make a false claim to U.S. citizenship.

An officer should not find that an alien lacks capacity simply because he or she does not know that a false claim to U.S. citizenship makes the alien inadmissible. An officer should find a lack of capacity only if the evidence shows that the alien was incapable of understanding the nature and consequences of the false claim at the time of the alleged false claim.

The officer should consider all relevant factors when evaluating whether the alien has the capacity to make a knowingly false claim to U.S. citizenship, including the alien's:

- Age;
- Level of education;
- Background;
- Mental capacity;
- Level of understanding;
- Ability to appreciate the difference between true and false; and
- Other relevant circumstances.

False Claim Made while Under Age 18

A lack of capacity claim may arise most often in the case of an alien who made a false claim to U.S. citizenship while under the age of 18. The fact that the person was not yet 18 years of age is insufficient by itself to establish a lack of capacity.

A capacity assessment, in this instance, relies on determining whether the alien who made the false claim while under age 18 had the maturity and the judgment to understand and appreciate the nature and consequences of his or her actions at the time the false claim was made.

Sufficient capacity for knowledge at the time of the claim is not an element that the government must prove. As long as there is some evidence in the record that reasonably calls the alien's admissibility into question, the alien has the burden to prove that he or she is not inadmissible.

The alien may establish that he or she did not have the capacity to judge the nature and consequences of a false citizenship claim due to age or cognitive impairment. The alien must establish the lack of capacity clearly and beyond doubt. The alien's capacity for knowledge is an individualized inquiry, and it depends on the unique circumstances of each particular case.

E. Purpose or Benefit under INA or Any State or Federal Law

1. Any Purpose or Benefit

The law only makes an alien inadmissible for falsely claiming U.S. citizenship if the alien falsely represents him or herself to be a citizen of the United States "for any purpose or benefit" under the INA, including INA 274A, or any other federal or state law. [20]

The provision for inadmissibility based on false claim to U.S. citizenship [21] uses "or" rather than "and" as the conjunction between "purpose" and "benefit." There may be cases in which the facts show that the alien intended to achieve both a purpose and obtain a benefit. However, an alien can also be inadmissible based on a false claim made with the specific intent to achieve an improper purpose, even if it did not involve an application for any specific benefit.

Furthermore, U.S. citizenship must affect or matter to the purpose or benefit sought. That is, U.S. citizenship must be material to the purpose or benefit sought. [22]

In sum, even though an alien may have falsely claimed U.S. citizenship, he or she is only inadmissible if:

- The alien made the false claim with the subjective intent of obtaining a benefit or achieving a purpose under the INA or any other federal or state law, as shown by direct or circumstantial evidence; and
- U.S. citizenship affects or matters to the purpose or benefit sought, that is, it must be material to obtaining the benefit or achieving the purpose.

2. Intent to Obtain a Benefit [23]

Whether an alien made the false claim with the specific intent of obtaining a benefit is a question of fact and dependent on the circumstances of each case. The alien has the burden to show, either with direct or circumstantial evidence, that he or she did not have the subjective intent of obtaining the benefit. [24]

Whether U.S. citizenship actually affects or matters to the benefit sought is determined objectively. If the benefit requires U.S. citizenship as part of eligibility, then the alien's false claim is material. [25] If the claim to citizenship has a natural tendency to influence the official decision to grant or deny the benefit sought, the claim is material. [26] It is the alien's burden to show that U.S. citizenship is not relevant to obtaining the benefit.

If U.S. citizenship is irrelevant to the benefit at issue, the alien's false claim to U.S. citizenship does not make him or her inadmissible unless the evidence provides a basis for finding that the alien made the false claim to achieve a purpose under federal or state law.

For purposes of a false claim to U.S. citizenship, [27] a benefit must be identifiable and enumerated in the INA or any other federal or state law.

A benefit includes but is not limited to:

- A U.S. passport; [28]
- Entry into the United States; [29] and

- Obtaining employment, loans, or any other benefit under federal or state law, if citizenship is a requirement for eligibility. [30]

3. Intent to Achieve a Purpose

Whether an alien made the false claim with the specific intent of achieving a purpose is a question of fact and dependent on the circumstances of each case. The alien has the burden to show, either with direct or circumstantial evidence, that he or she did not have the subjective intent of achieving the purpose. [31]

Whether U.S. citizenship actually affects or matters to the purpose is determined objectively. U.S. citizenship affects or matters to the purpose, and is material, if it has a natural tendency to influence the applicant's ability to achieve the purpose. [32] It is the alien's burden to show that U.S. citizenship is not relevant to achieving the purpose.

If U.S. citizenship is irrelevant to achieving the purpose at issue, the alien's false claim to U.S. citizenship does not make him or her inadmissible unless the evidence provides a basis for finding that the alien made the false claim to obtain a benefit under federal or state law.

The term "purpose" includes avoiding negative legal consequences. Negative legal consequences that an alien might seek to avoid by falsely claiming U.S. citizenship include but are not limited to:

- Removal proceedings; [33]
- Inspection by immigration officials; [34] and
- Prohibition on unauthorized employment. [35]

Purpose, however, is not limited to avoiding negative legal consequences. The purpose may also be something more positive. For example, a false claim would be for an improper purpose if a benefit under federal or state law is not restricted to U.S. citizens, but an alien falsely claims to be a U.S. citizen when seeking the benefit to avoid an eligibility or evidentiary requirement that does not apply to citizens seeking the benefit.

Example

In the course of an arrest for disorderly conduct, an alien falsely claimed that he was born in Puerto Rico. However, the facts of the case did not support that he had falsely claimed U.S. citizenship with the subjective intent of achieving the purpose of avoiding DHS immigration proceedings. Furthermore, the police could not have conferred such a result, and the alien's status as a U.S. citizen was immaterial to the arrest proceedings because the police treated U.S. citizens and aliens the same. [36]

Example

An alien stated twice during DHS interrogation that he was a U.S. citizen. He failed to show he had not made this claim to U.S. citizenship with the subjective intent of achieving the purpose of avoiding removal proceedings. He also failed to show that citizenship did not affect removal proceedings. Therefore, the alien was inadmissible for falsely claiming U.S. citizenship. [37]

Example

An employer made a job offer to an alien who did not have employment authorization. In completing the USCIS Form I-9, the alien marked the box claiming U.S. citizenship with the intent to avoid the need to obtain and present a valid and unexpired employment authorization document. The alien is inadmissible since the alien made the false claim for the purpose of avoiding additional requirements under the immigration laws. [38]

Example

An alien applied for a license under state law. The eligibility is not restricted to U.S. citizens but an alien must submit additional evidence that a U.S. citizen is not required to submit. Specifically, an alien must present evidence of lawful status or at least authorization to accept employment. The alien falsely claimed citizenship in order to avoid the additional evidentiary requirements. The alien is inadmissible since the alien made the false claim for the purpose of avoiding additional requirements under state law. [39]

4. Representation Must Be for Own Benefit

An alien is only inadmissible if the alien makes a misrepresentation for the alien's own benefit. If an alien misrepresents another alien's citizenship, the alien that made the misrepresentation is not inadmissible for falsely claiming U.S. citizenship. [40]

5. For Purpose of Coming into the United States

An alien who makes a successful false claim to U.S. citizenship or nationality at the port-of-entry and who is allowed into the United States has not been admitted. In order for an alien to be admitted, CBP must have authorized the alien to enter the United States after the alien came to the port-of-entry and sought admission as an alien. [41]

However, the law and precedents relating to what qualifies as the admission of an alien do not apply to U.S. citizens and nationals. U.S. citizens and nationals are not subject to the same inspection process as aliens. If CBP believes the person is a U.S. citizen or national, CBP cannot prevent the person's return to the United States. It is well-settled that someone who is allowed to come into the United States as a U.S. citizen or national has not been admitted. [42]

Therefore, an alien who comes into the United States under a false claim to U.S. citizenship is not only inadmissible for falsely claiming U.S. citizenship, but may also be inadmissible as an alien who is in the United States without inspection and admission or parole. [43]

An alien who comes into the United States based on a false claim to U.S. *nationality* is not inadmissible under the provision relating to false claims to citizenship. [44] However, the person may be inadmissible as an alien who is in the United States without inspection and admission or parole.

6. False Claim Made by an Agent or Representative

If an applicant's attorney or agent makes the false representation, the applicant is held responsible if it is established that the applicant was aware of the action taken by the representative in furtherance of the applicant's benefit application. This includes oral misrepresentations made at the border by a person assisting an alien to enter illegally. Furthermore, an alien cannot deny responsibility for any misrepresentation made on the advice of another person unless the alien establishes that he or she lacked the capacity to exercise judgment. [45]

F. Timely Retraction

Case law relating to the inadmissibility ground for fraud or willful misrepresentation has long recognized that an alien is not inadmissible if he or she made a timely retraction of the fraud or misrepresentation. [46] If an alien timely retracts the statement, it acts as a defense to the inadmissibility ground. A USCIS officer would then decide the case as if the fraud or misrepresentation had never happened.

In principle, an alien might also timely retract a false claim to U.S. citizenship. If the alien does so, he or she would not be inadmissible for this inadmissibility ground. The retraction has to be voluntary and timely in order to be effective. [47] The applicant must correct the representation before an officer or U.S. government official challenges the applicant's truthfulness

and before the conclusion of the proceeding during which the applicant 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. [48] 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. [49] A retraction or recantation can only be timely if the alien makes it in the same proceeding in which the alien gives the false testimony or misrepresentation. [50]

Further, a retraction or recantation of a false claim to U.S. citizenship is only timely if the alien makes it in the same proceeding in which he or she made the false claim. For example, disclosing in an adjustment application that one falsely claimed to be a citizen in completing a Form I-9, registering to vote, or seeking any other benefit would not be a timely retraction. The false claim was complete when the alien submitted the Form I-9, registered to vote, or sought the other benefit. The disclosure of the false claim on the adjustment of status application, therefore, would be part of a different proceeding.

Footnotes

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1. [^] Falsely represented includes whether the applicant misrepresented the fact that the applicant is a citizen of the United States with the knowledge that the representation is not true.

2. [^] See INA 212(a)(6)(C)(ii)(II).

3. [^] See INA 212(a)(6)(C)(i).

4. [^] For example, the alien could make a false claim to U.S. citizenship to comply with the employment verification requirements under INA 274A.

5. [^] See INA 101(a)(22).

6. [^] See INA 308. As of 2014, American Samoa (including Swains Island) is the only outlying possession of the United States, as defined under INA 101(a)(29). See Volume 12, Citizenship and Naturalization [12 USCIS-PM].

7. [^] See U.S. Constitution, amend. XIV. See INA 301. See INA 309. See Volume 12, Citizenship and Naturalization [12 USCIS-PM].

8. [^] See INA 212(a)(6)(C)(ii)(I).

9. [^] For example, if the false claim to U.S. nationality was made to a U.S. government official in seeking an immigration benefit. See INA 212(a)(6)(C). See Part J, Fraud and Willful Misrepresentation [8 USCIS-PM J].

10. [^] In *Ateka v. Ashcroft,* 384 F.3d 954 (8th Cir. 2004) and in *Rodriguez v. Mukasey,* 519 F.3d 773 (8th Cir. 2008), the applicants specifically testified that they claimed to be citizens when checking the particular box on Form I-9. Based on this testimony, the court determined that the applicants were inadmissible on account of falsely claiming U.S. citizenship. The Board of Immigration Appeals (BIA) non-precedent decisions seem to draw on this distinction. See *Matter of Oduor,* 2005 WL 1104203 (BIA 2005). See *Matter of Soriano-Salas,* 2007 WL 2074526 (BIA 2007).

11. [^] See *U.S. v. Karaouni,* 379 F.3d 139 (9th Cir. 2004).

12. [^] In *Ateka v. Ashcroft,* 384 F.3d 954 (8th Cir. 2004), *Matter of Oduor,* 2005 WL 1104203 (BIA 2005), and *Matter of Soriano-Salas,* 2007 WL 2074526 (BIA, June 5, 2007), for example, the evidence showed that the applicant had no idea what it meant to be a non-citizen national and that the applicant intended to claim that the applicant was a citizen.

13. [^] INA 212(a)(6)(C)(ii)(I) makes an alien subject to removal as inadmissible. INA 237(a)(3)(D)(i) is identical but applies to an alien who has been admitted but has become removable on account of the false representation. Also, if an alien falsely claims citizenship by voting, that alien would also be inadmissible under INA 212(a)(10)(D), which declares an alien inadmissible who votes in violation of any federal, state, or local law.

14. [^] The date this inadmissibility ground became effective. See Section 344(c) of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208 (September 30, 1996).

15. [^] See INA 212(a)(6)(C)(i). For more information on inadmissibility based on fraud and willful misrepresentation, see Part J, Fraud and Willful Misrepresentation [8 USCIS-PM J].

16. [^] See Chapter 1, Purpose and Background, Section B, Background [8 USCIS-PM K.1(B)].

17. [^] See 9 FAM 302.9-5, Falsely Claiming Citizenship - INA 212(a)(6)(C)(ii).

18. [^] For more information, see Part J, Fraud and Willful Misrepresentation, Chapter 3, Adjudicating Inadmissibility, Section D, Willfulness [8 USCIS-PM J.3(D)].

19. [^] It is the applicant's burden to establish that he or she is not inadmissible. See INA 291. See *Matter of Arthur (PDF),* 16 I&N Dec. 558 (BIA 1978).

20. [^] See INA 212(a)(6)(C)(ii).

21. [^] See INA 212(a)(6)(C)(ii).

22. [^] For more information on materiality, see Part J, Fraud and Willful Misrepresentation, Chapter 3, Adjudicating Inadmissibility, Section E, Materiality [8 USCIS-PM J.3(E)].

23. [^] See *Matter of Richmond,* 26 I&N Dec. 779, 787-88 (BIA 2016).

24. [^] See *Matter of Richmond,* 26 I&N Dec. 779, 786-787 (BIA 2016). See *Crocock v. Holder,* 670 F.3d 400 (2nd Cir. 2012).

25. [^] See *Kungys v. United States,* 485 U.S. 759, 770 (1988).

26. [^] See *Kungys v. United States,* 485 U.S. 759, 770 (1988). A false claim has a natural tendency to influence the official decision to grant or deny the benefit if the person would not obtain the benefit on the true facts, or if the false claim tends to cut off a line of inquiry, which is relevant to the eligibility and which might have resulted in a proper determination that the alien is not eligible for the benefit.

27. [^] See INA 212(a)(6)(C)(ii).

28. [^] See *Matter of Barcenas-Barrera (PDF),* 25 I&N Dec. 40 (BIA 2009). See *Matter of Villanueva (PDF),* 19 I&N Dec. 101, 103 (BIA 1984).

29. [^] See *Matter of Barcenas-Barrera (PDF),* 25 I&N Dec. 40 (BIA 2009). See Jamieson v. Gonzales, 424 F.3d 765 (8th Cir. 2005). See *Reid v. INS,* 420 U.S. 619 (1975).

30. [^] See *Dakura v. Holder,* 772 F.3d 994 (4th Cir. 2014). See *Crocock v. Holder,* 670 F.3d 400, 403 (2nd Cir. 2012). See *Castro v. Att'y Gen. of U.S.,* 671 F.3d 356, 368 (3rd Cir. 2012). See *Rodriguez v. Mukasey,* 519 F.3d 773 (8th Cir. 2008). See *Kechkar v. Gonzales,* 500 F.3d 1080 (10th Cir. 2007). See *Theodros v. Gonzales,* 490 F.3d 396 (5th Cir. 2007). See *Matter of Bett (PDF),* 26 I&N Dec. 437 (BIA 2014).

31. [^] See *Matter of Richmond,* 26 I&N Dec. 779, 786-787 (BIA 2016). See *Crocock v. Holder,* 670 F.3d 400 (2nd Cir. 2012).

32. [^] See *Kungys v. United States,* 485 U.S. 759, 770 (1988). A false claim has a natural tendency to influence the official decision to grant or deny the benefit if the person would not obtain the benefit on the true facts, or if the false claim tends to cut off a line of inquiry, which is relevant to the eligibility and which might have resulted in a proper determination that the alien is not eligible for the benefit.

33. [^] See *Matter of Richmond,* 26 I&N Dec. 779 (BIA 2016).

34. [^] See *Matter of Pinzon (PDF),* 26 I&N Dec. 189 (BIA 2013). See *Matter of F- (PDF),* 9 I&N Dec. 54 (BIA 1960).

35. [^] See *Kechkar v. Gonzales,* 500 F.3d 1080 (10th Cir. 2007).

36. [^] See *Castro v. Attorney Gen. of U.S.,* 671 F.3d 356, 368 (3rd Cir. 2012). According to the court, the Immigration Judge's (IJ) and the BIA conclusion that Castro made a false claim of U.S. citizenship for the purpose of evading detection by immigration authorities seemed to have been built solely on the assumption that this was a reasonable purpose to ascribe to Castro because he was undocumented. Therefore, the court decided that the BIA and the IJ erred in coming to this conclusion. The purpose imputed by the BIA to Castro would have applied to virtually any false claim to citizenship made by an alien unlawfully present in the country because the absence of legal status always provides a reason to wish to avoid the attention of DHS. Therefore, the construction threatened to read the limiting language—the requirement that the "purpose or benefit" be "under" the INA or any other federal or state law—out of INA 212(a)(6)(C)(ii) entirely.

37. [^] See *Matter of Richmond,* 26 I&N Dec. 779 (BIA 2016).

38. [^] See *Matter of Bett (PDF),* 26 I&N Dec. 437 (BIA 2014).

39. [^] This conclusion is consistent with the rationale of *Matter of Richmond,* 26 I&N Dec. 779 (BIA 2016).

40. [^] See Department of State Cable (no. 97-State-174342) (September 17, 1997). However, falsely claiming citizenship on behalf of another alien may make the alien inadmissible for alien smuggling. See *Matter of M-R,* 6 I&N Dec. 259, 260 (BIA 1954).

41. [^] See *Matter of Quilantan (PDF),* 25 I&N Dec. 285 (BIA 2010). See Volume 7, Adjustment of Status, Part B, 245(a) Adjustment, Chapter 2, Eligibility Requirements, Section A, "Inspected and Admitted" or "Inspected and Paroled" [7 USCIS-PM B.2(A)(2)].

42. [^] See *Reid v. INS*, 420 U.S. 619 (1975). See *Matter of Pinzon (PDF),* 26 I&N Dec. 189 (BIA 2013). *See Matter of S-,* 9 I&N Dec. 599 (PDF) (BIA 1962).

43. [^] Similarly, a lawful permanent resident (LPR) returning from a temporary trip abroad is not considered to be seeking admission or readmission to the United States unless of one of the factors in INA 101(a)(13)(C) is present. See *Matter of Collado-Munoz (PDF),* 21 I&N Dec. 1061 (BIA 1998). Because the returning LPR is not an arriving alien who is an applicant for admission unless one of the factors in INA 101(a)(13)(C) is present, the alien is not inspected as an arriving alien. If the alien makes a false claim to LPR status at a port-of-entry and if the alien is permitted to enter, then the alien has not been admitted for purposes of INA 101(a)(13)(A).

44. [^] See INA 212(a)(6)(C)(ii)(I).

45. [^] For more information, see Section D, Knowledge that Claim Was False, Subsection 4, Lack of Capacity [8 USCIS-PM K.2(D)(4)].

46. [^] See *Matter of R-R-,* 3 I&N Dec. 823 (BIA 1949). See *Matter of M-,* 9 I&N Dec. 118 (PDF) (BIA 1960) (also cited by *Matter of R-S-J- (PDF),* 22 I&N Dec. 863 (BIA 1999)). See 9 FAM 302.9-4(B)(3)(f), Timely Retraction.

47. [^] "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 (PDF), 14 I&N Dec. 412 (BIA 1973), referring to *Matter of M-,* 9 I&N Dec. 118 (PDF) (BIA 1960) and *Llanos-Senarrilos v. United States*, 177 F.2d 164 (9th Cir. 1949).

48. [^] See *Matter of Namio (PDF),* 14 I&N Dec. 412 (BIA 1973).

49. [^] See *Matter of Namio (PDF),* 14 I&N Dec. 412 (BIA 1973).

50. [^] See *Llanos-Senarrilos v. United States,* 177 F.2d 164, 165 (9th Cir. 1949).

Chapter 3 - Adjudication

A. Evidence

For an officer to find an alien inadmissible for falsely claiming U.S. citizenship, [1] the evidence must demonstrate:

- The alien made the misrepresentation in-person, in writing, or through other means to a person or entity; and
- The alien made the misrepresentation for any purpose or benefit under the Immigration and Nationality Act (INA), other federal law, or state law. [2]

There must be sufficient evidence that would lead a reasonable person to find that the alien falsely represented him or herself to be a U.S. citizen. [3] Examples of evidence include oral testimony, written testimony, or any other documentation containing information about the applicant's false claim to U.S. citizenship. [4]

B. Burden of Proof

The burden of proof to establish admissibility during the process of seeking an immigration benefit is on the applicant. [5] The burden never shifts to the government at any time during the adjudication process. [6]

1. No Evidence of False Misrepresentation

If there is no evidence that the applicant made a false representation of U.S. citizenship for any purpose or benefit under the INA or any other federal or state law, the officer should find that the applicant has met the burden of proof and is not inadmissible under this ground.

2. Evidence of False Misrepresentation

If there is evidence that would permit a reasonable person to conclude that the applicant is inadmissible under this ground, the officer should find that the applicant has not successfully met the burden of proof. [7] An applicant who fails to meet the burden of proof is inadmissible for falsely claiming U.S. citizenship unless the applicant is able to successfully rebut the officer's inadmissibility finding.

3. Applicant's Rebuttal Must be Clear and Beyond Doubt

If the officer determines that the applicant is inadmissible based on a false claim to U.S. citizenship, the applicant has the burden of establishing at least one of the following facts clearly and beyond doubt [8] to rebut the finding:

- The representation was not false;
- The false representation was not a representation of U.S. citizenship;

- The false representation was made prior to September 30, 1996;
- The false representation was not made for purposes or benefit under the INA or any other federal or state law; [9] or
- The applicant did not know the claim was false, lacks the legal capacity to appreciate the nature of the claim, or qualifies for the statutory exception.

4. Rebutting Inadmissibility Finding

If the officer determines that the applicant has established at least one of the above facts, then the applicant has successfully rebutted the inadmissibility finding and has met the burden of proving that he or she is not inadmissible.

If the officer determines that the applicant has established none of these facts, then the applicant has not successfully rebutted the inadmissibility finding and is inadmissible. [10]

If the officer finds that the evidence for and against a finding of false claim to U.S. citizenship is of equal weight, then the applicant is inadmissible. As long as there is a reasonable evidentiary basis to conclude that an applicant is inadmissible for falsely claiming U.S. citizenship, and the applicant has not overcome that reasonable basis with evidence, then the officer should find the applicant inadmissible.

C. Civil Penalty or Criminal Conviction

Falsely claiming to be a U.S. citizen could result in a civil penalty [11] or in a criminal conviction for falsely and willfully representing to be a U.S. citizen. [12]

Inadmissibility for falsely claiming to be a U.S. citizen can be sustained simply by proving that the applicant knowingly made the false claim for any purpose or any benefit under the INA or any other federal or state law. For purposes of determining whether the applicant is inadmissible for falsely claiming U.S. citizenship, it is not necessary to establish that the applicant is the subject of a civil penalty or that the applicant has a criminal conviction for falsely and willfully representing to be a U.S. citizen.

If the officer finds that the alien has a conviction for falsely and willfully representing to be a U.S. citizen, [13] the conviction record is sufficient to establish that the applicant is inadmissible for falsely claiming U.S. citizenship.

Similarly, an order of civil penalty based on a false representation of U.S. citizenship is sufficient to establish that the applicant is inadmissible for falsely claiming to be a U.S. citizen. Fraudulent conduct other than a false claim to U.S. citizenship, however, may be the basis for a civil penalty. If the applicant was liable for a civil penalty for document fraud that does not relate to a false claim to U.S. citizenship, [14] then the civil penalty order is not an indication that the applicant is inadmissible for falsely claiming U.S. citizenship.

The civil penalty must be specifically based on a finding that the alien made a false claim to U.S. citizenship for the civil penalty order to be sufficient to establish inadmissibility for falsely claiming U.S. citizenship.

Footnotes

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1. [^] See INA 212(a)(6)(C)(ii).

2. [^] See *Matter of Y-G- (PDF)*, 20 I&N Dec. 794 (BIA 1994). See *Matter of D-L- & A-M- (PDF)*, 20 I&N Dec. 409 (BIA 1991). See *Matter of L-L- (PDF)*, 9 I&N Dec. 324 (BIA 1961).

3. [^] 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).

4. [^] The Board of Immigration Appeals (BIA) recently held that Form I-9, Employment Eligibility Verification, is admissible in removal proceedings as support of a charge of inadmissibility. See *Matter of Bett (PDF),* 26 I&N Dec. 437, 441-442 (BIA 2014).

5. [^] See INA 291. See *Matter of Bett (PDF),* 26 I&N Dec. 437 (BIA 2014).

6. [^] See INA 291. See *Matter of Arthur (PDF),* 16 I&N Dec. 558 (BIA 1978).

7. [^] See *INS v. Elias-Zacarias,* 502 U.S. 478 (1992).

8. [^] See *Matter of Bett (PDF),* 26 I&N Dec. 437, 440 (BIA 2014). See *Kirong v. Mukasey,* 529 F.3d 800, 804 (8th Cir. 2008). See *Rodriguez v. Mukasey,* 519 F.3d 773, 776 (8th Cir. 2008). See *Blanco v. Mukasey,* 518 F.3d 714, 720 (9th Cir. 2008).

9. [^] For example, an alien falsely claiming to be a U.S. citizen during a police arrest would not meet the "purpose or benefit" requirement. See *Castro v. Attorney General,* 671 F.3d 356 (3rd Cir. 2012).

10. [^] See *Matter of Rivero-Diaz (PDF),* 12 I&N Dec. 475 (BIA 1967). See *Matter of M-,* 3 I&N Dec. 777 (BIA 1949).

11. [^] See INA 274C. Whenever "civil penalty" is used in this section, it refers to a civil penalty under INA 274C.

12. [^] See 18 U.S.C. 911. Whenever such "criminal conviction" is used in this section, it refers to a conviction under 18 U.S.C. 911.

13. [^] See *Pichardo v. INS,* 216 F. 3d 1198 (9th Cir. 2000).

14. [^] For example, the applicant is held liable for a civil penalty based on the use of a fraudulent visa.

Chapter 4 - Exceptions and Waivers

A. Applicability

Inadmissibility on account of false claim to U.S. citizenship does not apply to:

- Special immigrant juveniles seeking adjustment of status; [1] and
- Applicants for registry. [2]

B. Exception [3]

In 2000, Congress added a statutory exception to inadmissibility for false claim to U.S. citizenship. [4] Congress made the exception apply retroactively.

The exception applies to false claims to U.S. citizenship made on or after September 30, 1996, if the applicant satisfies the following requirements:

- Each parent of the applicant (or each adoptive parent in case of an adopted child) is or was a U.S. citizen, whether by birth or naturalization;
- The applicant permanently resided in the United States prior to attaining the age of 16; and
- The applicant reasonably believed at the time of the representation that he or she was a U.S. citizen.

Each of the applicant's parents had to be a U.S. citizen at the time of the false claim to U.S. citizenship to meet the first requirement of this exception. [5]

This exception does not limit the alien's ability to prove on other grounds that he or she did not know the claim was false. Rather, it is one situation in which it would be reasonable to find that the alien did not know the claim to U.S. citizenship was false.

C. Waiver [6]

The availability of a waiver to an inadmissibility ground depends on the immigration benefit. In general, there is no waiver for inadmissibility based on a false claim to U.S. citizenship [7] for aliens seeking lawful permanent resident status:

- As an immediate relative;
- Under an immigrant preference category (other than special immigrant juveniles);
- As a diversity immigrant;
- Under the Cuban Adjustment Act of 1966; [8] or
- Under any other statute that does not provide authority to waive the ground.

An officer may grant a waiver to an alien seeking adjustment of status as a refugee or an asylee, as a legalization applicant, or under any other basis that specifically permits a waiver of this ground of inadmissibility. [9]

Inadmissibility based on a false claim to U.S. citizenship does not necessarily bar adjustment of status based on residence in the United States since before January 1, 1972. [10] It could, however, support a finding that the applicant is not a person of good moral character.

Nonimmigrants may seek permission to enter despite the inadmissibility. [11]

Footnotes

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1. [^] See INA 245(h)(2)(A).

2. [^] Registry is a section of immigration law that enables certain aliens who have been present in the United States since January 1, 1972, the ability to apply for lawful permanent residence even if currently in the United States unlawfully. See INA 249. See 8 CFR 249.

3. [^] See INA 212(a)(6)(C)(ii)(II).

4. [^] See Section 201(b) of the Child Citizenship Act of 2000 (CCA), Pub. L. 106-395, 114 Stat. 1631, 1633(October 30, 2000).

5. [^] See INA 212(a)(6)(C)(ii)(II).

6. [^] For more information, see Volume 9, Waivers [9 USCIS-PM].

7. [^] See INA 212(a)(6)(C)(ii).

8. [^] See Pub. L. 89-732 (PDF) (November 2, 1966).

9. [^] See INA 209(c). See INA 245A(d)(2)(B)(i).

10. [^] See INA 249.

11. [^] Under INA 212(d)(3)(A).

Part L - Documentation Requirements

Part M - Citizenship Ineligibility

Part N - Aliens Previously Removed

Part O - Aliens Unlawfully Present

Part P - Alien Present After Previous Immigration Violation

Part Q - Practicing Polygamists, International Child Abductors, Unlawful Voters, and Tax Evaders

Volume 9 - Waivers

Part A - Waiver Policies and Procedures

Chapter 1 - Purpose and Background

A. Purpose

Certain aliens may not be allowed to enter or obtain status in the United States because they are inadmissible. These aliens may overcome the inadmissibility if they are eligible to apply for and receive a waiver.

USCIS, in its administration of waiver laws and policies, seeks to:

- Promote family unity and provide humanitarian results;
- Provide relief to refugees, asylees, victims of human trafficking [1] and certain criminal acts, [2] and other humanitarian and public interest applicants who seek protection or permanent residency in the United States;
- Advance the national interest by allowing aliens to be admitted to the United States if such admission couldbenefit the welfare of the country;
- Ensure public health and safety concerns are met by requiring that applicants satisfy all medical requirements prior to admission or, if admitted, seek any necessary treatment; and
- Weigh public safety and national security concerns against the social and humanitarian benefits of granting admission to an alien.

Considerations of family unity, humanitarian concerns, public and national interest, and national security may differ depending on the specific waiver an applicant is seeking.

B. Background

With the enactment of the Immigration and Nationality Act of 1952 (INA), [3] Congress established a variety of inadmissibility grounds to protect the interests of the United States. Congress considered waivers as a special remedy to the grounds of inadmissibility. [4]

Congress later amended the INA in 1957, easing many stricter provisions of the earlier legislation. [5] For example, it allowed certain alien relatives of U.S. citizens or lawful permanent residents (LPR) to apply for and obtain a waiver of certain grounds of exclusion or deportation (now inadmissibility or removal). [6]

When passing the 1957 amendments, Congress created exceptions to many strict provisions from the 1952 Act to promote family unity. For Congress, in many circumstances, it was more important to keep families together than to stringently enforce inadmissibility grounds. [7]

Congress tightened waiver requirements and availability once again with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). [8] For example, IIRIRA made waivers of criminal inadmissibility [9] unavailable to LPRs who were convicted of an aggravated felony or who had not continuously resided in the United States for at least 7 years before initiation of removal proceedings.

IIRIRA also created new inadmissibility grounds, such as the ground of inadmissibility on account of unlawful presence, andcorresponding waivers.

C. Legal Authorities

- INA 207, 8 CFR 207 - Annual admission of refugees and admission of emergency situation refugees
- INA 209, 8 CFR 209 - Adjustment of status of refugees
- INA 210, 8 CFR 210 - Special agricultural workers
- INA 211, 8 CFR 211 - Admission of immigrants into the United States
- INA 212, 8 CFR 212 - Excludable aliens
- INA 214, 8 CFR 214 - Admission of nonimmigrants
- INA 244, 8 CFR 244 - Temporary protected status
- INA 245, 8 CFR 245 - Adjustment of status of nonimmigrant to that of person admitted for permanent residence
- INA 245A, 8 CFR 245a - Adjustment of status of certain entrants before January 1, 1982, to that of person admitted for lawful residence

Footnotes

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1. [^] See INA 101(a)(15)(T).

2. [^] See INA 101(a)(15)(U).

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

4. [^] See *INS v. Errico*, 385 U.S. 214, 218 (1966), citing H.R. 1365, 82nd Cong. 128 (1952).

5. [^] See Act of September 11, 1957, Pub. L. 85-316 (September 11, 1957).

6. [^] The INA gives the Attorney General and the Secretary of Homeland Security statutory authority to grant waivers. Some sections of the INA, however, still refer exclusively to the "Attorney General." Under the Homeland Security Act of 2002, Pub. L. 107–296 (PDF) (November 25, 2002), the authority to grant waivers was also given to the Secretary of Homeland Security.

7. [^] See *INS v. Errico*, 385 U.S. 214, 219-20 (1966), citing H.R. 1199, 85th Cong. 7 (1957).

8. [^] See Pub. L. 104-208 (PDF) (September 30, 1996).

9. [^] See INA 212(h).

Chapter 2 - Forms of Relief

A. Waivers

In general, applicants for immigration benefits must establish that they are admissible to the United States. If an applicant for an immigration benefit is inadmissible to the United States, USCIS may only grant the benefit if the applicant receives a waiver of inadmissibility or another form of relief provided in the Immigration and Nationality Act (INA). [1] In general, if the INA uses the term waiver, the applicant must apply for the waiver by filing the correct application.

USCIS may only grant a waiver if the applicant meets all statutory and regulatory requirements.

There are instances in which an officer may adjudicate a waiver without asking the applicant to file a form. For example, an officer may adjudicate certain waivers of inadmissibility for a refugee or an asylee seeking adjustment of status without the applicant filing a waiver application. In these circumstances, the officer must still clearly document the waiver determination in the record.

B. Exceptions or Exemptions

A statute may provide for an exception or exemption from a ground of inadmissibility. [2] If the alien's action or circumstance meets the requirements of an exception or exemption, then the ground of inadmissibility does not apply and the alien is not inadmissible on that ground. Unlike a waiver, an exemption or exception generally does not require that an alien file an application.

C. Consent to Reapply

Permission to reapply for admission into the United States after deportation or removal, also known as "consent to reapply," is not a waiver. [3] Consent to reapply is a distinct remedy that permits an alien to seek admission. If the statute specifies that the alien must obtain consent to reapply to overcome the inadmissibility, a waiver of inadmissibility is not a substitute for consent to reapply. [4]

Footnotes

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

2. [^] Exception and exemption both mean that the specific inadmissibility ground does not apply if the applicant establishes that the terms of the exception or exemption apply.

3. [^] See Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) (used to seek consent to reapply). See the form instructions for more information.

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

Chapter 3 - Review of Inadmissibility Grounds

A. Verification of Inadmissibility

Before adjudicating a waiver, the officer must verify that the applicant is inadmissible. [1] The officer must identify all inadmissibility grounds that apply, even if an immigration judge, a consular officer, Customs and Border Protection (CBP) officer, or a different USCIS officer made a prior inadmissibility determination. [2]

An applicant's file should reflect evidence of inadmissibility. Examples of evidence that may indicate an applicant is inadmissible may include but is not limited to:

- A visa refusal worksheet;
- Background check results;
- A criminal disposition;
- A sworn statement; and
- A Record of Arrests and Prosecutions sheet (police arrest record).

If the officer identifies that the applicant is inadmissible, the officer should then determine whether a waiver or other type of relief is available and whether the applicant meets the eligibility requirements for the relief. [3]

B. Grounds Included in Waiver Application

The officer must review all inadmissibility grounds that the applicant lists in the waiver application. If the applicant states that he or she is inadmissible but there is no evidence of inadmissibility in the record, then the officer should issue a Request for Evidence (RFE). The officer should request that the applicant provide a written statement explaining why the applicant thinks he or she is inadmissible. The officer should proceed with the waiver adjudication if the officer determines that the applicant is inadmissible.

An applicant may file a waiver application after another government agency, such as the Department of State or CBP, has found the applicant inadmissible. In general, USCIS accepts another government agency's finding of inadmissibility. The officer should only question another government agency's inadmissibility determination if:

- The government agency's finding was clearly erroneous; or
- The applicant has shown that he or she is clearly not inadmissible.

The officer should work with the other government agency to resolve the issue through appropriate procedures.

C. Grounds Not Included in Waiver Application

If the officer identifies additional inadmissibility grounds based on events that are not included in the waiver application, the officer should notify the applicant and the applicant's representative, if applicable. The officer should follow current USCIS

guidance on the issuance of RFEs, Notices of Intent to Deny (NOID), and Denials.

Footnotes

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1. [^] For more on admissibility determinations, see Volume 8, Admissibility [8 USCIS-PM].

2. [^] When verifying the inadmissibility, the officer may determine that the applicant is admissible and does not require a waiver. For more on admissibility determinations, see Volume 8, Admissibility [8 USCIS-PM].

3. [^] For specific scenarios that the officer may encounter during the adjudication of a waiver, see Chapter 4, Waiver Eligibility and Evidence, Section C, Evidence [9 USCIS-PM A.4(C)].

Chapter 4 - Waiver Eligibility and Evidence

A. Eligibility Requirements

Waiver eligibility depends on whether:

- A waiver is available for the inadmissibility ground;
- The applicant meets all other statutory and regulatory provisions for the waiver; and
- A favorable exercise of discretion is warranted. [1]

An applicant must meet all statutory and regulatory requirements, including the requirements specified in the waiver application's instructions, before USCIS can approve the waiver application. [2] When the officer receives the application, the officer should ensure that it meets all of the applicable filing requirements. [3]

B. Waiver Availability

1. Waiver is Available

If an applicant is inadmissible, the officer must determine whether USCIS may waive the ground of inadmissibility and whether the applicant meets all eligibility requirements of the waiver. If the applicant is inadmissible on grounds that can be waived, the officer should determine whether the applicant meets the requirements for the waiver. [4]

2. Waiver and Consent to Reapply

An applicant who files a waiver application may also be inadmissible because of a prior removal or unlawful reentry after a previous immigration violation. [5] In these cases, the applicant is required to file an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), which is also called consent to reapply.

If the officer determines that the waiver is approvable, the officer should give the applicant an opportunity to file a consent to reapply application, if required. The officer should consult the consent to reapply form instructions to determine when USCIS may accept the waiver application and consent to reapply application together.

If the waiver is not approvable and the applicant did not request consent to reapply (although required), the officer should deny the waiver and not request the application for consent to reapply. If an applicant files a consent to reapply application and the

officer denies the waiver application, then the officer should deny the consent to reapply application as a matter of discretion. [6]

3. No Waiver is Available

An applicant may be inadmissible for both a ground that USCIS may waive and a ground for which no waiver or other form of relief is available. In this instance, the applicant is still inadmissible on grounds that cannot be waived and approving the waiver application serves no purpose. The officer, therefore, should deny the application as a matter of discretion because the applicant is inadmissible on grounds that cannot be waived. [7] The officer should provide the standard language regarding the availability of motions to reopen, motions to reconsider, and appeals (if applicable) in the denial notice.

C. Evidence

There is no specific type or amount of evidence necessary to establish eligibility for a waiver. Typically, the evidence should support all eligibility requirements, be specific, and come from a credible source. It should also substantiate the applicant's claims.If evidence is unavailable, the applicant should provide a reasonable explanation for its absence. [8]

1. Medical and Other Issues Requiring Specialized Knowledge

Professionals should address issues that require specialized knowledge. Physicians and other medical professionals, for example, should provide medical statements. The professional's attestation should explain how the condition or issue affects that applicant. An officer may still consider a nonprofessional's statement, but the officer should give less weight to a nonprofessional's opinion. An officer may consider medical evidence from the internet and published sources, but these sources generally cannot replace a physician's statement.

2. Family Relationships

Some waivers require that the applicant establish a qualifying familial relationship. Unless the adjudicating officer finds the underlying evidence unpersuasive, the evidence submitted as part of a previously approved petition or application based on that familial relationship is sufficient to establish the qualifying relationship for the waiver. If there is no evidence in the record establishing the qualifying relationship, then the officer must request evidence that establishes the qualifying relationship, such as marriage, birth, or adoption certificates, or other evidence as permitted by law.

Footnotes

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1. [^] See *Matter of Mendez-Moralez (PDF),* 21 I&N Dec. 296 (BIA 1996).

2. [^] See 8 CFR 103.2. See 8 CFR 103.7. General filing requirements include proper signature; proper fee or fee waiver; translation of any foreign language evidence; proper filing location; and the initial evidence specified in the relevant regulations and instructions with the application. Forms and form instructions are available on USCIS' website at uscis.gov/forms.

3. [^] See 8 CFR 103.2. Typically, a waiver does not require the applicant to submit biometrics. USCIS usually collects this information as part of the underlying benefit application, such as an adjustment of status application. However, if the required biometrics are outdated, then the officer must update the biometrics prior to the adjudication of a waiver.

4. [^] See Chapter 4, Waiver Eligibility and Evidence [9 USCIS-PM A.4].

5. [^] Inadmissible under INA 212(a)(9)(A) or INA 212(a)(9)(C).

6. [^] See *Matter of J-F-D- (PDF)*, 10 I&N Dec. 694 (Reg. Comm. 1963). See *Matter of Martinez-Torres (PDF)*, 10 I&N Dec. 776 (Reg. Comm. 1964).

7. [^] See *Matter of J-F-D- (PDF)*, 10 I&N Dec. 694 (Reg. Comm. 1963). See *Matter of Martinez-Torres (PDF)*, 10 I&N Dec. 776 (Reg. Comm. 1964).

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

Chapter 5 - Discretion

If the applicant meets all other statutory and regulatory requirements of the waiver, the officer must determine whether to approve the waiver as a matter of discretion. [1] Meeting the other statutory and regulatory requirements alone does not entitle the applicant to relief. [2]

The discretionary determination is the final step in the adjudication of a waiver application. The applicant bears the burden of proving that he or she merits a favorable exercise of discretion. [3]

A. Discretionary Factors

The officer must weigh the social and humanitarian considerations against the adverse factors present in the applicant's case. [4] The approval of a waiver as a matter of discretion depends on whether the favorable factors in the applicant's case outweigh the unfavorable ones. [5]

The following table provides some of the factors relevant to the waiver adjudication.

Non-Exhaustive List of Factors that May Be Relevant in the Discretionary Analysis

Category	Favorable Factors	Unfavorable Factors
Waiver Eligibility	• Meeting certain other statutory requirements of the waiver, including a finding of extreme hardship to a qualifying family member, if applicable. [6] • Eligibility for waiver of other inadmissibility grounds.	Not applicable – Not meeting the statutory requirements of the waiver results in a waiver denial. A discretionary analysis is not necessary.

Category	Favorable Factors	Unfavorable Factors
Family and Community Ties	• Family ties to the United States and the closeness of the underlying relationships. • Hardship to the applicant or to non-qualifying lawful permanent residents (LPRs) or U.S. citizen relatives or employers. • Length of lawful residence in the United States and status held during that residence, particularly where the applicant began residency at a young age. • Significant health concerns that affect the qualifying relative. • Difficulties the qualifying relative would be likely to face if the qualifying relative moves abroad with the applicant due to country conditions, inability to adapt, restrictions on residence, or other factors that may be claimed. • Honorable service in the U.S. armed forces or other evidence of value and service to the community. • Property or business ties in the United States.	• Absence of community ties.

Category	Favorable Factors	Unfavorable Factors
Criminal History, Moral Character (or both)	• Respect for law and order, and good moral character, which may be evidenced by affidavits from family, friends, and responsible community representatives. • Reformation of character and rehabilitation. • Community service beyond any imposed by the courts. • Considerable passage of time since deportation or removal.	• Moral depravity or criminal tendencies reflected by an ongoing or continuingcriminal record, particularlythe nature, scope, seriousness, and recent occurrence of criminalactivity. • Repeated or serious violations of immigration laws, which evidence adisregard for U.S. law. • Lack of reformation of character or rehabilitation. • Previous instances of fraud or false testimony in dealings with USCIS or any government agency. • Marriage to a U.S. citizen or LPR for the primary purpose of circumventing immigration laws. • Nature and underlying circumstances of the inadmissibility ground at issue, and the seriousness of the violation. • Public safety or national security concerns
Other	• Absence of significant undesirable or negative factors.	• Other indicators of an applicant's bad character and undesirability as a permanent resident of this country.

B. Discretionary Determination

When making a discretionary determination, the officer should review the entire record and give the appropriate weight to each adverse and favorable factor. Once the officer has weighed each factor, the officer should consider all of the factors cumulatively to determine whether the favorable factors outweigh the unfavorable ones. If the officer determines that the positive factors outweigh the negative factors, then the applicant merits a favorable exercise of discretion.

Example

A lengthy and stable marriage is generally a favorable factor in the discretionary analysis. On the other hand, the weight given to any possible hardship to the spouse that may occur upon separation may be diminished if the parties married after the commencement of removal proceedings with knowledge of an impending removal. [7]

Example

In general, when reviewing an applicant's employment history, an officer may consider the type, length, and stability of the employment. [8]

Example

In general, when reviewing an applicant's history of physical presence in the United States, the officer may favorably consider residence of long duration in this country, as well as residence in the United States while the applicant was of young age. [9]

Example

When looking at the applicant's presence in the United States, the officer should evaluate the nature of the presence. For example, a period of residency during which the applicant was imprisoned may diminish the significance of that period of residency. [10]

C. Cases Involving Violent or Dangerous Crimes

If an alien is inadmissible on criminal grounds involving a violent or dangerous crime, an officer may not exercise favorable discretion unless the applicant has established, in addition to the other statutory and regulatory requirements of the waiver that:

- The case involves extraordinary circumstances; or
- The denial would result in exceptional and extremely unusual hardship. [11]

Extraordinary circumstances involve considerations such as national security or foreign policy interests. Exceptional and extremely unusual hardship is substantially beyond the ordinary hardship that would be expected as a result of denial of admission, but it does not need to be so severe as to be considered unconscionable. [12] Depending on the gravity of the underlying criminal offense, a showing of extraordinary circumstances may still be insufficient to warrant a favorable exercise of discretion. [13]

Footnotes

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1. [^] If the applicant does not meet another statutory requirement of the waiver, USCIS denies the waiver and a discretionary analysis is not necessary. However, an officer may still include a discretionary analysis if the applicant's conduct is so egregious that a discretionary denial would be warranted even if the applicant had met the other statutory and regulatory requirements. Adding a discretionary analysis to a denial is also useful if an appellate body on review disagrees with the officer's conclusion that the applicant failed to meet the statutory requisites for the waiver.

2. [^] See *Reyes-Cornejo v. Holder,* 734 F.3d 636 (7th Cir. 2013). See *Matter of Cervantes-Gonzalez (PDF),* 22 I&N Dec. 560 (BIA 1999). See *Matter of Mendez-Moralez (PDF),* 21 I&N Dec. 296 (BIA 1996).

3. [^] See *Matter of De Lucia (PDF),* 11 I&N Dec. 565 (BIA 1966). See *Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

4. [^] See *Matter of Mendez-Moralez (PDF),* 21 I&N Dec. 296 (BIA 1996).

5. [^] See *Matter of Mendez-Moralez (PDF),* 21 I&N Dec. 296 (BIA 1996) (relating to a criminal waiver under INA 212(h)(1)(B)). See *Matter of Marin (PDF),* 16 I&N Dec. 581 (BIA 1978) (relating to an INA 212(c) waiver). See *Matter of Tijam,* 22 I&N Dec. 408 (BIA 1998) (relating to a fraud or misrepresentation finding (INA 212(a)(6)(C)(i)) and the discretionary waiver under former INA 241(a)(1)(H) [renumbered as INA 237(a)(1)(H) by IIRIRA]).

6. [^] In particular, if a finding of extreme hardship is a statutory eligibility requirement, the finding of extreme hardship permits, but does not require, a favorable exercise of discretion. Once extreme hardship is found, extreme hardship becomes a factor that weighs in favor of granting relief as a matter of discretion.

7. [^] See *Matter of Mendez-Moralez (PDF),* 21 I&N Dec. 296 (BIA 1996). See *Ghassan v. INS,* 972 F.2d 631 (5th Cir. 1992).

8. [^] See *Matter of Mendez-Moralez (PDF),* 21 I&N Dec. 296 (BIA 1996).

9. [^] See *Diaz-Resendez v. INS,* 960 F.2d 493 (5th Cir. 1992).

10. [^] See *Douglas v. INS,* 28 F.3d 241 (2nd Cir. 1994).

11. [^] See INA 212(h). See 8 CFR 212.7(d). See *Matter of Jean (PDF),* 23 I&N Dec. 373 (A.G. 2002) (relating to a waiver of inadmissibility granted in connection with INA 209(c), refugee or asylee adjustment of status).

12. [^] See *Matter of Monreal,* 23 I&N Dec. 56 (BIA 2001).

13. [^] See 8 CFR 212.7(d).

Chapter 6 - Validity of an Approved Waiver

A. Extent of Waiver Validity

In general, an approved waiver is only valid for the grounds of inadmissibility specified in the application. Furthermore, a waiver is only valid for those crimes, events, incidents, or conditions specified in the waiver application. If an alien is later found inadmissible for a separate crime, event, incident or condition not already included in the approved waiver application, the alien is required to file another waiver application.

B. Length of Waiver Validity

A waiver's validity depends on the underlying immigration benefit connected to the approved waiver.

1. Certain Nonimmigrants [1]

An inadmissible applicant seeking to enter the United States as a nonimmigrant generally needs to obtain advance permission to enter the United States as a nonimmigrant. [2] Advance permission to enter as a nonimmigrant [3] despite inadmissibility is referred to as a nonimmigrant waiver. Customs and Border Protection (CBP) generally adjudicates this waiver, which is temporary if approved. [4] This temporary permission does not ordinarily carry over to other benefit categories, such as other nonimmigrant categories, immigrant categories, visas, or adjustment of status.

2. Temporary Protected Status Holders [5]

An applicant seeking temporary protected status (TPS) status in the United States may be inadmissible. In most cases, a waiver is available to a TPS applicant in connection with his or her TPS application. If USCIS approves a TPS applicant's waiver, the waiver is temporary and lasts for the duration of TPS only. [6]

3. Refugees

An inadmissible refugee must apply for a waiver before seeking admission to the United States. [7] A waiver granted to a refugee for admission to the United States is valid for purposes of seeking adjustment of status as a refugee. [8] In this case, the applicant does not have to file another waiver for the specific inadmissibility ground previously waived. [9]

There is an exception, however, for medical waivers. If USCIS grants the refugee a waiver for purposes of admission to the United States because of a Class A condition, then the refugee is required to submit to another medical examination. If the second examination reveals a Class A condition, the refugee must file another waiver when seeking adjustment of status. [10]

4. Lawful Permanent Residents

An inadmissible applicant seeking lawful permanent resident (LPR) status requires a waiver. As previously explained, the availability of a waiver depends on the specific category under which an applicant seeks LPR status.

A waiver granted in connection with any application for LPR status [11] permanently waives the ground of inadmissibility for purposes of any future immigration benefits application, including immigrant and nonimmigrant benefits. The waiver remains valid even if the LPR later abandons or otherwise loses LPR status. [12]

This rule, however, does not apply to conditional residents or conditional grants issued to K-1 and K-2 nonimmigrants. [13]

5. Conditional Permanent Residents [14]

For most conditional permanent residents, [15] the waiver becomes valid indefinitely when the conditions are removed from the permanent resident status. This is the case even if the LPR later abandons or otherwise loses LPR status.

For certain criminal waivers [16] and a waiver of fraud or willful misrepresentation, [17] the validity of a waiver automatically ends if USCIS terminates conditional residency. There is no need for a separate termination notice and the applicant cannot appeal this waiver termination. If the immigration judge determines during removal proceedings that USCIS incorrectly terminated the conditional residence, the waiver becomes effective again. [18]

6. K-1 and K-2 Nonimmigrants

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. [19] If the K-1 nonimmigrant marries the petitioner, the approved waiver becomes valid indefinitely for any future immigration benefits application, whether immigrant or nonimmigrant.

The waiver remains valid even if the K nonimmigrant does not ultimately adjust status to an LPR or if the K nonimmigrant later abandons or otherwise loses LPR status. [20]

If the K-1 nonimmigrant does not marry the petitioner, the K-1 and K-2 (if applicable) remain inadmissible for any application or any benefit other than the proposed marriage between the K-1 and the K nonimmigrant visa petitioner. [21]

7. Inter-country Convention Adoptees

An approved waiver in conjunction with the provisional approval of a Petition to Classify Convention Adoptee as an Immediate Relative (Form I-800) is conditioned upon the issuance of an immigrant or nonimmigrant visa for the child's admission to the

United States and final approval of that Form I-800. If Form I-800 or the immigrant or nonimmigrant visa application is ultimately denied, the waiver is void. [22]

Footnotes

1. [^] Except for K, T, U, and V nonimmigrants.

2. [^] The application is filed on Application for Advance Permission to Enter as Nonimmigrant (Form I-192).

3. [^] See INA 212(d)(3)(A).

4. [^] For more information on when an applicant should file this waiver with CBP and when with USCIS, see Application for Advance Permission to Enter as a Nonimmigrant (Form I-192).

5. [^] See INA 244(c).

6. [^] See INA 244(a) and INA 244(c). See 8 CFR 244.3 and 8 CFR 244.13. See Instructions for Application for Waiver of Grounds of Inadmissibility (Form I-601). If the applicant obtains a waiver in connection with an Application for Temporary Protected Status (Form I-821), the waiver is only valid for the TPS application. If granted, the waiver applies to subsequent TPS re-registration applications, but not to any other immigration benefit requests.

7. [^] See INA 207(c)(3).

8. [^] See INA 209.

9. [^] If the refugee is seeking adjustment of status on a basis other than INA 209, the refugee must apply for a new waiver as required by that particular benefit.

10. [^] Refugees seek adjustment of status under INA 209. For more information on Class A conditions, see Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [8 USCIS-PM B].

11. [^] This includes applications for an immigrant visa, fiancé(e) visa, legalization, and adjustment of status.

12. [^] See 8 CFR 212.7(a)(4)(ii).

13. [^] See 8 CFR 212.7(a)(4)(ii). For K-1 and K-2 nonimmigrants granted a waiver, see Subsection 6, K-1 and K-2 Nonimmigrants [9 USCIS-PM A.6(B)(6)].

14. [^] See INA 216. See 8 CFR 212.7(a)(4)(iv).

15. [^] Aliens lawfully admitted for permanent residence on a conditional basis. See INA 216.

16. [^] See INA 212(h).

17. [^] See INA 212(i).

18. [^] See 8 CFR 212.7(a)(4)(iv).

19. [^] See 8 CFR 212.7(a)(4)(iii).

20. [^] See 8 CFR 212.7(a)(4)(ii).

21. [^] See 8 CFR 212.7(a)(4)(iii).

22. [^] See 8 CFR 204.313(g).

Chapter 7 - Denials, Appeals, and Motions

An officer must specify the reason(s) for denying any waiver in the denial notice. [1] If an officer denies the waiver based on discretion, the officer should explain how the negative factors outweigh the positive factors.

If USCIS denies a waiver application, the governing regulation may provide that the applicant may appeal the denial. [2] The officer must specify in the decision letter if the applicant may:

- File an appeal. If the decision is appealable, the officer must give the applicant proper notice of the possibility to appeal; or
- File a motion to reopen or reconsider. If USCIS approves the motion, then the officer reviews the waiver application again as if it had never been adjudicated. Therefore, USCIS issues a new decision on the waiver application following a successful motion.

USCIS may also reconsider a waiver approval or denial on its own motion at any time. [3]

Footnotes

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1. [^] See 8 CFR 103.3(a)(1)(i).

2. [^] See 8 CFR 103.3.

3. [^] See 8 CFR 103.5(a) and 8 CFR 212.7(a)(4)(v).

Part B - Extreme Hardship

Chapter 1 - Purpose and Background

A. Purpose

This part offers guidance concerning the adjudication of applications for those discretionary waivers of inadmissibility that require applicants to establish that refusal of their admission would result in “extreme hardship” to certain U.S. citizen or lawful permanent resident (LPR) family members.

B. Background

Under the Immigration and Nationality Act (INA), [1] admissibility is generally a requirement for admission to the United States, adjustment of status, and other immigration benefits. [2] The grounds that make aliens inadmissible to the United States are generally described in section 212 of the INA.

Several statutory provisions authorize the Secretary of Homeland Security [3] to grant discretionary waivers of particular grounds of inadmissibility for those who demonstrate that a denial of admission would result in “extreme hardship” to specified U.S. citizen or LPR family members. These specified family members are known as “qualifying relatives.” [4]

Each of these statutory provisions conditions a waiver on both a finding of extreme hardship to one or more qualifying relatives and the favorable exercise of discretion. These waiver applications are adjudicated by USCIS (and in some cases by the Department of Justice’s Executive Office for Immigration Review). [5]

The various statutory waiver provisions specify different categories of qualifying relatives and permit waivers of different inadmissibility grounds. The provisions include:

- INA 212(a)(9)(B)(v) – Provides for waiver of the 3- and 10-year inadmissibility bars for unlawful presence. [6] Qualifying relatives are limited to applicants' U.S. citizen and LPR spouses and parents. [7]
- INA 212(h)(1)(B) [8] – Provides for waiver of inadmissibility based on crimes involving moral turpitude, multiple criminal convictions, prostitution and commercialized vice, and certain serious criminal offenses for which the alien received immunity from prosecution. [9] Also provides a waiver of inadmissibility for a controlled substance violation insofar as the violation relates to a single offense of simple possession of 30 grams or less of marijuana. [10] Qualifying relatives are limited to applicants' U.S. citizen and LPR spouses, parents, sons, and daughters. [11]
- INA 212(i)(1) – Provides for waiver of inadmissibility for certain types of immigration fraud or willful misrepresentations of material fact. [12] For purposes of this waiver:
- Qualifying relatives are generally limited to applicants' U.S. citizen and LPR spouses and parents.
- But if the applicant is a Violence Against Women Act (VAWA) self-petitioner, USCIS also must consider extreme hardship to the applicant himself or herself, or to a parent or child [13] who is a U.S. citizen, LPR, or otherwise a qualified alien.

The factors discussed in this guidance apply to any waiver application in which the applicant must establish extreme hardship to a qualifying relative. [14] Because the classes of individuals who may serve as qualifying relatives varies among the different waiver provisions, officers should carefully determine which individuals can serve as qualifying relatives under the relevant extreme hardship analysis.

Footnotes

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1. [^] See Immigration and Nationality Act, Pub. L. 82-414 , 66 Stat. 163 (June 27, 1952), as amended.

2. [^] See INA 212(a) and INA 245(a).

3. [^] See 6 U.S.C. 271(b). See Delegation No. 0150.1, "Delegation to the Bureau of Citizenship and Immigration Services" II, Z (June 5, 2003).

4. [^] The classes of individuals who may serve as "qualifying relatives" depends on the specific text of the waiver provision involved. A U.S. citizen or LPR spouse or parent is a qualifying relative for most extreme hardship waivers. For certain other extreme hardship waivers, a U.S. citizen or LPR child, as well as an adult son or daughter, can be the qualifying relative. In the case of a K visa applicant, a U.S. citizen fiancé(e) is considered a U.S. citizen "spouse" qualifying relative. See 8 CFR 212.7(a) and 22 CFR 41.81(d) (K nonimmigrants). Finally, under some provisions, discretionary relief may be available upon a showing of extreme hardship to the applicants themselves. These include waivers of inadmissibility under INA 212(i)(1) (waiver of fraud-related inadmissibility for Violence Against Women Act (VAWA) self-petitioners), waivers of requirements for removing conditions on LPR status under INA 216(c)(4)(A), cancellation of removal under INA 240A(b)(2)(A)(v) adjudicated by the Executive Office for Immigration Review, and suspension of removal and cancellation of removal under Section 203 of Nicaraguan Adjustment and Central America Relief Act (NACARA), Pub. L. 105-100, 111 Stat. 2160, 2196 (November 19, 1997). See 8 CFR 240.64(c) and 8 CFR 1240.64(c). This guidance addresses USCIS' adjudication of waiver applications that require a showing of extreme hardship to specified family members, not applications based on extreme hardship to applicants themselves.

5. [^] See 6 U.S.C. 271(b). See Delegation No. 0150.1, "Delegation to the Bureau of Citizenship and Immigration Services" II, Z (June 5, 2003).

6. [^] See INA 212(a)(9)(B)(i).

7. [^] A U.S. citizen fiancé(e) is a qualifying relative in the case of a K nonimmigrant applicant. See 8 CFR 212.7(a) and 22 CFR 41.81(d) (K nonimmigrants).

8. [^] Other provisions of INA 212(h) authorize waivers of certain grounds of inadmissibility without an extreme hardship determination. See INA 212(h), INA 212(h)(1)(A), and INA 212(h)(1)(C).

9. [^] See INA 212(a)(2)(A)(i), INA 212(a)(2)(B), INA 212(a)(2)(D), and INA 212(a)(2)(E).

10. [^] See INA 212(a)(2)(A)(ii).

11. [^] The son or daughter must be related to the applicant in one of the ways specified in INA 101(b)(1), but he or she does not need to be a "child" (unmarried and under 21 years of age). Because the term "son or daughter" is not restricted with respect to age or marital status, it includes children as defined in INA 101(b)(1) as well as adult or married sons and daughters.

12. [^] See INA 212(a)(6)(C)(i).

13. [^] The term "child" is limited to individuals who are unmarried, under 21 years of age, and related to the applicant in one of the ways specified in INA 101(b)(1).

14. [^] Certain types of waivers utilize standards of hardship other than "extreme hardship." For example, the "exceptional hardship" waiver that applies to the foreign residence requirement for certain exchange visitors under INA 212(e) is a less demanding standard than "extreme hardship." By contrast, the "exceptional and extremely unusual hardship" standard for non-LPR cancellation of removal is more stringent that the extreme hardship standard under INA 240A(b). See *Matter of Monreal-Aguinaga (PDF)*, 23 I&N Dec. 56 (BIA 2001). This guidance specifically applies only to "extreme hardship" determinations.

Chapter 2 - Extreme Hardship Policy

A. Overview

Waivers of inadmissibility generally authorize U.S. immigration authorities to balance competing policy considerations when determining whether an alien should be admitted to the United States despite his or her inadmissibility.

On the one hand, the alien has engaged in conduct that Congress considers serious enough to render the individual inadmissible to the United States. On the other hand, Congress specifically authorized waivers of these grounds of inadmissibility for those cases in which the refusal of admission "would result in extreme hardship." To meet this "extreme hardship" requirement, the applicant must show that refusal of admission would impose more than the usual level of hardship that commonly results from family separation or relocation. Congress clearly intended the waiver to be applied for purposes of family unity and with other humanitarian concerns in mind. [1]

B. What is Extreme Hardship

The term "extreme hardship" is not expressly defined in the Immigration and Nationality Act (INA), in Department of Homeland Security (DHS) regulations, or in case law (although DHS regulations and certain Board of Immigration Appeals (BIA) decisions have provided some relevant guidance with respect to what may constitute extreme hardship in certain contexts). As the U.S. Supreme Court recognized in INS v. Jong Ha Wang, "[t]hese words are not self-explanatory, and reasonable men could easily differ as to their construction. But the [INA] commits their definition in the first instance to the Attorney General [and the Secretary of Homeland Security] and [their] delegates." [2]

Therefore, "[t]he Attorney General [and the Secretary of Homeland Security] and [their] delegates have the authority to construe 'extreme hardship' narrowly should they deem it wise to do so." [3] Conversely, "[a] restrictive view of extreme hardship is not mandated either by the Supreme Court or by [the BIA] case law." [4]

USCIS recognizes that at least some degree of hardship to qualifying relatives exists in most, if not all, cases in which individuals with the requisite relationships are denied admission. Importantly, to be considered "extreme," the hardship must exceed that which is usual or expected. [5] But extreme hardship need not be unique, [6] nor is the standard as demanding as the statutory "exceptional and extremely unusual hardship" standard that is generally applicable to non-lawful permanent resident cancellation of removal. [7]

Footnotes

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1. [^] For example, see *Matter of Lopez-Monzon (PDF)*, 17 I&N Dec. 280, 281 (BIA 1979) ("The intent of Congress in adding [the INA 212(i) waiver], which is evident from its language, was to provide for the unification of families, thereby avoiding the hardship of separation.").

2. [^] See 450 U.S. 139, 144 (1981) (per curiam).

3. [^] See *INS v. Jong Ha Wang*, 450 U.S. 139, 145 (1981) (per curiam).

4. [^] See *Matter of Pilch (PDF)*, 21 I&N Dec. 627, 630 (BIA 1996). See *Matter of L-O-G- (PDF)*, 21 I&N Dec. 413, 418 (BIA 1996).

5. [^] See 8 CFR 1240.58(b) (hardship must go "beyond that typically associated with deportation") (former suspension of deportation). The federal courts and the BIA have frequently relied on cases involving the former suspension of deportation statute when interpreting extreme hardship waiver statutes, as these statutes employed the same language. See Hassan v. INS, 927 F.2d 465, 467 (9th Cir. 1991). See *Matter of Cervantes-Gonzalez (PDF)*, 22 I&N Dec. 560, 565 (BIA 1999), aff'd, *Cervantes-Gonzales v. INS*, 244 F.3d 1001 (9th Cir. 2001).

6. [^] See *Matter of L-O-G- (PDF)*, 21 I&N Dec. 413, 418 (BIA 1996).

7. [^] See INA 240A(b). See *Matter of Andazola-Rivas (PDF)*, 23 I&N Dec. 319, 322, 324 (BIA 2002) (holding the "exceptional and extremely unusual hardship" standard to be "significantly more burdensome than the 'extreme hardship' standard" and intimating that the applicant "might well" have prevailed under the latter standard even though she failed under the former). See *Matter of Monreal-Aguinaga (PDF)*, 23 I&N Dec. 56, 59-64 (BIA 2001) (same).

Chapter 3 - Adjudicating Extreme Hardship Claims

A. Overview

In adjudicating a waiver request, the officer must ensure that the applicant meets all of the statutory requirements for the waiver, including the extreme hardship showing. If the applicant is eligible, the officer must then determine whether the applicant warrants a favorable exercise of discretion. In each case, the officer should analyze each part separately.

First, the applicant has the burden of proof to demonstrate by a preponderance of the evidence that he or she satisfies the statutory requirements of the waiver, including extreme hardship. [1] The applicant meets the preponderance of the evidencestandard if the evidence shows that it is more likely than not that a denial of admission would result in extreme hardship to one or more qualifying relatives. [2]

The finding of extreme hardship permits, but does not require, a favorable exercise of discretion. [3] Once the officer finds extreme hardship, the officer must then determine whether the applicant has shown that he or she merits a favorable exercise of discretion. [4]

B. Adjudicative Steps

The officer should complete the following steps when adjudicating a waiver application that requires a showing of extreme hardship to a qualifying relative. [5]

Adjudication Steps for Waivers Requiring Extreme Hardship to a Qualifying Relative

Adjudication Step		For More Information
Step 1	Confirm that the waiver provision requires a showing of extreme hardship to a qualifying relative.	See Chapter 1, Purpose and Background [9 USCIS-PM B.1]
Step 2	Consistent with the applicable waiver authority, identify each person as to whom the applicant makes a claim of extreme hardship and confirm that the applicant has established the necessary family relationship for the person(s) to be qualifying relatives(s).	See Chapter 4, Qualifying Relative [9 USCIS-PM B.4]
Step 3	Evaluate the present and future hardships that each qualifying relative would experience to determine whether it is more likely than not that an applicant's refusal of admission would result in extreme hardship to the qualifying relative. This includes whether any of the particularly significant factors listed below are present. These particularly significant factors generally exceed the common consequences and often weigh heavily in support of a finding of extreme hardship.	See Chapter 5, Extreme Hardship Considerations and Factors [9 USCIS-PM B.5] See Chapter 6, Extreme Hardship Determinations [9 USCIS-PM B.6]
Step 4	If no single hardship rises to the level of "extreme," then determine whether it is more likely than not that the hardships to the qualifying relatives in the aggregate rise to the level of extreme hardship.	See Chapter 2, Extreme Hardship Policy [9 USCIS-PM B.2] See Chapter 5, Extreme Hardship Considerations and Factors [9 USCIS-PM B.5] See Chapter 6, Extreme Hardship Determinations [9 USCIS-PM B.6]

Adjudication Step		For More Information
Step 5	If extreme hardship is not found, deny the application. If extreme hardship is found, determine whether based on the totality of the circumstances of the individual case, the applicant merits a favorable exercise of discretion.	See Chapter 7, Discretion [9 USCIS-PM B.7]

Footnotes

1. [^] See INA 291 (providing that burden is on applicant for admission to prove he or she is "not inadmissible" and "entitled to the nonimmigrant [or] immigrant . . . status claimed"). See *Matter of Mendez-Moralez (PDF)*, 21 I&N Dec. 296, 299 (BIA 1996) (holding that applicant for INA 212(h)(1)(B) waiver has burden of showing that favorable exercise of discretion is warranted, "as is true for other discretionary forms of relief"). See 8 CFR 212.7(e)(7) (provisional INA 212(a)(9)(B)(v) waivers). See INA 240(c)(4)(A) (in removal proceedings, the applicant for relief has the burden of proving that he or she is statutorily eligible and merits a favorable exercise of discretion).

2. [^] See *Matter of Chawathe (PDF)*, 25 I&N Dec. 369, 376 (AAO 2010).

3. [^] See *Matter of Cervantes-Gonzalez (PDF)*, 22 I&N Dec. 560, 566 (BIA 1999), aff'd, *Cervantes-Gonzales v. INS*, 244 F.3d 1001 (9th Cir. 2001). See *Matter of Ngai (PDF)*, 19 I&N Dec. 245 (BIA 1984). See *Matter of Shaughnessy (PDF)*, 12 I&N Dec. 810 (BIA 1968).

4. [^] See Chapter 7, Discretion [9 USCIS-PM B.7].

5. [^] In most cases, there will already have been a finding of inadmissibility, either by the consular officer adjudicating a visa application, or a USCIS officer adjudicating a related application, such as an Application to Register Permanent Residence or Adjust Status (Form I-485). A formal finding of inadmissibility is not required in adjudicating an Application for Provisional Presence Waiver (Form I-601A). The officer should identify all inadmissibility grounds and confirm that the ground(s) may be waived. This chart assumes that the inadmissibility grounds have been identified and that a waiver is available.

Chapter 4 - Qualifying Relative

A. Establishing the Relationship to the Qualifying Relative

A USCIS officer must verify that the relationship to a qualifying relative exists. When the qualifying relative is the visa petitioner, an officer should use the approval of the Petition for Alien Relative (Form I-130) as proof that the qualifying relationship has been established. [1]

If the applicant's relationship to the qualifying relative has not already been established through a prior approved petition, the USCIS officer must otherwise verify that the relationship to the qualifying relative exists. Along with the waiver application, applicants should include primary evidence that supports the relationship, such as marriage certificates, [2] birth certificates, adoption papers, paternity orders, orders of child support, or other court or official documents.

If such primary evidence does not exist or is otherwise unavailable, the applicant should explain the reason for the unavailabilityand submit secondary evidence of the relationship, such as school records or records of religious or other community institutions. If secondary evidence is also not reasonably available, the applicant may submit written testimony from a witness or witnesses with personal knowledge of the relevant facts. [3] If evidence establishing the relationship is missing or insufficient, the officer should issue a Request for Evidence (RFE) in accordance with USCIS policy.

If the applicant claims that the qualifying relative would suffer extreme hardship in part due to the hardship that would be suffered by a non-qualifying relative, the applicant must submit evidence establishing the claimed relationships. [4] If such evidence is missing or insufficient, the officer should issue an RFE in accordance with USCIS policy.

B. Separation or Relocation

With respect to the requirement that the refusal of the applicant's admission "would result in" extreme hardship to a qualifying relative, there are 2 potential scenarios to consider. Either:

- The qualifying relative(s) may remain in the United States separated from the applicant who is denied admission(separation); or
- The qualifying relative(s) may relocate overseas with the applicant who is denied admission (relocation).

In either scenario, depending on all the facts of the particular case, the refusal of admission may result in extreme hardship to one or more qualifying relatives.

Separation may result in extreme hardship if refusal of the applicant's admission would cause hardship (for example, suffering or harm) to a qualifying relative that is greater than the common consequences of family separation. [5] When assessing extreme hardship claims based on separation, USCIS focuses on how denial of the applicant's admission would affect the qualifying relative's well-being in the United States given the separation of the qualifying relative from the applicant.

Relocation may result in extreme hardship if refusal of the applicant's admission would cause hardship (for example, suffering or harm) to a qualifying relative that is greater than the common consequences of family relocation. When assessing extreme hardship claims based on relocation, USCIS focuses on how denial of the applicant's admission would affect the qualifying relative's well-being given the qualifying relative's relocation outside the United States.

An applicant may show that extreme hardship to a qualifying relative would result from both separation and relocation. [6] However, an applicant is not required to show extreme hardship under both scenarios. An applicant may submit evidence demonstrating which of the 2 scenarios would result from a denial of admission and may establish extreme hardship to one or more qualifying relatives by showing that either relocation or separation would result in extreme hardship. [7]

If the applicant seeks to demonstrate extreme hardship based on separation or relocation, the applicant's evidence must demonstrate that the designated outcome "would result" from the denial of the waiver. The applicant may meet this burden by submitting a statement from the qualifying relative certifying under penalty of perjury that the qualifying relative would relocate or separate if the applicant is denied admission. The statement should be sufficiently detailed to adequately convey to USCIS the reasons why either separation or relocation would likely result from a denial of admission. The applicant may also submit documentation or other evidence, if available, in support of this statement.

Due to the subjective factors inherently involved in decisions involving separation or relocation, a credible statement from the qualifying relative may be the best available evidence for establishing whether he or she would separate or relocate if the applicant's admission is denied. Among other things, such decisions generally involve the weighing of many deeply personal and subjective factors that cannot be objectively assessed by others.

Qualifying relative spouses, for example, are faced with the choice of separating from their applicant spouses to remain in the United States or leaving the United States to relocate abroad with their applicant spouses. The former may involve, among other things, the significant decline in the emotional support and affection between spouses; the latter may involve leaving behind important ties to the United States, including family and friends in the country, jobs and career opportunities, educational opportunities, availability of medical care, and safety and security. Decisions based on such complex human factors may be difficult to prove other than through credible statements.

However, if the USCIS officer determines that such a statement is not plausible or credible (including because it is inconsistent with the evidence of hardship presented), the officer may request additional evidence from the applicant to support the designation that the qualifying relative would separate or relocate. In such cases, the officer must consider the subjective nature of the inquiry and the difficulty involved in proving intent in this context through documentary or other supporting evidence.

Moreover, the officer must make determinations based on the evidence and arguments presented and not on the officer's personal moral view as to whether a particular qualifying relative "ought" to either relocate or separate in an individual case. Generally, in the absence of inconsistent evidence, a credible, sworn statement from the qualifying relative of his or her intent to relocate or separate would generally suffice to demonstrate what the qualifying relative plans to do.

Ultimately, the officer must be persuaded that it is more likely than not that a qualifying relative will suffer extreme hardship resulting from the denial of admission. In a case in which the applicant chooses to rely on evidence showing that extreme hardship would result from relocation, the officer must determine based on a preponderance of the evidence that relocation would occur. The same principle applies if the applicant chooses to rely on evidence showing that extreme hardship would result from separation. If the evidence presented fails to persuade the officer, the officer should provide an opportunity for the applicant to submit additional evidence—either to show that relocation or separation would occur, or to demonstrate that extreme hardship would result under both scenarios.

Finally, special considerations may arise in cases involving those limited statutory waivers for which a child may serve as a qualifying relative. [8] In such cases, a parent who asserts that he or she will separate from a child so that the child may remain in the United States bears the burden of overcoming the general presumption that the child will relocate with the parent. Among other factors, the parent should generally be expected to explain the arrangements for the child's care and support.

The failure to provide a credible plan for the care and support of the child would cast doubt on the parent's contention that he or she will actually leave the child behind in the United States. [9] Moreover, if the parent represents that the child will be left behind,USCIS may require the parent to state that understanding in a statement made under penalty of perjury. [10] Such a statement is not required, however, if the parent credibly represents that the child will be left behind in the care of the other parent [11] (which may itself give rise to extreme hardship depending on the totality of the circumstances).

C. Effect on Extreme Hardship if Qualifying Relative Dies

Generally, the applicant must show extreme hardship to a qualifying relative who is alive at the time the waiver application is both filed and adjudicated. [12] Unless a specific exception applies, an applicant cannot show extreme hardship if the qualifying relative has died.

INA 204(l) provides the only exception. In general, INA 204(l) allows USCIS to approve, or reinstate approval of, an immigrant visa petition and certain other benefits even though the petitioner or the principal beneficiary has died. INA 204(l) also provides that it applies generally to "any related applications," thereby including applications for waivers related to immigrant visa petitions.

Under this provision, an alien who establishes that the requirements of INA 204(l) have been met may apply for a waiver even though the qualifying relative for purposes of extreme hardship has died. Moreover, in cases in which the deceasedindividual is both the qualifying relative for purposes of INA 204(l) and the qualifying relative for purposes of the extreme hardship determination, the death of the qualifying relative is treated as the functional equivalent of a finding of extreme hardship. [13]

Section 204(l) also applies in the case of widows and widowers of U.S. citizens whose pending or approved petition was converted to a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360), [14] including if the petition later reverts to a Form I-130 petition based on a subsequent remarriage. [15]

D. Effect of Hardship Experienced by a Person who is not a Qualifying Relative

On its own, hardship to a non-qualifying relative [16] cannot satisfy the extreme hardship requirement. In some cases, however, the hardship experienced by non-qualifying relatives can be considered as part of the extreme hardship determination, but only to the extent that such hardship affects one or more qualifying relatives. [17]

1. Hardship to the Applicant

Except for certain applicants who are Violence Against Women Act (VAWA) self-petitioners, applicants for the waivers enumerated in Chapter 1 may not meet the relevant extreme hardship requirements by establishing hardship to themselves. In cases in which applicants who are not VAWA self-petitioners submit evidence of hardship to themselves, officers should consider the alleged hardships only as they affect the applicants' qualifying relatives.

For example, consider an applicant who indicates he suffers from a medical condition for which he would be unable to obtain necessary medical treatment in his home country. The applicant provides medical documentation about his condition and Department of State (DOS) information on country conditions that corroborate his statements. Because the applicant is not a qualifying relative, his claims alone cannot meet the extreme hardship requirement of the waiver.

However, the applicant's condition and prospective situation may show that denial of his admission would have a significant emotional or financial impact on one or more qualifying relatives in the United States. The USCIS officer may consider such impacts when determining whether the qualifying relative(s) would experience extreme hardship upon the applicant's denial of admission.

2. Hardship to Other Non-Qualifying Relatives

Similarly, if the applicant claims hardship to an individual who is not a qualifying relative for purposes of the relevant waiver, the officer should consider the alleged hardship only as it affects one or more qualifying relatives.

For example, consider an applicant who is married to a U.S. citizen with whom she has a 5-year-old child with a disability. Unless the relevant waiver allows for her child to serve as a qualifying relative, the USCIS officer may not consider the hardship to the child if the applicant is denied admission. The officer, however, may consider the child's disability when assessing whether the denial of admission will cause hardship for the qualifying-relative spouse. For example, denial of admission may impact the qualifying parent's financial and emotional ability to care for the disabled child. [18] Moreover, even if such derivative hardship does not rise to the level of extreme hardship by itself, it is a factor that should be considered when determining whether the qualifying relative's hardship, considered in the aggregate, rises to the level of extreme.

E. Aggregating Hardships

To establish extreme hardship, it is not necessary to demonstrate that a single hardship, taken in isolation, rises to the level of "extreme." Rather, any relevant hardship factors "must be considered in the aggregate, not in isolation." [19] Therefore, even if no one factor individually rises to the level of extreme hardship, the USCIS officer "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation" (or, in this case, the refusal of admission). [20] Moreover, even "those hardships ordinarily associated with deportation, . . . while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship." [21]

The applicant needs to show extreme hardship to only one qualifying relative. [22] But an applicant may have more than one qualifying relative. In such cases, if there is no single qualifying relative whose hardship alone is severe enough to be found "extreme," the extreme hardship standard would be met if the combination of hardships to 2 or more qualifying relatives in the aggregate rises to the level of extreme hardship. [23]

Therefore, if the applicant demonstrates that the combined hardships that two or more qualifying relatives would suffer rise to the level of extreme hardship, the applicant has met the extreme hardship standard. If the applicant presents evidence of hardship to multiple qualifying relatives that does not rise to the level of extreme hardship to any one qualifying relative, the USCIS officershould aggregate all of their hardships to decide whether these hardships combined rise to the level of extreme hardship. [24]

Footnotes

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1. [^] An officer who has concerns about the qualifying relationship in the approved Form I-130 should consult with a supervisor.

2. [^] This includes marriages valid under the laws of the place of marriage.

3. [^] See 8 CFR 103.2(b)(2)(i).

4. [^] See Section D, Effect of Hardship Experienced by a Person who is not a Qualifying Relative [9 USCIS-PM B.4(D)].

5. [^] For discussion of the common consequences of family separation and relocation, see Chapter 5, Extreme Hardship Considerations and Factors, Section B, Common Consequences [9 USCIS-PM B.5(B)].

6. [^] If an applicant who submits evidence related to both relocation and separation ultimately demonstrates extreme hardship with regard to only one scenario, the USCIS officer should determine, possibly through the issuance of an RFE, whether the qualifying relative has established which scenario is more likely to result from a denial of admission.

7. [^] See, for example, *Matter of Calderon-Hernandez (PDF)*, 25 I&N Dec. 885 (BIA 2012) (remanding for determination of hardship based only on separation after immigration judge had rejected hardship based on relocation). See *Matter of Recinas (PDF)*, 23 I&N Dec 467 (BIA 2002) (consideration of hardship based only on relocation). See *Cerrillo-Perez v. INS*, 809 F.2d 1419 (9th Cir. 1987) (ordering consideration of extreme hardship based on separation after Board of Immigration Appeals found no hardship based on relocation). See *Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1998) (same). See *Mendez v. Holder*, 566 F.3d 316 (2nd Cir. 2009) (ordering consideration of hardship only under relocation). See *Figueroa v. Mukasey*, 543 F.3d 487 (9th Cir. 2008) (remanding assessment of hardship only under relocation).

8. [^] This is authorized by statute in cases of waivers of criminal grounds under INA 212(h)(1)(B).

9. [^] See *Matter of Ige (PDF)*, 20 I&N Dec. 880, 885 (BIA 1994) (holding that, for purposes of the former suspension of deportation, neither the parent's "mere assertion" that the child will remain in the United States nor the mere "possibility" of the child remaining is entitled to "significant weight;" rather, the Board expects evidence that "reasonable provisions will be

made for the child's care and support"). See Iturribarria v. INS, 321 F.3d 889, 902-03 (9th Cir. 2003) (finding that in suspension of deportation case, the petitioner could not claim extreme hardship from family separation without evidence of the family's intent to separate). See Perez v. INS, 96 F.3d 390, 393 (9th Cir. 1996) (holding that agency properly required, as means of reducing speculation in considering extreme hardship element in a suspension of deportation case, affidavits and other evidentiary material establishing that family members "will in fact separate").

10. [^] See *Matter of Ige (PDF)*, 20 I&N Dec. 885, 885 (BIA 1994) (requiring such an affidavit in suspension of deportation cases).

11. [^] See *Matter of Calderon-Hernandez (PDF)*, 25 I&N Dec. 885 (BIA 2012) (concluding that when a child will stay behind with a parent in the United States, regardless of that parent's immigration status, the waiver applicant need not provide documentary evidence regarding the child's care).

12. [^] See *Matter of Federiso (PDF)*, 24 I&N Dec. 661 (BIA 2008).

13. [^] See AFM Chapter 10.21(c)(5), Waivers and Other Related Applications.

14. [^] See 8 CFR 204.2(i)(1)(iv).

15. [^] For more detailed guidance on the approval of petitions and applications after the death of a qualifying relative under INA 204(l), see Approval of Petitions and Applications after the Death of the Qualifying Relative under New Section 204(l) of the Immigration and Nationality Act (PDF, 102 KB), issued December 16, 2010, and Approval of a Spousal Immediate Relative Visa Petition under Section 204(l) of the Immigration and Nationality Act after the Death of a U.S. Citizen Petitioner (PDF, 104 KB), issued November 18, 2015. See Williams v. DHS, 741 F.3d 1228 (11th Cir. 2014) (noting congressional intent in not expressly including a "remarriage bar" in 204(l) and finding "[t]hat a spouse eventually remarries does nothing to impugn the validity of the original I-130 beneficiary-petition or the first marriage, and leaves the surviving spouse in the same position she would have been but for the untimely passing of her husband, an event beyond her control."). USCIS applies this ruling to all cases it adjudicates.

16. [^] For example, hardship to the applicant's child when the particular waiver provision lists only the applicant's spouse and parents as qualifying relatives.

17. [^] See *Matter of Gonzalez Recinas (PDF)*, 23 I&N Dec. 467, 471 (BIA 2002) ("In addition to the hardship of the United States citizen children, factors that relate only to the respondent may also be considered to the extent that they affect the potential level of hardship to her qualifying relatives.").

18. [^] See *Zamora-Garcia v. INS*, 737 F.2d 488, 494 (5th Cir. 1984) (requiring, in suspension of deportation case, "consideration of the hardship to the [qualifying applicant] posed by the possibility of separation from the [non-qualifying third party children]").

19. [^] See *Bueno-Carrillo v. Landon*, 682 F.2d 143, 146 n.3 (7th Cir. 1982). See Ramos v. INS, 695 F.2d 181, 186 n.12 (5th Cir. 1983).

20. [^] See *Matter of O-J-O- (PDF)*, 21 I&N Dec. 381, 383 (BIA 1996).

21. [^] See *Matter of O-J-O (PDF)*-, 21 I&N Dec. 381, 383 (BIA 1996). See *Matter of Ige (PDF)*, 20 I&N Dec. 880, 882 (BIA 1994) ("Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.").

22. [^] See, for example, INA 212(h), INA 212(i), and INA 212(a)(9)(B)(v).

23. [^] See *Watkins v. INS*, 63 F.3d 844, 850 (9th Cir. 1995) (reversing BIA decision on ground it had failed to aggregate the "professional and social changes" of the petitioner, who was a qualifying relative under the particular statute, with the hardship to the applicant's children, who were also qualifying relatives). See *Prapavat v. INS*, 638 F.2d 87, 89 (9th Cir. 1980) (holding that extreme hardship "may also be satisfied … by showing that the aggregate hardship to two or more family members described in 8 U.S.C. 1254(a)(1) is extreme, even if the hardship suffered by any one of them would be insufficient by itself"),

on rehearing, 662 F.2d 561, 562-63 (9th Cir. 1981) (per curiam) (again listing both hardships to the qualifying relative petitioners and hardships to their U.S. citizen child, holding that these hardships "must all be assessed in combination," and finding that the Board had erred in failing to do so). See *Jong Ha Wang v. INS*, 622 F.2d 1341, 1347 (9th Cir. 1980) ("[T]he Board should consider the aggregate effect of deportation on all such persons when the alien alleges hardship to more than one."), *rev'd on other grounds*, 450 U.S. 139 (1981) (per curiam). These decisions all interpreted the former suspension of deportation provision. The list of qualifying individuals (which included the petitioners themselves) whose extreme hardship sufficed under that provision differed from the lists of qualifying relatives in the waiver provisions discussed here, but the statutory language was identical in all other relevant respects ("result in extreme hardship to …").

24. [^] Hardships that the BIA has held to be "common results" in themselves are insufficient for a finding of extreme hardship. See *Matter of Ngai*, (PDF) 19 I&N Dec. 245 (BIA 1984). A common consequence, however, when combined with other factors that alone would also have been insufficient, may meet the extreme hardship standard when considered in the aggregate. For a list of those common consequences, see Chapter 5, Extreme Hardship Considerations and Factors, Section B, Common Consequences [9 USCIS-PM B.5(B)].

Chapter 5 - Extreme Hardship Considerations and Factors

A. Totality of the Circumstances

The officer must make extreme hardship determinations based on the factors, arguments, and evidence submitted. [1] Therefore, the officer should consider any submission from the applicant bearing on the extreme hardship determination. The officer may also consider factors, arguments, and evidence relevant to the extreme hardship determination that the applicant has not specifically presented, such as those addressed in Department of State (DOS) information on country conditions [2] or other U.S. Government determinations regarding country conditions, including a country's designation for Temporary Protected Status (TPS). Officers must base their decisions on the totality of the evidence and circumstances presented.

B. Common Consequences

The common consequences of denying admission, in and of themselves, do not warrant a finding of extreme hardship. [3] The Board of Immigration Appeals (BIA) has held that the common consequences of denying admission include, but are not limited to, the following:

- Family separation;
- Economic detriment;
- Difficulties of readjusting to life in the new country;
- The quality and availability of educational opportunities abroad;
- Inferior quality of medical services and facilities; and
- Ability to pursue a chosen employment abroad.

While extreme hardship must involve more than the common consequences of denying admission, the extreme hardship standard is not as high as the significantly more burdensome "exceptional and extremely unusual" hardship standard that that applies to other forms of immigration adjudications, such as cancellation of removal. [4]

C. Factors Must Be Considered Cumulatively

The officer must consider all factors and consequences in their totality and cumulatively when assessing whether a qualifying relative will experience extreme hardship either in the United States or abroad. In some cases, common consequences that on their own do not constitute extreme hardship may result in extreme hardship when assessed cumulatively with other factors. [5]

For example, if a qualifying relative has a medical condition that alone does not rise to the level of extreme hardship, the combination of that hardship and the common consequences of inferior medical services, economic detriment, or readjusting to life in another country may cumulatively cause extreme emotional or financial hardship for the qualifying relative when considering the totality of the circumstances.

Ordinarily, for example, the fact that medical services are less comprehensive in another country is a common consequence of denying admission; but the inferior quality of medical services, considered along with the individual's specific medical conditions, may create sufficient difficulties as to rise to the level of extreme hardship in combination with all the other consequences.

The officer must weigh all factors individually and cumulatively, as follows:

- First, the officer must consider whether any factor set forth individually rises to the level of extreme hardship under the totality of the circumstances.
- Second, if any factor alone does not rise to the level of extreme hardship, the officer must consider all factors together to determine whether they cumulatively rise to the level of extreme hardship. This includes hardships to multiple qualifying relatives.

When considering the factors, whether individually or cumulatively, all factors, including negative factors, must be evaluated in the totality of the circumstances.

D. Examples of Factors that May Support a Finding of Extreme Hardship

The chart below lists factors that an applicant might present and that would be relevant to determining whether an applicant has demonstrated extreme hardship to a qualifying relative. This list is not exhaustive; circumstances that are not on this list may also be relevant to finding extreme hardship.

The presence of one or more of the factors below in a particular case does not mean that extreme hardship would necessarily result from a denial of admission. But they are factors that may be encountered and should be considered in their totality and cumulatively in individual cases. All hardship factors presented by the applicant should be considered in the totality of the circumstances in making the extreme hardship determination.

Some of the factors listed below apply when the qualifying relative would remain in the United States without the applicant. Other factors apply when the qualifying relative would relocate abroad. Some of the factors might apply under either circumstance.

Factors and Considerations for Extreme Hardship

Factors	Considerations

Factors	Considerations
Family Ties and Impact	• Qualifying relative's ties to family members living in the United States, including age, status, and length of residence of any children. • Responsibility for the care of any family members in the United States, particularly children, elderly adults, and disabled adults. • The qualifying relative's ties, including family ties,to the country of relocation, if any. • Nature of relationship between the applicant and the qualifying relative, including any facts about the particular relationship that would either aggravate or lessen the hardship resulting from separation. • Qualifying relative's age. • Length of qualifying relative's residence in the United States. • Length of qualifying relative's prior residence in the country of relocation, if any. • Prior or current military service of qualifying relative. • Impact on the cognitive, social, or emotional well-being of a qualifying relative who is left to replace the applicant as caregiver for someone else, or impact on the qualifying relative (for example, child or parent) for whom such care is required.

Factors	Considerations
Social and Cultural Impact	• Loss of access to the U.S. courts and the criminal justice system, including the loss of opportunity to request or provide testimony in criminal investigations or prosecutions; to participate in proceedings to enforce labor, employment, or civil rights laws; to participate in family law proceedings, victim's compensation proceedings, or other civil proceedings; or to obtain court orders regarding protection, child support, maintenance, child custody, or visitation. • Fear of persecution or societal discrimination. • Prior grant of U nonimmigrant status. • Existence of laws and social practices in thecountry of relocation that would punish the qualifying relative because he or she has been in the United States or is perceived to have Western values. • Access or lack of access to social institutions and structures (official and unofficial) for support, guidance, or protection. • Social ostracism or stigma based on characteristics such as gender, gender identity, sexual orientation, religion, race, national origin, ethnicity, citizenship, age, political opinion, marital status, or disability. [6] • Qualifying relative's community ties in the United States and in the country of relocation. • Extent to which the qualifying relative has integrated into U.S. culture, including language, skills, and acculturation. • Extent to which the qualifying relative would have difficulty integrating into the country of relocation, including understanding and adopting social norms and established customs, including gender roles and ethical or moral codes. • Difficulty and expense of travel/communication to maintain ties between qualifying relative and applicant, if the qualifying relative does not relocate. • Qualifying relative's present inability to communicate in the language of the country of relocation, as well as the time and difficulty that learning that language would entail. • Availability and quality of educational opportunities for qualifying relative (and children, if any) in the country of relocation. • Availability and quality of job training, including technical or vocational opportunities, for qualifying relative (and children, if any) in the country of relocation.

Factors	Considerations
Economic Impact	• Economic impact of applicant's departure on the qualifying relative, including the applicant's or qualifying relative's ability to obtain employment in the country of relocation. • Economic impact resulting from the sale of a home, business, or other asset. • Economic impact resulting from the termination of a professional practice. • Decline in the standard of living, including due to significant unemployment, underemployment, or other lack of economic opportunity in the country of relocation. • Ability to recoup losses, or repay student loan debt. • Cost of extraordinary needs, such as special education or training for children. • Cost of care for family members, including children and elderly, sick, or disabled parents.
Health Conditions & Care	• Health conditions and the availability and quality of any required medical treatment in the country to which the applicant would be returned, including length and cost of treatment. • Psychological impact on the qualifying relative due to either separation from the applicant or departure from the United States, including separation from other family members living in the United States. • Psychological impact on the qualifying relative due to the suffering of the applicant. • Prior trauma suffered by the qualifying relative that may aggravate the psychological impact of separation or relocation, including trauma evidenced by prior grants of asylum, refugee status, or other forms of humanitarian protection.
Country Conditions [7]	• Conditions in the country of relocation, including civil unrest or generalized levels of violence, current U.S. military operations in the country, active U.S. economic sanctions against the country, ability of country to address significant crime, environmental catastrophes like flooding or earthquakes, and other socio-economic or political conditions that jeopardize safe repatriation or lead to reasonable fear of physical harm. • Temporary Protected Status (TPS) designation. [8] • Danger Pay for U.S. government workers stationed in the country of nationality. [9] • Withdrawal of Peace Corps from the country of nationality for security reasons. • DOS Travel Warnings or Alerts, whether or not they constitute a particularly significant factor, as set forth in Part E below.

E. Particularly Significant Factors

The preceding list identifies factors that may bear on whether a denial of admission would result in extreme hardship. Below are factors that USCIS has determined often weigh heavily in support of finding extreme hardship. An applicant who seeks to

demonstrate the presence of one of the enumerated circumstances must submit sufficient reliable evidence to support the existence of such circumstance(s) and show that the circumstance will cause extreme hardship to the qualifying relative. The mere presence of an enumerated circumstance does not create a presumption of extreme hardship. The ultimate determination of extreme hardship must be based on the totality of the circumstances present in the individual case.

It is important to emphasize that the enumerated circumstances listed below are specifically highlighted only because they are often likely to support findings of extreme hardship. Other hardships not enumerated may also rise to the level of extreme, even if they vary significantly than those listed below. [10]

Eligibility for an immigration benefit ordinarily must exist at the time of filing and at the time of adjudication. [11] However, considering the nature of the particularly significant factors described below, the presence of one or more of these circumstances at the time of adjudication should be considered by a USCIS officer even if the circumstance arose after the filing of the waiver request.

1. Qualifying Relative Previously Granted Iraqi or Afghan Special Immigrant Status, T Nonimmigrant Status, or Asylum or Refugee Status

If a qualifying relative was previously granted Iraqi or Afghan special immigrant status, [12] T nonimmigrant status, asylum status, or refugee status in the United States from the country of relocation and the qualifying relative's status has not been revoked, those factors would often weigh heavily in support of finding extreme hardship. [13] The existence of this circumstance normally results in hardship greater than the common consequences denying admission, whether in cases involving relocation or separation.

The prior decision to grant the qualifying relative status as an Iraqi or Afghan special immigrant, T nonimmigrant, refugee, or asylee indicates the significantly heightened risk that relocation to the country from which he or she received protection could result in retaliatory violence, persecution or other danger to the qualifying relative. This prior assessment by USCIS would often weigh heavily in support of finding extreme hardship in a case involving relocation.

The same is also true in cases involving separation. The prior assessment by USCIS with respect to the qualifying relative indicates that he or she would likely face increased difficulty returning to that country to visit the applicant, thus generally resulting in hardship that is greater than that normally present in cases involving family separation. The applicant might also show that, due to their relationship, the applicant may experience persecution or other dangers similar to those that gave rise to the qualifying relative's underlying status. The qualifying relative in such a case may suffer additional psychological trauma due to the potential for harm to the applicant in the country of relocation.

2. Qualifying Relative or Related Family Member's Disability

Cases involving disabled individuals often involve hardships that rise above the common consequences. If a government agency has made a formal disability determination [14] with regard to the qualifying relative, or with regard to a family member of the qualifying relative who is dependent on the qualifying relative for care, that factor would often weigh heavily in support of finding that either relocation or separation would result in extreme hardship under the totality of the circumstances.

In cases involving either (1) relocation of the qualifying relative with a disability or (2) relocation of both the qualifying relative and the relevant family member with a disability, the applicant will need to show that the services available to the disabled individual in the country of relocation are unavailable or significantly inferior to those available to him or her in the United States. In such cases, the disability determination would often weigh heavily in support of a finding of extreme hardship.

In cases involving separation, the applicant will need to show that the qualifying relative with a disability, or the relevant family member with a disability, generally requires the applicant's assistance for care due to the disability. Where replacement care is

not realistically available and obtainable, the disability determination would often weigh heavily in support of a finding of extreme hardship.

Absent a formal disability determination, an applicant may provide other evidence that a qualifying relative or relevant individualsuffers from a medical condition, whether mental or physical, that makes either travel to, or residence in, the country of relocationdetrimental to the qualifying relative or family member's health or safety. Similarly, an applicant may provide other evidence that the condition of the qualifying relative requires the applicant's assistance for care.

3. Qualifying Relative's Military Service

Military service by a qualifying relative often results in hardships from denial of the applicant's admission that rise above the common consequences of denying admission. If a qualifying relative is an Active Duty member of any branch of the U.S. armed forces, [15] or is an individual in the Selected Reserve of the Ready Reserve, denial of an applicant's admission often causes psychological and emotional harm that significantly exacerbates the stresses, anxieties and other hardships inherent in military service by a qualifying relative.

This may result in an impairment of the qualifying relative's ability to serve the U.S. military, or to be quickly called into active duty in the case of reservists, which also affects military preparedness. This is often the case even if the qualifying relative's military service already separates, or will separate, him or her from the applicant. In such circumstances, the applicant's removal abroadmay magnify the stress of military service to a level that would constitute extreme hardship.

4. DOS Travel Warnings

DOS issues travel warnings to notify travelers of the risks of traveling to certain foreign countries. [16] Reasons for issuing travel warnings include, but are not limited to, unstable government, civil war, ongoing intense crime or violence, or frequent terrorist attacks. A travel warning remains in place until changes in circumstances sufficiently mitigate the need for such a warning. With respect to some travel warnings, DOS advises of travel risks to a specific region or regions of the country at issue.

In some situations, DOS issues travel warnings that do more than notify travelers of the risks of traveling to a particular country or region(s) within a country. Rather, DOS affirmatively recommends against travel or affirmatively recommends that U.S. citizens depart. DOS may make such travel warnings country-wide. Such travel warnings may contain language in which:

- DOS urges avoiding all travel to the country or region because of safety and security concerns;
- DOS warns against all but essential travel to the country or region;
- DOS advises deferring all non-essential travel to the country or region; and/or
- DOS advises U.S. citizens currently in the country or region to depart.

In cases where a qualifying relative would relocate to a country or region that is the subject of such DOS recommendations against travel, the travel warning would often weigh heavily in support of a finding of extreme hardship. In assessing the dangers in the country of relocation, USCIS officers should give weight to DOS travel warnings, taking into account the nature and severity of such warnings.

Generally, the fact that the country of relocation is currently subject to a DOS country-wide travel warning against travel may indicate that a qualifying relative would face significantly increased danger if he or she were to relocate to that country with the applicant. This significantly increased danger would often support a finding of extreme hardship.

If the relevant travel warning covers only a part or region of the country of relocation, the USCIS officer must determine whether the qualifying relative would relocate to the part or region that is subject to the warning. If the officer finds that this part or

region is one to which the qualifying relative plans to return despite the increased danger (for example, because of family relationships or employment opportunities), that may indicate that the qualifying relative would face significantly increased danger if he or she were to relocate to that part or region. This significantly increased danger would often support a finding of extreme hardship.

Alternatively, if the officer finds that the qualifying relative would relocate to a part of the country that is not subject to the travel warning (because of the danger in the part or region covered by the travel warning or for any other reason), that indicates that the qualifying relative would generally not face significantly increased danger upon relocation.

If the officer finds that the qualifying relative would remain in the United States while the applicant returns to a country or region that is subject to a DOS warning against travel, the officer should evaluate whether the separation may result in extreme hardship to the qualifying relative. In such cases, the officer should consider the hardship to the qualifying relative resulting from the increased danger to the applicant in the relevant country or region.

5. Substantial Displacement of Care of Applicant's Children

USCIS recognizes the importance of family unity and the ability of parents and other caregivers to provide for the well-being of children. [17] Depending on the particular facts of a case, either the continuation of one's existing caregiving duties under new and difficult circumstances or the need to assume someone else's caregiving duties can be sufficiently burdensome to rise to the level of extreme hardship. The children do not need to be U.S. citizens or lawful permanent residents (LPRs) in such cases. [18]

In cases involving the separation of spouses in which the qualifying relative is the primary caretaker and the applicant is the primary income earner, the income earner's refusal of admission often causes economic loss to the caregiver. Although economic loss alone is generally a common consequence of a denial of admission, depending on the particular circumstances the economic loss associated with the denial of admission may create burdens on the caregiver that are severe enough to rise to the level of extreme hardship. That can occur, for example, when the qualifying relative must take on the additional burdens of primary income earner while remaining the primary caregiver. That dual responsibility may significantly disrupt the qualifying relative's ability to meet his or her own basic subsistence needs or those of the person(s) for whom the care is being provided. In such cases, the dual burden would often support a finding of extreme hardship. In addition, the qualifying relative may suffer significant emotional and psychological impacts from being the sole caregiver of the child(ren) that exceed the common consequences of being left as a sole parent.

In cases involving the separation of spouses in which the qualifying relative is the primary income earner and the applicant is the primary caretaker, the caretaker's refusal of admission can result in a substantial shift of caregiving responsibility from the applicant to the qualifying relative. Such a shift may significantly affect the qualifying relative's ability to earn income for the family; disrupt family, social, and cultural ties; or hinder the child(ren)'s psychological, cognitive, or emotional development.

The shift may also frustrate or complicate the qualifying relative's efforts to provide a healthy, stable, and caring environment for the child(ren). Such additional emotional, psychological and/or economic stress for the qualifying relative could exceed the levels of hardship that ordinarily result from family separation, and rise to the level of extreme hardship. [19]

Under either scenario discussed above, the significant shifting of caregiving or income-earning responsibilities would often weigh heavily in support a finding of extreme hardship to the qualifying relative, provided the applicant shows:

- The existence of a bona fide relationship between the applicant and the child(ren);
- The existence of a bona fide relationship between the qualifying relative and the child(ren); and
- The substantial shifting of caregiving or income-earning responsibilities under circumstances in which the ability to adequately care for the children would be significantly compromised.

To prove a bona fide relationship to the child(ren), the applicant and qualifying relative should have emotional and/or financial ties or a genuine concern and interest for the child(ren)'s support, instruction, and general welfare. [20] Evidence that can establish such a relationship includes (but is not limited to):

- Income tax returns;
- Medical or insurance records;
- School records;
- Correspondence between the parties; or
- Affidavits of friends, neighbors, school officials, or other associates knowledgeable about the relationship.

To prove the qualifying relative would take on the additional caregiving or income-earning responsibilities, the applicant needs to show that the qualifying relative either (1) is a parent of the child(ren) in question or (2) otherwise has the bona fide intent to assume those responsibilities. Evidence of such an intent could include (but is not limited to):

- Legal custody or guardianship of the child;
- Other legal obligation to take over parental responsibilities;
- Affidavit signed by qualifying relative to take over parental or other caregiving responsibilities; or
- Affidavits of friends, neighbors, school officials, or other associates knowledgeable about the qualifying relative's relationship with the children or intentions to assume parental or other caregiving responsibilities.

F. Hypothetical Case Examples

Below are hypothetical cases that can help officers determine when cases present factors that rise to the level of extreme hardship. These hypotheticals are not meant to be exhaustive or all-inclusive with respect to the facts or scenarios that may be presented for adjudication and that may give rise to extreme hardship. Although a USCIS officer presented with similar scenarios as those presented in the hypotheticals could reasonably reach the same conclusions described below, extreme hardship determinations are made on a case-by case basis in the totality of the circumstances. An extreme hardship determination will always depend on the facts of each individual case.

For purposes of the following hypotheticals, it is assumed that:

- The applicant is inadmissible under a ground that may be waived based on a showing of extreme hardship to a qualifying relative spouse or parent. [21]
- The facts asserted in the hypotheticals are supported by appropriate documentation.

Scenario 1

Tyler was admitted to the United States as a nonimmigrant 5 years ago. Three years after Tyler's entry, Tyler married Pat, a U.S. citizen spouse. Tyler seeks a waiver claiming that Pat would suffer extreme hardship if Tyler were denied admission to the United States.

Pat submits a credible, sworn statement indicating that if Tyler is refused admission, Pat would relocate to Tyler's native country. Tyler and Pat have been married for 2 years. Pat is a sales clerk. A similar job in the country of relocation would pay far less than Pat earns in the United States. In addition, although Pat has visited the country of relocation several times, Pat is not fluent in the country's language and lacks the ties that would facilitate employment opportunities and social and cultural integration.

Tyler is a skilled laborer who similarly would command a much lower salary in the country of relocation, but who was, prior to coming to the United States, gainfully employed. The couple is renting an apartment in the United States, does not own any real estate or other significant property, and has no children. Pat and Tyler do not have any other family, either in the United States or in the country of relocation.

Analysis of Scenario 1

These facts alone generally would not favor a finding of extreme hardship. The hardships to Pat, even when aggregated, include only common consequences of relocation—economic loss and the social and cultural difficulties arising mainly from Pat 's inability to speak the language fluently.

Scenario 2

The facts are the same as in Scenario 1 except that Pat (who is Tyler's U.S. citizen spouse and would relocate) has a chronic medical condition requiring regular visits to the doctor, and Tyler is an unskilled worker who would command a much lower salary in the country of relocation. In addition, Pat has family that lives nearby and is a crucial part of Tyler's support system. Pat and Tyler are also active members of their local community and have friends who often help out when Pat's family is not available. Based on the care received from the doctor and the support received from family and friends, Pat is able to manage the chronic condition.

Pat submits a credible, sworn statement that Pat will relocate with Tyler despite Pat's medical condition, and the evidence shows under the totality of the circumstances that Pat will relocate with Tyler. Pat's doctor provides a statement that confirms that Pat will continue to progress and function well if Pat keeps receiving medical treatment and the support from family and other members of Pat's existing social support network. While the doctor cannot fully attest to the availability of care in Tyler's native country, the doctor is able to attest that moving to another country and disrupting Pat 's medical care and support network will cause Tyler significant difficulties. The doctor's statement also states that Pat will likely not be able to work without the support system Pat has in the United States.

Analysis of Scenario 2

These facts would generally favor a finding of extreme hardship. The aggregate hardships to Pat now include not only the economic losses, diminution of employment opportunities, and social, cultural, and linguistic difficulties (which are generally common consequences of relocation) but also the additional medical hardship that Pat would experience if Pat relocates to Tyler's native country. The attestation of Pat's doctor expressing concerns about the disruption in medical care, the effect of losing support from Pat's family and social environment, and the possibility of Pat not being able to accept employment, would generallyfavor a finding of extreme hardship.

Scenario 3

Assume the facts are the same as originally presented in Scenario 1 (without the additional facts from Scenario 2), but now with the added facts that Tyler also has LPR parents who live in the United States. Pat submits a credible, sworn statement indicating that Pat would relocate with Tyler and that Tyler's LPR parents would remain in the United States. Again, when analyzing the additional evidence under the totality of the circumstances, the the evidence shows Pat will still relocate with Tyler.

Tyler and Pat both have a close relationship with Tyler's parents, who are elderly and non-native English speakers. Tyler regularly transports the parents to medical appointments, translates medical and other instructions, and offers them significant emotional support. As a result of the separation from Tyler and Tyler's spouse, Tyler's parents would suffer significant emotional hardship.

Analysis of Scenario 3

Based on the totality of the evidence presented, the addition of these facts would generally favor a finding of extreme hardship. There are now 3 qualifying relatives (Tyler's U.S. citizen spouse and Tyler's two LPR parents). Although the aggregated hardships to Tyler's spouse alone (under Scenario 1) include only common consequences of a refusal of admission, aggregating those hardships with the hardships to Tyler's elderly parents, which include the potential disruption of their medical care, loss of ability to navigate their surroundings in English, and their significant emotional hardship resulting from the loss of their child's support, would generally tip the balance in favor of a finding of extreme hardship.

Scenario 4

EF has lived continuously in the United States since entering without inspection 4 years ago. She has been married to GH, her U.S.citizen husband, for 2 years. EF seeks a waiver claiming that GH would suffer extreme hardship if EF were denied admission to the United States. GH has a moderate income, and EF works as a housecleaner for low wages. GH submits a credible, sworn statement that he would remain in the United States, and thus would separate from EF, if she is denied the waiver. Upon separating, the couple would lose the income EF earns. In addition to losing EF's income, GH is committed to sending remittances to EF once she leaves, in whatever amount GH can afford. EF and GH do not have children, and GH does not have family in the United States.

Analysis of Scenario 4

These facts alone generally would not rise to the level of extreme hardship, even if the hardships to the qualifying relative are aggregated. The hardships to GH do not rise above the common consequences of separation and economic loss.

Scenario 5

JK has lived continuously in the United States since entering without inspection 6 years ago. She married LM, her U.S. citizen husband, 2 years ago. JK seeks a waiver on the basis that LM would suffer extreme hardship if JK were denied admission to the United States. JK and LM live near LM's family and friends, and LM has spent little time traveling abroad. He does not speak the language of the country to which JK would return if she is denied admission, and LM's employment opportunities in that country would be less desirable than in the United States.

Additionally, DOS has issued a travel warning that strongly advises against travel to specific regions in the country to which JK would return, including the region where her family lives. The region-specific warning affirmatively recommends against non-essential travel to that region, citing the high rate of kidnapping and murder. LM submits a credible, sworn statement indicating that due to his recent marriage, the difficulties JK would face in her country, and his commitment to supporting her however possible, he would relocate to remain with JK if she is denied a waiver.

Analysis of Scenario 5

The totality of these circumstances generally would favor a finding of extreme hardship, significantly in light of the nature and severity of the DOS travel warning. Although the other hardships present in the case are common consequences of relocation, LM has also demonstrated that he will return to the region of a country that is the subject of the DOS travel warning, which advises against non-essential travel to that region. The travel warning recommending against travel to that particular region of that country to which LM would relocate is a particularly significant factor that would often weigh heavily in support of a finding of extreme hardship. If the travel warning were less severe or only temporary, the warning would not qualify as a particularly significant factor but would be another factor to be considered in the totality of the circumstances by the officer.

Alternatively, in some circumstances where DOS has issued travel warnings with regard to a particular region of a country, the applicant and qualifying relative may relocate to a different region of the country that is not subject to a travel warning. In such a situation, the fact of the region-specific travel warning would not itself constitute a particularly significant factor; however, the

hardships arising from relocating to another region of the country remains a factor to be considered and may result in a finding of extreme hardship, based on the totality of the circumstances. [22]

Scenario 6

OP has lived continuously in the United States since entering without inspection 7 years ago. After dating and living together for 5years, OP married her same-sex partner SQ, a U.S. citizen. OP seeks a waiver claiming that SQ would suffer extreme hardship if OP were denied admission to the United States. SQ submits a credible, sworn statement indicating that she would remain in the United States and separate from OP if the waiver is denied.

SQ owns a business in the United States, and OP has continuously supported the business, including by helping out as an office manager. SQ would not be able to keep the business running successfully without OP because of the expense of hiring an office manager. In addition, the DOS country report indicates that women in OP's country of relocation generally may not work outside the home except in an extremely limited set of professions (such as teaching) for which OP is not qualified.

The country report also indicates that same-sex marriages are not recognized in that country, that same-sex sexual conduct is illegal, and that official societal discrimination and harassment (in some circumstances even giving rise to physical threats or harm) based on sexual orientation or gender identity is prevalent in many areas of life.

Based on these factors, SQ fears OP would be discriminated against and potentially be at risk of physical harm based on her sexual orientation. SQ has been in therapy due to depression and anxiety after she learned that her wife may be denied admission to the United States and that her wife would have to remain in a country where she risks discrimination and physical harm. The couple does not provide other evidence of hardship.

Analysis of Scenario 6

These facts would generally favor a finding of extreme hardship. SQ would face serious economic detriment if OP is denied admission. In addition, the country reports show that SQ's marriage to OP would not be recognized in OP's native country, and that OP's marriage to a person of the same gender is a common cause for social ostracism, discrimination, and potential physicaldanger in OP's native country. The country reports further show that OP's access to education, employment and health care could be limited due to OP's sexual orientation and gender, thereby negatively affecting OP's subsistence.

SQ would face psychological trauma based on the fear that OP would be harassed or threatened because of her sexual orientation. SQ's trauma based on her fear that OP will be ostracized and persecuted in OP's native country based on her sexual orientation and gender are factors that in the totality of circumstances would ordinarily rise to the level of extreme hardship.

Scenario 7

TU married his U.S. citizen wife, VW, 3 years ago. TU seeks a waiver on the ground that VW would suffer extreme hardship if TU were denied admission to the United States. Before becoming a U.S. citizen, VW and some members of her family fled persecution from her native country, and they were granted asylum in the United States. TU is of the same nationality. VW submits a credible, sworn statement that she would remain in the United States and separate from TU if the waiver is denied. The evidence also supports the conclusion that the return of TU to that country would cause VW particular anxiety and psychological stress, due both to the limitations on VW's ability to visit her husband and to the harm TU may face in the country of return due to his relationship to VW.

Analysis of Scenario 7

These facts generally would favor a finding of extreme hardship. TU and VW are of the same nationality, and TU would return to the country from which VW fled. The fact that VW was previously granted asylum from the country of relocation is a particularly significant factor that would often weigh heavily in support of a finding of extreme hardship. The fact that VW and

members of her family were previously granted asylum from the country of return shows that she is at risk of persecution if she were to return to that country to even visit her husband.

She has also submitted credible evidence indicating that she would suffer additional anxiety and psychological stress from the harm her husband may face due to his relationship with her and her family. The totality of these circumstances, including the particularly significant factor of VW's grant of asylum, would generally result in a finding of extreme hardship.

Scenario 8

XY married her U.S. citizen husband, ZA, 9 years ago. XY seeks a waiver on the basis that ZA would suffer extreme hardship if XY were denied admission to the United States. XY and ZA have a 3-year old son and a 2-year old daughter. XY submits credible evidence showing that she is the primary caretaker of the children and that ZA is the primary income earner. His wages are not sufficient to pay for childcare and the couple does not have family that can provide childcare for the children.

ZA submits a credible, sworn statement indicating that he will remain in the United States with their children separated from XY if the waiver is denied. The evidence also indicates that XY will have very limited employment opportunities in the country of return because of her limited education. Whatever income XY will be able to earn in the country of return will be spent on her subsistence and will be insufficient to allow her to contribute to childcare or other family needs in the United States. Due to the lack of childcare options available to ZA, he will be required to become the sole caregiver of the children, while simultaneously striving to maintain his role as the family's sole income earner.

If ZA is unable to retain his job due to the assumption of primary caregiving responsibilities, he will lose the income necessary to support his children. The dual burden of being both the primary income earner and sole caregiver will create significant psychological, emotional, and financial stresses for ZA. Additionally, the evidence shows that the displacement of childcare would impact the emotional state and development of the children, which would require further care and attention on the part of ZA.

Analysis of Scenario 8

These facts would generally favor a finding of extreme hardship. Although ZA's children are not qualifying relatives for purposes of demonstrating extreme hardship in this case, the hardship to ZA caused by becoming primarily responsible for the children's care, while maintaining his role as primary income earner, would implicate the particularly significant factor for substantial displacement of care of the applicant's children.

In this case, ZA and XY submitted credible evidence that XY cannot contribute to the family's needs, that ZA is unable to earn sufficient income for family needs if he must assume primary caregiving responsibilities, and that ZA otherwise lacks the resources or support network to replace either the primary caregiving responsibilities he would need to assume or the primary income-earning role that has been the source of the family's support.

The evidence also shows that the displacement of childcare would impact the children in a manner that would require additional care and attention by ZA and would thus further impact ZA's ability to care for his children. Absent other facts that diminish the impacts of the separation, this scenario would generally rise to the level of extreme hardship based on the totality of the circumstances.

Alternatively, this particularly significant factor may also be presented in a case where the applicant is the primary income earner and the qualifying relative is the primary caretaker of the children. If the applicant is refused admission, the qualifying relative could be required, depending on the circumstances, to take on the additional responsibilities of being the primary income earner in addition to continuing his or her role as primary caretaker.

In cases where this heightened responsibility would threaten the qualifying relative's ability to meet basic subsistence needs for the family, the significant emotional and psychological stress caused by the added burdens would often weigh heavily in support of a finding of extreme hardship.[23]

Footnotes

1. [^] See *Matter of Cervantes-Gonzalez (PDF)*, 22 I&N Dec. 560 (BIA 1999), aff'd, *Cervantes-Gonzales v. INS*, 244 F.3d 1001 (9th Cir. 2001). See *Matter of L-O-G (PDF)*-, 21 I&N Dec. 413 (BIA 1996). See *Matter of Anderson (PDF)*, 16 I&N Dec. 596 (BIA 1978).

2. [^] See DOS Country Reports on Human Rights Practices and DOS Travel Warnings.

3. [^] See *Matter of Ngai (PDF)*, 19 I&N Dec. 245 (BIA 1984) ("Common results of the bar, such as separation, financial difficulties, etc. in themselves are insufficient to warrant approval of an application unless combined with much more extreme impacts").

4. [^] See INA 240A(b)(1)(D).

5. [^] See *Matter of O-J-O- (PDF)*, 21 I&N Dec. 381, 383 (BIA 1996).

6. [^] The characteristics for which a person is ostracized or stigmatized may be actual or perceived (that is, the person may actually have that characteristic, or someone may perceive the person as having that characteristic).

7. [^] The officer should consider any submitted government or nongovernmental reports on country conditions specified in the hardship claim. In the absence of any evidence submitted on country conditions, the officer may refer to DOS information on country conditions, such as DOS Country Reports on Human Rights Practices and the most recent DOS Travel Warnings, to corroborate the claim.

8. [^] For more information on TPS, see the USCIS website.

9. [^] See 5 U.S.C. 5928. See Department of State Danger Pay Regulations, available at Standardized Regulations (DSSR).

10. [^] See Section D, Examples of Factors that Might Support Finding of Extreme Hardship [9 USCIS-PM B.5(D)].

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

12. [^] See, for example, Division F, Title VI of the Omnibus Appropriations Act of 2009, Pub. L. 111-8 (PDF), 123 Stat. 524, 807 (March 11, 2009). See Section 1244 of the National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181 (PDF), 122 Stat. 3, 396 (January 28, 2008). See Section 1059 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109-163 (PDF), 119 Stat. 3136, 3443 (January 6, 2006), as amended by Pub. L. 110-36 (PDF), 121 Stat. 227 (June 15, 2007).

13. [^] Although it is unlikely that a qualifying relative would have been granted withholding of removal under INA 241(b)(3) or withholding or deferral of removal under the Convention Against Torture (CAT), if a qualifying relative was previously granted such a form of relief, this would often weigh heavily in support of a finding of extreme hardship to that qualifying relative, similar to situations involving qualifying relatives described in this particularly significant factor.

14. [^] Federal agency programs focusing on individuals with disabilities generally rely on definitions found in their authorizing legislation. These definitions may be unique to an agency's program.

15. [^] See 10 U.S.C. 101. The term "armed forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

16. [^] See DOS Travel Warnings.

17. [^] The term "child" includes those related to the applicant by birth, adoption, marriage, legal custody, or guardianship.

18. [^] In this scenario, the children are assumed to be under age 21. See INA 101(b)(1) and INA 101(c)(1).

19. [^] These scenarios are not exhaustive. For example, even when a qualifying relative is not the primary caretaker or breadwinner. Nonetheless, the loss of the applicant's contribution to caretaking or support may have consequences that rise to the level of extreme hardship to the qualifying relative based on the totality of the circumstances.

20. [^] USCIS applies a similar principle when assessing whether there is a bona fide relationship between a father and his child born out of wedlock. See INA 101(b)(1)(D) and 8 CFR 204.2(d)(2)(iii).

21. [^] None of these examples involves a waiver authority where the child is a qualifying relative under the Immigration and Nationality Act (INA). For more on qualifying relatives, see Chapter 4, Qualifying Relative [9 USCIS-PM B.4].

22. [^] If the entire country is the subject of a travel warning that affirmatively recommends against travel or residence, the particularly significant factor will exist and would often weigh heavily in support of a finding of extreme hardship. For more on travel warnings, see Section E, Particularly Significant Factors, Subsection 4, DOS Travel Warnings [9 USCIS-PM B.5(E)(4)].

23. [^] For more on substantial displacement of care, see Section E, Particularly Significant Factors, Subsection 5, Substantial Displacement of Care of Applicant's Children [9 USCIS-PM B.5(E)(5)].

Chapter 6 - Extreme Hardship Determinations

A. Evidence

Most instructions to USCIS forms list the types of supporting evidence that applicants may submit with those forms. [1] The instructions to the relevant waiver forms describe some of the extreme hardship factors that may be considered, along withcertain possible types of supporting evidence that may be submitted. USCIS accepts any type of probative evidence, including, but not limited to:

- Expert opinions;
- Medical or mental health documentation and evaluations by licensed professionals;
- Official documents, such as birth certificates, marriage certificates, adoption papers, paternity orders, orders of child support, and other court or official documents;
- Photographs;
- Evidence of employment or business ties, such as payroll records or tax statements;
- Bank records and other financial records;
- Membership records in community organizations, confirmation of volunteer activities, or records related to cultural affiliations;
- Newspaper articles and reports;
- Country reports from official and private organizations;
- Personal oral testimony; [2] and
- Affidavits, statements that are not notarized but are signed "under penalty of perjury" as permitted by 28 U.S.C. 1746, or letters from the applicant or any other person.

If the applicant indicates that certain relevant evidence is not available, the applicant must provide a reasonable explanation for the unavailability, along with available supporting documentation. [3] Depending on the country where the applicant is from, is being removed to, or resides, certain evidence may be unavailable. If the applicant alleges that documentary evidence such as a birth certificate is unavailable, the officer may consult the Department of State (DOS) Foreign Affairs Manual, [4] when appropriate, to verify whether these particular documents are ordinarily unavailable in the relevant country. [5]

B. Burden of Proof and Standard of Proof

The applicant bears the burden of proving that the qualifying relative would suffer extreme hardship. He or she must establish eligibility for a waiver by a preponderance of the evidence. [6] If the applicant submits relevant, probative, and credible evidence that leads the USCIS officer to believe that it is "more likely than not" that the assertion the applicant seeks to prove is true, thenthe applicant has satisfied the preponderance of the evidence standard of proof as to that assertion. [7]

The mere assertion of extreme hardship alone does not establish a credible claim. Individuals applying for a waiver of inadmissibility should provide sufficient evidence to support and substantiate assertions of extreme hardship to the qualifying relative(s). Each assertion should be accompanied by evidence that substantively supports the claim absent a convincing explanation why the evidence is unavailable and could not reasonably be obtained. The officer should closely examine the evidence to ensure that it supports the applicant's claim of hardship to the qualifying relative.

To illustrate, an applicant who claims that the qualifying relative has severe, ongoing medical problems will not likely be able to establish the existence of these problems without providing medical records documenting the qualifying relative's condition. Officers cannot substitute their medical opinion for a medical professional's opinion; instead the officer must rely on the expertise of reputable medical professionals.

A credible, detailed statement from a doctor may be more meaningful in establishing a claim than dozens of test results that are difficult for the officer to decipher. However, nothing in such a case changes the requirement that all evidence submitted by applicants should be considered to evaluate the totality of the circumstances.

Similarly, if the applicant claims that the qualifying relative will experience severe financial difficulties, the applicant will not likely be able to establish these difficulties without submitting financial documentation. This could include, but is not limited to, bank account statements, employment and income records, tax records, mortgage statements, leases, and proof of any other financial liabilities or earnings.

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 should issue a Request for Evidence (RFE) in accordance with USCIS policy.

In considering whether the applicant's evidence is sufficient to meet the applicant's burden of proof, the officer will consider whether the applicant has complied with applicable requirements to submit information and supporting documentation and whether the evidence is credible, persuasive, and refers to specific facts sufficient to demonstrate that the burden of proof has been satisfied and that applicant warrants a favorable exercise of discretion. In considering whether the applicant's evidence is credible, the officer will consider the totality of the circumstances and all relevant factors and should take into account the inherent plausibility and internal and external consistency of the evidence and any inaccuracies or falsehoods in the evidence.

If evidence in the record leads the officer to reasonably believe that undocumented assertions of the extreme hardship claim are true, the officer may accept the assertion as sufficient to support the extreme hardship claim. The preponderance of the evidence standard does not require any specific form of evidence; it requires the applicant to demonstrate only that it is more likely than not that the refusal of admission will result in extreme hardship to the qualifying relative(s). Any evidence that satisfies that test will suffice. [8]

If the officer finds that the applicant has met the above burden of showing extreme hardship to one or more qualifying relatives, the officer should proceed to the discretionary determination. [9] If the officer ultimately finds that the applicant has not met the above burden, the waiver application must be denied.

Footnotes

1. [^] A waiver that requires a showing of extreme hardship to a qualifying relative is currently submitted on an Application for Waiver of Grounds of Inadmissibility (Form I-601) or an Application for Provisional Unlawful Presence Waiver (Form I-601A).

2. [^] An officer who interviews an applicant or other witness in person must place the witness under oath or affirmation before beginning the interview and must note in the record that the person was placed under oath along with the date and place of the interview. The officer should also take notes or record the testimony.

3. [^] See 8 CFR 103.2(b).

4. [^] See the DOS website.

5. [^] See also DOS Bureau of Consular Affairs website for more information on birth certificates under reciprocity by country.

6. [^] See *Matter of Chawathe (PDF)*, 25 I&N Dec. 369 (AAO 2010) (identifying preponderance of the evidence as the standard for immigration benefits generally, in that case naturalization).

7. [^] See *Matter of Chawathe (PDF)*, 25 I&N Dec. 369, 376 (AAO 2010) (preponderance of the evidence means more likely than not).

8. [^] For more detailed guidance on how to interpret the requirement that the refusal of admission "would result in" extreme hardship to the qualifying relative, see Chapter 2, Extreme Hardship Policy, Section B, What is Extreme Hardship [9 USCIS-PM B.2(B)].

9. [^] See Chapter 7, Discretion [9 USCIS-PM B.7].

Chapter 7 - Discretion

A finding of extreme hardship permits but never compels a favorable exercise of discretion. If the officer finds the requisite extreme hardship, the officer must then determine whether USCIS should grant the waiver as a matter of discretion based on an assessment of the positive and negative factors relevant to the exercise of discretion. The family relationships to U.S. citizens or lawful permanent residents and a finding of extreme hardship to one or more of those family members are significant positive factors to consider. [1]

For purposes of exercising discretion, a finding of extreme hardship that is sufficient to warrant a favorable exercise of discretion to grant a waiver of the unlawful presence grounds of inadmissibility may not be sufficient to warrant a favorable exercise of discretion with respect to crime- or fraud-related grounds of inadmissibility. The conduct that triggered the applicant's inadmissibility, such as a criminal conviction [2] or underlying fraud, [3] is an important negative factor to consider. The officer should weigh all positive factors against all negative factors. Ultimately, if the positive factors outweigh the negative factors, the officer should approve the waiver; otherwise, the waiver should be denied.

Footnotes

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1. [^] See *Matter of Mendez-Moralez (PDF)*, 21 I&N Dec. 296 (BIA 1996).

2. [^] In cases where applicants who have been convicted of violent or dangerous crimes apply for waivers under INA 212(h)(1)(B) [formerly INA 212(h)(2)], discretion generally will not be favorably exercised unless either there are "extraordinary circumstances" (for example those relating to national security or foreign policy) or the applicant demonstrates "exceptional and extremely unusual hardship." Depending on the gravity of the offense, even a showing of extraordinary circumstances does not guarantee a favorable exercise of discretion. See 8 CFR 212.7(d).

3. [^] See *INS v. Yueh-Shaio Yang*, 519 U.S. 26, 30-32 (1996). See *Matter of Cervantes-Gonzalez (PDF)*, 22 I&N Dec. 560, 568-69 (BIA 1999), *aff'd*, *Cervantes-Gonzales v. INS*, 244 F.3d 1001 (9th Cir. 2001).

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 medicalcondition(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]

Civil surgeons or panel physicians complete these documents after the medical examination of the applicant, [2] 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]

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] 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]

The Immigration Act of 1990 [6] 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] 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] All medical grounds of inadmissibility have a corresponding waiver under this section except for inadmissibility based on drug abuse or addiction. [9]

Applicants for other immigration benefits categories, such as refugees and asylees seeking adjustment, [10] Legalization or SAW applicants, [11] 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]

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: [13]

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)	

Immigration Benefits Category	Statutory Authority for Waiver	Relevant Form
T and U nonimmigrant visa	INA 212(d)(13) and INA 212(d)(14)	Application for Advance 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

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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 (PDF) (September 11, 1957).

5. [^] See Pub. L. 89-236 (PDF) (October 3, 1965).

6. [^] See Pub. L. 101-649 (November 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. [^] For further information on waivers other than the medical waiver described in this Part, please see the program-specific waiver chapters in this volume. 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.

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] USCIS may grant this waiver in accordance with such terms, conditions, [2] and controls, if any, that USCIS considers appropriate after consultation with the Secretary of HHS. [3] 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 significanceand requires a waiver, [4] 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] 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] or minor unmarried lawfully adopted child [7] 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]
- 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] if applicable) that contains all the required signatures, excluding the supporting documentation that is not medically relevant; [10]
- A copy of the medical examination documentation; [11]
- Copies of all other medical reports, laboratory results, and evaluations regardless of whether they are connected to the communicable disease of public health significance.

3. Sending Documents to CDC

Officers should email the documents to cdcqap@cdc.gov.

To request expedited review, officers should indicate in the subject line of the email to CDC that the request is "Urgent."

4. CDC Response

Once CDC receives and reviews the documents, CDC will forward a response letter with its recommendation 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 theadditional information is sufficient. CDC will provide a response letter to the requesting USCIS office advising if the additional information is sufficient. [12]

Once CDC indicates no additional information is needed, the officer may proceed with the next step of the waiver adjudication.

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. [13]

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. [14] 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 emailing 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

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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, 1526 (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. [^] For Class A TB waivers, CDC’s response letter will provide a specific recommendation whether CDC supports the granting of a waiver.

13. [^] See INA 212(g)(1).

14. [^] 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] 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]
- The civil surgeon or panel physician certifies that such vaccination would not be medically appropriate; [3] or
- The requirement of such a vaccination would be contrary to the applicant's religious beliefs or moral convictions. [4]

Each of these waivers has its own requirements. [5] 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]

C. Blanket Waiver for Missing Vaccination Documentation [7]

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]

1. Situations Specified in the Law [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]

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]

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] 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 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 moralconviction.	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	If YES ...	If NO ...
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. [1]

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 inadmissibleon 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). [2] 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 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 that contains all the required signatures, excluding the supporting documentation that is not medically relevant; [3]
- A copy of the medical examination documentation; [4]

- 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; [5] 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.

3. Sending Documents to CDC

Officers should email the documents to cdcqap@cdc.gov.

To request expedited review, officers should indicate in the subject line of the email to CDC that the request is "Urgent."

4. CDC Response

Once the documents are received by CDC, the documents are reviewed by CDC's consultant psychiatrist and CDC will forward a response letter with its recommendation 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 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 [6] 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 formsto 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. [7]

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. [8] 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, and emailing cdcqap@cdc.gov.

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(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.

2. [^] See INA 212(g)(3).

3. [^] For instance, evidence of the family relationship.

4. [^] 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.

5. [^] The Instructions to Form I-601 detail the contents that should be included in the doctor's report.

6. [^] 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.

7. [^] Neither a qualifying relationship nor a finding of hardship is required.

8. [^] 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, theperson 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]

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

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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 D - Waivers for Criminal and Related Grounds of Inadmissibility

Part E - Aliens Subject to Civil Penalty

Part F - Alien Smuggling

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] 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] 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] limited the availability of the waiver and eliminated the possibility of applying for a waiver if more than 10 years have passed. [4] A waiver is now available only to applicants who can demonstrate extreme hardship to:

- U.S. citizen parent or spouse;
- An LPR parent or spouse;
- A U.S. citizen fiancé(e); [5] 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] by creating two inadmissibility grounds within the same provision:

- Inadmissibility for fraud or willful misrepresentation; [7] and
- Inadmissibility for falsely claiming U.S. citizenship on or after September 30, 1996. [8]

The waiver [9] discussed in this Part G only applies to applicants who are inadmissible for fraud or willful misrepresentation. [10]

Inadmissibility based on a false claim to U.S. citizenship made on or after September 30, 1996 [11] cannot be waived through a waiver for fraud or willful misrepresentation. [12] 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] available to applicants listed in the table below.

Classes of Applicants Eligible to Apply for Waiver under INA 212(i)

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]
- 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

Applicant Category		Relevant Form
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]	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] 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] 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] and
- A K-3 or K-4 visa applicant. [19]

The instructions to Form I-601 and the USCIS website detail when and where the applicant should file the waiver. [20]

2. Refugees

An applicant seeking admission as a refugee and who is inadmissible for fraud or willful misrepresentation may seek a waiver. [21] 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] 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] and Special Agricultural Workers (SAW) applicants [24] 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]

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] 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] 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]

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] If USCIS grants the waiver, DOS will grant a nonimmigrant waiver [30] without CBP involvement.

Footnotes

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1. [^] See INA 212(a)(6)(C)(i).

2. [^] See INA 212(a)(6)(C)(i).

3. [^] See Section 349 of IIRIRA, Division C of Pub. L. 104-208, 110 Stat. 3009, 3009-639 (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 (PDF)*, 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 Section 344(a) of IIRIRA, Division C of Pub. L. 104-208, 110 Stat. 3009, 3009-637 (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 Section 344(c) of IIRIRA, Division C of Pub. L. 104-208, 110 Stat. 3009, 3009-637 (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 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.

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. [1]

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. [2]

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. [3]

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. [4] 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; [5] and
- The nature of the proceedings in which the applicant committed the fraud or willful misrepresentation. [6]

Footnotes

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1. [^] For more on inadmissibility for fraud and willful misrepresentation, see Volume 8, Admissibility, Part J, Fraud and Willful Misrepresentation [8 USCIS-PM J].

2. [^] 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].

3. [^] See INA 212(i), INA 204(a)(1)(A)(iii), and INA 204(a)(1)(A)(iv).

4. [^] See I*NS v. Yueh-Shaio Yang*, 519 U.S. 26 (1996). See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999).

5. [^] See *INS v. Yueh-Shaio Yang*, 519 U.S. 26 (1996).

6. [^] In *Matter of Tijam*, 22 I&N Dec. 408, 413 (BIA 1998), the Board of Immigration Appeals (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] is granted, then, except for K-1 and K-2 nonimmigrants and conditional permanent residents, [2] 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]

For conditional permanent residents, [4] 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]

A waiver applies only to the specific grounds of inadmissibility and related crimes, events or incidents specified in the waiver application. [6] 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]

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] The waiver becomes permanent once the K-1 marries the petitioner, as discussed in the section on validity of an approved waiver. [9]

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]

C. Inadmissibility Based on Documentary Requirements [11]

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] and failure to comply with documentary requirements. [13] The applicant then applies for a waiver of inadmissibility for willful misrepresentation. [14]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

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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. [^] Aliens 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).

Part H - Unlawful Presence

Part I - Provisional Unlawful Presence

Part J - National Interest

Part K - Family Unity, Humanitarian Purposes, or Public Interest

Part L - Nonimmigrant

Part M - Other Provisions Overcoming Inadmissibility

Part N - Motions and Appeals

Volume 10 - Employment Authorization

Part A - Employment Authorization Policies and Procedures

Part B - Specific Categories

Chapter 1 - Purpose and Background

For a few select categories of aliens, the Immigration and Nationality Act (INA) grants employment authorization outright or directs the Secretary to authorize employment authorization and provide an endorsement of that authorization.[1] For other categories of aliens, the INA provides that the Secretary may grant employment authorization and provide an endorsement of that authorization.[2]

DHS regulations at 8 CFR 274a.12 set forth the following categories:

- Aliens authorized to work in the United States incident to their immigration status (8 CFR 274a.12(a)),
- Aliens who are authorized to work in the United States but only for a specific employer (8 CFR 274a.12(b)), and
- Aliens who fall within a category that the Secretary has determined must apply for employment authorization and may receive employment authorization as a matter of discretion (8 CFR 274a.12(c)).

For most aliens in the first category seeking an Employment Authorization Document (EAD, Form I-766) and those in the last category seeking both employment authorization and an EAD, an application generally must be filed with USCIS with the appropriate fee (unless waived), and in accordance with the instructions to the Application for Employment Authorization (Form I-765).[3]

Footnotes

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1. [^] See, for example, INA 210(a)(4) (authorizing employment for special agricultural workers); INA 214(c)(2)(E) (requiring spouses of L nonimmigrants to be work authorized); INA 214(e)(6) (requiring spouses of E treaty traders and investors to be work authorized; INA 214(p)(6) (requiring U nonimmigrants to be work authorized); INA 274A(h)(3)(A) (lawful permanent residents).

2. [^] For example, Congress has authorized the Secretary to grant employment authorization, as a matter of discretion, to aliens like spouses and children of A, G, E-3, and H nonimmigrants who have been battered or subjected to extreme cruelty (INA 106(a)), aliens with pending, bona fide petitions for U nonimmigrant status (INA 214(p)(6)), aliens seeking adjustment of status under the Nicaraguan Adjustment and Central American Relief Act (NACARA) (Title II of Pub. L. 105-100 (PDF) (October 4, 1996), and the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) (Division A, Title IX of Pub. L. 105-277 (PDF) (Oct. 21, 1998)). Most discretionary employment authorization is based on INA 274A(h)(3).

3. [^] See 8 CFR 274a.13. See the Application for Employment Authorization (Form I-765).

Chapter 2 - Parolees

A. Employment Authorization for Parolees

USCIS is the DHS component that has authority to grant employment authorization and issue employment authorization documents (EADs) to aliens who are currently in the United States.

This chapter addresses discretionary employment authorization for aliens who have been paroled into the United States under Section 212(d)(5) of the Immigration and Nationality Act (INA), based on an urgent humanitarian reason or for a significant public benefit.

The purpose of this chapter is to tailor certain existing guidance for officers on how to exercise discretion in adjudications involving parole-based employment authorization. USCIS has determined that it is necessary to issue this guidance at this time because there is a national emergency at the U.S. southern border where aliens are entering the U.S. illegally.[1] USCIS also has determined that officers may need more guidance on the use of discretion in employment authorization adjudications.

This policy guidance provides officers with helpful tools based on existing policies to aid in their discretionary adjudications and to help ensure that requests for employment authorization based on parole are properly adjudicated.

Parole

The Secretary of Homeland Security has discretionary authority to parole into the United States temporarily "under conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any individual applying for admission to the United States," regardless of whether the alien is inadmissible to, or removable from, the United States.[2] Congress did not define the phrase "urgent humanitarian reasons or significant public benefit," entrusting the interpretation and application of these standards to the Secretary.

Any alien may request parole but no alien has a right to be granted parole. Parole decisions are discretionary determinations that must be made on a case-by-case basis consistent with the INA. To exercise its parole authority, USCIS must determine that parole into the United States is justified by urgent humanitarian reasons or significant public benefit. Even when one of those standards is met, DHS may still deny parole as a matter of discretion.

When deciding whether to exercise its parole authority, USCIS must consider all relevant information, including any criminal history or other serious adverse factors that would weigh against a favorable exercise of discretion. The denial of a request for parole is not subject to judicial review.[3] The Secretary also has the authority to impose any terms and conditions on the grant of parole, including requiring reasonable assurances that the parolee will appear at all the hearings and will depart from the United States when required to do so.[4]

In general, if USCIS favorably exercises its discretion to authorize parole, either USCIS or the U.S. Department of State will issue a travel document to enable the applicant to travel to a U.S. port of entry and request parole from U.S. Customs and Border Protection (CBP). CBP officers make the ultimate determination, upon the alien's arrival at a U.S. port of entry, whether to parole him or her into the United States and for what length of time. Once an alien is paroled into the United States, the parole allows him or her to stay temporarily in the United States.

Parole is not an admission to the United States.[5] Parole also does not provide the alien with any lawful status. When an alien is allowed to be paroled into the United States, he or she is still deemed to be an applicant for admission.[6] Parole terminates automatically upon the expiration of the authorized parole period or upon the alien's departure from the United States.[7] Parole also may be terminated on written notice when DHS determines the purpose for which the parole was authorized has been accomplished or when a DHS official determines that neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States. When parole is terminated, the alien is "restored to the status that he or she had at the time of parole."[8]

B. Eligibility for Employment Authorization

Employment authorization for parolees is discretionary; therefore parolees must apply for and be granted employment authorization before they may work in the United States.[9] An alien who is paroled into the United States is not employment-authorized incident to status.[10]

Exercise of Discretion

USCIS, U.S. Immigration and Customs Enforcement (ICE), and CBP officers[11] can decide, as a matter of discretion, whether to grant an alien parole for urgent humanitarian reasons or based on a significant public benefit. The fact that USCIS, ICE, or CBP grants parole does not mean an alien is automatically entitled to discretionary employment authorization. The grant of parole is a separate determination from the grant of employment authorization, even though both adjudications require an officer to exercise discretion.

USCIS determines whether to grant discretionary employment authorization on a case-by-case basis, taking into account all factors and considering the totality of the circumstances. In deciding if an alien should receive an EAD, USCIS officers should consider the underlying factors and circumstances which served as the bases for the alien's initial parole (or re-parole).[12] However, these factors are not dispositive in determining if a favorable exercise of discretion is warranted for employment authorization purposes.

The exercise of discretion does not mean the decision can be arbitrary, inconsistent, or dependent upon intangible or imagined circumstances. At the same time, there is no calculation that lends itself to a certain conclusion. An officer should determine whether to approve an application for employment authorization based on parole as a matter of discretion by:

- Considering any positive or negative factors relevant to the applicant's case,
- Evaluating the case-specific considerations for each factor,
- Avoiding the use of numbers, points, or any other analytical tool that suggests quantifying the exercise of favorable or unfavorable discretion, and
- Assessing whether on balance a favorable exercise of discretion is warranted in light of the totality of the evidence including the positive and negative factors.

C. Adjudication of Parole-Based Employment Authorization Applications

In deciding whether a parolee should be granted employment authorization, USCIS makes a case-by-case determination considering all relevant information. The ultimate decision to grant discretionary work authorization for a parolee depends on whether, based on the facts and circumstances of each individual case, USCIS finds that the positive factors outweigh any negative factors that may be present, and that a favorable exercise of discretion is warranted. The denial of employment authorization is not subject to judicial review.

Discretionary Factors

Officers should consider and weigh positive and negative factors when conducting the discretionary analysis for employment authorization for parolees. A nonexclusive, nonbinding list of factors are reflected in the table below which officers may use at their discretion.

Employment Authorization for Parolees: Nonexclusive List of Factors Relevant to Discretionary Determination

Favorable Factors	Unfavorable Factors
• The emergent nature of the event or circumstances that necessitated the alien's parole that is dependent on work authorization • The length of time authorized for parole (for example, over 1 year) and conditions placed on parole • If the alien is the primary caregiver or source of financial support for a spouse, parent, or child with significant and debilitating health conditions • Any prior time periods the alien has been lawfully in the United States • If the alien is assisting (or will assist) the federal government in a criminal investigation or prosecution of significant duration • If the alien is the spouse, parent, or child of a U.S. citizen; or the alien is a member of the U.S. Armed Forces or in the Selected Reserve of the Ready Reserve and is currently serving on active duty, or, if discharged, served honorably	• Any criminal history, especially serious crimes or felonies • The length of time authorized for parole (for example, less than 1 year) • If the alien violated the terms of his or her parole • The nature and severity of any prior violations of the immigration laws, including illegal entries and unauthorized employment • The length of time the alien was or has been in the United States without lawful presence, with shorter periods of time being more unfavorable • Grounds of inadmissibility or removal that may apply to the parolee that may be considered unfavorable factors • Fraud or material misrepresentations to obtain an immigration benefit • Lying or making a material misrepresentation to any immigration or consular officer or employee while such officer or employee is performing his or her official duties under the law • Whether the alien has a final order of removal or is subject to reinstatement of such an order • Whether the alien is a national security or public safety risk as evidenced by arrests and criminal convictions

The officer should examine the totality of the evidence, weighing the positive and negative factors in each case, and determine whether a favorable exercise of discretion is warranted to grant work authorization. Examples of serious negative factors based on the table above include, but are not limited to an alien who has:

- A final order of removal or who is subject to reinstatement of such an order;
- Been convicted of an aggravated felony;[13]
- Been convicted of any felony;[14]
- Been charged with or convicted for any offense involving domestic violence or assault;
- Been charged with or convicted for any criminal offense involving child abuse, neglect, or sexual assault;
- Been charged with, arrested, and or convicted for any criminal offense involving illegal drugs or controlled substances;
- Been charged with or convicted of driving under the influence or driving while intoxicated; or

- Lied or made a material misrepresentation to any immigration or consular officer or employee while such officer or employee is performing his or her official duties under the law.

Officers may consider serious negative factors as strong unfavorable factors that weigh heavily against granting employment authorization as a matter of discretion. However, the negative factors noted above should not be interpreted as an instruction to automatically deny any application for discretionary employment authorization. The ultimate decision to grant or deny an application for employment authorization for a parolee rests on whether, based on the totality of the facts of the individual case, the officer finds that the positive factors outweigh any negative factors that may be present.

Discretionary decisions that involve complex or unusual facts and whether the outcome is favorable or unfavorable to the applicant, may warrant supervisory review. Further, officers may consult with the Office of Chief Counsel through appropriate supervisory channels.

D. Validity Period

USCIS has discretion to establish a specific validity period for discretionary employment authorization. For purposes of discretionary employment authorization for parolees, officers should only grant employment authorization for the period that is the length of the parole authorization, which usually is not more than a year. Aliens who are re-paroled may file a new employment authorization application under the procedures set forth in the instructions to the Application for Employment Authorization (Form I-765).

Footnotes

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1. [^] See Presidential Proclamation 9844 of February 15, 2019, *Declaring a National Emergency Concerning the Southern Border of the United States*, 84 FR 4949 (PDF) (Feb. 20, 2019); Section 11 of Executive Order 13767 of January 25, 2017, *Border Security and Immigration Enforcement Improvements*, 82 FR 8793 (PDF) (Jan. 30, 2017).

2. [^] See INA 212(d)(5)(A).

3. [^] See INA 242(a)(2)(B)(ii).

4. [^] See 8 CFR 212.5(d).

5. [^] See INA 101(a)(13)(B) and INA 212(d)(5)(A). See 8 CFR 1.2 (“An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked.”).

6. [^] See INA 212(d)(5)(A).

7. [^] See 8 CFR 212.5(e)(1).

8. [^] See 8 CFR 212.5(e). See *Hassan v. Chertoff*, 593 F.3d 785, 789 (9th Cir. 2010).

9. [^] Under 8 CFR 274a.12(c)(11) and 8 CFR 274a.13.

10. [^] One exception is international entrepreneur parolees pursuant to 8 CFR 274a.12(b)(37) who are employment authorized incident to their parole by a specific employer. This PM chapter does not address this category.

11. [^] CBP, ICE, and USCIS all have authority to grant parole. See DHS Delegation Nos. 7010.3, 7030.2, 0150.1, and the September 2008 Memorandum of Agreement, *Coordinating the Concurrent Exercise of USCIS, U.S. Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP) of the Secretary’s Parole Authority under INA 212(d)(5)(A) With Respect to Certain Aliens Located Outside the United States*.

12. [^] Aliens are granted a fixed parole period that cannot be extended. If the alien's circumstances still meet the requirements for parole at the end of that period, the alien may be authorized a new parole period by the appropriate DHS component. This action is called “re-parole.”

13. [^] See INA 101(a)(43).

14. [^] As defined in 18 U.S.C. 3156(a)(3).

Chapter 3 - Reserved

Volume 11 - Travel and Identity Documents

Part A - Secure Identity Documents Policies and Procedures

Chapter 1 - Purpose and Background

A. Purpose

USCIS issues a variety of documents that establish identity and immigration status in the United States. These include, but are not limited to, employment authorization documents, travel documents, permanent resident cards, and naturalization and citizenship certificates.

B. Background

In 1946, the U.S. government began issuing different types of registration documents based on an alien’s status in the United States. The Identification Card for the Use of Resident Citizen in the United States (Form I-179; later known as Form I-197) was introduced in 1960 to provide naturalized U.S. citizens living along the Mexican border with identification to facilitate border crossings between the United States and Mexico. Legacy Immigration and Naturalization Service (INS) guidance provided that the identification card could only be issued in certain districts of the Southwest United States. The card was issued until February 1973. [1]

Lawful permanent resident (LPR) cards were first issued as Form I-151. Between 1952 and 1977, legacy INS issued 17 different re-designs of the card. In 1977, the permanent resident card (PRC) (Form I-551) replaced Form I-151 as evidence of LPR status. In 1989, legacy INS introduced a new version of the PRC with a 10-year validity period. [2]

USCIS currently issues a number of documents for travel and identity purposes. These secure identity documents often serve multiple purposes; they may also be used as proof of an alien’s immigration status, employment authorization, and as travel authorization. [3]

USCIS has also increased the security, integrity, and efficiency of secure identity document delivery, and maintains better tracking and accuracy of delivery. Various USCIS initiatives work to confirm that secure identity documents are delivered to the right address and person, an important step in the delivery of sensitive documents, which may be subject to abuse. [4]

C. Legal Authorities

- 8 CFR 103.2 - Submission and adjudication of benefit requests
- 8 CFR 103.8 - Service of decisions and other notices

- 8 CFR 103.16 - Collection, use and storage of biometric information

Footnotes

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1. [^] Although Forms I-179 and I-197 are no longer issued by USCIS, valid existing cards continue to be acceptable documentation of U.S. citizenship. See 8 CFR 235.10.

2. [^] Except for conditional permanent residents, who are issued Forms I-551 with an expiration date of 2 years, after the date on which the alien became a conditional permanent resident.

3. [^] For more information, see USCIS to Issue Employment Authorization and Advance Parole Card for Adjustment of Status Applicants: Questions and Answers

4. [^] USCIS previously was unable to confirm the status of the delivery of secure identity documents, the accuracy of the delivery address, or who signed for the document. This left USCIS vulnerable to persons seeking to obtain sensitive immigration documents by theft or other illicit means. Advances in USCIS' delivery of sensitive documents have significantly reduced this risk.

Chapter 2 - USCIS-Issued Secure Identity Documents

A. Personal Information Used on Secure Identity Documents

USCIS issues a variety of secure identity documents that establish identity and immigration status in the United States. Personal information included on USCIS-issued secure identity documents includes, but is not limited to, a benefit requestor's biometrics, full legal name, date and country of birth, gender, and A-number.

1. Biometrics

USCIS has general authority to require and collect biometrics from any applicant, petitioner, sponsor, derivative, dependent, beneficiary, or requestor filing for any immigration, citizenship, and naturalization benefit. [1]

If the benefit request filed requires biometrics, and the requestor is in the United States, USCIS schedules a biometric services appointment at a local Application Support Center (ASC). [2] If the benefit requestor is outside of the United States, biometrics are captured by a USCIS international office, a U.S. embassy or consulate, or a U.S. military facility. The biometrics collected from the benefit requestor allow USCIS to verify identity and conduct national security and criminal history background checks. USCIS also uses the benefit requestor's biometric information for the initial issuance or replacement of a secure identity document.

2. Full Legal Name

All USCIS-issued secure identity documents contain the benefit requestor's full legal name. [3] Documents USCIS issues do not include nicknames. They do not contain initials, unless an initial appears on the official birth certificate, or the requestor legally changed his or her name to include an initial.

A benefit requestor must provide his or her full legal name on all benefit requests. The requestor's full legal name is comprised ofhis or her:

- Given name (first name);

- Middle name(s) (if any); and
- Family name (last name). [4]

The legal name is one of the following:

- The requestor's name at birth as it appears on the birth certificate (or other qualifying identity documentation when a birth certificate is unavailable); [5] or
- The requestor's name following a legal name change.

USCIS does not suspend the adjudication of a benefit request pending a court determination of a name change or other efforts by the requestor to establish a new legal name. USCIS creates secure identity documents using the legal name in place when the benefit request is decided.

Name Changes

If the requestor changes his or her name after USCIS issues the secure identity document, the requestor may file an application, with the appropriate fee, to request USCIS re-issue the secure identity document with the new name. [6] The requestor must provide sufficient evidence of the name change. USCIS does not have legal authority to change a person's name. The name change may or may not be recorded on the birth certificate, marriage certificate, or other vital document record.

3. Date of Birth

In general, the official date of birth is the date recorded on the requestor's birth certificate. USCIS recognizes dates of birth based on the Gregorian calendar in the following order: month, day, and year. Some foreign countries issue documents with the date of birth in a different order. [7] Most translations should have the date in the order of the month, day, and year. However, officers should verify the order of a translated date before issuing documents to avoid discrepancies.

If there is a discrepancy between a translated birth certificate and other government-issued documentation, the requestor must provide compelling evidence that the date of birth on the birth certificate is incorrect or miscalculated. For naturalization certificates, USCIS cannot change a recorded date of birth, except to correct a USCIS clerical error. [8]

4. Gender

USCiS-issued documents that display gender or sex identifiers are limited to indicating only female or male. Requestors who have changed their gender should be issued immigration documents that reflect their new gender. Requestors who already possess immigration documents at the time they change gender may request new documents reflecting their post-transition gender by filing the appropriate form for replacement documents. [9]

USCIS recognizes a requestor's gender change when a court or government with jurisdiction recognizes the change, or when a licensed health care professional certifies that the requested gender designation is consistent with that person's gender identity. USCIS issues initial or amended secure identity documents reflecting the changed gender designation if the requestor presents sufficient evidence in support of the change in gender designation along with meeting all other requirements to receive the secure identity document.

USCIS does not require proof of sex reassignment surgery, and officers should not request any records relating to such surgery. [10] If the requestor changed his or her name along with gender, the requestor must submit evidence that they completed any name change procedure according to the relevant U.S. state or foreign law. [11]

B. Delivery of Secure Identity Documents

USCIS mails secure identity documents through the U.S. Postal Service (USPS) to the address provided on a benefit request, unless the requestor requested that USCIS send any secure identity document to the U.S. business address of the attorney of record or accredited representative. [12]

In general, USCIS only sends secure identity documents to U.S. addresses. The requestor may, however, request that any secure identity document be sent to a designated military or diplomatic address for pickup in a foreign country, if permitted. [13] For example, certain travel documents (such as reentry permits and refugee travel documents) may be sent to a U.S. embassy orconsulate or USCIS international office for the requestor to pick up, if this request is made when the requestor files the benefit application. [14]

C. Tracking Delivery

Benefit requestors may track the delivery status of their secure identity document by signing up for a Case Status Online account to obtain a tracking number. With a tracking number, requestors may also register for Informed Delivery through USPS to get previews of mail in transit. [15]

D. Making Address Changes

Non-U.S. citizens must report any change of address within 10 days of moving within the United States or its territories. [16] If a mailing address changes after a benefit request is filed, the requestor should update it online with USCIS and USPS as soon as possible to ensure he or she receives any secure identity documents USCIS sends in the mail. If more than one application or petition is pending, the requestor should ensure that USCIS updates the address on all pending benefit requests.

Requestors should use the USPS Look Up a Zip Code tool to ensure they are providing a complete address using the standard abbreviations and formatting recognized by USPS.

Footnotes

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1. [^] See 8 CFR 103.2(b)(9). See 8 CFR 103.16.

2. [^] For more information, see Preparing for Your Biometric Services Appointment.

3. [^] See 8 CFR 320.3(b)(1)(viii)-(ix), 8 CFR 322.3(b)(1)(xiii) and 8 CFR 338.1(b). See 6 CFR 37.3 for the full legal name description in the REAL ID Act, Pub. L. 109-13 (PDF) (May 11, 2005).

4. [^] A first name is sometimes referred to as a given name. A family name or surname may also include a maiden name. See 6 CFR 37.3 for the full legal name description in the Real ID Act, Pub. L. 109-13 (PDF) (May 11, 2005).

5. [^] There may be instances in which a birth certificate is unobtainable because of country conditions or personal circumstances. In these instances, a requestor may submit secondary evidence or affidavits to establish his or her identity. Any affidavit should explain the reasons primary evidence is unavailable. For more information, see the Department of State Reciprocity Tables for identity documents that cannot be obtained in particular countries and during specific time periods. Asylum applicants may be able to establish their identity, including their full legal name, with testimony alone.

6. [^] See Chapter 3, Reissuance of Secure Identity Documents [11 USCIS-PM A.3].

7. [^] 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.

8. [^]See 8 CFR 338.5. USCIS may, however, change the date of birth on a certificate of citizenship for a person who has a U.S. court order or similar state vital record changing the date of birth. See Volume 12, Citizenship & Naturalization, Part K, Certificates of Citizenship and Naturalization, Chapter 4, Replacements of Certificates of Citizenship and Naturalization [12 USCIS-PM K.4].

9. [^] See Chapter 3, Reissuance of Secure Identity Documents [11 USCIS-PM A.3].

10. [^] For more information on documentation a benefit requestor must show to establish a change in gender, see Adjudicator's Field Manual Chapter 10.22, Change of Gender Designation on Documents Issued by USCIS.

11. [^] There may be instances in which evidence of a name change is unobtainable because of country conditions or personal circumstances. In some situations, USCIS permits such requestors to submit secondary evidence or affidavits to establish their identity. Any affidavit should explain the reasons primary evidence is unavailable. For more information, see the Department of State Reciprocity Tables for identity documents that cannot be obtained in particular countries and during specific time periods. Asylum applicants may be able to establish with testimony alone that they completed any name change procedure according to relevant law.

12. [^] See 8 CFR 103.2(b)(19)(iii). A benefit requestor may also request to change, through written notice to USCIS, that USCIS mail the secure identity document to him or her instead of the attorney of record or legal representative.

13. [^] For more information regarding mailing secure identity documents overseas, see Travel Documents and Emergency Travel.

14. [^] In general, if a requestor applies for advance parole while in the United States, and departs the United States before the advance parole document is issued, the requestor may be found inadmissible to the United States upon return, or even if admitted, may be found to have abandoned his or her application. There is no process for a requestor outside the United States traveling on a valid advance parole document or combo card (a card that combines an employment authorization document (EAD) and advance parole document) to apply for a replacement of a lost or stolen advance parole document to enable him or her to return the United States. In these cases, the requestor should contact the closest USCIS international office or U.S. embassy or consulate.

15. [^] For more information on how to track the delivery of secure identity documents, see How to Track Delivery of Your Green Card, Employment Authorization Document (EAD), and Travel Document.

16. [^] See INA 265. See Change of Address Information.

Chapter 3 - Reissuance of Secure Identity Documents

A. General

Benefit requestors may file to renew their USCIS-issued secure identity documents that have expired or replace ones that have been lost, stolen, mutilated, or destroyed, or that contain an error.

The following table provides general information on how to request that USCIS reissue certain secure identity documents.

How to Request Replacement or Renewal of USCIS-Issued Secure Identity Documents

Secure Identity Document	How to Request Replacement or Renewal

Secure Identity Document	How to Request Replacement or Renewal
Permanent Resident Card (PRC)	• Complete and properly file an Application to Replace Permanent Resident Card (Form I-90) with USCIS, with appropriate fees (if required), in accordance with the Form I-90 instructions. [1] • An LPR who is temporarily outside the United States for less than 1 year and who is not in possession of a valid PRC (for example, it was lost, stolen, or destroyed) may properly file an Application for Travel Document (Carrier Documentation) (Form I-131A) to request documentation to demonstrate to an airline or other transportation carrier that he or she is authorized to travel to the United States. [2]
Employment Authorization Document (EAD)	• If inside the United States, complete and properly file an Application for Employment Authorization (Form I-765) with USCIS, with appropriate fees (if required). [3] • There is no process to seek a replacement EAD, including a combo card (employment and travel authorization documented on a single card), outside the United States.
Reentry permit	• If inside the United States, complete and properly file an Application for Travel Document (Form I-131) with USCIS, with appropriate fees. • An LPR who is temporarily outside the United States for less than 2 years and who is not in possession of a valid PRC (for example, it was lost, stolen, or destroyed) may properly file an Application for Travel Document (Carrier Documentation) (Form I-131A) to request documentation to demonstrate to an airline or other transportation carrier that he or she is authorized to travel to the United States. [4]
Advance parole document	• If inside the United States, complete and properly file an Application for Travel Document (Form I-131) with USCIS, with appropriate fees. [5] • There is no process to seek a replacement advance parole document, including a combo card (employment and travel authorization documented on a single card), outside the United States. In cases where an advance parole document was lost, stolen, or destroyed while overseas, requestors should contact the closest USCIS international office or U.S. embassy or consulate.
Refugee travel document	• Whether inside or outside the United States, complete and properly file an Application for Travel Document (Form I-131) with USCIS, with appropriate fees.
Certificate of Citizenship or Certificate of Naturalization	• Whether inside or outside the United States, complete and properly file an Application for Replacement Naturalization/Citizenship Document (Form N-565). [6]

B. Reissuing Non-Deliverable Secure Identity Documents

USCIS receives a number of secure identity documents returned by the U.S. Postal Service (USPS) after attempting delivery. Reasons for return range from USPS error (such as misdirected mail or correct address not recognized) to requestor error (such as an untimely address change). Benefit requestors who believe their secure identity documents have been returned to USCIS as non-deliverable may contact the USCIS Contact Center. In some instances, USCIS may be able to attempt a second delivery to the original address.

1. Background

Historically, the management of secure identity documents, including storage, remailing, and destruction, occurred at multiple sites across USCIS with each location having a separate staff performing Post Office Non-Deliverables (PONDS) functions in accordance with local policies. In 2016, USCIS undertook an initiative to reduce the handling of secure identity documents, more clearly define the scope of PONDS duties, and create a more consistent and manageable process. The Office of Intake and Document Production (OIDP) established a centralized PONDS Unit at the Lee's Summit Production Facility in June 2017, which now oversees all PONDS operations.

Between June 2017 and October 2017, PONDS data showed 95 percent of secure identity documents were successfully re-mailed to requestors within 60 business days of being returned to USCIS. For documents that were unsuccessfully re-mailed, USCIS had previously kept documents for 365 calendar days. In 2018, USCIS began retaining non-deliverable secure identity documents returned to USCIS for 60 business days, or 12 weeks, before destroying them. [7]

Before secure identity documents are destroyed, PONDS Unit staff must search all relevant data systems to see if a new address exists. If a new address exists, USCIS re-mails the card to the new address. If no new address exists, USCIS destroys the card and updates its status in applicable systems as destroyed, in accordance with PONDS procedures.

2. Reissuing Secure Identity Documents

In certain circumstances, USCIS reissues secure identity documents if the original identity document was not successfully delivered to the requestor and has been subsequently destroyed. Depending on the scenario, USCIS may require the requestor to properly file a new form with fee for USCIS to reissue the secure identity document.

New Application and Fees Not Required

Generally, if USCIS-issued secure identity documents were non-deliverable due to USPS errors, USCIS may reissue the secure identity document without requiring a new application and fee.

However, lawful permanent residents and conditional permanent residents must always file Form I-90 to request a replacement PRC. [8] In some cases, USCIS would not require a new fee. [9]

The table below provides common (but not comprehensive) non-delivery scenarios involving USPS errors.

Common Non-Delivery Scenarios Involving USPS Errors

Scenario	Example	New Application and Applicable Fee Required? [10]
USPS lost, misdirected, or destroyed mail. [11]	N/A	No

Scenario	Example	New Application and Applicable Fee Required? [10]
USPS incorrectly marked as deceased but requestor is not deceased.	N/A	No
USPS incorrectly marked yellow label on undeliverable envelope.	USPS label indicates requestor does not reside at address; however, requestor does.	No
USPS did not recognize a good address for requestor.	N/A	No

Generally, if USCIS-issued secure identity documents were non-deliverable due to USCIS or certain other errors, USCIS may reissue the secure identity document without requiring a new application and fee. The table below provides common (but not comprehensive) non-delivery scenarios involving USCIS and other errors.

Common Non-Delivery Scenarios Involving USCIS and Other Errors

Scenario	Example	New Application and Applicable Fee Required? [12]
Requestor updated address timely but USCIS incorrectly entered address into data systems.	Requestor enters “123 Presidential Avenue” and USCIS erroneously enters “123 Residential Avenue.”	No
Requestor updated address timely but USCIS updated address after 48 hour document production hold and before undeliverable document was returned to USCIS as undeliverable.	N/A	No
Certain USCIS systems errors.	N/A	No

New Application and Fees Required

Generally, if USCIS-issued secure identity documents were non-deliverable due to requestor error, USCIS reissues the secure identity document only upon receiving a new application and fee. [13] The table below provides common (but not comprehensive) non-delivery scenarios involving requestor errors.

Common Non-Delivery Scenarios Involving Requestor Errors

Scenario	Example	New Application and Applicable Fee Required?
Requestor submitted untimely address change.	• Requestor updated address well after the 10-day timeframe set by INA 265 and after USCIS mailed his or her secure identity document, but the secure identity document was not returned to USCIS as undeliverable. • Requestor updated address after his or her secure identity document was returned to USCIS as undeliverable and destroyed.	Yes, requestor must resubmit completed application with fee.
Requestor updated address timely, but gave incomplete or incorrect address.	• Instead of "123 Main Street," requestor entered "Main Street 123" or "213 Main Street." • Requestor omitted apartment or suite number or included incorrect apartment or suite number. • Requestor misspelled a part of the address, such as "123 Brandway" instead of "123 Broadway." • Requestor listed the wrong state or zip code. • Requestor provided an invalid USPS address.	Yes, requestor must resubmit completed application with fee.
Requestor provided future address, not current address.	N/A	Yes, requestor must resubmit completed application with fee.
Requestor did not accept mail.	N/A	Yes, requestor must resubmit completed application with fee.

Footnotes

1. [^] See 8 CFR 264.5. See 8 CFR 103.7. There are certain conditions when USCIS may issue an Alien Documentation, Identification and Telecommunications (ADIT) stamp in place of a new Permanent Resident Card (PRC). One such condition may be applying for naturalization at least 6 months before the expiration of the PRC. Lawful permanent residents in this circumstance may contact the USCIS Contact Center for more information on how to obtain an ADIT stamp instead of filing Form I-90.

2. [^] The transportation letter does not replace the PRC. LPRs must still complete and properly file Form I-90 to obtain a replacement PRC.

3. [^] For more information on when a new Form I-765 and fee is required, see Employment Authorization Document.

4. [^] The transportation letter does not replace the reentry permit. LPRs must complete and properly file Form I-131 upon reentry into the United States to obtain a replacement reentry permit.

5. [^] In general, if a requestor applies for advance parole while in the United States, and departs the United States before the advance parole document is issued, the requestor may be found inadmissible to the United States upon return, or even if admitted, may be found to have abandoned his or her application.

6. [^] For more information, see Volume 12, Citizenship and Naturalization, Part K, Certificates of Citizenship and Naturalization, Chapter 4, Replacement of Certificate of Citizenship or Naturalization [12 USCIS-PM K.4].

7. [^] An economic analysis found that retention of non-deliverable secure identity documents for longer than 60 days costs USCIS more than production of a new identity document.

8. [^] See 8 CFR 264.5.

9. [^] For additional information on required fees, see Form I-90 instructions. See USCIS Fee Calculator.

10. [^] Applicants seeking a replacement of a PRC must always file Form I-90 to request a replacement card. See 8 CFR 264.5. However, in some cases, such as the scenarios described in the table, USCIS would not require a new fee.

11. [^] For more information, see Find Missing Mail.

12. [^] Applicants seeking a replacement of a PRC must always properly file Form I-90 to request a replacement card. See 8 CFR 264.5. However, in some cases, such as the scenarios described in the table, USCIS would not require a new fee.

13. [^] Unless the requestor qualifies for a fee waiver. See Request for Fee Waiver (Form I-912).

Part B - Permanent Resident Cards

Chapter 1 - Purpose and Background

A. Purpose

A lawful permanent resident (LPR) is an alien who the U.S. government has lawfully authorized to permanently live in the United States.[1] LPRs are issued a Permanent Resident Card (PRC)[2] as evidence of identity and status in the United States.[3]

B. Background

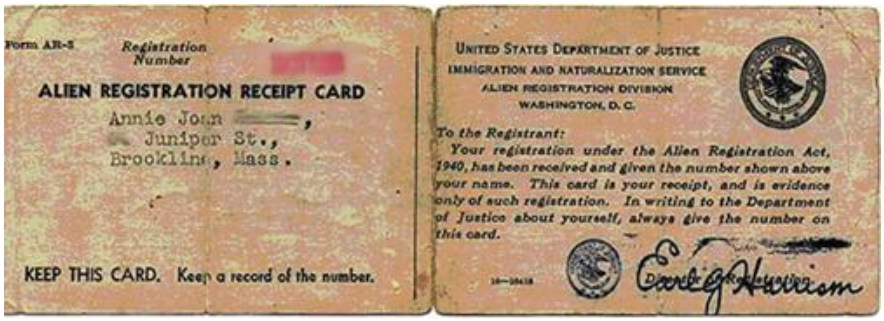
In general, LPRs initially receive a PRC after USCIS approves their Application to Register Permanent Residence or Adjust Status (Form I-485) or after U.S. Customs and Border Protection admits them into the United States as an LPR following consular processing abroad.[4] LPRs 18 years of age and over are required to carry their PRCs (or other equivalent proof of registration) at all times.[5]

LPRs use the Application to Replace Permanent Resident Card (Form I-90) to request that USCIS replace their PRC.[6] Form I-90 should also be used to obtain a PRC when an applicant has been automatically converted to permanent resident status.[7]

Eligible LPRs also use Form I-90 to request taking up "commuter status" or to resume actual residence in the United States after having been in commuter status.[8]

History

The principle of registering and fingerprinting aliens was established in the Alien Registration Act of 1940 (Smith Act).[9] The Smith Act required all non-citizens in the United States 14 years of age or older who remained in the United States 30 days or longer to register and be fingerprinted with the U.S. government before such 30 days were over, whether they were present lawfully or unlawfully, temporarily or permanently. These registered aliens were issued an Alien Registration Receipt Card (Form AR-3).


Form AR-3 Registration Number

ALIEN REGISTRATION RECEIPT CARD

Annie Joan [redacted],
[redacted] Juniper St.,
Brookline, Mass.

KEEP THIS CARD. Keep a record of the number.

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
ALIEN REGISTRATION DIVISION
WASHINGTON, D. C.

To the Registrant:
Your registration under the Alien Registration Act, 1940, has been received and given the number shown above your name. This card is your receipt, and is evidence only of such registration. In writing to the Department of Justice about yourself, always give the number on this card.

Alien Registration Receipt Card (Form AR-3).

Courtesy of the USCIS History Office and Library.

This card was later revised as AR-3A and AR-103.

In 1946, the U.S. government began issuing different types of registration documents based upon the status of the alien in the United States. LPRs were issued Form I-151 (Alien Registration Receipt Card), which contained a green tint and led to the card being commonly referred to as a "green card."

In 1977, the PRC (Form I-551) replaced the Form I-151 as evidence of LPR status. In 1989, the Immigration and Naturalization Service (INS) introduced the second version of the PRC, usually with an expiration date of 10 years after the date of issuance.[10] USCIS has continued to improve the PRC by using the latest tamper-resistant technology.[11]

C. Legal Authorities

- INA 101(a)(20) – Definition of lawfully admitted for permanent residence
- INA 262 – Registration of aliens
- INA 264 – Forms for registration and fingerprinting
- 8 CFR 264.5 – Application for a replacement Permanent Resident Card
- 8 CFR 211.5 – Alien commuters

Footnotes

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1. [^] Certain LPRs may commence or continue to reside in Mexico or Canada and commute to their place of employment in the United States. For more information, see Chapter 4, Commuter Cards [11 USCIS-PM B.4].

2. [^] A Permanent Resident Card is also called a Form I-551 or a green card.

3. [^] Certain aliens obtain lawful permanent residence on a conditional basis and are known as conditional permanent residents. An alien (and his or her children) whose qualifying marriage to their petitioning spouse is less than 2 years old at the time of admission or adjustment of status obtain lawful permanent residence on a conditional basis. See INA 216. Immigrant investors (and their spouses and children) may also obtain lawful permanent residence on a conditional basis based on qualifying entrepreneurship. See INA 216A. See Volume 6, Immigrants, Part G, Investors [6 USCIS-PM G].

4. [^] For information on consular processing, see Volume 7, Part A, Adjustment of Status Policies and Procedures, Chapter 1, Purpose and Background, Section A, Purpose [7 USCIS-PM A.1(A)].

5. [^] See INA 264(e).

6. [^] Form I-90 generally may not be used to request an initial PRC. For example, aliens who are granted LPR status by an immigration judge, or an LPR mother who needs a PRC for a child (under 2 years of age) born while the mother was temporarily abroad, should not file Form I-90 to request an initial PRC. The USCIS field office with jurisdiction over such an applicant's residence may be able to assist the applicant to obtain an initial PRC at an INFOPASS appointment. For more information, applicants may call the USCIS Contact Center at 1-800-375-5283 (TTY for applicants who are deaf, hard of hearing, or have a speech disability: 1-800-767-1833).

7. [^] For example, special agricultural workers who automatically adjusted to permanent residence based on INA 210 must file Form I-90 in order to obtain a PRC.

8. [^] For more information, see Chapter 4, Commuter Cards [11 USCIS-PM B.4].

9. [^] See 54 Stat. 670 (June 28, 1940).

10. [^] Exceptions to a 10-year card include, for example, conditional permanent residents for whom legacy INS began issuing Forms I-551 with an expiration date of 2 years after the date on which the alien became a conditional permanent resident under the Immigration Marriage Fraud Amendments of 1986, Pub. L. 99-639 (PDF) (November 10, 1986). See Chapter 2, Replacement of Permanent Resident Card, Section C, Conditional Permanent Residents [11 USCIS-PM B.2(C)] for more information.

11. [^] For example, in May 2017, USCIS began issuing redesigned permanent resident cards with enhanced security features.

Chapter 2 - Replacement of Permanent Resident Card

A. Eligibility Requirements

Lawful permanent residents (LPRs) are entitled to evidence of status in the United States. LPRs are eligible for replacement of their Permanent Resident Card (PRC) if they meet requirements, including but not limited to, the following:

- Properly file the Application to Replace Permanent Resident Card (Form I-90);
- Establish identity;
- Establish LPR or conditional permanent resident (CPR)[1] status; and
- Otherwise meet the eligibility requirements to receive a replacement PRC.

Maintaining LPR or CPR Status

LPR status generally begins from the date the government admits an alien to the United States as an LPR or grants or recognizes LPR status. LPR status ends if and when rescinded by USCIS,[2] terminated in removal proceedings,[3] or the status is abandoned.[4] Similarly, CPR status generally begins from the date the government admits an alien to the United States as a CPR or grants CPR status. CPR status ends if and when rescinded or terminated.[5] For example, CPRs may lose status if they do

not apply to remove conditions, if they do not meet certain requirements to remove the conditions on their status during the required time period, or if USCIS denies a petition to remove conditions.[6]

LPRs Applying for Naturalization

LPRs (and CPRs) 18 years of age and over are required to carry their PRCs (or other proof of registration).[7] Applying for naturalization does not change this requirement.

B. Lawful Permanent Residents in Proceedings

LPRs in deportation, exclusion, or removal proceedings are entitled to evidence of LPR status until ordered excluded, deported, or removed.[8]

If an LPR is in proceedings, USCIS reviews the Form I-90 and totality of the evidence in the record to determine if a new PRC will be issued or if the applicant will receive evidence of status in the form of a temporary permanent resident document.[9]

C. Conditional Permanent Residents

A CPR is an alien admitted for permanent residence on a conditional basis for a period of 2 years because he or she sought LPR status:

- Based on a marriage of less than 2 years;[10] or
- As an entrepreneur.[11]

CPRs are issued PRCs by USCIS with an expiration date of 2 years from the date of becoming a CPR. CPRs whose status is not expiring within 90 days may file a Form I-90 to replace a PRC for the reasons provided in the form instructions. If a CPR is eligible to receive a replacement card, the expiration date of the replacement card will be the same as that of the prior card (2 years from the date of becoming a CPR).

A CPR is not eligible to file a Form I-90 for any reason if he or she is within 90 days of the expiration of conditional status. This ensures the CPR files the appropriate petition to remove the conditions during the 90 days before his or her CPR status expires.[12] The receipt notice for such a petition to remove conditions serves both to extend CPR status, and as proof of that extension, while the petition is pending.

If a CPR files a Form I-90 during the 90 days before the expiration of conditional status, USCIS denies the application and advises the applicant to file the appropriate petition to remove the conditions.

D. Documentation and Evidence

1. Form

An Application to Replace Permanent Resident Card (Form I-90) must be used by an LPR to request replacement of a PRC expiring within 6 months.[13] Additional reasons for which LPRs must file Form I-90 include, but are not limited to, replacement of a lost, stolen, destroyed, or mutilated PRC, or when the LPR's name or other biographic information has legally changed since issuance of the PRC.[14]

CPRs may use Form I-90 to request replacement of a PRC that is not expiring within 90 days for reasons that include, but are not limited to, replacement of a lost, stolen, destroyed, or mutilated PRC, or when the CPR's name or other biographic information

has legally changed since issuance of the PRC.[15] CPRs may not use Form I-90 to request removal of the conditions on residence.[16]

The Form I-90 instructions include a full list of reasons to request replacement of a PRC and further information on filing requirements for each reason. An applicant must file Form I-90 according to the form instructions. Applicants can access the current edition of the form on the USCIS website.

2. Fees

An applicant should refer to the Form I-90 instructions for the appropriate fees required for filing a Form I-90.[17] Any required fees must be submitted at the time of filing.[18]

3. Filing Location

An applicant may submit a Form I-90 by mail or electronic filing as indicated in the form instructions. However, applicants may not file online if they are requesting a fee waiver.

4. Required Evidence

An applicant should refer to the Form I-90 instructions for required initial evidence based on the particular reason for which he or she is seeking a replacement card. For example, if an applicant requests a replacement PRC because the existing card has incorrect data because of DHS error, the applicant must submit proof of the correct name or biographical data and return the original PRC with the incorrect data to USCIS when filing Form I-90.

E. Biometrics

1. Application Support Center Appointments

Replacement of a PRC requires submission of biometrics at the USCIS Application Support Center (ASC) servicing the applicant's place of residence in the United States.[19] USCIS generally schedules the applicant for a biometrics appointment after receiving a properly filed application. USCIS notifies the applicant of an appointment by sending the applicant a Notice of Action (Form I-797C) stating the date, time, and location of the appointment.

For purposes of a request to replace a PRC, USCIS generally collects the following biometrics from the applicant: photograph, signature, and fingerprints.[20]

When an applicant appears at an ASC[21] to provide biometrics, the ASC may take actions that include, but are not limited to, the following:

- Verifying applicant identity;
- Verifying biographic changes, if applicable;[22]
- Capturing biometrics; and
- Attaching an extension sticker on the PRC, when eligible (the extension applies only to the PRC and does not apply to any other documents issued to the applicant).

2. Rescheduling Requests and Failure to Appear

If an applicant fails to appear for the scheduled biometrics appointment, his or her Form I-90 is considered abandoned and may be denied, unless USCIS receives a properly filed change of address or rescheduling request before the scheduled appointment.

Biometrics must be completed within 90 days of the biometrics appointment described in the initial Form I-797C. The application may be denied for abandonment if biometrics are not completed within this timeframe. If an applicant is unable to appear for the initial scheduled date, the applicant may request to reschedule the appointment along with a sufficient explanation for the applicant's inability to appear on that date. The applicant should submit the rescheduling request before the scheduled appointment, otherwise USCIS may deny the application for failure to appear at a scheduled biometrics appointment. The applicant should follow the instructions on the Form I-797C to request rescheduling.

F. Temporary Evidence of Permanent Resident Status

LPRs are entitled to evidence of status.[23] In some cases, LPRs may require temporary evidence of LPR status. For example, an applicant granted LPR status may require evidence of status while waiting to receive his or her initial PRC or a Form I-90 applicant may require evidence of status while waiting to receive his or her replacement PRC. In these cases, USCIS may issue temporary evidence of LPR status, which may be used to prove employment authorization, and authorization to return to the United States after temporary foreign travel.[24] USCIS may also provide temporary evidence of status to LPRs in deportation, exclusion, or removal proceedings.[25]

1. Permanent Resident Card Extension Sticker

An applicant with a pending Form I-90 to replace an expiring PRC may receive an extension sticker on his or her current PRC to allow for time to process the new card.[26] The extension sticker will specify how long it is valid for.

If the applicant is eligible, the ASC places an extension sticker on the back of the PRC. However, the ASC does not place an extension sticker on any of the following:

- Mutilated cards;
- PRCs currently valid for more than 6 months;
- PRCs issued to CPRs;[27]
- Old versions of the PRC (such as cards with no expiration date);
- A PRC that already contains an extension sticker; or
- A temporary permanent resident card (for example, an Arrival/Departure Record (Form I-94), issued with photo and temporary I-551 stamp).

If the Form I-90 applicant does not have his or her PRC at the time of the ASC appointment, he or she can receive temporary proof of LPR status from the local USCIS office by first calling the USCIS Contact Center at 1-800-375-5283 to schedule an appointment at the local field office (TTY for people who are deaf, hard of hearing, or have a speech disability: 1-800-767-1833).

2. Other Temporary Evidence of Permanent Resident Status

USCIS may issue temporary evidence of LPR status in other forms, known as an Alien Documentation, Identification and Telecommunication (ADIT) stamp (also known as an I-551 stamp). LPRs may obtain an ADIT stamp from the local field office by first calling the USCIS Contact Center at 1-800-375-5283 to schedule an appointment (TTY for people who are deaf, hard of

hearing, or have a speech disability: 1-800-767-1833). ADIT stamps may only be placed on Form I-94 (with photo) or an unexpired passport.

G. Adjudication

1. Lawful Permanent Resident Status

The officer reviews evidence submitted by the applicant to verify that the applicant is an LPR. An officer verifies an applicant's status using USCIS systems and records.

2. Security Checks

Officers should ensure biographic and biometric security checks are completed, and remain valid through adjudication of the application.

3. Requests for Evidence and Interviews

Officers may issue requests for evidence for an application to replace a PRC.[28] In some cases, USCIS may refer a Form I-90 applicant to a field office for an interview.[29]

4. Decision

Approval

USCIS may approve a Form I-90 if the applicant meets the following requirements:

- The application is signed or certified via internet filing;
- All applicable fees have been paid (unless waived or not required);
- The applicant established his or her identity;
- The applicant is an LPR or CPR;
- Biometric requirements have been completed and remain valid at the time of the decision; and
- The applicant established all other eligibility criteria for the specific basis he or she filed Form I-90.

If the officer approves the Form I-90, USCIS sends both the approval notice and the new PRC to the applicant's U.S. mailing address.[30] PRCs cannot be mailed to addresses outside the United States.[31]

Denial

USCIS may deny an application to replace a PRC if the applicant fails to:

- Establish LPR or CPR status;
- Submit biometrics;
- Establish his or her identity;
- Attend an interview (if required); or

- Otherwise meet the eligibility criteria applicable to his or her Form I-90.

If the officer denies the Form I-90, the applicant cannot appeal the decision.[32] However, the applicant may file a motion to reopen or reconsider. A denial also does not preclude the applicant from filing a new Form I-90 if he or she can establish eligibility.

H. Motions to Reopen or Reconsider

1. Requested by Applicant

To request a motion to reopen or motion to reconsider a denial, an applicant must file a Notice of Appeal or Motion (Form I-290B) with fee, unless waived.[33] An applicant should follow the current form instructions to properly file a motion.

An applicant has 30 days[34] from the date of the decision to submit a motion. Officers may use discretion to excuse failure to file a motion to reopen within this time period if the applicant demonstrates the delay was reasonable and beyond the control of the applicant.[35]

2. Service Motion to Reopen

A Service motion to reopen is initiated by USCIS to reopen a case in order to change the decision or to correct information for card production. When USCIS initiates a Service motion, an officer issues a formal notice to the applicant advising him or her that the case has been reopened. If the new decision is favorable to the applicant, the officer updates appropriate systems and generates an automatic approval notice separate from the motion.

If the decision is unfavorable to the applicant, an officer provides 30 days[36] for the applicant to submit information in support of his or her case. USCIS may extend the time period for good cause shown.[37] If the applicant does not wish to submit any information relating to the motion, the applicant may waive the 30-day period.[38] If the applicant fails to submit the required information within the allocated timeframe or the information the applicant submits does not overcome the grounds for denial, an officer may proceed to make a final determination on the motion and change the decision on the Form I-90, if applicable. A new period for an applicant to file a motion to reopen or reconsider[39] begins from the date of issuance of the new adverse decision on the Form I-90.

Footnotes

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1. [^] See INA 216 and INA 216A.

2. [^] See INA 246.

3. [^] See INA 240.

4. [^] For example, if an alien files a Record of Abandonment of Lawful Permanent Resident Status (Form I-407). See INA 101(a)(13)(C)(i).

5. [^] See INA 216. See INA 216A. See INA 246.

6. [^] See INA 216(c) and INA 216A(c). USCIS may also terminate a CPR's status if, during the 2-year conditional resident period, USCIS determines the qualifying marriage or entrepreneurship that formed the basis of the conditional permanent residence was improper. See INA 216(b) and INA 216A(b).

7. [^] See INA 264(e).

8. [^] See 8 CFR 264.5(g) (“Issuance of evidence of permanent residence to an alien who had permanent resident status when the proceedings commenced shall not affect those proceedings”).

9. [^] For more information, see Section F, Temporary Evidence of Permanent Resident Status, Subsection 2, Other Temporary Evidence of Permanent Resident Status [11 PM-USCIS B.2(F)(2)].

10. [^] See INA 216.

11. [^] Also known as the employment-based 5th preference (EB-5) category. See INA 216A.

12. [^] See Petition to Remove Conditions on Residence (Form I-751) or Petition by Entrepreneur to Remove Conditions on Permanent Resident Status (Form I-829). See 8 CFR 216.4 or 8 CFR 216.6.

13. [^] See 8 CFR 264.5. See Form I-90 instructions (PDF).

14. [^] See 8 CFR 264.5(b). See Form I-90 instructions (PDF) for a full list of reasons. LPRs must also use Form I-90 to request a replacement of a prior edition of the alien registration card issued on Form AR-3, AR-103, or I-151. See 8 CFR 264.5(c).

15. [^] See 8 CFR 264.5(d). See Form I-90 instruction (PDF) for a full list of reasons.

16. [^] A CPR whose card is expiring may apply to have the conditions on residence removed in accordance with 8 CFR 216.4 or 8 CFR 216.6.

17. [^] See 8 CFR 264.5(a). See Form I-90 instructions (PDF).

18. [^] For information on fee waivers, see the Request for Fee Waiver (Form I-912).

19. [^] Form I-90 applicants who are commuters may be issued a request for evidence of a U.S. address for USCIS to use to schedule the location of a biometrics services appointment.

20. [^] For more information, see Preparing for Your Biometric Services Appointment.

21. [^] If an applicant is temporarily outside of the United States due to U.S. military or government orders and he or she is required to include a biometrics service fee when submitting Form I-90, the applicant should also include a properly completed Form FD-258 (fingerprint card) and a passport-style photo with the application. See Form I-90 instructions (PDF) for more information.

22. [^] The ASC may verify portions of the name, date of birth, and gender.

23. [^] See INA 264(d).

24. [^] For more information on travel documents for LPRs, see Customs and Border Protection's Carrier Information Guide.

25. [^] See 8 CFR 264.5(g) (“Issuance of evidence of permanent residence to an alien who had permanent resident status when the proceedings commenced shall not affect those proceedings”). See Section B, Lawful Permanent Residents in Proceedings [11 USCIS-PM B.2(B)].

26. [^] See 8 CFR 264.5(h).

27. [^] After timely filing the petition to remove conditions on permanent residence, CPRs receive a receipt notice that serves as proof of extension. See Section C, Conditional Permanent Residents [11 USCIS-PM B.2(C)] for more information.

28. [^] For more information on requests for evidence, see AFM 10.5, Requesting Additional Information.

29. [^] See 8 CFR 103.2(b)(9).

30. [^] Applicants may use Case Status Online to check on the status of their Form I-90. If Case Status Online indicates that USCIS has mailed a new PRC, the applicant should be provided with a U.S. Postal Service (USPS) tracking number. If Case Status Online and the USPS tracking number indicate a PRC has been mailed and delivered, but the applicant has not received the PRC, the applicant should inquire with USPS immediately. For more information, see the Form I-90 web page. A PRC issued to a commuters is mailed to the port-of-entry designated by an applicant. For more information, see Chapter 4, Commuter Cards [11 USCIS-PM B.4].

31. [^] Applicants temporarily outside of the United States due to U.S. military or government orders may be serviced by the U.S. armed forces or U.S. diplomatic postal systems.

32. [^] See 8 CFR 264.5(f).

33. [^] See 8 CFR 103.5(a).

34. [^] If the decision is mailed to the applicant, the applicant has 33 days from the date of the denial letter to submit the motion. See 8 CFR 103.8(b).

35. [^] See 8 CFR 103.5(a)(1)(i).

36. [^] If the decision is mailed to the applicant, the applicant has 33 days from the date of the decision letter to submit information in support of his or her case. See 8 CFR 103.8(b).

37. [^] See 8 CFR 103.5(a)(5)(ii).

38. [^] See 8 CFR 103.5(a)(5).

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

Chapter 3 - Expired Permanent Resident Cards

To deter fraud and enhance security, field offices generally collect expired Permanent Resident Cards (PRCs) encountered through the normal course of business, unless the PRC has an extension sticker.

Offices that have collected expired cards should follow agency procedures to update applicable systems and destroy the expired cards.

Chapter 4 - Commuter Cards

Under normal circumstances, a lawful permanent resident (LPR) is considered to have abandoned his or her status if he or she moves to another country with the intent to reside there permanently. However, in certain situations, an LPR may commence or continue to reside in a foreign contiguous territory and commute to the United States for employment.[1] This administrative grant of “commuter status” is only available to LPRs living in Canada or Mexico.

The two types of commuters are as follows:

- Those who commute for regular employment in the United States; and
- Those who enter to perform seasonal work in the United States, but whose presence in the United States is for 6 months or less, in the aggregate, during any continuous 12-month period (seasonal commuters or seasonal workers).

LPRs must use the Application to Replace Permanent Resident Card (Form I-90) to take up commuter status or when taking up actual residence in the United States after having been a commuter.[2] Commuters receive a Permanent Resident Card (PRC) that indicates their status as a commuter. Commuters must also use Form I-90 to replace their commuter PRCs.[3]

A. Eligibility Requirements

1. Obtaining Commuter Status

To be eligible for commuter status, an applicant must meet the following requirements:

- Establish LPR status;
- Establish he or she lives in Canada or Mexico;[4] and
- Establish employment in the United States within the 6 months before filing.

Evidence of employment may include, but is not limited to:

- Employment pay stubs showing employment in the United States; or
- An employment letter on company letterhead showing current employment in the United States.

Applicants should refer to the Form I-90 instructions (PDF) for further information on evidentiary requirements. Upon approval, USCIS issues the applicant a PRC indicating status as a commuter.[5]

2. Removing Commuter Status

A commuter who begins residing in the United States after having been a commuter must use Form I-90 to request to remove commuter status from his or her PRC. The commuter should submit evidence of a U.S. address with Form I-90. Evidence may include, but is not limited to, a lease agreement, property deed, or utility bill(s) dated within the 6 months before filing Form I-90. Applicants should refer to the Form I-90 instructions (PDF) for further information on evidentiary requirements.

A seasonal worker is presumed to be residing in the United States if he or she is present in the United States for more than 6 months, in the aggregate, during any continuous 12-month period. In such a case, the seasonal worker is no longer eligible for commuter status.[6]

B. Loss of Permanent Resident Status for Commuters[7]

A commuter who has been out of regular employment in the United States for a continuous period of 6 months loses LPR status.[8] However, an exception applies when employment in the United States was interrupted for reasons beyond the person's control (other than lack of a job opportunity) or when the commuter can demonstrate that he or she has worked 90 days in the United States during the 12-month period before the application for admission into the United States at a port of entry.[9]

Footnotes

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1. [^] See 8 CFR 211.5(a).

2. [^] See 8 CFR 264.5(b)(5).

3. [^] See Chapter 2, Replacement of Permanent Resident Card [11 USCIS-PM B.2] for general information.

4. [^] See 8 CFR 211.5(a).

5. [^] The PRC cannot be mailed outside the United States; therefore, the commuter must designate his or her usual port-of-entry (POE) on the Form I-90 so that his or her PRC may be mailed to the designated POE for pick-up. Customs and Border Protection (CBP) also issues a Commuter Status Card (Form I-178) that must be carried while traveling across the border. The Form I-178 is valid for 6 months and must be renewed with CBP at 6-month intervals. Renewal requires presenting proof of ongoing employment in the United States.

6. [^] See 8 CFR 211.5(a).

7. [^] See 8 CFR 211.5(b).

8. [^] See 8 CFR 211.5(b).

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

Part C - Reentry Permits

Part D - Refugee Travel Documents

Part E - Advance Parole

Volume 12 - Citizenship and 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.

U.S. 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 U.S. 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

Volume 12 Parts		Guidance
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] 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 aliens 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.

Act	Statutory Provisions
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

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1. [^] See Frank G. Franklin, The Legislative History of Naturalization in the United States; From the Revolutionary War to 1861 (Chicago: The University of Chicago Press, 1906).

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]
- Canal Zone or the Republic of Panama on or after February 26, 1904; [2]

- Virgin Islands on or after January 17, 1917; [3]
- Guam born after April 11, 1899; [4] or
- Commonwealth of the Northern Mariana Islands (CNMI) on or after November 4, 1986. [5]

Persons born in American Samoa and Swains Island are generally considered nationals but not citizens of the United States. [6]

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 applicant 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

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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 (PDF), 90 Stat. 263, 266 (March 24, 1976) (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 (PDF), 90 Stat. 263, 265-66 (March 24, 1976) (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] 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] USCIS is authorized to perform such acts as are necessary to properly implement the Secretary's authority. [3] In certain cases, an applicant for naturalization may choose to have the Oath of Allegiance [4] 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

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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]

- 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] 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]

The applicant has the burden of establishing eligibility by a preponderance of the evidence throughout the examination. [4] 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' 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] 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]

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

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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 (October 14, 1940).

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] 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]

B. Fingerprints

1. Fingerprint Requirement

USCIS must collect fingerprint records as part of the background check process on applicants for naturalization regardless of their age. [3] In general, applicants receive a biometric service appointment at a local Application Support Center (ASC) for collection of their biometrics (fingerprints, photographs, and signature). [4]

USCIS notifies applicants in writing to appear for fingerprinting after filing 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. [5]

Previously, USCIS had waived the fingerprint requirements for applicants 75 years old or older because it was difficult to capture readable fingerprints from this age group. As a result, applicants 75 years old or older were not required to appear at an ASC. Electronic processing of applications and improved technology now allows USCIS to capture fingerprints for applicants of all ages and enhances the ability to confirm identity and perform required background checks. [6]

Once an ASC collects an applicant’s biometrics, USCIS submits the records to the FBI for a full criminal background check. [7] 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.

Accommodations

USCIS makes special arrangements to accommodate the needs of applicants who are unable to attend an appointment, including applicants with disabilities and homebound or hospitalized applicants. All domestic USCIS facilities are accessible to applicants with disabilities. Applicants who are homebound or hospitalized may request an accommodation when unable to appear at an ASC for biometrics processing. Applicants should submit a copy of the appointment notice and medical documentation verifying the need for an in-home appointment with the local field office.

Applicants who need to request an accommodation for their appointment can submit a request online or call the USCIS Contact Center at any time at 800-375-5283 (TDD: 800-767-1833). [8]

2. Fingerprint Waivers

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

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

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

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

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

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

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

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

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

Chapter 3 - Naturalization Interview

A. Roles and Responsibilities

1. USCIS Officers

Authority to Conduct Examination

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

USCIS' authority includes the legal authority for officers to:

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

Questions on Eligibility

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

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

- Biographical information, to include marital history and military service;
- Admission and length of time as a lawful permanent resident (LPR);
- Absences from the United States after becoming an LPR;
- Places of residence and employment history;

- Knowledge of English and of U.S. history and government (civics);
- Moral character and any criminal history;
- Attachment to the principles of the U.S. Constitution;
- Affiliations or memberships in certain organizations;
- Willingness to take an Oath of Allegiance to the United States; and
- Any other topic pertinent to the eligibility determination.

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

Grounding Decisions on Applicable Laws

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

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

2. Authorized Representatives

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

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

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

An applicant may be represented by any of the following:

- Attorneys in the United States; [9]
- Certain law students and law graduates not yet admitted to the bar; [10]

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

No other person may represent an applicant. [15]

3. Interpreters

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

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

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

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

B. Preliminary Review of Application

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

1. General Contents of A-File

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

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

2. Jurisdiction for Application [17]

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

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

3. Results of Background and Security Checks [21]

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

4. Other Documents or Requests in the Record

Requests for Accommodations or Disability Exceptions

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

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

An officer reviews an applicant's record and relevant databases to identify any current removal proceedings or previous proceedings resulting in a final order of removal from the United States. If an applicant is in removal proceedings, a Notice to Appear or the previously issued "Order to Show Cause" may appear in the applicant's record. [24] USCIS cannot make a decision on any naturalization application from an applicant who is in removal proceedings. [25]

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

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

C. Initial Naturalization Examination

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

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

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

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

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

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

D. Subsequent Re-examination

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

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

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

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

E. Expediting Applications from Certain SSI Beneficiaries

USCIS will expedite naturalization applications filed by applicants:

- Who are within 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

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

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

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

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

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

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

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

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

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

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

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

12. [^] See 8 CFR 292.1(a)(4) 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 N-652).

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

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

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

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

Chapter 4 - Results of the Naturalization Examination

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

The officer may:

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

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

A. Approval of Naturalization Application

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

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

B. Continuation of Examination

1. Continuation to Request Evidence

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

The request for evidence should include:

- The specific documentation or information that the officer is requesting;
- The ways in which the applicant may respond; and
- The 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]

2. Scheduling Subsequent Re-examination

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

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

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

C. Denial of Naturalization Application

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] 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]

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

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

Failure to establish…	Citation
Lawful Admission for Permanent Residence	• INA 316(a)(1) • INA 318 • 8 CFR 316.2(a)(2)
Continuous Residence	• INA 316(a)(2) • INA 316(b) • 8 CFR 316.2(a)(3) • 8 CFR 316.5(c)
Physical Presence	• INA 316(a) • 8 CFR 316.2(a)(4)
3 Months of Residence in State or Service District	• INA 316(a)

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

D. Administrative Closure, Lack of Prosecution, Withdrawal, and 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]

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] 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]

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]

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] 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]

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] 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

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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 B.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] or
- An applicant fails to appear for at least two ceremonies to take the Oath of Allegiance without good cause. [2]

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

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

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

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

B. Motion to Reopen Administratively Closed Application

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

Footnotes

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

B. Review of Timely Filed Hearing Request

1. Hearing Scheduled within 180 Days

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

2. Review of Application

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

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

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

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

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

The officer conducting the hearing:

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

- Re-determines the original decision and reverses the original decision to deny, and approves the naturalization application.

3. English and Civics Testing at Hearing

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

C. Improperly Filed Hearing Request

1. Untimely Filed Request

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

Hearing Request Treated as a Motion to Reopen

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

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

Hearing Request Treated as a Motion to Reconsider

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

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

2. Requests Improperly Filed by Unauthorized Persons or Entities

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

3. Requests Improperly Filed by Attorneys or Authorized Representatives

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

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

D. Judicial Review

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

Footnotes

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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] 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]

Applicants may request an accommodation at the time of filing their naturalization application or at any other time during the naturalization process. [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] USCIS does not exclude persons with disabilities from its programs or activities based on their disability. The Rehabilitation Act and the implemented Department of Homeland Security (DHS) regulations [5] 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]

D. Legal Authorities

- Section 504 of the Rehabilitation Act of 1973 [7] – Nondiscrimination under federal grants
- 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

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

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].

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

Chapter 2 - Accommodation Policies and Procedures

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

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

A. Requesting an Accommodation

1. Submitting the Request

It is the applicant's responsibility to request an accommodation in advance, each time an accommodation is needed. Generally, the applicant, his or her attorney or accredited representative, or legal guardian should request an accommodation

concurrently with the filing of the naturalization application. However, an applicant may also call the USCIS Contact Center at 1-800-375-5283 (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]

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

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

Chapter 3 - Types of Accommodations

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

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

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

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

A. Accommodations for the Naturalization Examination

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

Accommodations for the Naturalization Examination

Accommodation	Explanation
Extending examination time and breaks	Some applicants with disabilities may need more time than is regularly scheduled for the examination
Providing 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 in signing forms	Presence of a relative may have a calming effect, and such persons may assist applicants who are unable to sign or make any kind of mark
Legal guardian, surrogate, or designated representative at examination	Some applicants are unable to undergo an examination because of a physical or developmental disability or mental impairment
Allowing nonverbal communication	Applicants may be unable to speak sufficiently to respond to questions but may be able to communicate in 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]

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

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

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

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

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

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

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

Persons eligible to act on behalf of the applicant include:

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

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

- Legal guardian or surrogate (highest priority);
- U.S. citizen spouse;

- U.S. citizen parent;
- U.S. citizen adult son or daughter;
- U.S. citizen adult brother or sister (lowest priority).

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

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

5. Allowing Nonverbal Communication

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

6. Off-Site Examination

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

B. Accommodations for the Naturalization Test

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

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

Accommodations for the Naturalization Test

Accommodation	Explanation
Providing reading tests in large print	Partially blind applicants may be unable to read small print
Oral writing test	Applicants with physical impairments or with limited use of their hands may be unable to write sentences in the test itself

Accommodation	Explanation
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]

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]

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]

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] There are various ways to become a U.S. citizen through the process of naturalization. This chapter addresses the general naturalization requirements. [2]

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

B. General Eligibility Requirements

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

General Eligibility Requirements for Naturalization
The applicant must be age 18 or older at the time of filing for naturalization
The applicant must be a lawful permanent resident (LPR) for at least five years before being eligible for naturalization

General Eligibility Requirements for Naturalization
The applicant must have continuous residence in the United States as an LPR for at least five years immediately preceding the date of filing the application and up to the time of admission to citizenship
The applicant must be physically present in the United States for at least 30 months out of the five years immediately preceding the date of filing the application
The applicant must have lived within the state or USCIS district with jurisdiction over the applicant's place of residence for at least three months prior to the date of filing
The applicant must demonstrate good moral character for five years prior to filing for naturalization, and during the period leading up to the administration of the Oath of Allegiance
The applicant must have an attachment to the principles of the U.S. Constitution and be well disposed to the good order and happiness of the United States during all relevant periods under the law
The applicant must be able to read, write, and speak and understand English and have knowledge and an understanding of U.S. history and government

C. Legal Authorities

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

Footnotes

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

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

3. [^] See INA 316.

Chapter 2 - Lawful Permanent Resident (LPR) Admission for Naturalization

A. Lawful Permanent Resident (LPR) at Time of Filing and Naturalization

1. Lawful Admission for Permanent Residence

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] An applicant is not lawfully admitted for permanent residence in accordance with all applicable provisions of the Immigration and Nationality Act (INA) if his or her lawful permanent resident (LPR) status was obtained by mistake or fraud, or if the admission was otherwise not in compliance with the law. [2]

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 United States for at least five years as an LPR at the time of filing, [3] though the applicant may file his or her application up to 90 days before reaching the five-year continuous residence period. [4]

2. Effective Date of Lawful Permanent Residence

A person is generally considered to be an LPR at the time USCIS approves the applicant's adjustment application or at the time the applicant enters and is admitted into the United States with an immigrant visa. [5] Most applicants applying for adjustment of status become LPRs on the date USCIS approves the application. [6]

For certain classifications, however, the effective date of becoming an LPR may be a date that is earlier than the actual approval of the status (commonly referred to as a "rollback" date). For example, a person admitted under the Cuban Adjustment Act is generally an LPR as of the date of the person's last arrival and admission into the United States or 30 months before the filing of the adjustment application, whichever is later. [7] A refugee is generally considered an LPR as of the date of entry into the United States. [8] A parolee granted adjustment of status pursuant to the Lautenberg Amendment is considered an LPR as of the date of parole into the United States. [9] In addition, USCIS generally considers an asylee's date of admission as an LPR to be one year prior to the date of approval of the adjustment application. [10]

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 [11] must have met all of the applicable requirements of the conditional residence provisions. [12] 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. [13] Unless USCIS approves the applicant's Petition to Remove Conditions on Residence (Form I-751), the applicant remains ineligible for naturalization. [14]

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. [15]

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 [16] and complies with all other applicable requirements of the naturalization laws. These nationals are not "aliens" as defined in the INA and do not possess a PRC. [17]

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. [18]

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. [19] 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. [20]

Footnotes

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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 (PDF)*, 23 I&N Dec. 548, 550 (BIA 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).

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 245(b).

6. [^] In general, a lawful permanent resident card should have the correct date of LPR status. For additional information on adjustment of status dates, see Volume 7, Adjustment of Status [7 USCIS-PM].

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

8. [^] See INA 209(a)(2).

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

10. [^] See INA 209(b). See Volume 7, Adjustment of Status [7 USCIS-PM].

11. [^] See INA 316(a).

12. [^] See INA 216.

13. [^] See INA 216 and INA 318.

14. [^] 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 the applicant may not be required to have an approved petition to remove conditions prior to naturalization.

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

16. [^] 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.

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

18. [^] See Part I, Military Members and their Families, Chapter 3, Military Service during Hostilities (INA 329) [12 USCIS-PM I.3].

19. [^] See INA 264(e).

20. [^] See Section A, Lawful Permanent Resident (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] must have resided continuously in the United States after his or her lawful permanent resident (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]

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

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

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

B. Maintenance of Continuous Residence 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]

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]

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]

- 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]

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]

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]

- 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]

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]

3. Eligibility after Break in Residence

An applicant who is required to establish continuous residence for at least 5 years [15] 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] may apply two years and one day after returning to the United States to resume permanent residence. [17]

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

Certain applicants [18] may seek to preserve their residence for an absence of one year or more to engage in qualifying employment abroad. [19] 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]

In addition, the applicant must have been:

- Employed with or under contract with the U.S. government or an American institution of research [21] 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]

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]

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]

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] A Permanent Resident Card (PRC) card, generally, is acceptable as a travel document only if the person has been absent for less than one year. [26] 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]

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] Previously, residence in the CNMI only counted as residence in the United States for naturalization purposes for an alien who was an immediate relative of a U.S. citizen residing in the CNMI.

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

Under the current law, USCIS no longer considers lawful permanent residents to have abandoned their LPR status solely by residing in the CNMI. This provision is retroactive and provides for the restoration of permanent resident status. However, the provision did not provide that the residence would count towards the naturalization continuous and physical presence requirements. Therefore, USCIS will only count residence in the CNMI on or after November 28, 2009, as continuous residence within the United States for naturalization purposes. [29]

F. Documentation and Evidence

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

For example, a "commuter alien" may have held and used a PRC [30] 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

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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 Section A, Continuous Residence Requirements [12 USCIS-PM D.3(A)].

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

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

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 (PDF), 122 Stat. 754, 867 (May 8, 2008) (48 U.S.C. 1806 note).

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

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]

Physical presence refers to the number of days the applicant must physically be present in the United States during the statutory period up to the date of filing for naturalization. The continuous residence [2] and physical presence requirements are interrelated but each must be satisfied for naturalization.

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

B. Documentation and Evidence

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

Footnotes

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

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

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

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 a lawful permanent resident (LPR) and before filing to qualify for an exemption.

A. Qualifying Employment Abroad

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

Continuous Residence and Physical Presence for Qualifying Employment Abroad

Employer or Vocation	Provision	Continuous Residence	Physical Presence
U.S. government or contractor	INA 316(b) INA 316(c)	Preserves residence through N-470 process	Exempt through N-470 process
American institution of research	INA 316(b) INA 316(c)	Preserves residence through N-470 process	Must meet regular statutory requirement

Employer or Vocation	Provision	Continuous Residence	Physical Presence
American firm	INA 316(b) INA 316(c)	Preserves residence through N-470 process	Must meet regular statutory requirement
Media organizations	INA 319(c)	Exempt	
Interpreter, translator, or security-related position (executive or manager)	Sec. 1059(e) of Pub. L. 109-163	Entire period abroad may count as continuous residence and physical presence in United States if engaged in qualifying employment for any portion of period abroad	
Religious 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] Such persons are exempt from the physical presence requirement. [2] Persons employed by or under contract with the Central Intelligence Agency can accrue the required year of continuous physical presence at any time prior to applying for naturalization and not just before filing the application to preserve residence. [3]

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

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

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

2. Employee of Certain Media Organizations Abroad

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

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

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

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

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

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

Qualifying Employment Abroad

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

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

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

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

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

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

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

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

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

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

USCIS does not consider a person to be acting in a managerial or executive capacity merely on the basis of the number of employees that the person supervises. USCIS takes into account the reasonable needs of the organization with regard to the overall purpose and stage of development of the organization in cases where staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity. [15]

Applicable Period of Absence

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

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

4. 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] 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]

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] for modifications and exceptions for applicants with certain types of military service, to include:

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

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

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

See Part G, Spouses of U.S. Citizens, [20] for modifications and exceptions for spouses of certain U.S. citizens, to include:

- Spouse of U.S. Citizen for 3 Years – INA 319(a);
- Spouse of Military Member Serving Abroad – INA 319(e);
- Surviving Spouse of U.S. Citizen – INA 319(d); and
- Surviving Spouse Person Conducting U.S. Intelligence. [21]

See Part H, Children of U.S. Citizens, [22] 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]

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 national security	INA 316(f)	Exempt	

1. Citizens who Lost U.S. Citizenship through Foreign Military Service [24]

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]

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]

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] 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]

Footnotes

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

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

3. [^] See INA 316(c).

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

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

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

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

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

9. [^] See INA 101(a)(44)(A) and INA 101(a)(44)(B) for statutory definitions of the terms "managerial capacity" and "executive capacity." See 8 CFR 204.5(j)(2), 8 CFR 214.2(l)(1)(ii)(B), and 8 CFR 214.2(l)(1)(ii)(C). See 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. [^] Pub. L. 110-36 (PDF) added Section 1059(e) to the National Defense Authorization Act for Fiscal Year 2006, which added the interpreter and translator provisions.

11. [^] See INA 101(a)(44)(A) and INA 101(a)(44)(B) for statutory definitions of the terms "managerial capacity" and "executive capacity." See 8 CFR 204.5(j)(2), 8 CFR 214.2(l)(1)(ii)(B), and 8 CFR 214.2(l)(1)(ii)(C). See 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 402.12, Intracompany Transferees.

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

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

14. [^] See INA 101(a)(44)(A) and INA 101(a)(44)(B) for statutory definitions of the terms “managerial capacity” and “executive capacity.” See 8 CFR 204.5(j)(2), 8 CFR 214.2(l)(1)(ii)(B), and 8 CFR 214.2(l)(1)(ii)(C). See 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 9 FAM 402.12, Intracompany Transferees.

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

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

17. [^] See INA 317. A missionary is a member of a religious group sent into an area to do religious teaching or evangelism. See *Matter of Rhee (PDF)*, 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.

20. [^] See 12 USCIS-PM G.

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

22. [^] See 12 USCIS-PM H.

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

24. [^] See 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 (CNMI). [1] The term “service district” is defined as the geographical area over which a USCIS office has jurisdiction. [2]

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

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

B. Place of Residence

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

C. Place of Residence in Certain Cases

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

1. Military Member

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

- The service member’s place of residence may be the state or service district where he or she is physically present for at least three months immediately prior to filing (or the examination if filed early);
- The service member’s place of residence may be the location of the residence of his or her spouse or minor child, or both; or
- The service member’s place of residence may be his or her home of record as declared to the U.S. armed forces at the time of enlistment and as currently reflected in the service member’s military personnel file.

2. Spouse of Military Member (Residing Abroad)

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

3. Students

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

4. Commuter

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

5. Residence in Multiple States

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

6. Residence During Absences of Less than One Year

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

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

7. 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] 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] Although an applicant may file early according to the 90 day early filing provision, the applicant is not eligible for naturalization until he or she has reached the required five-year period of continuous residence as a lawful permanent resident (LPR).

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

In cases where an applicant has filed early and the required three month period of residence in a state or service district falls within the required five-year period of continuous residence, jurisdiction for filing will be based on the three-month period immediately preceding the examination on the application. [15]

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

USCIS will expedite naturalization applications filed by applicants:

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

Although USCIS will prioritize processing of these applications, each applicant is still required to meet all eligibility requirements for naturalization at the time of filing. Applicants must inform USCIS of the approaching termination of benefits by InfoPassappointment 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

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

2. [^] See 8 CFR 316.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 7 - Attachment to the Constitution

A. Attachment to the Constitution

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

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

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

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

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

B. Selective Service Registration

1. Males Required to Register

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

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

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

2. Failure to Register for Selective Service

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

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

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

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]

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]

A conviction by a court martial or a court of competent jurisdiction for a military desertion or a departure from the United Statesto avoid a military draft will preclude naturalization. [12] 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]

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] 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] Membership in these organizations may also raise issues of lawful admission, good moral character, [16] or may even render the applicant removable. [17]

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]

1. Communist Party Affiliation

An applicant cannot naturalize if any of the following are true within 10 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]

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]

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] 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] Additionally, an applicant who engaged in persecution or genocide prior to admission as a lawful permanent resident (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] Such persons may also be deportable. [24]

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 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 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 oath requirements for anyone who has a medical condition constituting 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. 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. See Pub. L. 106-448 (PDF) (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 Selective Training and Service Act of 1940, Pub. L. 76-783 (September 16, 1940).

7. [^] See sss.gov.

8. [^] Failure to register is not a permanent bar to naturalization.

9. [^] See 50 U.S.C. 3811.

10. [^] See Section 1-101 of Proclamation 4771 of July 2, 1980 (PDF), 94 Stat. 3775. See 50 U.S.C. 3806. See Section 3(a) of the Selective Training and Service Act of 1940, Pub. L. 76-783, 54 Stat. 885, 885 (September 16, 1940). See 50 U.S.C. 3802(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 and 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 Good Moral Character (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. [1]

Footnotes

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1. [^] 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. [1]

Footnotes

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1. [^] 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]

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] 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]

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] 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]

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

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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 (October 14, 1940).

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]

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 a lawful permanent resident (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] 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]

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]

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] 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]

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] 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]

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]
- 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]

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] 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] 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]

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]

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]

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]

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] 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-examination 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 Naturalization Interview Results (Form N-652).

Chapter 3 - Medical Disability Exception (Form N-648)

A. Medical Disability Exception Requirements

In 1994, Congress enacted legislation providing an exception to the English and civics requirements for naturalization applicants who cannot meet the requirements [1] because of a physical or developmental disability or mental impairment. [2]

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 an impairment that results from abnormalities which can be shown by medically acceptable clinical or laboratory diagnostic techniques. [3]

The applicant has the burden of proof, by a preponderance of the evidence standard, to demonstrate that he or she has a disability or impairment that affects functioning such that, even with reasonable accommodations, he or she is unable to meet the English and civics requirements for naturalization. Illiteracy alone is not a valid reason to seek an exception to the English and civics requirements. In addition, advanced age, in and of itself, is not a medically determinable physical or developmental disability or mental impairment.

A licensed medical professional [4] must complete the form and certify, under penalty of perjury, that the applicant's medical condition prevents the applicant from meeting the English requirement, the civics requirement, or both requirements.

B. Filing

1. Initial Submission

An applicant seeking an exception to the English and civics requirements must submit a Medical Certification for Disability Exceptions (Form N-648) as an attachment to the Application for Naturalization (Form N-400). [5] USCIS generally only considers a Form N-648 that is concurrently filed with a Form N-400 to be filed timely, but later-filed or multiple Forms N-648 may be accepted in certain circumstances as set forth below.

2. Late Submissions

USCIS may consider a later-filed Form N-648 if the applicant provides a credible explanation for filing the N-648 after filing the Form N-400 and submits sufficient evidence in support of that explanation. For example, if a significant change in the applicant's medical condition since the submission of the initial Form N-648 has taken place, a later-filed Form N-648 would be appropriate. Other explanations for not filing the Form N-648 with the initial Form N-400 may also be acceptable, and an officer should consult with his or her supervisor and USCIS counsel in those cases.

The officer should review the explanation and documentation carefully, because without sufficient probative evidence, a late submission can raise credible doubts about the validity of the medical certification, especially where little or no effort is made to explain the delay, and the applicant claims that the stated disability or impairment was present before the naturalization application was filed. [6] USCIS may require the submission of an additional Form N-648, which may be from the same medical professional, or refer the applicant to another medical professional for a new Form N-648, if there are credible doubts as to the veracity of the medical certification.

3. Multiple Submissions

If multiple Forms N-648 are submitted at the same time, an officer should question the applicant about the reasons for any additional Forms N-648, and carefully examine any discrepancies between the documents. Two different Forms N-648 from different medical professionals may also raise questions of credibility about the validity of the medical certification. Significant discrepancies may be a basis for finding the Form N-648 insufficient. In the absence of a reasonable justification, multiple submissions may raise credible doubts about the validity of the medical certification, especially where the stated disability or impairment was not identified or discussed earlier. [7] USCIS may require the submission of an additional Form N-648, which may be from the same medical professional, or refer the applicant to another medical professional for a new Form N-648, if there are credible doubts as to the veracity of the medical certification.

4. Properly Filed

Properly Filed Medical Certification for Disability Exceptions (Form N-648)
Completed, certified, and signed by all appropriate parties.
In addition, the medical certification must contain the following information: • Clinical diagnosis of the applicant's medical condition(s) and, if applicable, the relevant medical code recognized by the Department of Health and Human Services (HHS). [8] This includes the most current Diagnostic and Statistical Manual of Mental Disorders (DSM) and the International Classification of Diseases (ICD) codes. • Description of the medical condition(s) forming the basis for the disability exception. • Date(s) 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 any 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.

C. Distinction Between Medical Disability Exception and Accommodation

Requesting an exception to the English and civics requirements is different from requesting an accommodation for the naturalization examination process. [9] An approved exception exempts the applicant from the English requirement, the civics requirement, or both requirements completely or partially, depending on the facts of the specific case. 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 English or civics requirements.

Reasonable accommodations may include, but are not limited to, sign language interpreters, extended time for completing the English and civics requirements, and completing the English and civics requirements at an off-site location. A disability exception requires an applicant to show that his or her medical condition prevents the applicant from complying with the English or civics requirements or both, even with reasonable accommodations. The impact of a particular medical condition may vary between individual cases. It may be possible to accommodate one applicant who is affected by a particular medical condition, while another applicant affected by the same condition may be eligible for a disability exception. For example, someone who has low vision may require the accommodation of a large print version of the reading test in order to complete the requirement. However, if a person is not able to read because of the medical condition even with an accommodation, then the person needs to file a Form N-648. In such cases, where an accommodation is insufficient, USCIS may accept a later filed Form N-648.

D. 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. [10]

These medical professionals must be licensed to practice in any state of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, or the Commonwealth of the Northern Mariana Islands.

The medical professional must, at a minimum:

- Conduct at least one 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 educational 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 Form N-648 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 providing the necessary information, answering the questions, and verifying and attesting to the accuracy of the form's content.

The medical professional certifying the form may choose to provide medical diagnostic reports, records, and statements as attachments to the Form N-648 as evidence of the disability. Any supporting documentation should be clearly probative of the medical disability that prevents the applicant from completing the required English and civics requirements.

Failure to correctly fill out each question with the appropriate, corresponding responses may result in a finding that the Form N-648 is insufficient.

E. Review of Medical Certification for Sufficiency

1. General Guidelines for Review

The officer must carefully review the form to determine whether the applicant is eligible for the exception. The table below provides general guidelines on what steps the officer should and should not take when reviewing the Form N-648.

N-648 Review Guidelines

When reviewing the form, the officer should:
• Determine whether the form has been properly completed.

When reviewing the form, the officer should:

- Ensure that the medical professional has fully answered all of the required questions and has signed and certified the Form N-648 along with the applicant.
- Ensure that the Form N-648 relates to the applicant and that there are no discrepancies between the form and other available information, including biographic data, testimony during the interview, or information contained in the applicant's A-file.
- Determine whether the Form N-648 contains enough information to establish that the applicant is eligible for the exception by a preponderance of the evidence. This determination includes ensuring that the medical professional's explanation is both sufficiently detailed as well as specific to the applicant and to the applicant's stated disability (rather than a generic, "one size fits all" explanation).
- Ensure the Form N-648 fully addresses the underlying medical condition and its causal connection or nexus with the applicant's inability to comply with the English or civics requirements or both.
- If the record reflects that the applicant has a regularly treating medical professional, but another medical professional has completed the Form N-648, ensure that the Form N-648 includes a credible and sufficiently detailed explanation for the reason that the regularly treating medical professional did not complete the Form N-648.

When reviewing the form, the officer should not:

- Attempt to determine the validity of the medical diagnosis or second guess why this diagnosis precludes the applicant from complying with the English and civics requirements.
- Request to see an applicant's medical or prescription records solely to question whether there was a proper basis for the medical professional's diagnosis unless evidence exists that creates discrepancies or anomalies that those records can help resolve. The officer may ask follow-up questions to resolve any outstanding issues.
- Require that an applicant undergo specific medical, clinical, or laboratory diagnostic techniques, tests, or methods.
- Conclude that the applicant has failed to meet the burden of proof simply because he or she did not previously disclose the alleged medical condition in other immigration-related medical examinations or documents. It is appropriate, however, to consider this as a factor when determining the sufficiency of the Form N-648. The officer should always carefully examine the evidence of record and ask follow-up questions to resolve any outstanding issues.
- 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.

2. Medical Examination and Demonstrating Nexus

Reviewing the request for the medical disability exception, the officer must focus on whether the medical professional has sufficiently explained with enough supporting details that the applicant has a disability or impairment and its nature. The medical professional must also explain how the applicant's disability or impairment prohibits the applicant from being able to demonstrate the English or civics requirements or both. The explanation should be sufficiently detailed and tailored to the individual applicant's diagnosed medical disabilities or impairment.

After review of the record, the officer may only grant an exception if the applicant has demonstrated by a preponderance of the evidence that there is a nexus (or causal connection) between the disability or impairment and:

- The applicant's inability to read, write, and speak words in ordinary usage in the English language;
- The applicant's inability to know and understand the fundamentals of history and of the principal form of government of the United States; or
- Both.

Form N-648 requires the medical professional to describe the severity of the medical condition. The medical professional must explain the basis of his or her assessment, such as known symptoms of the condition, tests conducted, and observations. The officer can question the applicant during the naturalization interview about the applicant's daily life activities. If discrepancies exist regarding the applicant's daily life and activities between the naturalization applicationand information contained in the A-file, the Form N-648 itself, or from any other source of information, the officer should question the applicant during the interview about those discrepancies.

3. Use of Interpreters

Certification on Form N-648 and Presence of Interpreter at Medical Examination

If it is unclear whether an interpreter was used during the medical examination, the officer must ask the applicant whether the medical examination that formed the basis of the Form N-648 was performed with the assistance of an interpreter.

For example, the officer may question the applicant during the interview:

- About the applicant's visits with the medical professional and the nature of their relationship.
- About the manner of communication used to conduct the medical examination.

If an interpreter was used during the medical examination but the interpreter's certification on the Form N-648 is blank, the form is considered incomplete. The officer must then provide the applicant with notice of the deficiency and an opportunity to bring a properly completed Form N-648 to the re-examination.

If necessary, the officer may also choose to subpoena and question the interpreter, if any, who was present at the medical examination about their translations during a medical examination in connection with the applicant's Form N-648. If the officer wishes to question an interpreter he or she must be under the general oath. If the person who interpreted at the medical examination is to be questioned as a witness and is the same person as the person interpreting at the naturalization interview, the interpreter must then be disqualified from interpreting for that applicant at the naturalization interview. [11] In this case, the officer should reschedule the interview, as needed, to permit the applicant an opportunity to find a new interpreter.

Interpreter at Interview

During the interview, the officer should question the applicant under oath in the applicant's preferred language, with use of an interpreter, [12] if needed, to address any issues of concern related to the Form N-648. In the agency's discretion, and in all cases,

the officer may also disqualify an interpreter provided by the applicant for cause and reschedule the interview. [13] If the office has a language service available, the officer may use the language service when the interpreter is disqualified.

4. Requesting Supplemental Form N-648

In general, USCIS does not request a supplemental disability determination from another doctor after evaluating the originally submitted Form N-648. However, if there is a question as to whether the medical professional actually examined and diagnosed the applicant or there are credible doubts as to the veracity of the medical certification because it is clearly contradicted by other evidence, the officer may request a new Form N-648 from a different doctor. The officer should exercise caution when requesting an applicant obtain a supplemental disability determination from another authorized medical professional. The officer should:

- Explain the reasons for doubting the veracity of the information on the original Form N-648, to include any observations or applicant responses to questions during the interview that raised issues of credible doubt or sworn statements submitted at the time of the interview;
- Consult with a supervisor and receive approval before requesting that the applicant 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.

5. Credible Doubt, Discrepancies, Misrepresentation, and Fraud

In general, USCIS should accept the medical professional's diagnosis. However, an officer may find a Form N-648 insufficient if there is a finding of credible doubt, discrepancies, misrepresentation or fraud as to the applicant's eligibility for the disability exception.

The officer must provide the applicant an opportunity to address any specific discrepancies or inconsistencies during the interview. When issuing a request for evidence, the officer should only request the information necessary to make a determination on the sufficiency of the Form N-648. In some cases, USCIS may require the submission of an additional Form N-648 or request the applicant's medical reports or other supplementary medical background information if there is a question whether the medical professional actually examined and diagnosed the applicant or there are credible doubts as to the veracity of the medical certification because it is clearly contradicted by other evidence.

Below are some factors that may give rise to credible doubts during the course of the Form N-648 adjudication: [14]

- The medical professional's responses on the Form N-648 lack probative value because the responses do not contain a reasonable degree of detail or fail to provide any basis for the stated diagnosis and the nexus to the inability to learn, speak or read or understand English;
- The medical professional did not explain the specific medical, clinical, or laboratory diagnostic techniques used in diagnosing the applicant's medical condition on the Form N-648;
- The Form N-648 does not include an explanation of the doctor-patient relationship indicating that the medical professional completing the Form N-648 regularly treats the applicant for the cited conditions, or a reasonable justification for not having the Form N-648 completed by the regularly treating medical professional (if applicable);
- The Form N-648 was completed by the certifying medical professional more than 6 months prior to the filing of the naturalization application;

- The Form N-648 provides information inconsistent with information provided on the naturalization application or at the interview. For example, the effects of the medical condition on the applicant's daily life such as employment capabilities or ability to attend educational programs;
- Previous medicals including Report of Medical Examination and Vaccination Record, Form I-693 did not identify long-term medical condition which may be inconsistent with the Form N-648's indication of when the condition began, if indicated;
- The applicant or the medical professional failed to provide a reasonable justification for the late filing of the Form N-648;
- The applicant during the interview indicates that he or she was not examined or diagnosed by the medical professional, the medical professional did not certify the form him or herself, or the applicant merely paid for the Form N-648 without a doctor's examination and diagnosis;
- The medical professional completing the Form N-648 is under investigation for immigration fraud, Medicaid fraud, or other fraud schemes by USCIS Fraud Detection and National Security (FDNS) Directorate, Immigration and Customs Enforcement, or another federal, state, or local agency, or a state medical board;
- The medical professional has engaged in a pattern of submitting Forms N-648 with similar or "boiler plate" language that does not reflect a case-specific analysis;
- The interpreter used during the medical examination, the N-400 interview, or both, is known or suspected, by FDNS or another state or federal agency, to be involved in any immigration fraud, including and especially Form N-648 related fraud;
- The evidence in the record or other credible information available to the officer indicates fraud or misrepresentation;
- The applicant provides multiple Forms N-648 with different diagnoses and information and from different doctors; or
- Any other articulable grounds that are supported by the record.

If any one or more of these indicators are present, the officer should consult with his or her supervisor for next steps, which may include requesting additional documentation or finding the Form N-648 insufficient.

In addition, there may be cases where USCIS suspects or determines that an applicant, interpreter, 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 FDNS. If an officer or the local FDNS office determines that an applicant, interpreter, or medical professional has made material misrepresentations or committed fraud, the officer must explain those findings in thenaturalization denial notice.

The officer should determine that a request for a medical disability exception is insufficient if:

- The Form N-648 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;
- The medical professional who certified the Form N-648 is not authorized to make such certification; [15]
- The applicant was not examined or diagnosed by the certifying medical professional;
- The applicant described in the Form N-648 is not the same person as the naturalization applicant;
- The Form N-648 was completed or certified by someone other than the certifying medical professional; or
- Significant anomalies, discrepancies, or fraud indicators exist that preclude a finding of eligibility under a preponderance of the evidence standard.

The table below provides the general procedures for finding the Form N-648 to be insufficient. The procedures apply to any phase of the naturalization examination, including the initial examination, re-examination, or hearing on a denial.

General Procedures Upon Determination the Form N-648 is Insufficient

If the Form N-648 is insufficient at the naturalization examination or hearing:
• USCIS proceeds with the initial or re-examination or hearing on a denial as if the applicant had not submitted a Form N-648.
• USCIS must provide the applicant with an opportunity to take all portions of the English and civics requirements.
• An applicant has a total of two opportunities to pass the English and civics requirements before the application for naturalization is adjudicated: once during the initial examination and then later during the re-examination interview.
• An applicant may decline to complete the English and civics requirements. However, declining to continue the interview or complete the requirements counts as a failed attempt to pass the English and civics requirements. [16]
• An applicant's failure to appear at the re-examination or hearing on a denial, or to complete the requirements for any reason results in a denial, unless excused by USCIS for good cause.

F. Interview, Re-Examination, and Hearing after an Insufficient Form N-648

1. Initial Interview

Passing the English and Civics Requirements [17]

If an applicant's Form N-648 is found to be insufficient, but the applicant subsequently meets the English and civics requirements in the same examination:

- The officer must provide the applicant the opportunity to proceed with the naturalization examination to determine if the applicant meets the other applicable eligibility requirements.
- The officer should not determine that the applicant engaged in fraud or lacks good moral character for the sole reason that the applicant met the educational requirements after submitting an insufficient Form N-648.
- The officer may question the applicant further, however, on the reasons for submitting the form, the applicant's relationship to the medical professional, and any other relevant factors, if deemed necessary.

Failing the English and Civics Requirements

If an applicant's Form N-648 is found to be insufficient, and the applicant fails to meet the English and civics requirements:

- The officer must notify the applicant of the Form N-648 deficiencies in writing. USCIS may choose to issue the applicant a request for evidence that specifically addresses the issues with the Form N-648.
- The officer should schedule the applicant to appear for a re-examination, and for a second opportunity to meet the English and civics requirements, between 60 and 90 days after the initial examination.

2. Re-Examination

If new information is received in support of a Form N-648 that USCIS found insufficient at the initial interview, the officer must review the evidence at the re-examination. In addition, the officer conducting the re-examination should review the original Form N-648 and accompanying evidence for consistency with the new information.

If an applicant submits a Form N-648 for the first time at the re-examination interview, the officer should carefully question the applicant as to why he or she did not submit the Form N-648 at the time of filing the naturalization application as required by the regulations, or at the initial interview.

The officer should follow the same procedure and apply the same criteria during the re-examination regarding late or multiple Form N-648 submissions. The officer should carefully consider whether there is any evidence of change in medical conditions or other credible explanation justifying the initial submission of the Form N-648 at the re-examination. The officer should then weigh the explanation and evidence provided by the applicant regarding the late filing. USCIS may consider the timing of the filing and any additional Form N-648s submitted by the applicant when assessing the applicant's credibility with regard to the disability exception.

If the applicant has established that he or she is eligible for the disability exception, the officer should then allow the naturalization interview and examination to continue with the use of an interpreter, if applicable, exempting the applicant from the English or civics requirements, or both, as indicated on the form.

If, on the other hand, the applicant does not provide sufficient evidence that the late submission is due to a material change in his or her medical condition, or does not provide another credible explanation, the applicant may not be eligible for the disability exception. If the officer determines for any reason that the Form N-648 is insufficient to establish eligibility for the disability waiver, the officer may not grant the exception but should afford the applicant a second opportunity to take the English and civics tests.

If the applicant fails any portion of the test or declines to continue with the re-examination, the officer must deny the naturalization application based on the applicant's failure to meet the English and civics requirements. In the naturalization denial notice, the officer must provide an explanation for finding the form insufficient to show eligibility for the disability exception.

If the officer issued a request for evidence at the initial interview and determines that the evidence submitted in response to the request for evidence is insufficient:

- The officer must proceed with the re-examination as if the applicant had not submitted a Form N-648;
- The officer must provide the applicant with a second opportunity prior to adjudication 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 Form N-648 or to take the English and civics tests;
- If the applicant fails any portion of the testing, including declining the test or failing to respond to test questions correctly, the officer must deny the naturalization application based on the applicant's failure to meet the English and civics requirements; and
- The officer must provide an explanation of the Form N-648's deficiencies in the naturalization application's denial notice.

3. Hearing on Denial

All denied naturalization applicants may file a Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA) (Form N-336) within 30 calendar days of receiving the adverse decision. [18]

USCIS may conduct a full de novo hearing on a denied naturalization application, including a full review of any previously submitted Form N-648 as well as other information contained in the record. [19] An applicant may submit additional documentation at the hearing, including a new or initial Form N-648 and relevant medical diagnostic reports, records, or statements. Although an applicant may submit a Form N-648 for the first time during a hearing, the officer may question the credibility of the N-648 as described above. At the hearing, an applicant will only be allowed to submit one Form N-648 and only allowed to attempt to satisfy the educational requirements once.

In addition, the officer also should follow the same procedures in the hearing as provided in this chapter when making a determination that a Form N-648 filed for the first time at the hearing is sufficient or insufficient.

G. Sufficient Form N-648

The officer should determine that a request for a medical disability exception is sufficient if, at a minimum:

- The Form N-648 is properly completed per the form instructions;
- The medical professional explains in detail how the applicant's medical condition prevents the applicant from meeting the English requirement, the civics requirement, or both requirements; and
- No anomalies, discrepancies, or fraud indicators exist, based on the totality of evidence of record, that call into question a finding of eligibility under a preponderance of the evidence standard.

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, including the initial examination or re-examination, or hearing on a denial.

General Procedures Upon Determination the Form N-648 is Sufficient

If the officer determines an applicant's Form N-648 is sufficient at the naturalization examination or hearing:
• USCIS first proceeds with the interview in the applicant's preferred language with the use of an interpreter, if applicable.
• If the medical professional indicated on the form that the applicant is unable to comply with any or part of the English and civics requirements, USCIS waives the indicated requirement(s).
• USCIS then proceeds to determine whether the applicant meets all other naturalization eligibility requirements.

Footnotes

1. [^] The term "English and civic requirements" refers to demonstrating English language proficiency, which is determined by an ability to read, write,speak, and understand English, as well as knowledge of U.S. history and government, which is determined by a civics test. See Chapter 2, English and Civics Testing, Section A, Educational Requirements [12 USCIS-PM E.2(A)].

2. [^] See INA 312(b)(1). See Section 108 of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103-416, 108 Stat. 4305, 4309 (October 25, 1994) (adding INA 312(b)).

3. [^] See INA 312(b). See 8 CFR 312.1(b)(3). See 8 CFR 312.2(b).

4. [^] See Section D, Authorized Medical Professionals [12 USCIS-PM E.3(D)].

5. [^] See 8 CFR 312.2(b)(2).

6. [^] For more information about credible doubt, see Section E, Review of Medical Certification for Sufficiency, Subsection 5, Credible Doubt, Discrepancies, Misrepresentation, and Fraud [12 USCIS-PM E.3(E)(5)].

7. [^] For more information on adjudicating late or multiple submissions, see Section B, Filing [12 USCIS-PM E.3(B)].

8. [^] See 45 CFR 162.1002. The relevant medical codes, if any, are required to ensure the medical professional provides his or her medical opinion with a certain level of specificity. The codes should not be used by officers to attempt to determine the validity of the medical diagnosis or second-guess why the diagnosis precludes the applicant from complying with the educational requirements.

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

10. [^] See 8 CFR 312.2(b)(2).

11. [^] However, in the officer's discretion, a "good cause" exception may be granted that would allow the witness to interpret. See Adjudicator's Field Manual (AFM) Chapter 15.7, The Role and Use of Interpreters in Domestic Field Office Interviews without USCIS-Provided Interpretation.

12. [^] The interpreter must be under oath. See Adjudicator's Field Manual (AFM) Chapter 15.7, The Role and Use of Interpreters in Domestic Field Office Interviews without USCIS-Provided Interpretation.

13. [^] See Adjudicator's Field Manual (AFM) Chapter 15.7, The Role and Use of Interpreters in Domestic Field Office Interviews without USCIS-Provided Interpretation.

14. [^] The list provided is not exhaustive and is meant only to provide some examples for officers when reviewing Form N-648 sufficiency. Officers should consult with their supervisor if there are any questions.

15. [^] See Section D, Authorized Medical Professionals [12 USCIS-PM E.3(D)].

16. [^] An officer should annotate that the applicant declined to take any part of the educational requirements in the record.

17. [^] See INA 312.

18. [^] See Part B, Naturalization Examination, Chapter 6, USCIS Hearing and Judicial Review [12 USCIS-PM B.6].

19. [^] See 8 CFR 336.2.

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] 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]

The applicable naturalization provision under which the applicant files determines the period during which the applicant must demonstrate GMC. [3] The applicant's conduct outside the GMC period may also impact whether he or she meets the GMC requirement. [4]

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] 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 good moral character (GMC) depends on the corresponding naturalization provision.[1] 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]

The statutory period starts three years prior to the date of filing for certain spouses of U.S. citizens.[3] 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]

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]

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]

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] 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] 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]

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]

2. Juvenile Convictions

In general, a guilty verdict, ruling, or judgment in a juvenile court does not constitute a conviction for immigration purposes.[11] 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] 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] 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]

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]

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] 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] 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] 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] 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]

Foreign pardons do not eliminate a conviction for immigration purposes.[21]

8. Expunged Records

Expunged Records and the Underlying Conviction

A record of conviction that has been expunged does not remove the underlying conviction.[22] For example, an expunged record of conviction for a controlled substance violation[23] or any crime involving moral turpitude (CIMT) does not relieve the applicant from the conviction in the immigration context.[24] In addition, foreign expungements are still considered convictions for immigration purposes.[25]

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]

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.

9. Change in Sentence

"Term of imprisonment or a sentence"[27] generally refers to an alien's original criminal sentence, without regard to post-sentencing alterations.[28] Therefore, state-court orders that modify, clarify, or otherwise alter a criminal alien's original sentence will only be relevant for immigration purposes if they are based on a procedural or substantive defect in the underlying criminal proceeding.[29]

D. Effect of Probation

An officer may not approve a naturalization application while the applicant is on probation, parole, or under a suspended sentence.[30] 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.[31] 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.[32] 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:[33]

- 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.[34]

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.[35] 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."[36]

The "purely political offense" exception applies to the following conditional bars to GMC:[37]

- Conviction for one or more crimes involving moral turpitude (CIMTs);[38]
- Conviction of two or more offenses with a combined sentence of five years or more;[39] and
- Incarceration for a total period of 180 days or more.[40]

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.[41] 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:[42]

- Failure to support dependents;[43]
- Adultery;[44] and

- Unlawful acts.[45]

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.[46] 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.[47]

Footnotes

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1. [^] See the relevant Volume 12 [12 USCIS-PM] 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 (PDF)*, 20 I&N Dec. 12 (BIA 1989).

11. [^] See *Matter of Devison-Charles (PDF)*, 22 I&N Dec. 1362 (BIA 2000).

12. [^] See *Matter of Rivera-Valencia (PDF)*, 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 (PDF)*, 23 I&N Dec. 878 (BIA 2006). See *Alim v. Gonzales*, 446 F.3d 1239 (11th Cir 2006).

16. [^] See *Matter of Squires (PDF)*, 17 I&N Dec. 561 (BIA 1980). See *Matter of McNaughton (PDF)*, 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 (PDF)*, 23 I&N Dec. 705 (A.G. 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 (PDF)*, 22 I&N Dec. 512 (BIA 1999).

27. [^] See INA 101(a)(48)(B).

28. [^] See *Matter of Thomas and Thompson*, 27 I&N Dec. 674 (A.G. 2019) ("the phrase 'term of imprisonment or a sentence' in paragraph (B) [of INA 101(a)(48)] is best read to concern an alien's *original* criminal sentence, without regard to post-sentencing alterations that, like a suspension, merely alleviate the impact of that sentence.").

29.[^] See *Matter of Thomas and Thompson*, 27 I&N Dec. 674, 682 (A.G. 2019) (holding that the tests set forth in *Matter of Cota-Vargas (PDF)*, 23 I&N Dec. 849 (BIA 2005), *Matter of Song (PDF)*, 23 I&N Dec. 173 (BIA 2001), and *Matter of Estrada*, 26 I&N Dec. 749 (BIA 2016), will no longer govern the effect of state-court orders that modify, clarify, or otherwise alter a criminal alien's sentence.) For questions on procedural or substantive defects, officers should consult the Office of Chief Counsel (OCC).

30. [^] See 8 CFR 316.10(c)(1).

31. [^] See 8 CFR 316.10(b)(2)(iv).

32. [^] 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).

33. [^] See *Matter of K-*, 7 I&N Dec. 594 (BIA 1957).

34. [^] See *Matter of J-*, 2 I&N Dec. 285 (BIA 1945).

35. [^] See *In re O'Cealleagh (PDF)*, 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).

36. [^] See 22 CFR 40.21(a)(6).

37. [^] See Chapter 5, Conditional Bars for Acts in Statutory Period [12 USCIS-PM F.5], for further guidance on each bar to GMC.

38. [^] 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)].

39. [^] 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)].

40. [^] See Chapter 5, Conditional Bars for Acts in Statutory Period, Section D, Imprisonment for 180 Days or More [12 USCIS-PM F.5(D)].

41. [^] See 8 CFR 316.10(b)(3).

42. [^] See Chapter 5, Conditional Bars for Acts in Statutory Period [12 USCIS-PM F.5], for further guidance on extenuating circumstances.

43. [^] See Chapter 5, Conditional Bars for Acts in Statutory Period, Section K, Certain Acts in Statutory Period, Subsection 2, Failure to Support Dependents [12 USCIS-PM F.5(K)(2)].

44. [^] See Chapter 5, Conditional Bars for Acts in Statutory Period, Section K, Certain Acts in Statutory Period, Subsection 3, Adultery [12 USCIS-PM F.5(K)(3)].

45. [^] See Chapter 5, Conditional Bars for Acts in Statutory Period, Section L, Unlawful Acts [12 USCIS-PM F.5(L)].

46. [^] See INA 237 (“general classes of deportable aliens”).

47. [^] 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 good moral character (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]

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]

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]
- 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] The officer should not deny the application for lack of prosecution after the initial naturalization examination. [5]

Footnotes

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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 Good Moral Character (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 Good Moral Character (GMC)

A. Murder

An applicant who has been convicted of murder at any time is permanently barred from establishing good moral character (GMC)for naturalization. [1]

B. Aggravated Felony

In 1996, Congress expanded the definition and type of offense considered an "aggravated felony" in the immigration context. [2] 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]

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]

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] 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]

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)
Explosive Materials and Firearms Offenses	INA 101(a)(43)(E)(i)–(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)

Aggravated Felony	Citation
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]

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] 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]

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]

"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]

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]

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] "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]

Footnotes

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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 (PDF) , 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)(43)(B) . See *Matter of S-S- (PDF)*, 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 good moral character (GMC), the Immigration and Nationality Act (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] 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]

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 Crimes Involving Moral Turpitude (CIMTs)	• INA 101(f)(3) • 8 CFR 316.10(b)(2)(i), (iv)	Conviction or admission of one or more CIMTs (other than political offense), except for one petty offense

Offense	Citation	Description
Aggregate Sentence of 5 Years or More	• INA 101(f)(3) • 8 CFR 316.10(b)(2)(ii), (iv)	Conviction of two or more offenses with combined sentence of 5 years or more (other than political offense)
Controlled Substance Violation	• INA 101(f)(3) • 8 CFR 316.10(b)(2)(iii), (iv)	Violation of any law on controlled substances, except for simple possession of 30g or less of marijuana
Incarceration for 180 Days	• INA 101(f)(7) • 8 CFR 316.10(b)(2)(v)	Incarceration for a total period of 180 days or more, except political offense and ensuing confinement abroad
False Testimony under Oath	• INA 101(f)(6) • 8 CFR 316.10(b)(2)(vi)	False testimony for the purpose of obtaining any immigration benefit
Prostitution Offenses	• INA 101(f)(3) • 8 CFR 316.10(b)(2)(vii)	Engaged in prostitution, attempted or procured to import prostitution, or received proceeds from prostitution
Smuggling of a Person	• INA 101(f)(3) • 8 CFR 316.10(b)(2)(viii)	Involved in smuggling of a person to enter or try to enter the United States in violation of law
Polygamy	• INA 101(f)(3) • 8 CFR 316.10(b)(2)(ix)	Practiced or is practicing polygamy (the custom of having more than one spouse at the same time)

Offense	Citation	Description
Gambling Offenses	• INA 101(f)(4)–(5) • 8 CFR 316.10(b)(2)(x)–(xi)	Two or more gambling offenses or derives income principally from illegal gambling activities
Habitual Drunkard	• INA 101(f)(1) • 8 CFR 316.10(b)(2)(xii)	Is or was a habitual drunkard
Two or More Convictions for Driving Under the Influence (DUI)	• INA 101(f)	Two or more convictions for driving under the influence during the statutory period
Failure to Support Dependents	• INA 101(f) • 8 CFR 316.10(b)(3)(i)	Willful failure or refusal to support dependents, unless extenuating circumstances are established
Adultery	• INA 101(f) • 8 CFR 316.10(b)(3)(ii)	Extramarital affair tending to destroy existing marriage, unless extenuating circumstances are established
Unlawful Acts	• INA 101(f) • 8 CFR 316.10(b)(3)(iii)	Unlawful acts that adversely reflect upon GMC, unless extenuating circumstances are established

A. One or More Crimes Involving Moral Turpitude

1. Crime Involving Moral Turpitude

"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]

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]

The officer should consider the nature of the offense in determining whether it is a CIMT.[5] 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]

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] 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 6 months or less; and
- The maximum possible sentence for the offense does not exceed one year.[8]

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]

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]

B. Aggregate Sentence of 5 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 5 years or more.[11] 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 5 years or more occurred outside of the United States for purely political offenses committed abroad.[12]

C. Controlled Substance Violation

1. Controlled Substance Violations

An applicant cannot establish good moral character (GMC) if he or she has 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] This includes conspiring to violate or aiding and abetting another person to violate such laws or regulations.

This conditional bar to establishing GMC applies to a conviction for such an offense or an admission to such an offense, or an admission to committing acts that constitute the essential elements of a violation of any controlled substance law. [14] Furthermore, a conviction or admission that the applicant has been a trafficker in a controlled substance, or benefited financially from a spouse or parent's trafficking is also a conditional bar. [15]

Controlled substance is defined in the Controlled Substances Act (CSA) as a "drug or other substance, or immediate precursor" that is included in the schedule or attachments in the CSA. [16] The substance underlying the applicant's state law conviction or admission must be listed in the CSA. [17] Possession of controlled substance related paraphernalia may also constitute an offense "relating to a controlled substance" and may preclude the applicant from establishing GMC. [18]

2. Conditional GMC Bar Applies Regardless of State Law Decriminalizing Marijuana

A number of states and the District of Columbia (D.C.) have enacted laws permitting "medical" [19] or "recreational" [20] use of marijuana. [21] Marijuana, however, remains classified as a "Schedule I" controlled substance under the federal CSA. [22] Schedule I substances have no accepted medical use pursuant to the CSA. [23] Classification of marijuana as a Schedule I controlled substance under federal law means that certain conduct involving marijuana, which is in violation of the CSA, continues to constitute a conditional bar to GMC for naturalization eligibility, even where such activity is not a criminal offense under state law. [24]

Such an offense under federal law may include, but is not limited to, possession, manufacture or production, or distribution or dispensing of marijuana. [25] For example, possession of marijuana for recreational or medical purposes or employment in the marijuana industry may constitute conduct that violates federal controlled substance laws. Depending on the specific facts of the case, these activities, whether established by a conviction or an admission by the applicant, may preclude a finding of GMC for the applicant during the statutory period. An admission must meet the long held requirements for a valid "admission" of an offense. [26] Note that even if an applicant does not have a conviction or make a valid admission to a marijuana-related offense, he or she may be unable to meet the burden of proof to show that he or she has not committed such an offense.

3. Exception for Single Offense of Simple Possession [27]

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. [28] This exception is also applicable to paraphernalia offenses involving controlled substances as long as the paraphernalia offense is "related to" simple possession of 30 grams or less of marijuana. [29]

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.[30] 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.[31]

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.[32]

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.[33] 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.[34]

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:[35]

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."[36] However, false information provided orally under oath to an officer in a question-and-answer statement relating to a written application is "testimony."[37] The oral statement must also be an affirmative misrepresentation. The Supreme 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.[38] 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.

[39] The Board of Immigration Appeals (BIA) has held that to "engage in" prostitution, one must have engaged in a regular pattern of behavior or conduct.[40] The BIA has also determined that a single act of soliciting prostitution on one's own behalf is not the same as procurement.[41]

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.[42]

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.[43]

H. Polygamy

An applicant who has practiced or is practicing polygamy during the statutory period is precluded from establishing GMC.[44] Polygamy is the custom of having more than one spouse at the same time.[45] 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.[46] 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.[47] 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. Certain Acts in Statutory Period

Although the INA provides a list of specific bars to good moral character,[48] the INA also allows a finding that "for other reasons" a person lacks good moral character, even if none of the specific statutory bars applies.[49] The following sections provide examples of acts that may lead to a finding that an applicant lacks GMC "for other reasons."[50]

1. Driving Under the Influence

The term "driving under the influence" (DUI) includes all state and federal impaired-driving offenses, including "driving while intoxicated," "operating under the influence," and other offenses that make it unlawful for a person to operate a motor vehicle while impaired. This term does not include lesser included offenses, such as negligent driving, that do not require proof of impairment.

Evidence of two or more DUI convictions during the statutory period establishes a rebuttable presumption that an alien lacks GMC.[51] The rebuttable presumption may be overcome[52] if the applicant is able to provide "substantial relevant and credible contrary evidence" that he or she "had good moral character even during the period within which he [or she] committed the DUI offenses," and that the "convictions were an aberration."[53] An alien's efforts to reform or rehabilitate himself or herself after multiple DUI convictions do not in and of themselves demonstrate GMC during the period that includes the convictions.

2. 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.[54] 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.[55]

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.[56]

An applicant who fails to support dependents may lack GMC if he or she:

- Deserts a minor child;[57]
- Fails to pay any support;[58] or
- Obviously pays an insufficient amount.[59]

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.[60]

Extenuating Circumstances

If the applicant shows extenuating circumstances, a failure to support dependents should not adversely affect the GMC determination.[61]

The officer should consider the following circumstances:

- An applicant's unemployment and financial inability to pay the child support;[62]
- 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;[63]
- Whether the nonpayment was due to an honest but mistaken belief that the duty to support a minor child had terminated;[64] and
- Whether the nonpayment was due to a miscalculation of the court-ordered arrears.[65]

3. Adultery

An applicant who has an extramarital affair during the statutory period that tended to destroy an existing marriage is precluded from establishing GMC.[66]

Extenuating Circumstances

If the applicant shows extenuating circumstances, an offense of adultery should not adversely affect the GMC determination.[67] 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.[68]

L. Unlawful Acts

1. Unlawful Acts Provision

An applicant who has committed, was convicted of, or was imprisoned for an unlawful act during the statutory period may be found to lack GMC if the act adversely reflects on his or her moral character, unless the applicant can demonstrate extenuating circumstances.[69] An act is unlawful if it violates a criminal or civil law of the jurisdiction where it was committed. The provision addressing "unlawful acts" does not require the applicant to have been charged with or convicted of the offense.[70] The fact that none of the statutorily enumerated bars to GMC applies does not preclude a finding under this provision that the applicant lacks the GMC required for naturalization.[71]

2. Case-by-Case Analysis

USCIS officers determine on a case-by-case basis whether an unlawful act committed during the statutory period is one that adversely reflects on moral character.[72] The officer may make a finding that an applicant did not have GMC due to the commission of an unlawful act evidenced through admission, conviction, or other relevant, reliable evidence in the record.[73] The case-by-case analysis must address whether:

- The act is unlawful (meaning the act violates a criminal or civil law in the jurisdiction where committed);
- The act was committed or the person was convicted of or imprisoned for the act during the statutory period;
- The act adversely reflects on the person's moral character; and
- There is evidence of any extenuating circumstances.[74]

In addition, in cases under the jurisdiction of the Ninth Circuit, the officer's analysis must also consider any counterbalancing factors that bear on the applicant's moral character.[75]

The following steps provide officers with further guidance on making GMC determinations based on the unlawful acts provision.

Step 1 – Determine Whether the Applicant Committed, Was Convicted of, or Was Imprisoned for an Unlawful Act during Statutory Period

The officer should determine if the applicant committed, was convicted of, or was imprisoned for any unlawful acts during the statutory period. To determine if an act qualifies as an unlawful act, the officer should identify the applicable law, then look to whether the act violated the relevant law regardless of whether criminal or civil proceedings were initiated or concluded during the statutory period.[76]

Officers should only conclude that a person committed the acts in question based on a conviction record, an admission to the elements of the criminal or civil offense, or other relevant, reliable evidence in the record showing commission of the unlawful act.[77]

Step 2 – Determine Whether Unlawful Act Adversely Reflects on GMC

The officer should evaluate whether the unlawful act adversely reflects on the moral character of the applicant. Unlawful acts that reflect adversely on moral character are not limited to conduct that would be classified as a CIMT.[78] In general, an act that

is classified as a CIMT[79] would be an unlawful act that adversely reflects on the applicant's moral character.[80] An officer should also consider whether the act is against the standards of an average member of the community. For example, mere technical or regulatory violations may not be against the standards of an average member of the community.[81]

Step 3 – Review for Extenuating Circumstances

The officer should review whether the applicant has shown extenuating circumstances which render the crime less reprehensible than it otherwise would be or the actor less culpable than he or she otherwise would be.[82] Extenuating circumstances must pertain to the unlawful act and must precede or be contemporaneous with the commission of the unlawful act.[83] It is the applicant's burden to show extenuating circumstances that mitigate the effect of the unlawful act on the applicant's moral character.[84]

If the applicant meets his or her burden of proof to demonstrate extenuating circumstances, the officer may find that commission of the unlawful act[85] does not preclude the applicant from establishing GMC.[86] An officer may not, however, 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(s) are not extenuating circumstances.[87]

3. Examples of Unlawful Acts

There is no comprehensive list of unlawful acts in the INA or regulations. Examples of unlawful acts recognized by case law as barring GMC include, but are not limited to the following:

- Bail jumping;[88]
- Bank fraud;[89]
- Conspiracy to distribute a controlled substance;[90]
- Failure to file or pay taxes (discussed below);
- Falsification of records;[91]
- False claim to U.S. citizenship;[92]
- Forgery-uttering;[93]
- Insurance fraud;[94]
- Obstruction of justice;[95]
- Sexual assault;[96]
- Social Security fraud;[97]
- Unlawful harassment;[98]
- Unlawfully registering to vote (discussed below);
- Unlawful voting (discussed below); and
- Violating a U.S. embargo.[99]

Despite these examples, officers must still perform the case-by-case analysis described above, including whether the act adversely reflects on one's moral character and the existence of any extenuating circumstances, in every case.[100]

Unlawful Voting, False Claim to U.S. Citizenship in Order to Register to Vote

An applicant may fail to show GMC if he or she engaged in unlawful voting or falsely claimed U.S. citizenship in order to register to vote or to vote,[101] depending on the circumstances of the case.[102] For unlawful voting, the applicant's conduct must be unlawful under the relevant federal, state, or local election law.[103] False claims to U.S. citizenship for the purpose of voting or registering to vote are unlawful under federal law.[104]

Where appropriate, the officer should take a sworn statement regarding the applicant's testimony on unlawful voting or false claim to citizenship. 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.

When there is evidence of one of the aforementioned unlawful acts, as with all unlawful acts, the officer must make an assessment regarding whether the act reflects adversely on moral character and must consider any extenuating circumstances, in addition to the below exception for unlawful voting and false claims to U.S. citizenship for voting.[105]

GMC Exception for Unlawful Voting and False Claims to U.S. Citizenship Unlawful Acts

In 2000, Congress added an exception for GMC determinations for unlawful voting and false claims to U.S. citizenship.[106] An applicant qualifies for an exception if all of the following conditions are met:

- The applicant's natural or adoptive parents are or were U.S. citizens at the time of the violation;[107]
- The applicant permanently resided in the United States before 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.

Failure to File Tax Returns or Pay Taxes in Accordance with Tax Authority

An applicant who fails to file tax returns, if required to do so, or fully pay his or her tax liability, as required under the relevant tax laws, may be precluded from establishing GMC. If there are inconsistencies[108] between the record and the applicant's tax returns, the applicant may be precluded from establishing GMC due to the commission of an unlawful act.[109] Once the failure to file tax returns or pay taxes and the relevant law has been identified, the officer must assess on a case-by-case basis whether the applicant is ineligible for naturalization under the unlawful acts provision. If the officer determines that the unlawful conduct violates the standards of an average member of the community, the applicant will not be able to establish GMC. However, recognizing the complexities of filing taxes, there may be instances where the officer may determine that the applicant's conduct regarding his or her tax return or tax payment did not violate the standards of an average member of the community, or that the applicant established extenuating circumstances. In such cases, GMC may be established by the applicant showing that he or she has corrected all inconsistencies or errors. An example of when an applicant may not be prevented from establishing GMC despite filing taxes incorrectly could be where the applicant is divorced and mistakenly claimed a child as a dependent on his or her tax return for a tax year that the former spouse was entitled to claim the child as a dependent based on the terms of the divorce.

Examples of corrections of such inconsistencies or errors might include a letter from the tax authority to evidence 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 and is doing so in accordance with the pertinent tax authority.

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 (PDF)*, 19 I&N Dec. 669, 670 (BIA 1988). See *Matter of Perez-Contreras (PDF)*, 20 I&N Dec. 615, 618 (BIA 1992). See *Matter of Flores (PDF)*, 17 I&N Dec. 225 (BIA 1980) (and cases cited therein).

4. [^] See *Matter of Silva-Trevino (PDF)*, 24 I&N Dec. 687, 688, 706 (A.G. 2008).

5. [^] See *Matter of Esfandiary (PDF)*, 16 I&N Dec. 659 (BIA 1979).

6. [^] See *Matter of Silva-Trevino (PDF)*, 24 I&N Dec. 687 (A.G. 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 (PDF)*, 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 21 U.S.C. 802 for federal definition of “controlled substance.” For good moral character provisions, see INA 101(f)(3), INA 212(a)(2)(A)(i)(II), and INA 212(a)(2)(C). Also, see 8 CFR 316.10(b)(2)(iii) and (iv). Note that 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. See Subsection 3, Exception for Single Offense of Simple Possession [12 USCIS-PM F.5(C)(3)].

14. [^] An admission must comply with the requirements outlined in *Matter of K (PDF)*, 7 I&N Dec 594 (BIA 1957) (establishing requirements for a valid “admission” of an offense); See Chapter 2, Adjudicative Factors, Section E, Admission of Certain Criminal Acts [12 USCIS-PM F.2(E)].

15. [^] See INA 101(f)(3) and INA 212(a)(2)(C).

16. [^] See 21 U.S.C. 802(6). The term “controlled substance” does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1986.

17. [^] See 21 U.S.C. 802(6). See also *Ruiz-Vidal v. Gonzales*, 473 F.3d 1072, 1078 (9th Cir. 2007); *Matter of Hernandez-Ponce (PDF)*, 19 I&N Dec. 613, 616 (BIA 1988); *Matter of Mena (PDF)*, 17 I&N Dec. 38, 39 (BIA 1979); *Matter of Paulus (PDF)*, 11 I&N Dec. 274, 275-76 (BIA 1965).

18. [^] The paraphernalia offense must be connected to a drug defined in 21 U.S.C. 802. See *Mellouli v. Lynch*, 135 S.Ct. 1980 (2015). Conviction for, or an admission to the essential elements of a trafficking offense may be considered a Crime Involving Moral Turpitude, which may trigger a bar to a finding of GMC. See INA 101(f)(3). See 8 CFR 316.10(b)(2)(i). See Section A, One or More Crimes Involving Moral Turpitude [12 USCIS-PM F.5(A)].

19. [^] See, for example, Cal. Health & Safety Code section 11362.5; Colo. Rev. Stat. 44-11-101, *et. seq.*; Haw. Rev. Stat. sections 329-121 to 329-128; Me. Rev. Stat. Ann., Tit. 22, 2383-B(5); Nev. Rev. Stat. sections 453A.010-453A.810; Ore. Rev. Stat. sections 475.300-475.346.

20. [^] See, for example, Washington Initiative 502 at section 20, amending RCW 69.50.4013 and 2003 c 53 s 334; Colorado Amendment 64, Amending Colo. Const. Art. XVIII 16(3), Colo Rev. State. Sections 44-12-101, *et. seq.* These laws are commonly known as permitting certain "recreational use" of marijuana and may include conduct such as use, possession, purchase, transport, and consumption. See, for example, Washington Initiative 502 at section 20, amending RCW 69.50.4013 and 2003 c 53 s 334; Colorado Amendment 64, Amending Colo. Const. Art. XVIII 16(3).

21. [^] "Marihuana" is defined by the Controlled Substances Act (21 U.S.C. 802(16)):

> (A) Subject to subparagraph (B), the term "marihuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin.
>
> (B) The term "marihuana" does not include –
>
> > (i) hemp, as defined in section 297A of the Agricultural Marketing Act of 1946; or
> >
> > (ii) the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

22. [^] See 21 U.S.C. 812(c).

23. [^] See 21 U.S.C. 812(b)(1)(B).

24. [^] See 21 U.S.C. 812(b)(1)(B). See 21 U.S.C. 844(a).

25. [^] See 21 U.S.C. 841(a) ("unlawful for any person knowingly or intentionally…to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance."). See 21 U.S.C. 844 (simple possession). See 21 U.S.C. 802(15) (defining manufacture) and 8 U.S.C. 802(22) (defining production).

26. [^] See Chapter 2, Adjudicative Factors, Section E, Admission of Certain Criminal Acts [12 USCIS-PM F.2(E)]. See *Matter of K- (PDF)*, 7 I&N Dec. 594 (BIA 1957) (establishing requirements for a valid "admission" of an offense).

27. [^] The BIA defined "offense" in INA 212(h) as "refer[ring] to the specific unlawful acts that made the alien inadmissible, rather than to any generic crime." *Matter of Martinez Espinoza* (PDF), 25 I&N Dec. 118, 124 (2009). Multiple offenses that are parts of a single act and are committed simultaneously may be considered a "single offense." *Matter of Davey (PDF)*, 26 I&N Dec. 37 (BIA 2012).

28. [^] See INA 101(f)(3). See 8 CFR 316.10(b)(2)(iii). As explained in subsection 2, the decriminalization of certain activities involving marijuana in certain states and the District of Columbia (D.C.) does not affect the applicability of the controlled substances violation conditional bar to establishing GMC.

29. [^] See *Matter of Martinez Espinoza*, 25 I&N Dec. 118 (BIA 2009), abrogated on other grounds by *Mellouli v. Lynch*, 135 S.Ct. 1980 (U.S. 2015).

30. [^] See INA 101(f)(7). See 8 CFR 316.10(b)(2)(v).

31. [^] See *Matter of Piroglu (PDF)*, 17 I&N Dec. 578 (BIA 1980).

32. [^] See Chapter 2, Adjudicative Factors, Section F, "Purely Political Offense" Exception [12 USCIS-PM F.2(F)].

33. [^] See INA 101(f)(6). See 8 CFR 316.10(b)(2)(vi).

34. [^] See *Matter of R-S-J-*, 22 I&N Dec. 863 (BIA 1999).

35. [^] See *Kungys v. United States*, 485 U.S. 759, 780-81 (1988).

36. [^] See *Matter of L-D-E*, 8 I&N Dec. 399 (BIA 1959).

37. [^] See *Matter of Ngan*, 10 I&N Dec. 725 (BIA 1964). See *Matter of G-L-T-*, 8 I&N Dec. 403 (BIA 1959).

38. [^] See *Matter of G-,* 6 I&N Dec. 208 (BIA 1954).

39. [^] 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).

40. [^] See *Matter of T*, 6 I&N Dec. 474 (BIA 1955).

41. [^] See *Matter of Gonzalez-Zoquiapan*, 24 I&N Dec. 549 (BIA 2008).

42. [^] See INA 101(f)(3) and INA 212(a)(6)(E). See 8 CFR 316.10(b)(2)(viii).

43. [^] See INA 212(a)(6)(E)(ii). See Section 301 of the Immigration Act of 1990 (IMMACT90), Pub. L. 101-649 (PDF), 104 Stat. 4978, 5029 (November 29, 1990).

44. [^] See INA 101(f)(3) and INA 212(a)(10)(A). See 8 CFR 316.10(b)(2)(ix).

45. [^] 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.

46. [^] See INA 101(f)(5). See 8 CFR 316.10(b)(2)(x) and 8 CFR 316.10(b)(2)(xi).

47. [^] See INA 101(f)(1). See 8 CFR 316.10(b)(2)(xii).

48. [^] See INA 101(f).

49. [^] See INA 101(f).

50. [^] For information on “unlawful acts” under 8 CFR 316.10(c)(iii), see Section L, Unlawful Acts [12 USCIS-PM F.5(L)]. As is the case for finding a person lacks GMC “for other reasons,” the statutory authority for the conditional bar to GMC for “unlawful acts” is the last paragraph of INA 101(f).

51. [^] See INA 101(f). See *Matter of Castillo-Perez*, 27 I&N Dec. 664 (A.G. 2019).

52. [^] For specific questions on whether the applicant may overcome the presumption, officers should consult the Office of Chief Counsel.

53. [^] See *Matter of Castillo-Perez*, 27 I&N Dec. 664, 671 (A.G. 2019).

54. [^] See 8 CFR 316.10(b)(3)(i). See Hague Convention on the International Recovery of Child Support.

55. [^] See Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

56. [^] 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*, 189F.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).

57. [^] See *United States. v. Harrison*, 180 F.2d 981 (9th Cir. 1950).

58. [^] See *In re Malaszenko*, 204 F.Supp. 744 (D. N.J. 1962). See *In re Mogus*, 73 F.Supp. 150 (W.D. Pa. 1947).

59. [^] See *In re Halas*, 274 F.Supp. 604 (E.D. Pa. 1967). See *Petition of Dobric*, 189 F.Supp. 638 (D. Minn. 1960).

60. [^] See 8 CFR 316.10(b)(3)(i).

61. [^] See Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances [12 USCIS-PM F.2(G)].

62. [^] See *In re Huymaier*, 345 F.Supp. 339 (E.D. Pa. 1972).

63. [^] See *Petition of Perdiak*, 162 F.Supp. 76 (S.D. Cal. 1958).

64. [^] See *In re Valad*, 465 F.Supp. 120 (E.D. Va. 1979).

65. [^] See *Etape v. Napolitano*, 664 F.Supp.2d 498, 517 (D. Md. 2009).

66. [^] See 8 CFR 316.10(b)(3)(ii).

67. [^] See Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances [12 USCIS-PM F.2(G)].

68. [^] 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 (S.D.N.Y. 1956).

69. [^] See INA 101(f). See 8 CFR 316.10(b)(3)(iii). For cases arising in the Ninth Circuit, in addition to extenuating circumstances, USCIS must also consider and weigh all factors relevant to the determination of GMC, which include education, family background, employment history, financial status, and lack of criminal record. See *Hussein v. Barrett*, 820 F.3d 1083 (9th Cir. 2016).

70. [^] See *United States v. Jean-Baptiste*, 395 F.3d 1190 (11th Cir. 2005) (finding that even where a conviction for a crime occurs after naturalization, the applicant lacked the good moral character for naturalization when the crime was committed during the statutory period). Likewise, if the unlawful act is committed outside the statutory period, but the applicant is convicted or imprisoned for the unlawful act during the statutory period, they will be barred from establishing good moral character.

71. [^] See INA 101(f). See 8 CFR 316.10(b)(3)(iii), 8 CFR 316.10(b)(1), and 8 CFR 316.10(b)(2) (other relevant GMC regulations). See *United States v. Jean-Baptiste*, 395 F.3d 1190 (11th Cir. 2005).

72. [^] See INA 101(f) and INA 316(a)(3). See 8 CFR 316.10(b)(3)(iii).

73. [^] An admission must comply with the requirements outlined in *Matter of K (PDF)*, 7 I&N Dec 594 (BIA 1957) (establishing requirements for a valid "admission" of an offense). See Chapter 2, Adjudicative Factors, Section C, Definition of Conviction [12 USCIS-PM F.2(C)] and Section E, Admission of Certain Criminal Acts [12 USCIS-PM F.2(E)]. See INA 101(f). See 8 CFR 316.10(b)(3)(iii). Other significant evidence, for example, includes but is not limited to a fine, civil judgment, guilty plea which was later withdrawn after completion of rehabilitation program, voting records, or unexplained discrepancies on tax filings.

74. [^] See, generally, *United States v. Jean-Baptiste*, 395 F.3d 1190, 1195 (11th Cir. 2005).

75. [^] See *Hussein v. Barrett*, 820 F.3d 1083 (9th Cir. 2016).

76. [^] See *Etape v. Napolitano*, 664 F. Supp.2d 498, 507 (D. Md. 2009). See *Meyersiek v. USCIS*, 445 F. Supp.2d 202, 205–06 (D.R.I. 2006) ("Although the words 'unlawful acts' are not further defined, the Court interprets them to mean bad acts that would rise to the level of criminality, regardless of whether a criminal prosecution was actually initiated."). See *United States v. Jean-Baptiste*, 395 F.3d 1190, 1193 (11th Cir. 2005).

77. [^] See 8 CFR 316.10(b)(3)(iii). See Chapter 2, Adjudicative Factors, Section E, Admission of Certain Criminal Acts [12 USCIS-PM F.2(E)]. Other relevant, reliable evidence, for example, includes but is not limited to a fine, civil judgment, guilty plea which was later withdrawn after completion of rehabilitation program, voting records, or unexplained discrepancies on tax filings.

78. [^] See *Khamooshpour v. Holder*, 781 F.Supp.2d 888, 896 (D. Ariz 2011). See *Agarwal v. Napolitano*, 663 F.Supp.2d 528, 542 (W.D. Tex 2009).

79. [^] See Section A, One or More Crimes Involving Moral Turpitude, Subsection 1, Crime Involving Moral Turpitude [12 USCIS-PM F.5(A)(1)].

80. [^] See *United States v. Teng Jiao Zhou*, 815 F.3d 639 (9th Cir. 2016) (finding that first degree robbery under California Penal Code, Section 211 was a CIMT and therefore an unlawful act that adversely reflected on one's moral character).

81. [^] See 8 CFR 316.10(a)(2). See *Abdi v. U.S. Citizenship and Immigration Services*, 923 F.Supp.2d 1160, 1166 (D. Minn. 2013).

82. [^] See 8 CFR 316.10(b)(3)(iii). See INA 101(f). See Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances [12 USCIS-PM F.2(G)]. See *United States v. Suarez*, 664 F.3d 655, 662 (7th Cir. 2011). See *United States. v. Lekarczyk*, 354 F.Supp.2d 883 (W.D. Wis. 2005).

83. [^] See *United States v. Jean-Baptiste*, 395 F.3d 1190, 1195 (11th Cir. 2005) (citing *Rico v. INS*, 262 F.Supp.2d 6 (E.D.N.Y. 2003).

84. [^] See *United States v. Lekarczyk*, 354 F.Supp.2d 883 (W.D. Wis. 2005).

85. [^] See 8 CFR 316.10(b)(3)(iii).

86. [^] 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)]. For cases under the jurisdiction of the Ninth Circuit Court of Appeals, however, the officer must also consider and weigh the applicant's evidence relevant to moral character beyond that which precedes or is contemporaneous with and applies directly to the unlawful act. See *Hussein v. Barrett*, 820 F.3d 1083, 1089-90 (9th Cir. 2016) (finding that the officer must consider all of the applicant's evidence on factors relevant to the GMC determination to determine if the catch-all provision in the statute precludes the applicant from establishing GMC). In the Ninth Circuit, positive additional factors counterbalance an unlawful act committed in the statutory period if the factors are sufficient to overcome the weight of the negative act.

87. [^] See *United States v. Jean-Baptiste*, 395 F.3d 1190, 1195 (11th Cir. 2005).

88. [^] See *United States v. Lekarczyk*, 354 F.Supp.2d 883, 887 (W.D. Wis 2005).

89. [^] See *United States v. Lekarczyk*, 354 F.Supp.2d 883, 887 (W.D. Wis 2005).

90. [^] See *United States v. Jean-Baptiste*, 395 F.3d 1190 (11th Cir. 2005).

91. [^] See *Etape v. Napolitano*, 664 F.Supp.2d 498 (D. Md. 2009).

92. [^] See, for example, 18 U.S.C. 1001.

93. [^] See *United States v. Lekarczyk*, 354 F.Supp.2d 883, 887 (W.D. Wis 2005).

94. [^] See *United States v. Salama*, 891 F.Supp.2d 1132, 1140-41 (E.D. Cal. 2012).

95. [^] See *Etape v. Napolitano*, 664 F.Supp.2d 498 (D. Md. 2009).

96. [^] See *United States v. Okeke*, 671 F.Supp.2d 744 (D. Md. 2009).

97. [^] See *Etape v. Napolitano*, 664 F.Supp.2d 498 (D. Md. 2009).

98. [^] See *Sabbaghi v. Napolitano*, 2009 WL 4927901 (W.D. Wash. 2009) (unpublished).

99. [^] See *Khamooshpour v. Holder*, 781 F.Supp.2d 888, 896-97 (D. Ariz 2011).

100. [^] See Subsection 2, Case-by-Case Analysis [12 USCIS-PM F.5(L)(2)]. See *Hussein v. Barrett*, 820 F.3d 1083 (9th Cir. 2016).

101. [^] Falsely claiming U.S. citizenship may also be an unlawful act, regardless of whether the false claim was for the purpose of voting or registering to vote. See, for example, 18 U.S.C. 1001.

102. [^] See 18 U.S.C. 611 (voting by aliens). See 18 U.S.C. 1015(f) (false claim to U.S. citizenship to vote or register to vote).

103. [^] The officer should consider the controlling statutes in cases involving potential unlawful voting offenses, as some local municipalities permit LPRs or other noncitizens to vote in municipal elections.

104. [^] See 18 U.S.C. 1015(f) (false claim to U.S. citizenship to vote or register to vote). There are exceptions to the false claim to U.S. citizenship unlawful act set forth in INA 101(f). False claims to U.S. citizen status for any purpose or benefit under the law, where an exception does not apply, including for registering to vote or voting, may affect an applicant's GMC as an unlawful act, as a CIMT, as an aggregate sentence of 5 years or more, or where there was incarceration of the applicant for 180 days or more. See, for example, 18 U.S.C. 1001. See INA 101(f)(3) (one or more CIMTs, INA 101(f)(3) (aggregate sentence of 5 or more years), and INA 101(f)(7) (incarceration for 180 days or more) as discussed in Section A, One or More Crimes Involving Moral Turpitude [12 USCIS-PM F.5(A)] and Section D, Imprisonment for 180 Days or More [12 USCIS-PM F.5(D)].

105. [^] See 8 CFR 316.10(b)(3)(iii). See *United States v. Suarez*, 664 F.3d 655, 662 (7th Cir. 2011). See *United States v. Lekarczyk*, 354 F.Supp.2d 883 (W.D. Wis. 2005). See INA 101(f). See Chapter 2, Adjudicative Factors, Section G, Extenuating Circumstances [12 USCIS-PM F.2(G)].

106. [^] See INA 101(f). These provisions were added by the CCA, but they apply to all applications filed on or after September 30, 1996. See Section 201(a)(2) of the CCA, Pub. L. 106-395 (PDF), 114 Stat. 1631, 1636 (October 30, 2000).

107. [^] As a matter of policy, USCIS has determined that the applicant's parents had to be U.S. citizens at the time of the unlawful voting or false claim to U.S. citizenship in order to meet the first prong of this exception.

108. [^] Examples of material facts include marital status, number of dependents, and income.

109. [^] Examples of such unlawful acts include attempt to defraud the IRS by avoiding taxes in violation of 26 U.S.C. 7201 or 26 U.S.C. 6663 or filing a false document under penalties of perjury in violation of 26 U.S.C. 7206(1). 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). See *Matter of M- (PDF)*, 8 I&N Dec. 535 (BIA 1960) (conspiracy to defraud the U.S. government by avoiding taxes is a CIMT). See *Matter of E- (PDF)*, 9 I&N Dec. 421 (BIA 1961).

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] The special provisions, however, provide modifications to those 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]
- 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]
- 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]

- 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]
- 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]

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]

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] 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

Provision	Marriage and Marital Union	Continuous Residence	Physical Presence	Eligibility for Overseas Processing
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

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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]

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] 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]
- Certain marriages that violate the strong public policy of the state of residence of the couple; [4]
- Civil unions, domestic partnerships, or other such relationships not recognized as marriages in the place of celebration; [5]
- Relationships where one party is not present during the marriage ceremony (proxy marriages) unless the marriage has been consummated; [6] or
- Relationships entered into for purposes of evading immigration laws of the United States. [7]

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] 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]

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]

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] If the divorce is not final

under the foreign law, remarriage to a U.S. citizen is not valid for immigration purposes. [12]

An officer should ensure that the court issuing the divorce had jurisdiction to do so. [13] 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] 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]

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] 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] 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]

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 continue to be the spouse of a U.S. citizen from the time of filing the naturalization application 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 for at least 3

years immediately preceding the date of filing the naturalization application. [19] 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 does not meet the married and "living in marital union" requirements if:

- The applicant is not residing with his or her U.S. 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 U.S. citizen spouse; or
- The marital relationship is terminated at any time prior to taking the Oath of Allegiance.

If the applicant ceases to reside with his or her U.S. citizen spouse between the time of filing and the time at which the applicant takes the Oath of Allegiance, the officer should consider whether the applicant met the living in marital union requirement at the time of filing.

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]

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]

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] 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]

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]

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] 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] 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]

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] 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] 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] 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]

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]

- 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 (PDF), 110 Stat. 2419 (September 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 8 CFR 319.1(b)(2)(ii)(C) and guidance below on “Involuntary Separation” under the paragraph “Failure to be Living in Marital Union due to Separation.” See Volume 12, Citizenship and Naturalization, Part G, Spouses of U.S. Citizens, Chapter 2, Marriage and Marital Union for Naturalization, Section 3, Failure to be Living In Marital Union due to Separation [12 USCIS-PM G.2(D)(3)].

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] The spouse must have continuously resided in the United States after becoming a lawful permanent resident (LPR) for at least 3 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 3 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 3 years preceding the time of filing the naturalization application (the citizen spouse must have been a U.S. citizen for those 3 years).
- Continuous residence in the United States as an LPR for at least 3 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 3 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 3 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 3 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 5 years.[2] 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]

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 3 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 3 years before filing.[4]

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 living in marital union with his or her citizen spouse for at least 3 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 living in marital union only up until the time of filing.[5] 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.[6]

A person who was a spouse subjected to battery or extreme cruelty by their citizen spouse is exempt from the marital union requirement.[7]

C. 3 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 3 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.[8]

D. 18 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.[9] 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.[10]

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 3-year period of continuous residence.[11] 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 3-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 3-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 3-month period of residence in a state or service district falls within the required 3-year period of continuous residence, jurisdiction is based on the 3-month period immediately preceding the examination on the application (interview).[12]

F. Eligibility for Persons Subjected to Battery or Extreme Cruelty

1. General Eligibility for Persons Subjected to Battery or Extreme Cruelty

On October 28, 2000, Congress expanded the provision regarding naturalization based on marriage to a U.S. citizen for persons who reside in the United States. The amendments added that any person who obtained LPR status as the spouse, former spouse, or intended spouse[13] of a U.S. citizen who subjected him or her to battery or extreme cruelty may naturalize under this provision.[14]

Specifically, the person must have obtained LPR status based on:

- An approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) as the self-petitioning spouse of an abusive U.S. citizen;
- An approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) as the self-petitioning spouse of an abusive LPR, if the abusive spouse naturalizes after the petition has been approved;[15] or
- Special rule cancellation of removal for battered spouses and children in cases where the applicant was the spouse, or intended spouse of a U.S. citizen, who subjected him or her to battery or extreme cruelty.[16]

A person is also eligible for naturalization under the spousal naturalization provisions if he or she had the conditions on his or her residence removed based on:

- An approved battery or extreme cruelty waiver of the joint filing requirement for Petition to Remove Conditions on Residence (Form I-751), for a conditional permanent resident, if the marriage was entered into in good faith and the spouse was subjected to battery or extreme cruelty by the petitioning citizen or LPR spouse.[17]

2. Exception to Marital Union and U.S. Citizenship Requirements for Spouses

A person subjected to battery or extreme cruelty by his or her U.S. citizen spouse is exempt from the following naturalization requirements:[18]

- Married to the U.S. citizen spouse at the time of filing the naturalization application;
- Living in marital union with the citizen spouse for at least 3 years at the time of filing the naturalization application; and
- Applicant's spouse has U.S. citizenship from the time of filing until the time the applicant takes the Oath of Allegiance.[19]

The spouse must meet all other eligibility requirements for naturalization.[20]

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.[21] 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.[22] 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]

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]

Footnotes

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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. [^] There are limited circumstances where an applicant may be able to establish that he or she is living in marital union with the citizen spouse even though the applicant does not actually reside with the citizen spouse. See Chapter 2, Marriage and Marital Union for Naturalization, Section D, Marital Union and Living in Marital Union [12 USCIS-PM G.2(D)].

5. [^] See 8 CFR 319.1(a)(3). See *Ali v. Smith*, 39 F. Supp. 2d 1254. (W.D. Wash. 1999).

6. [^] 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].

7. [^] See INA 319(a). See Section F, Eligibility for Persons Subjected to Battery or Extreme Cruelty [12 USCIS-PM G.3(F)].

8. [^] See Part D, General Naturalization Requirements, Chapter 3, Continuous Residence [12 USCIS-PM D.3]. See 8 CFR 316.5(a).

9. [^] 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].

10. [^] 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].

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

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

13. [^] See INA 101(a)(50) (definition of intended spouse).

14. [^] See INA 319(a). See the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386 (PDF) (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].

15. [^] See INA 204(a)(1)(B)(ii).

16. [^] See INA 240A(b)(2)(A)(i)(I) or INA 240A(b)(2)(A)(i)(III).

17. [^] See INA 216(c)(4)(C).

18. [^] See INA 319(a).

19. [^] See INA 319(a) and 8 CFR 319.1(b). See INA 204(a)(1)(A)(iii)(II)(aa)(CC)(bbb).

20. [^] See INA 319(a). See 8 CFR 319.1.

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(a). See 8 CFR 319.1(a).

24. [^] 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] Spouses otherwise eligible under this provision are exempt from the continuous residence and physical presence requirements for naturalization. [2]

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]
- 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]
- 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] 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]

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]

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]

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] 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] 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]

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]

- Government of the United States (including the U.S. armed forces);
- American institution of research recognized as such by the Attorney General; [13]
- 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]

- 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] Both the statute and its corresponding regulation are silent on when to begin calculating the specified period regularly stationed abroad. [16]

As a matter of policy, USCIS calculates the period of qualifying employment abroad from the time the applicant spouse properly files for naturalization. [17] 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]

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]

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]

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] 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] 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]

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]

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]

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]

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 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] 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] 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]

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]

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]

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]

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]

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] 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] 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]

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]

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] 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]

An officer must not approve a CPR spouse's naturalization application unless the spouse meets these requirements. [14]

D. Conditional Permanent Residents Admitted as Entrepreneurs

If a CPR spouse is admitted as alien entrepreneur, [15] USCIS will make a determination on the CPR's petition to remove conditions before approving the CPR's naturalization application.

Footnotes

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1. [^] See INA 216. See Immigration Marriage Fraud Amendments of 1986, Pub. L. 99-639 (PDF) (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] 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] 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] 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]

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] 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
301(d)	One parent is a U.S. citizen; other parent is U.S. national	U.S. citizen parent was physically present in the 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 an alien	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 an alien	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)

INA Section	Status of Parents	Residence or Physical Presence Requirements	Child is a U.S. Citizen
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 (PDF), 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 and Residence 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 Immigration and Nationality Act (INA). [1] 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]
- The other definition of child applies to citizenship and naturalization. [3]

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]

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] 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] 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 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]

B. Legitimated Child

Legitimation means "placing a child born out of wedlock in the same legal position as a child born in wedlock." [9] 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] 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]

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]

- 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] and
- The child is in the legal custody of the legitimating parent or parents at the time of the legitimation. [14]

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]

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] This includes certain siblings of adopted children who are permitted to be adopted while under 18 years of age. [17]

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] and
- The child is in the legal custody of the adopting parent or parents at the time of the adoption. [19]

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]

D. Orphan [21]

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]

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]

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]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]

ART and the 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]

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.

F. Definition of U.S. Residence

The term residence is defined in the INA as the person's principal actual dwelling place in fact, without regard to intent.[27] A person is not required to live in a particular place for a specific period of time in order for that place to be considered his or her "residence." However, the longer a stay in a particular place, the more likely it is that a person can establish that place is his or her residence.

1. Difference between Residence and Physical Presence

The term residence should not be confused with physical presence, which refers to the actual time a person is in the United States, regardless of whether he or she has a residence in the United States.[28] Although some provisions related to naturalization and citizenship require specific time periods of physical presence, residence, or both,[29] in contrast, there is no specific time period of residence required for purposes of acquiring citizenship where a child is born outside the United States of two U.S. citizen parents.[30]

For example, a person who spent time travelling in the United States for a year living in different hotel rooms in different cities or towns every week and who did not own or rent any property or have another principal dwelling place in the United States, would likely be able to establish 1 year of physical presence. However, without additional evidence of a principal actual dwelling place in the United States, that person could not establish residence in the United States. The table below provides a few examples on how travel would affect the physical presence and the residence requirements. However, the examples are not dispositive and individual cases will be determined based on the individual merits and evidence presented.

Examples Illustrating Physical Presence and Residence in the United States

Scenarios	Physical Presence	Residence

Scenarios	Physical Presence	Residence
U.S. citizen parent owns a home and works in a foreign country. Parent travels to the United States and: • Stays 2 weeks with a cousin in New York, • Stays 2 weeks in New York with his or her parents, and • Travels to Florida on vacation for 2 weeks.	6 weeks	No U.S. residence (Residence is outside the United States)
Parent is a U.S. citizen born in a foreign country, who never lived in or visited the United States. His child moved to the United States as an adult and claimed U.S. citizenship.	No physical presence[31]	No U.S. residence
As a child, U.S. citizen parent came to the United States for 3 consecutive summers to attend a 2-month long camp. The parent lived and went to school in a foreign country for the rest of the year.	6 months	No U.S. residence (Residence is outside the United States)
U.S. citizen parent worked in the United States for 9 months in a year for 8 years out of a 9-year period. (Parent returned to Mexico to spend the remaining 3 months of each year with family, who never visited the United States.)	9 months in a year for 8 years	U.S. residence established[32]

2. Special Considerations

Various circumstances may affect whether USCIS considers a person to be residing in the United States, and therefore whether a U.S. citizen may transmit citizenship to his or her children.

U.S. Citizens who were Born, But Did Not Reside, in the United States

A U.S. citizen may have automatically acquired U.S. citizenship based on birth in the United States,[33] but never actually resided in the United States. This U.S. citizen will not have established residence in the United States, and may be unable to transmit U.S. citizenship to his or her own children.

For example, if the U.S. citizen, still having never resided in the United States, subsequently marries another U.S. citizen who never resided in the United States, and they give birth to a child outside the United States, the child will not acquire citizenship at birth under INA 301(c) because neither U.S. citizen parent can show the requisite residence in the United States. However, if the U.S. citizen parent had returned to the United States after his or her birth and established residence before giving birth to the child outside the United States, then he or she may be able to meet the residence requirement based on that period of residence and transmit U.S. citizenship to his or her children.

Commuters and Temporary Visits to the United States

Residence is more than a temporary presence or a visit to the United States. Therefore, temporary presences and visits are insufficient to establish residence for the purposes of transmitting citizenship. For example, someone who resides along the border in Mexico or Canada, but works each day in the United States, cannot use his or her workplace to establish a residence.

Vacations or brief stays in the United States do not qualify as residence in the United States. However, attendance at school, college, or university in the United States for an extended period of time may be considered as residence in the United States depending upon the totality of the circumstances.[34]

Owning or Renting Property

A person does not need to own or rent property in the United States in order to establish residence. In addition, owning or renting property outside of the United States does not automatically establish lack of residence in the United States. Owning and renting property in the United States may help to establish residence in the United States if the person also establishes that he or she actually lived in that property, for example. A person who owns property but never lived in the property would not be able to establish residence based on owning that property.

3. Evidence

A U.S. citizen who was born in the United States generally meets the residence requirement as long as he or she can present evidence to demonstrate that his or her mother was not merely transiting through or visiting the United States at the time of his or her birth.[35] For example, a long form birth certificate is sufficient evidence if it shows a U.S. address listed as the mother's residence at the time of the U.S. citizen's birth.

If a U.S. citizen's birth certificate indicates that his or her mother's address was outside of the United States at the time of the birth, USCIS may find that the U.S. citizen does not meet the residence requirement unless the U.S. citizen can prove U.S. residence.

Documents that can help demonstrate residence include, but are not limited to, the following:

- U.S. marriage certificate indicating the address of the bride and groom;
- Property rental leases, property tax records, and payment receipts;
- Deeds;
- Utility bills;
- Automobile registrations;
- Professional licenses;
- Employment records or information;
- Income tax records and income records, including W-2 salary forms;
- School transcripts;
- Military records; and
- Vaccination and medical records.

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* (PDF), 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. 102-493 (PDF), 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.

27. [^] See INA 101(a)(33). See *Savorgnan v. U.S.*, 338 U.S. 491, 506 (1950).

28. [^] Examples of documentary evidence showing physical presence may include: academic transcripts, military records, official vaccination records, medical records, employment records, and lease agreements.

29. [^] See INA 301. See INA 309. For more information on physical presence, see Part D, General Naturalization Requirements, Chapter 4, Physical Presence [12 USCIS-PM D.4].

30. [^] See INA 301(c).

31. [^] See *Madar v. USCIS*, 918 F.3d 120 (3rd Cir. 2019). In that case, the appellant argued that he was "constructively resident" in the United States because his U.S. citizen father lived during the relevant time in what was then Communist Czechoslovakia and was not free to leave the country. The court rejected that claim noting that physical presence requirements can be constructively satisfied only in extraordinary circumstances, such as, for example, when a U.S. government error causes citizenship to lapse, preventing the foreign-born parent from complying with the physical presence requirements.

32. [^] See *Alcarez-Garcia v. Ashcroft*, 293 F.3rd 1155 (9th Cir. 2002).

33. [^] See U.S. Const. amend XIV. See INA 301(a).

34. [^] See *Matter of M--*, 4 I&N Dec. 418 (BIA 1951) (continuous stay in the United States as a college student for almost 3 years held to have residence in the United States for purposes of Section 201(g) of the Nationality Act of 1940, Pub. L. 76-853, 54 Stat. 1137, 1139 (October 14, 1940)).

35. [^] For more information on how the rules may vary depending on whether the U.S citizen is the mother or father of a child seeking to acquire citizenship, see Chapter 3, U.S. Citizens at Birth (INA 301 and 309), Section A, General Requirements for Acquisition of Citizenship at Birth [12 USCIS-PM H.3(A)] through Section C, Child Born Out of Wedlock [12 USCIS-PM H.3(C)].

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]

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]

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]

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]

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] The following sections provide the current law.

B. Child Born in Wedlock [6]

1. Child of Two U.S. Citizen Parents [7]

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]

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 Alien Parent [9]

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 an alien 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 Alien Father [10]

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 an alien;
- 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]

1. Child of U.S. Citizen Father

General Requirements for Fathers of Children Born Out of Wedlock

The general requirements for acquisition of citizenship at birth [12] for a child born in wedlock also apply to a child born out of wedlock outside of the United States (or one of its outlying possessions) who claims citizenship through a U.S. citizen father. Specifically, the provisions apply in cases where:

- 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, who are claiming citizenship through their fathers.

Written Agreement to Provide Financial Support

In order for a child born out of wedlock outside of the United States (or one of its outlying possessions) to acquire U.S. citizenship through his or her father, Congress included a requirement that the father agree in writing to provide financial support for the child until the child reaches the age of 18. [13] Congress included the language to prevent children from becoming public charges. [14] USCIS interprets the phrase in the statute "has agreed in writing to provide financial support" [15] to mean that there must be documentary evidence that supports a finding that the father accepted the legal obligation to support the child until the age of 18.

The written agreement of financial support may be dated at any time before the child's 18th birthday. If the child is under the age of 18 at the time of filing an Application for Certificate of Citizenship, the father may provide the written agreement of financial support either concurrently with the filing of the application or prior to the adjudication of the application. USCIS may request the written agreement of financial support at the time of issuance of a Request for Evidence or at the time of an interview (unless the interview is waived).

Alternatively, if the applicant is already over the age of 18, he or she may meet the requirement if one or more documents support a finding that the father accepted his legal obligation to support the child. In such cases, the evidence must have existed (and have been finalized) prior to the child's 18th birthday and must have met any applicable foreign law or U.S. law governing the child's or father's residence to establish acceptance of financial responsibility. [16]

In all cases, the applicant has the burden of proving the father has met any applicable requirements under the law to make an agreement to provide financial support. A written agreement of financial support is not required if the father died before the child's 18th birthday. [17]

Written Agreement Requirements

In order for a document to qualify as a written agreement of financial support under INA 309(a)(3), the document:

- Must be in writing and acknowledged by the father; [18]
- Must indicate the father's agreement to provide financial support for the child; [19] and
- Must be dated before the child's 18th birthday.

In addition, USCIS considers whether the agreement was voluntary.

Other Acceptable Documentation

A written agreement of financial support may come in different forms and documents. USCIS may consider other similar documentation in which the father accepts financial responsibility of the child until the age of 18. Some examples of documents USCIS may consider include:

- A previously submitted Affidavit of Support (Form I-134) or Affidavit of Support Under Section 213A of the INA (Form I-864);
- Military Defense Enrollment Eligibility Reporting System (DEERS) enrollment;
- Written voluntary acknowledgement of a child in a jurisdiction where there is a legal requirement that the father provide financial support; [20]
- Documentation establishing paternity by a court or administrative agency with jurisdiction over the child's personal status, if accompanied by evidence from the record of proceeding establishing the father initiated the paternity proceeding and the jurisdiction legally requires the father to provide financial support; or
- A petition by the father seeking child custody or visitation with the court of jurisdiction with an agreement to provide financial support and the jurisdiction legally requires the father to provide financial support.

2. Child of U.S. Citizen Mother

The rules that determine whether a child born out of wedlock outside of the United States derives citizenship at birth from his or her U.S. citizen mother vary depending on when the child was born.

Child Born On or After December 23, 1952 and Before June 12, 2017

A child born between December 23, 1952 and June 12, 2017 who is born out of wedlock outside of the United States and its outlying possessions acquires citizenship at birth if:

- 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 one of its outlying possessions for 1 continuous year prior to the child's birth. [21]

Child Born On or After June 12, 2017

A child born on or after June 12, 2017, who is born out of wedlock outside of the United States or one of its outlying possessions acquires citizenship at birth if:

- 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 one of its outlying possessions for at least 5 years prior to the child's birth (at least 2 years of which were after age 14). [22]

Effect of Sessions v. Morales-Santana Decision

Prior to the U.S. Supreme Court's decision in *Sessions v. Morales-Santana*, [23] the physical presence requirements for children born out of wedlock were different for a child acquiring citizenship through a U.S. citizen mother than for those acquiring through a U.S. citizen father. An unwed U.S. citizen mother could transmit citizenship to her child if the mother was physically present in the United States for 1 continuous year prior to the child's birth. [24] An unwed U.S. citizen father, by contrast, was held to the longer physical presence requirement of 5 years (at least 2 years of which were after age 14) in the United States or one of its outlying possessions. [25]

On June 12, 2017, the U.S. Supreme Court held, in *Sessions v. Morales-Santana*, that the different physical presence requirements for an unwed U.S. citizen father and an unwed U.S. citizen mother violated the U.S. Constitution's Equal Protection Clause. [26] The U.S. Supreme Court indicated that the 5 years of physical presence (at least 2 years of which were after age 14) [27] requirement should apply prospectively to all cases involving a child born out of wedlock outside the United States to one U.S. citizen parent and one alien parent, regardless of the gender of the parent. [28]

The U.S. Supreme Court decision effectively eliminated, prospectively, the 1 year continuous physical presence requirement that previously applied to unwed U.S. citizen mothers, and replaced it with the higher physical presence requirement that previously applied to unwed U.S. citizen fathers. [29] After *Sessions v. Morales-Santana*, the 1-year continuous physical presence requirement[30] remains in effect only for those children born prior to June 12, 2017 outside of the United States to unwed U.S. citizen mothers.

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. [31]

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. [32]

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. [33]

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. [34] 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:

- Consular Report of Birth Abroad (FS-240);
- Applicant's unexpired U.S. passport issued initially for a full 5 or 10-year period; or
- Certificate of Naturalization of the applicant's parent or parents. [35]

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. [36]

However, the Immigration and Nationality Act (INA) permits USCIS to waive the taking of the Oath of Allegiance if USCIS determines the person is unable to understand its meaning. [37] 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. [38] An applicant may file an appeal within 30 calendar days after service of the decision (33 days if the decision was mailed).

Footnotes

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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 and Residence 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 (PDF), 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). See Section A, General Requirements for Acquisition of Citizenship at Birth [12 USCIS-PM H.3(A)].

13. [^] A separate agreement or contract is not required for the father to satisfy the requirement. See INA 309(a)(3). See the Immigration and Nationality Act Amendments of 1986, Pub. L. 99–653 (PDF) (November 14, 1986).

14. [^] See the Immigration and Nationality Act Amendments of 1986, Pub. L. 99–653 (PDF) (November 14, 1986). The Immigration and Nationality Act (INA)was intended to keep families together and generally construed in favor of family unity and the acceptance of responsibility by family members. See *Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9th Cir. 2005).

15. [^] See INA 309(a)(3).

16. [^] In many cases, the issue of whether the father agreed to provide financial support depends on foreign law. The applicant bears the burden of proving the father has met any applicable requirements to make a binding agreement under the law. See *Matter of Annang (PDF)*, 14 I&N Dec. 502 (BIA 1973). Officers should consult USCIS counsel about any requirements under the law.

17. [^] See INA 309.

18. [^] A court document may be signed by a judge rather than the father, but may still serve as evidence to meet this requirement if there is an indication in the record of proceedings that the father consented to the determination of paternity.

19. [^] Since the statute only provides for the agreement of the father to provide support and does not provide for any loss of citizenship if the agreement is not met, USCIS does not consider whether the father actually provided financial support.

20. [^] For example, a birth certificate or acknowledgement document submitted and certified by the father. Under U.S. jurisdictions, a written voluntary acknowledgement of a child generally triggers a legal obligation to support the child. However, under foreign jurisdictions, a voluntary written agreement may not always trigger a legal obligation to support the child. The officer may consult with local USCIS counsel for questions regarding the effect of the law.

21. [^] See INA 309(c).

22. [^] See INA 301(g). See *Sessions v. Morales-Santana (PDF)*, 137 S.Ct. 1678 (2017).

23. [^] See *Sessions v. Morales-Santana*, (PDF) 137 S.Ct. 1678 (2017).

24. [^] See INA 309(c).

25. [^] See INA 301(g).

26. [^] See *Sessions v. Morales-Santana*, (PDF) 137 S.Ct. 1678 (2017). See U.S. Constitution, amend. XIV.

27. [^] See INA 301(g).

28. [^] See *Sessions v. Morales-Santana (PDF)*, 137 S.Ct. 1678 (2017).

29. [^] See INA 309(c).

30. [^] See INA 309(c).

31. [^] 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).

32. [^] See 8 CFR 341.1.

33. [^] See Section F, Decision and Oath of Allegiance [12 USCIS-PM H.3(F)]. See 8 CFR 341.5(b).

34. [^] See 8 CFR 341.2(a)(2).

35. [^] See 8 CFR 341.2(a).

36. [^] 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].

37. [^] See INA 337(a). See 8 CFR 341.5(b).

38. [^] 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]

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]

- The child has at least one parent, including an adoptive parent [3] who is a U.S. citizen by birth or through naturalization;
- The child is under 18 years of age;
- The child is a lawful permanent resident (LPR); [4] and
- The child is residing [5] in the United States in the legal and physical custody of the U.S. citizen parent. [6]

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. [7]

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: [8]

- 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; [9]
- 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 Child Citizenship Act (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. [10]

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 alien parents, or one alien 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. [11] 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. [12]

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. [13]

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. [14]

E. Documentation and Evidence

The applicant must submit the following required documents unless such documents are already contained in the USCIS administrative record or do not apply: [15]

- 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;
    - Consular Report of Birth Abroad (FS-240);
    - A valid unexpired U.S. 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. [16]

- 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]
- 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). [18]
- If the child was admitted as an LPR as an orphan or Hague Convention adoptee [19] (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. [20] 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. [21]

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. [22]

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. [23] 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. [24] 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. [^] These provisions were created by the Child Citizenship Act of 2000 (CCA), Pub. L. 106-395 (October 30, 2000), which amended earlier provisions of the Immigration and Nationality Act (INA) regarding acquisition of citizenship after birth for foreign-born children who have U.S. citizen parent(s). These CCA amendments became effective on February 27, 2001.

3. [^] As long as the child meets the requirements to be considered an adopted child for immigration purposes, as outlined in INA 101(b)(1)(E), INA 101(b)(1)(F), or INA 101(b)(1)(G).

4. [^] A person is generally considered to be an LPR once USCIS approves his or her adjustment application or once he or she enters the United States with an immigrant visa. See INA 245(b). For certain classifications, however, the effective date of becoming an LPR is a date that is earlier than the actual approval of the status (commonly referred to as a "rollback" date). See Part D, General Naturalization Requirements, Chapter 2, Lawful Permanent Resident (LPR) Admission for Naturalization, Section A, Lawful Permanent Resident (LPR) at Time of Filing and Naturalization [12 USCIS-PM D.2(A)]. In addition, a person who is born a U.S. national and is the child of a U.S. citizen may establish eligibility for a Certificate of Citizenship without having to establish LPR status.

5. [^] For the definition of residence, see Chapter 2, Definition of Child and Residence for Citizenship and Naturalization, Section F, Definition of U.S. Residence [12 USCIS-PM H.2(F)].

6. [^] See INA 320. See 8 CFR 320.2. Children of U.S. government employees, including members of the armed forces, who live with parents who are stationed outside the United States are not considered to be "residing in" the United States for purposes of acquisition of citizenship under INA 320. For a more thorough discussion, see Chapter 5, Child Residing Outside of the United States (INA 322), Section F, Application for Citizenship and Issuance of Certificate under Section 322 (Form N-600K) [12 USCIS-PM H.5(F)].

7. [^] For a more thorough discussion, see Chapter 2, Definition of Child and Residence for Citizenship and Naturalization, Section E, Child Born Abroad through Assisted Reproductive Technology [12 USCIS-PM H.2(E)].

8. [^] See 8 CFR 320.1.

9. [^] If the requirements of INA 101(b)(1)(E), or INA 101(b)(1)(F), or INA 101(b)(1)(G) are met.

10. [^] See Chapter 3, United States Citizens at Birth (INA 301 and 309) [12 USCIS-PM H.3].

11. [^] See Section 321(b) of INA of 1952, Pub. L. 82-414 (PDF), 66 Stat. 163, 245 (June 27, 1952).

12. [^] See Section 5 of the Act of October 5, 1978, Pub. L. 95-417 (PDF). 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 (PDF), but is also included in the definition of "child" in INA 101(c).

13. [^] See 8 CFR 320.3(a).

14. [^] 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].

15. [^] See 8 CFR 320.3(b).

16. [^] See INA 101(b)(1)(E). See Chapter 2, Definition of Child and Residence for Citizenship and Naturalization, Section C, Adopted Child [12 USCIS-PM H.2(C)].

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 INA 101(b)(1).

20. [^] See 8 CFR 320.4.

21. [^] See 8 CFR 341.2. See Section G, Documentation and Evidence [12 USCIS-PM H.5(G)].

22. [^] 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].

23. [^] See INA 337(a). See 8 CFR 341.5(b).

24. [^] 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]

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]

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]
- The child's U.S. citizen parent or citizen grandparent meets certain physical presence requirements in the United States or an outlying possession; [4]
- 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]

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 5 years of the parent's death. [6]

C. Physical Presence of the U.S. Citizen Parent or Grandparent [7]

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 5 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]

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 5 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]
- The child is required to maintain the lawful status that he or she was admitted under while in the United States; [10] and
- The child is required to take the Oath of Allegiance in the United States unless the oath requirement is waived. [11]

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]

E. Children of U.S. Government Employees and Members of the Armed Forces Employed or Stationed Abroad

Effective October 29, 2019, children residing abroad with their U.S. citizen parents who are U.S. government employees or members of the U.S. armed forces stationed abroad are not considered to be residing in the United States for acquisition of citizenship. Similarly, leave taken in the United States while stationed abroad is not considered residing in the United States even if the person is staying in property he or she owns.

Therefore, U.S. citizen parents who are residing outside the United States with children who are not U.S. citizens should apply for U.S. citizenship on behalf of their children under INA 322,[13] and must complete the process before the child's 18th birthday. [14] The child of a 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 naturalization.[15]

Applications filed on or after October 29, 2019 are subject to this policy. The policy in place before October 29, 2019 applies to applications filed before that date. Children who have already been recognized through the issuance of a Certificate of Citizenship as having acquired U.S. citizenship under INA 320 are not affected by this policy change.

Background

Children born outside the United States who did not acquire U.S. citizenship at birth have two methods by which they could become U.S. citizens. The first method permits children to automatically become U.S. citizens under INA 320. Among other eligibility criteria, the statute requires the child to be "residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence."[16]

The second method is for the U.S. citizen parent of a child "who has not acquired citizenship automatically under section 320" to apply for U.S. citizenship on the child's behalf under INA 322. To be eligible for citizenship under INA 322, the statute requires the child to be "residing outside of the United States in the legal and physical custody of the applicant (or, if the citizen parent is deceased, an individual who does not object to the application)."[17]

USCIS policy previously provided that children of U.S. government employees and members of the U.S. armed forces who were employed or stationed outside of the United States should be considered to be both "residing in the United States" for purposes of INA 320 and "residing outside of the United States" for purposes of INA 322.[18] Their parents were permitted to file an Application for Certificate of Citizenship (Form N-600) on their behalf and obtain a Certificate of Citizenship showing that

they had acquired citizenship automatically, or their parents were permitted to file an Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K) in order to apply for naturalization on the child's behalf.

USCIS previously arrived at the interpretation that children of members of the U.S. armed forces could be considered as "residing in the United States" when stationed abroad by comparison to naturalization under INA 316.

For purposes of naturalization under INA 316, eligibility requirements include continuous residence in the United States for at least 5 years after being lawfully admitted for permanent residence.[19] An absence from the United States for a continuous period of 1 year of more during the period for which continuous residence is required, breaks the continuity of such residence, except in certain cases when the absence is related to qualifying employment, including an absence by a U.S. government employee who establishes that he or she is absent from the United States on behalf of the U.S. government.[20] The spouse and dependent unmarried sons and daughters of such an employee are also entitled to this exception excusing the absence from the United States during which they are residing outside of the United States as dependent members of the U.S. government employee's household.

Based on this treatment of U.S. government employees and their children in the context of naturalization under INA 316, USCIS determined that "residing in the United States" for purposes of naturalization under INA 320 should likewise be interpreted to include children of U.S. military and government employees stationed outside of the United States who are residing outside of the United States with their parents.

However, as of October 29, 2019, USCIS is no longer committed to this reasoning because the prior USCIS policy guidance is in conflict with several provisions of the Immigration and Nationality Act (INA), especially with changes to the acquisition of citizenship statutes that occurred in 2008, after the initial policy determination in 2004.

First, permitting a child to be eligible simultaneously for a Certificate of Citizenship under INA 320 and for naturalization under INA 322 conflicts with the language of INA 322(a), which states that a parent "may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under INA 320."

Second, considering children who are living outside of the United States to be "residing in the United States" conflicts with the definition of "residence" at INA 101(a)(33), which defines "residence" as a person's "principal, actual dwelling place in fact."

Third, considering these children to be "residing in the United States" is at odds with INA 322(d), which was enacted in 2008,[21] 4 years after USCIS issued policy guidance on the topic. When Congress enacted INA 322(d), it provided for special procedures in cases involving the naturalization of "a child of a member of the Armed Forces of the United States who is authorized to accompany such member and reside abroad with the member pursuant to the member's official orders, and is so accompanying and residing with the member." Congress placed this provision under INA 322, which applies only to children "residing outside of the United States." It did not provide similar language for such children to acquire citizenship under INA 320.

Furthermore, in the same legislation, Congress also explicitly provided that spouses of U.S. armed forces members who reside outside of the United States due to the member's official orders are considered to be residing in the United States for naturalization purposes.[22] The fact that no similar provision was included for children of U.S. armed forces members in the acquisition of citizenship context is significant.[23]

Finally, the prior USCIS policy produced confusion in several respects. First, it may have resulted in inconsistent adjudications by USCIS officers adjudicating applications for certificates of citizenship, and U.S. Department of State (DOS) consular officers adjudicating passport applications. DOS has interpreted INA 320 to apply solely to children who are physically in the United States and does not recognize an exception by policy for children of U.S. military and U.S. government employees stationed outside of the United States.[24]

In addition, the policy resulted in confusion as to the date a child acquired U.S. citizenship, depending on what form the parent (a U.S. government employee or U.S. armed forces member employed or stationed outside of the United States) used: Form N-600K would result in naturalization proceedings under INA 322, while Form N-600 would result in automatic acquisition of citizenship under INA 320. Children who acquire U.S. citizenship automatically are citizens as of the date on which they meet all eligibility criteria under INA 320, but children who seek naturalization under INA 322 become citizens upon taking and subscribing to the oath of allegiance (or upon approval of the application if the oath is waived).

Under USCIS' prior policy guidance, a child of a U.S. government employee or U.S. armed forces member who was employed or stationed outside of the United States could meet all of the eligibility criteria for acquiring citizenship under INA 320 while residing outside of the United States, but still seek to naturalize under INA 322. In such a case, the date on which the child became a citizen would have been unclear.

For all these reasons, USCIS rescinded the prior USCIS policy permitting children of U.S. government employees and U.S. armed forces members stationed outside of the United States to be considered "residing in" the United States.

F. 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 5 years after the death of the U.S. citizen parent. [25]

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.

G. 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. [26]

- 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;

- Consular Report of Birth Abroad (FS-240);
- A valid unexpired U.S. 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. [27] 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 2 years. [28]
  - 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). [29]
  - 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). [30]
- 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.

H. 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. [31] 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. [32]

I. 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. [33]

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. [34] 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. [35] An applicant may file an appeal within 30 days of service of the decision.

Footnotes

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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 and Residence 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 (PDF) (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 I, Decision and Oath of Allegiance [12 USCIS-PM H.5(I)].

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 Chapter 9, Spouses, Children, and Surviving Family Benefits, Section C, Children of Military Members [12 USCIS-PM I.9(C)].

14. [^] See INA 322(a)(3).

15. [^] See INA 322(d).

16. [^] See INA 320(a)(3).

17. [^] See INA 322(a)(4).

18. [^] See Policy Manual Technical Update, Child Citizenship Act and Children of U.S. Government Employees Residing Abroad (July 20, 2015); and USCIS Policy Memorandum, No. 103, *Acquisition of Citizenship by Children of U.S. Military and Government Employees Stationed Abroad under Section 320 of the Immigration and Nationality Act (INA)*, issued May 6, 2004.

19. [^] See INA 316(a). See Part D, General Naturalization Requirements, Chapter 3, Continuous Residence [12 USCIS-PM D.3].

20. [^] See INA 316(b).

21. [^] See National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181 (PDF), 122 Stat 3 (January 28, 2008).

22. [^] See INA 319(e).

23. [^] See, for example, *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)) ("[W]here Congress includes particular language in one section of a statute but omits it in another ..., it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.").

24. [^] See 8 FAM 301.10-2(A), Evidence of Citizenship for Children Born Abroad to U.S. Citizen Parent(s) Under INA 320 as amended by the Child Citizenship Act of 2000.

25. [^] See 8 CFR 322.3(a).

26. [^] See 8 CFR 322.3(b).

27. [^] See INA 322(d)(2).

28. [^] See INA 101(b)(1)(E). See Chapter 2, Definition of Child and Residence for Citizenship and Naturalization, Section C, Adopted Child [12 USCIS-PM H.2(C)].

29. [^] 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.

30. [^] If admitted as an IH-4, the parent(s) must have completed the adoption in the United States.

31. [^] See 8 CFR 322.4.

32. [^] See 8 CFR 341.2. See Section G, Documentation and Evidence [12 USCIS-PM H.5(G)].

33. [^] 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].

34. [^] See INA 337(a). See 8 CFR 341.5(b).

35. [^] See 8 CFR 322.5(b) and 8 CFR 103.3(a).

Chapter 6 - Special Provisions for the Naturalization of Children

A. Children Subjected to Battery or Extreme Cruelty

In general, the spouse of a U.S. citizen who resides in the United States may be eligible for naturalization based on his or her marriage under section 319(a) of the Immigration and Nationality Act (INA). On October 28, 2000, Congress expanded the naturalization provision based on a family relationship to a U.S. citizen. The amendments added that children of U.S. citizens may naturalize if they obtained lawful permanent resident (LPR) status based on having been battered or subjected to extreme cruelty by their citizen parent. [1]

1. Eligibility for Special Provision

A child [2] is eligible for naturalization under the spousal naturalization provisions [3] if he or she obtained LPR status based on:

- An approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) as the self-petitioning child of an abusive U.S. citizen;
- An approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) as the self-petitioning child of an abusive LPR, if the abusive parent naturalizes after USCIS approves the petition; [4]
- An approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) as the derivative child [5] of a self-petitioning spouse of a U.S. citizen who was battered or subjected to extreme cruelty by a U.S. citizen spouse; [6] or
- Cancellation of removal where the applicant was the child of a U.S. citizen who subjected him or her to battery or extreme cruelty. [7]

A child is also eligible for naturalization under the spousal naturalization provisions if he or she had the conditions on his or her residence removed based on:

- An approved battery or extreme cruelty waiver of the joint filing requirement for the Petition to Remove Conditions on Residence (Form I-751). [8]

The applicant must meet all other eligibility requirements for naturalization, including the requirement that the applicant is over the age of 18 at the time of filing. The applicant must be the genetic, legitimated, 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. [9]

Stepchildren of U.S. citizens may also naturalize under this provision if otherwise eligible. [10]

2. Exception to General Naturalization Requirements

An applicant subjected to battery or extreme cruelty by his or her U.S. citizen parent is exempt from the following naturalization requirements: [11]

- Living with the U.S. citizen parent for at least 3 years at the time of filing the naturalization application; and

- The applicant's U.S. citizen parent, who petitioned for him or her, has U.S. citizenship from the time of filing until the time the applicant takes the Oath of Allegiance. [12]

These exceptions also apply to derivative children.

B. Surviving Child of Members of the U.S. Armed Forces

On November 24, 2003, Congress amended certain military-related immigration provisions of the INA. This included extending certain immigration benefits to surviving spouses, children, and parents of deceased U.S. citizen service members. [13]

1. Eligibility for Special Provision

A surviving child, who has not already acquired U.S. citizenship, may be eligible for naturalization. [14] In addition, the child may qualify for certain exemptions from the general naturalization requirements. To qualify for this special provision, the applicant must be the child [15] of a U.S. citizen service member who died during a period of honorable service in an active duty status in the U.S. armed forces. [16] This includes service members who were not U.S. citizens at the time of their death but were later granted posthumous U.S. citizenship.

The applicant must meet all other eligibility requirements for naturalization, including the requirement that the applicant be over the age of 18 at the time of filing. The applicant must be the genetic, legitimated, 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. [17] A person who is the surviving stepchild of a member of the U.S. armed forces is not eligible to naturalize under this provision.

2. Exceptions to General Naturalization Requirements

Under the special provision, the qualified surviving child is exempt from the following requirements:

- Continuous residence;
- Physical presence; and
- Three-month physical presence within the state or jurisdiction.

Footnotes

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1. [^] See the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386 (October 28, 2000). For more information regarding battered spouses or spouses subjected to extreme cruelty, 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 Battery or Extreme Cruelty [12 USCIS-PM G.3(F)].

2. [^] The child must be 18 years of age or older to apply for naturalization.

3. [^] Under spousal naturalization provisions, the child is required to show 3 years of continuous residence and physical presence at least half of that time. See INA 319(a).

4. [^] See INA 204(a)(1)(B)(ii). The definition of child includes certain stepchildren. See INA 101(b)(1).

5. [^] A derivative child is an unmarried child who can accompany the principal beneficiary based on a parent-child relationship.

6. [^] See INA 319(a). See INA 204(a)(1)(A)(iii), INA 204(a)(1)(A)(iv), for inclusion of the derivative child in the VAWA self-petitioning provisions. See INA 319(a).

7. [^] See INA 240A(b)(2)(A)(i)(I) or INA 240A(b)(2)(A)(i)(III).

8. [^] The waiver must be based on either the parent being subjected to battery or extreme cruelty by the petitioning citizen or LPR spouse, or the child being subjected to battery or extreme cruelty by the conditional permanent resident parent or the petitioning citizen or LPR spouse. See INA 216(c)(4)(C).

9. [^] For further guidance on the definition of child for citizenship and naturalization purposes, see Chapter 2, Definition of Child and Residence for Citizenship and Naturalization [12 USCIS-PM H.2].

10. [^] See INA 101(b)(1).

11. [^] See INA 319(a).

12. [^] See INA 204(a)(1)(A)(iii)(II)(aa)(CC)(bbb). See INA 204(a)(1)(A)(iv).

13. [^] See the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108-136 (PDF) (November 24, 2003). See INA 319(d). See INA 329A.

14. [^] See INA 319(d). For information on eligibility for surviving parents and spouses, see Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits [12 USCIS-PM I.9].

15. [^] See INA 101(c)(1). The child must meet the definition of child applicable to citizenship and naturalization. See Part H, Children of U.S. Children, Chapter 2, Definition of Child [12 USCIS-PM H.2].

16. [^] See Part H, Children of U.S. Citizens, Chapter 2, Definition of Child and Residence for Citizenship and Naturalization [12 USCIS-PM H.2].

17. [^] For further guidance on the definition of child for citizenship and naturalization purposes, see Chapter 2, Definition of Child and Residence for Citizenship and Naturalization [12 USCIS-PM H.2].

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] 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.

Military members and their families may call the Military Help Line for assistance: 1-877-CIS-4MIL (1-877-247-4645).

B. Background

Special naturalization provisions for members of the U.S. armed forces date back at least to the Civil War. [2] Currently, the special naturalization provisions provide for expedited naturalization through military service during peacetime [3] or during designated periods of hostilities. [4] 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] 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]

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] to:

- Reduce the period of service required for military naturalization based on peacetime service from three years to one year. [8]
- Add service in the Selected Reserve of the Ready Reserve during periods of hostilities as a basis to qualify for naturalization. [9]
- 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]
- Permit naturalization processing overseas in U.S. embassies, consulates, and military bases for members of the U.S. armed forces. [11]

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]

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 lawful permanent resident (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]

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]

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 (PDF), 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) (PDF). 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] 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] 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]

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]

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] 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]

An applicant with military service who does not qualify on the basis of one year of military service [7] 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]

Footnotes

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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]

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 a lawful permanent resident (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 1 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 United States 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]

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]

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] 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] 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]

D. Designated Periods of Hostilities

The Immigration and Nationality Act (INA) and Presidential Executive Orders have designated the following military engagements and ranges of dates as periods of hostilities. [7]

Designated Periods of Hostilities			
World War I [8]	April 6, 1917	→	November 11, 1918
World War II [9]	September 1, 1939	→	December 31, 1946
Korean Conflict [10]	June 25, 1950	→	July 1, 1955
Vietnam Hostilities [11]	February 28, 1961	→	October 15, 1978
Persian Gulf Conflict [12]	August 2, 1990	→	April 11, 1991
War on Terrorism [13]	September 11, 2001	→	Present

On July 3, 2002, President George W. Bush issued Executive Order 13269, which has designated a period of hostilities and has permitted the expedited naturalization for aliens and noncitizen nationals eligible under INA 329 as of September 11, 2001. The current designated period continues to be a designated period of hostilities for INA 329 purposes until the President issues a new Executive Order terminating the designation. [14]

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 [15] 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 [16] 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 Conditions on Residence (Form I-751) before his or her Application for Naturalization (Form N-400) may be approved.

G. Department of Defense Military Accessions Vital to National Interest Program

The general guidance in this section is from information provided by the Department of Defense (DOD) on its Military Accessions Vital to National Interest (MAVNI) program. USCIS is providing this general information in the Policy Manual to assist potential service members and their families. [17]

1. Military Accessions Vital to National Interest Program

In 2009, DOD authorized the MAVNI pilot program as a recruitment tool to enlist certain nonimmigrants and other aliens who have skills that are considered vital to the national interest of the United States. [18] The program applies to certain health care professionals and aliens who are fluent in certain foreign languages. [19]

An alien entering active duty status or service in the Selected Reserve of the Ready Reserve may apply for military naturalization after the alien's Request for Certification of Military or Naval Service (Form N-426) has been properly authorized, completed, and signed by the appropriate person authorized by DOD. [20] USCIS is unable to adjudicate a naturalization application without a properly submitted N-426.

2. General Eligibility Requirements

Eligible Candidates

To be eligible for the MAVNI program, the DOD requires applicants to be in one of the following immigration categories or authorized stays at the time of enlistment into the U.S. armed forces:

- Asylee;
- Refugee;
- Beneficiary of Temporary Protected Status (TPS);
- Person granted deferred action by USCIS under the Deferred Action for Childhood Arrivals (DACA) policy; or
- Nonimmigrant in any of the following categories: E, F, H, I, J, K, L, M, O, P, Q, R, S, T, TC, TD, TN, U, or V.

Valid Status for 2 Years

The DOD requires most applicants for MAVNI to have been in a valid status in one of the eligible immigration categories or authorized stays listed above for at least 2 years immediately preceding the date of enlistment. The applicant is not required to be in the same qualifying category or authorized stay listed above for those 2 years on the date of enlistment.

The DOD may exempt or waive the 2-year requirement for certain applicants. Specifically, the DOD does not require DACA recipients to meet the 2-year requirement. In addition, the DOD will consider waiving the requirement that an applicant to the MAVNI program be in valid immigration status or within a period of authorized stay at the time of enlistment on a case-by-case basis under certain circumstances. [21]

3. Other Factors to Consider

Nonimmigrants and Absences from United States

Under DOD guidance, most applicants to the MAVNI program under a qualifying nonimmigrant category at the time of enlistment must not have been absent from the United States for more than 90 days during the 2-year period immediately preceding the date of enlistment. [22] The DOD does not apply this 90-day limitation on absences to DACA recipients.

Foreign Residency Requirement

A nonimmigrant exchange visitor under the J nonimmigrant visa classification may be eligible to apply for the MAVNI program with the DOD. Certain nonimmigrant exchange visitors are subject to a statutory foreign residence requirement. [23] J exchange visitors who enlist in the military through the MAVNI program are not required to comply with the foreign residence requirement in order to naturalize. [24] In addition, the dependent spouse or child of the exchange visitor is not required to comply with the foreign residence requirement. [25]

Adjustment of Status Applicants

The DOD does not disqualify otherwise eligible applicants to the MAVNI program by virtue of having a pending adjustment of status application with USCIS. [26]

Footnotes

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1. [^] See INA 329.

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 the 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 8 CFR 329.1 and 8 CFR 329.2.

8. [^] See 8 CFR 329.1 and 8 CFR 329.2. Declared by Joint Resolution of Congress of April 6, 1917 (40 Stat. 429, Ch. 1) and Joint Resolution of Congress, December 7, 1917 (40 Stat. 429, Ch. 1). Armistice signed, November 11, 1918.

9. [^] See 8 CFR 329.2. See Proclamation No. 2714, Cessation of Hostilities of World War II, 61 Stat. 1048 (December 31, 1946).

10. [^] See 8 CFR 329.2.

11. [^] See 8 CFR 329.2. See Exec. Order No. 12081, Termination of Expeditious Naturalization Based on Military Service, 43 FR 42237 (September 18, 1978).

12. [^] See 8 CFR 329.2. See Exec. Order No. 12939, Expedited Naturalization of Aliens and Noncitizen Nationals Who Served in an Active-Duty Status During the Persian Gulf Conflict, 59 FR 61231 (November 22, 1994).

13. [^] See 8 CFR 329.2. See Exec. Order No. 13269, Expedited Naturalization of Aliens and Noncitizen Nationals Serving in an Active-Duty Status During the War on Terrorism, 67 FR 45287 (July 3, 2002).

14. [^] See 8 CFR 329.2. See Exec. Order No. 13269, Expedited Naturalization of Aliens and Noncitizen Nationals Serving in an Active-Duty Status During the War on Terrorism, 67 FR 45287 (July 3, 2002).

15. [^] See INA 329.

16. [^] See INA 329.

17. [^] For further information and details of the DOD program, see the DOD MAVNI Fact Sheet (PDF) or contact the DOD.

18. [^] The Secretary of Defense authorized the pilot program. See the DOD MAVNI Fact Sheet (PDF).

19. [^] See sections on health care professionals and eligible languages in the DOD MAVNI Fact Sheet (PDF).

20. [^] MAVNI enlistees should speak with their commanding officers for additional information regarding the circumstances under which the military departments will sign and certify the Form N-426.

21. [^] See section on eligibility in the DOD MAVNI Fact Sheet (PDF).

22. [^] See section on eligibility in the DOD MAVNI Fact Sheet (PDF).

23. [^] See INA 212(e).

24. [^] The J exchange visitor is not required to obtain a waiver of the INA 212(e) foreign residence requirement. See INA 329.

25. [^] A J-1 exchange visitor's dependent spouse or child is issued a J-2 nonimmigrant visa.

26. [^] See Form I-485, Application to Register Permanent Residence or Adjust Status. See section on eligibility in the DOD MAVNI Fact Sheet (PDF).

Chapter 4 - Permanent Bars to Naturalization

A. Exemption or Discharge from Military Service Because of Alienage

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 ("alienage discharge") is permanently ineligible for naturalization unless he or she qualifies for an exception (discussed below). [1]

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] 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 alienage.

Certain persons were granted exemptions from the draft for reasons other than alienage, 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 alienage.

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]

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]
- 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]
- 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] who had served in the armed forces of the country of which he or she was a national. [7]

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]

Countries with Effective Treaties Providing Reciprocal Exemption from Military Service	
Argentina	Art. X, 10 Stat. 1005, 1009, effective 1853

Countries with Effective Treaties Providing Reciprocal Exemption from Military Service	
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)

Countries with Expired Treaties Providing Reciprocal Exemption from Military Service	
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. 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 an alien may impact the applicant's eligibility for naturalization.

Selective Service and military department records are conclusive evidence of service and discharge. [9] Proof of an applicant's request and approval for an exemption or discharge from military service because the applicant is an alien may be grounds for denial of the naturalization application. [10]

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] 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]

Footnotes

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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. SeeGallarde 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(L)].

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] 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] or honorable service during a designated period of hostility [3] 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. 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]
- There is no filing fee for current and former service members for an Application for Certificate of Citizenship (Form N-600). [5]

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] 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] The applicant may request overseas processing at any time of the naturalization process.

Footnotes

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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]

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]

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] 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] 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] 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

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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. 110-251 (PDF), 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]

Footnotes

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1. [^] See INA 328(f), INA 329(c), and INA 340. See Pub. L. 108-136 (PDF). 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] 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]

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]

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] 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]

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] 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]

Footnotes

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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] 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 lawful permanent resident (LPR) spouse or child is considered to be seeking admission to the United States.[2] 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] 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]

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]

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]

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] The general provision applies to spouses who have been LPRs for 5 years immediately preceding the date of filing the naturalization application.[8] Naturalization on the basis of marriage applies to spouses of U.S. citizens who have been LPRs for 3 years immediately preceding the date of filing the naturalization application and who have lived in marital union with their citizen spouses for those 3 years.[9]

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] 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]

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]

Spouses of service members already accompanying and residing abroad with their military spouse may also qualify for naturalization through the general provision[13] or on the basis of their marriage to a U.S. citizen for 3 years.[14] Such spouses may be eligible for any naturalization proceeding abroad, to include interviews, filings, oaths, ceremonies, or other proceedings relating to naturalization.[15]

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] 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] or on the basis of his or her marriage to a U.S. citizen for 3 years.[18]

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] and
- The LPR is accompanying and residing abroad with the service member in marital union.[20]

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 5 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] 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 3 years and who is applying on the basis of his or her marriage for 3 years must establish that the service member has been a U.S. citizen for the required period.[22]

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] This applied to a spouse who was eligible through the general provision[24] or through 3 years of marriage to a U.S. citizen[25] 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] 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] 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]

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]

Spouses should indicate that they seek to naturalize through the general provision[30] or on the basis of their marriage to a U.S. citizen for 3 years[31] 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]

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]	Place of Residence	Lawful Admission	Treatment of Time Residing Abroad	Automatic Citizenship or Overseas Naturalization
320	United States	Must be LPR	Must reside with U.S. citizen parent in the United States	May acquire automatic citizenship (must take oath in the United States)
322	Outside the United States	No lawful admission required	Must reside with U.S. citizen parent serving abroad	Must apply, but may complete entire naturalization process from outside the United States (must take oath before 18th birthday)

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] 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]

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 5 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]

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]

The amendments benefit children of U.S. citizen members of the military who are accompanying their parent abroad on official orders.[38] 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]

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]) 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]

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]

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]

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]

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 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]

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 during a period 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]

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]

The surviving spouse, child, or parent must meet the general naturalization requirements, except for the residence or physical presence requirements in the United States.

Footnotes

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1. [^] See the National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181 (PDF), 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, residence, 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 (PDF), 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 and Residence 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.

Part J - Oath of Allegiance

Chapter 1 - Purpose and Background

A. Purpose

Before becoming a U.S. citizen, an eligible naturalization applicant must take an oath of renunciation and allegiance (Oath of Allegiance) in a public ceremony. [1] 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] 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]

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] 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]

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
- Pub. L. 106-448 (PDF) – Waiver of Oath of Renunciation and Allegiance for Naturalization of Aliens having Certain Disabilities Act of 2000

Footnotes

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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]

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] 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 Secretary of Homeland Security has the authority to administer the Oath and may delegate the authority to other officials within DHS and to other employees of the United States. [3]

The Secretary of Homeland Security has, through the Director of USCIS, delegated the authority to administer the Oath during an administrative naturalization ceremony to certain USCIS officials who can successively re-delegate the authority within their chains of command. [4] For example, the Director delegated this authority to the Deputy Director, District Directors, and Field Office Directors. Field Office Directors may re-delegate the authority by way of a delegation memorandum to other employees within their chains of command, such as supervisory immigration services officers.

In addition, immigration judges may also administer the Oath in administrative ceremonies. During judicial naturalization ceremonies, the judge in the district of proper jurisdiction has exclusive authority to administer the Oath.

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] 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]

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]

Footnotes

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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 103(a)(1)(6). Potential exercise of Oath authority by any of the following needs to be raised through chains of command to USCIS leadership and counsel for consideration: Any elected official, including the President, Vice President, or Members of Congress; military officers; judges (other than immigration judges or judges presiding over judicial ceremonies); or any person outside of USCIS, other than cases clearly involving the Secretary of Homeland Security's direct use of Oath authority.

4. [^] See INA 310 and 8 CFR 310. See INA 337 and 8 CFR 337. See Section II(V) of DHS Delegation 0150.1 (issued June 5, 2003).

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]

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]

There is no exemption from the clause "to perform work of national importance under civilian direction when required by the law." [3]

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]

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] 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]

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]

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] 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] 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]

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]

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 disability, an applicant with the assistance of a legal guardian, surrogate, or designated representative must provide a written request and a written evaluation by an authorized medical professional. [12] An applicant is not required to submit a specific form to request an oath waiver. [13] 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. [14] 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, at the time of naturalization. If USCIS waives the oath requirement, USCIS issues a Certificate of Citizenship after the officer approves the application. [15]

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. [16] In addition to oath waiver, this process may require accommodations including off-site examinations.

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 an authorized medical professional. [17] 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, surrogate, or designated representative [18] signs on behalf of an applicant who is unable to understand or communicate an understanding of the Oath of Allegiance because of a physical or developmental disability or mental impairment. The legal guardian, surrogate, or representative acts on behalf of an applicant with a disability at every stage of the naturalization examination. The legal 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; [19] 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: [20]

- 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

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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. [^] For information on who is an authorized medical professional, see Part E, English and Civics Testing and Exceptions, Chapter 3, Medical Disability Exception (Form N-648), Section C, Authorized Medical Professionals [12 USCIS-PM E.3(C)].

13. [^] 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].

14. [^] See INA 337(a). See 8 CFR 341.5(b).

15. [^] See Part H, Children of U.S. Citizens [12 USCIS-PM H].

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

17. [^] For the definition of an authorized medical professional, see Part E, English and Civics Testing and Exceptions, Chapter 3, Medical Disability Exception (Form N-648), Section C, Authorized Medical Professionals [12 USCIS-PM E.3(C)].

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

19. [^] 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.

20. [^] 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]

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] 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]

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] or
- An applicant fails to appear for at least two ceremonies to take the Oath of Allegiance without good cause. [5]

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]

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]

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]

Footnotes

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1. [^] See Chapter 5, 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 - Administrative Naturalization Ceremonies

USCIS is committed to elevating the importance of the naturalization ceremony as a venue to recognize the rights, responsibilities, and importance of citizenship and provide access to services for new citizens. The naturalization ceremony is the culmination ofthe naturalization process. USCIS aims to make administrative naturalization ceremonies positive and memorable moments in the lives of the participants. USCIS honors the Oath of Allegiance with policies and practices that reflect the importance of the occasion.

The following information provides USCIS officials with guidance for conducting administrative naturalization ceremonies in a meaningful and consistent manner. [1]

A. Materials Distributed

USCIS may distribute materials at administrative naturalization ceremonies, including:

- U.S. Citizenship Welcome Packet (including the President's Congratulatory Letter);
- American flag;
- Citizen's Almanac (Form M-76 (PDF, 8.53 MB)); and
- Pocket-size Declaration of Independence and Constitution of the United States.

1. Contents of U.S. Citizenship Welcome Packet

USCIS distributes the U.S. Citizenship Welcome Packet (Form M-771) to every naturalization candidate participating in an administrative ceremony in the United States. [2]

The U.S. Citizenship Welcome Packet consists of the following:

- President's, Secretary's, or Director of USCIS' Congratulatory Letter and Envelope;
- Application for U.S. Passport (Form DS-11 (PDF));
- Important Information for New Citizens (Form M-767);
- Oath of Allegiance/The Star Spangled Banner/Pledge of Allegiance Flier (Form M-789);
- Certificate Holder; and
- A Voter's Guide to Federal Elections.

The official congratulatory letters from the President of the United States, Secretary of Homeland Security, or Director of USCIS are the only congratulatory letters USCIS distributes at naturalization ceremonies. Guests, elected officials, other U.S. government entities, and non-governmental organizations may not provide candidates with congratulatory letters within the venue.

2. Distribution of U.S. Citizenship Welcome Packet

USCIS may distribute the U.S. Citizenship Welcome Packet during the check-in process 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. [3]

The U.S. Citizenship Welcome Packet contains information for naturalized citizens. Before distributing the packet, officers 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 packet;
- Make a general statement about the contents of the packet; and
- Answer the candidates' naturalization-related questions.

3. The American Flag

Officers distribute the American flag to naturalization candidates. Only USCIS-issued flags made in the United States may be distributed to naturalization candidates.

4. Citizen's Almanac and Pocket-size U.S. Declaration of Independence and Constitution

The Citizen's Almanac (Form M-76 (PDF, 8.53 MB)) 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 examination.

Officers are not required to distribute these publications to each naturalization candidate, but must make the publications available. The items may be placed on a table in an area accessible to the naturalization candidates. USCIS may also inform candidates that both publications are available for download at uscis.gov/citizenship.

5. Other Materials

USCIS field office leadership must consult with the USCIS Office of the Chief Counsel's Ethics Division to determine whether materials and publications other than the American flag and the contents of the U.S. Citizenship Welcome Packet are appropriate for distribution. Federal workers, including officers, and other invited participants, whether governmental or non-governmental, must never distribute the following within the venue where the USCIS naturalization ceremony is taking place, or anywhere within a federal facility or on federal property:

- Partisan publications;
- Publications referencing a specific political group;
- Commercial materials or publications;
- Religious materials or publications; or
- Any promotional or solicitation materials or publications.

Authorized non-U.S. governmental organizations invited by USCIS to distribute materials or publications, such as voter registration organizations, may provide USCIS-authorized materials at the conclusion of the naturalization ceremony.

Similarly, other authorized U.S. government participants, such as the Department of State's Passport Services Division, the Corporation for National and Community Service, and the Social Security Administration may distribute USCIS-authorized materials within the venue after the USCIS official has concluded the naturalization ceremony. Only USCIS-approved materials and publications may be distributed within the venue once the presiding USCIS official has concluded the naturalization ceremony.

B. Ceremony Check-In Process

USCIS officers perform the ceremony check-in process before the start of the ceremony. An officer reviews the responses on each naturalization candidate's Notice of Naturalization Oath Ceremony (Form N-445) and updates responses as necessary.

Once the officer verifies each candidate's eligibility for naturalization, the officer then collects all USCIS-issued travel documents and lawful permanent resident cards from each candidate.

C. Ceremony Program

To standardize the naturalization ceremony experience, unless exempted, USCIS offices follow these steps in all administrative ceremonies: [4]

- Play "Faces of America;"
- Play the national anthem, The Star Spangled Banner, instrumental or vocal version; [5]
- Deliver opening (welcoming) remarks by Master of Ceremonies; [6]
- Announce the "call of countries;" [7]
- Administer the Oath of Allegiance to the naturalization candidates; [8]
- Deliver keynote remarks (USCIS leadership or guest speaker);
- Play Presidential, Secretary's, or Director of USCIS' congratulatory remarks;
- Recite the Pledge of Allegiance;
- Deliver concluding remarks (Master of Ceremonies or USCIS field leadership); [9] and
- Present the Certificate of Naturalization (Form N-550) by USCIS leadership or officers. [10]

The Naturalization Ceremony Presentation [11] includes all required video and musical elements the office plays at various points in the naturalization ceremony program.

Field offices may also enhance the ceremony program with additional appropriate elements, such as approved musical selections included in the Naturalization Ceremony Presentation. When USCIS plays musical selections during ceremonies, naturalization applicants are not required to stand or sing.

D. Guest Speakers

USCIS welcomes distinguished community members who are U.S. citizens by birth or naturalization to participate as guest speakers in administrative naturalization ceremonies. A guest speaker may be a:

- Civic leader;
- Government leader;
- Military leader;
- Member of Congress;
- Judge;
- Department of Homeland Security (DHS) official; or
- A person whom USCIS deems appropriate for the occasion.

Local USCIS field leadership must carefully review and select guest speakers based on their relevance to the occasion, with particular focus on their outstanding achievements, contributions to the nation or their community, personal experience, or notable activities as a citizen of the United States.

USCIS field leadership must review the qualifications of any potential guest speaker who is not a DHS employee, and approve his or her role in the program before he or she speaks at an administrative naturalization ceremony. [12] If USCIS headquarters selects a guest speaker for 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 importance, dignity, and solemnity of the occasion. After selecting and scheduling a guest speaker, the local field leadership must send the speaker a written notice, which describes USCIS's expectations regarding the appropriate length and content of remarks. USCIS must advise speakers that appropriate remarks 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 vote in federal elections);
- Responsibilities of U.S. citizenship (such as voting and serving on a jury when requested);
- Civic principles within the U.S. government;
- Civic participation in the local community;
- Importance of swearing allegiance to the United States; or
- Theme of the ceremony.

Inappropriate remarks, including political (partisan or otherwise), religious, or commercial statements, are not permitted. [13] Out of respect for the candidates and other attendees, guest speakers serving in the keynote role should deliver remarks between 5 and 10 minutes in length. If a scheduled guest speaker is unable to participate, USCIS must approve any replacement speaker.

USCIS respects the privacy of applicants and may not release the names or personal information of applicants for naturalization unless the applicant provides consent or disclosure required by law.

E. Participation by Elected Officials and Members of Congress

1. Elected Officials

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 that is inconsistent with USCIS's obligation of neutrality. Accordingly, candidates for public office, including incumbents, generally may not speak at or participate in an administrative naturalization ceremony starting from 3 months immediately preceding a primary or general election for office.

For example, if the state primary elections are on February 4, 2014, and the state general election is November 3, 2014, a candidate for public office in those primary elections may not be a guest speaker or have another formal participatory role from November 4, 2013 (3 months before the primary election) until after February 4, 2014. A candidate for the general election may not have a participatory role from August 3, 2014 (months before the general election) until after November 3, 2014. [14]

The 3-month rule does not apply to the President or Vice President of the United States. However, the 3-month rule does apply to Members of Congress. In exceptional circumstances, the USCIS Office of the Chief Counsel's Ethics Division may authorize exceptions to the 3-month rule if the candidate's participation, subject to any appropriate conditions, would not unduly compromise the ceremony's political neutrality and would serve the best interest of USCIS and enhance the ceremony. For any exceptions or issues relating to the 3-month rule, field leadership should contact the Office of Chief Counsel's Ethics Division.

2. Members of Congress

USCIS congressional liaisons coordinate with USCIS district or field office leadership regarding invitations to and requests from Members of Congress to participate in administrative naturalization ceremonies.

Congressional liaisons and the Field Operations Directorate must provide ample notice when issuing invitations to or responding to requests from Members of Congress to serve as guest speakers in naturalization ceremonies. In the event a Member of Congress is unable to serve as a guest speaker after accepting an invitation to do so, only USCIS may select an appropriate substitute.

When a congressional liaison issues an invitation to a Member's office, the invitation must include USCIS guidelines for administrative naturalization ceremonies. [15] Members of Congress scheduled to speak at administrative naturalization ceremonies must follow USCIS' guidance for guest speakers. [16] Members of Congress may not distribute any materials at a USCIS naturalization ceremony or inside the ceremony venue. [17]

Some members of Congress may ask USCIS to schedule naturalization ceremonies to mark particular dates or events of significance to the United States or the U.S. state being represented. USCIS district office or field office leadership may, at their discretion, honor these requests, subject to restrictions for guest speakers. [18]

District office or field office leadership must decline the request if there is any possibility of the event being seen as a platform for any political, controversial, religious, or commercial message. District office or field office leadership may also decline the request if supporting such a ceremony would negatively impact other activities or otherwise present operational hardships.

When a member of Congress asks USCIS to schedule a naturalization ceremony, USCIS responds in writing. If the request is to be honored, the response will provide expectations and restrictions regarding speech for guest speakers. [19] If the request is to be declined, USCIS will provide a reason and a copy of the ceremony guidance.

Members of Congress and their staff are always welcome to attend a naturalization ceremony as members of the public.

F. Voter Registration After Naturalization Ceremonies

1. Distribution of Voter Registration Applications [20]

The ability to vote in federal elections is both a right and a responsibility that comes with U.S. citizenship. [21] All newly naturalized citizens must be given the opportunity to register at the end of the administrative naturalization ceremony when the new citizen is then eligible to register to vote. [22]

The options for distribution of voter registration applications are (in preferential order):

- State or local government election offices distribute and collect voter registration applications for an election official to review and officially register the person to vote;
- Non-governmental organizations distribute and collect voter registration applications for an election official to review and officially register the person to vote; [23] or

- In the absence of the above options, USCIS provides voter registration applications to all new citizens. USCIS is not responsible for the collection of applications or any other activities related to voter registration.

2. Voter Registration Services

The term “voter registration services” includes one or more of the following activities:

- Distribution of voter registration application forms;
- Assisting interested applicants in completing voter registration application forms;
- Reviewing submitted forms to ensure that each form is complete;
- Collecting completed forms for submission to the local election official; or
- Providing non-partisan educational information on the voting process. [24]

The mechanism for registration may vary by ceremony location, but in every case must take place only after the conclusion of the ceremony, when the candidates are officially U.S. citizens.

If no space is available for governmental or non-governmental entities to provide on-site voter registration services, the USCIS field office distribute voter registration applications to each newly naturalized citizen. [25] USCIS bases a “no space available” determination on the location of the ceremony, the size of the facility, and the number of applicants naturalizing, as well as the layout of the space. “No space available” determinations are made on a case-by-case basis by USCIS field leadership conducting the ceremony.

3. Registration by Non-governmental Organizations

In-person voter registration services by the state or local election office is optimal. 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 administrative naturalization ceremonies. To qualify, non-governmental organizations must be:

- Non-profit;
- Non-partisan; and
- Approved by USCIS field leadership.

All interested non-governmental organizations seeking to offer voter registration services must submit a written request to the local USCIS Field Office Director at least 60 days prior to the ceremony, including a statement that those participating in the registration process have received proper training on how to register voters. The written request must address all of the criteria indicated below. Field leadership provides a written response to each request after consultation with the USCIS Office of the Chief Counsel’s Ethics Division, at least 30 days prior to the date of the ceremony. [26]

Field leadership must consider requests from all interested non-governmental organizations seeking to participate in the ceremony and must offer equal, non-preferential opportunities to all qualified and approved non-governmental organizations. If multiple organizations seek to provide voter registration services at USCIS administrative naturalization ceremonies, USCIS field leadership may establish a rotating participation schedule.

When USCIS determines that an organization is qualified and is approved to participate in voter registration services at an administrative naturalization ceremony, field leadership sends the organization a letter, listing specific requirements for participation. Field leadership then contacts the organization to determine its availability to participate in scheduled administrative ceremonies.

While participating, non-governmental organizations and their representatives must not:

- Attempt to influence or interfere with a person's right to register to vote, or to vote; [27]
- Participate in any political activity, partisan or otherwise, regardless of whether the ceremonies take place on federal or non-federal property; [28]
- Engage in religious or commercial solicitation or promotion of any kind;
- Discriminate on the basis of race, color, gender, religion, age, sexual orientation, national or ethnic origin, disability, marital status, or veteran status; [29]
- Collect, retain, or share the personal information of those registered to vote at naturalization ceremonies, even if this information is requested on a voluntary basis;
- Use the information provided on voter registration applications for any purpose other than voter registration; [30] or
- Alter completed voter registration materials in any manner. [31]

While participating, non-governmental organizations and their representatives must:

- Safeguard all personal information new citizens provide for voter registration;
- Follow scheduling and logistical requirements set forth by USCIS field leadership;
- Have received recent proper training on how to register voters;
- Receive an on-site briefing from field leadership regarding rules for that particular facility;
- Wear professional attire and represent themselves and their organization professionally; and
- Wear nametags that include the name of the organization while registering voters (no other identification of the organization may be worn or displayed).

4. Revocation of Participation Privilege

If a non-governmental organization fails to comply with the above requirements for participation, field leadership, in consultation with the USCIS Office of the Chief Counsel's Ethics Division, may revoke the privilege to participate and exclude the organizationfrom participating in future administrative naturalization ceremonies.

In addition, if a USCIS official receives a complaint from a newly naturalized citizen, guest of a newly naturalized citizen, or the state or local election office regarding an organization's inappropriate behavior or lack of ability to properly provide voter registration services, field leadership, in consultation with the USCIS Office of Chief Counsel's Ethics Division, may revoke the privilege to participate upon appropriate inquiry and review of the circumstances.

5. Points-of-Contact for Voting and Voter Registration

If naturalized citizens have questions regarding voting and voter registration, USCIS refers them to:

- The governmental or non-governmental organization offering voter registration services on-site;
- Other information resources within the local area; or
- The official USA.gov Register to Vote government web site.

G. Services Provided by Other Government Entities

Federal entities, such as the Department of State's Passport Services Division, the Corporation for National and Community Service, and the Social Security Administration, as well as state and local governments, 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. [32] Governmental entities that desire representation at administrative naturalization ceremonies must seek advance approval from field leadership of the USCIS office conducting the ceremony.

H. Participation of Volunteers and Civic Organizations

Field leadership may permit volunteers from the community, 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 will determine the appropriate level of participation for the occasion. However, under no circumstances will any non-USCIS employee perform any USCIS function. [33]

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, religious, or commercial activity of any kind.

I. Offers to Donate Use of Facilities

USCIS must use neutral facilities [34] that are not specific to any religion, commercial enterprise, or political affiliation. In addition, administrative naturalization ceremonies should not be held as a part of, or in conjunction with, conventions or conferences.

USCIS must maintain the importance, dignity, and solemnity of naturalization ceremonies. Administrative naturalization ceremonies should always be the focus and main event, and should always be the held at facilities that are neutral and appropriate. USCIS may not use:

- Religious facilities (for example, space in or connected to a place of worship);
- Facilities of an organization that practices immigration law;
- Facilities of an organization that is active in immigration legislation or political advocacy;
- Facilities of an organization that represents petitioners and applicants before DHS;
- Facilities where USCIS personnel cannot protect secure documents; or
- Facilities that may compromise the importance, dignity, and solemnity of the occasion.

USCIS employees must not solicit a gift (including use of facilities to hold an administrative naturalization ceremony) from any non-federal entity. However, USCIS may accept an unsolicited gift with the concurrence of the USCIS Field Operations Associate Director, the USCIS Office of Chief Counsel's Ethics Division, and approval of the USCIS Director.

In addition, USCIS must not use a donated facility from a prohibited source to include:

- Persons or organizations seeking official action by USCIS; [35]

- Persons or organizations doing business or seeking to do business with USCIS;
- Persons or organizations regulated by USCIS or DHS; or
- Persons or organizations with interests that may substantially affect the performance or nonperformance of the official duties of USCIS or USCIS employees.

1. Submission of Offer

The donor must submit all required documents to the Field Operations Directorate at least 4 weeks in advance of the ceremony date to guarantee timely processing. The donor must include the following documents in the gift offer request:

- An invitation letter (preferably on the organization's letterhead);
- A completed Offer of Gift from Non-Governmental Sources (Form G-1194). [36]

In addition to the donor's submission, an officer must submit the following documents for approval:

- Gift offer memorandum (memo to the USCIS Director from the Field Operations Associate Director, and including the requesting USCIS Region, District, and Field Office); and
- DHS, Gift Donation Form (Form 112-02-001). [37]

2. Review of Offer

After receipt, an authorized official reviews the documents for accuracy and consistency. The following officials then review and consider for approval the gift offer (in order of review):

- USCIS Field Operations, Associate Director;
- USCIS Office of Chief Counsel's Ethics Division; and
- USCIS Director (final approval).

Field leadership may accept a gift offer or donated facility for ceremony use from a federal, state, or local governmental agency without the approval of the USCIS Director. However, before accepting such an offer, field leadership must consider if acceptance would create a conflict of interest. Field leadership should confer with the Field Operations Directorate at headquarters and the USCIS Office of the Chief Counsel's Ethics Division before accepting gifts or a donated facility.

3. Rejection of Offer

USCIS may reject an offer of use of facilities if:

- The gift offer would not aid or facilitate the mission of USCIS and DHS;
- The acceptance of the gift would create or appear to create a conflict of interest or appearance of a conflict of interest;
- The donor seeks to obtain or conduct business with USCIS or DHS;
- The donor conducts operations or activities that are regulated by USCIS or DHS;
- The acceptance of the gift or use of the donated facility would reflect unfavorably upon the ability of the agency, or any employee of the agency, to carry out USCIS and DHS responsibilities or official duties in a fair and objective manner;

- The acceptance of the gift or use of the donated facility would compromise the integrity or the appearance of the integrity of USCIS or DHS programs or any official involved in those programs;
- The acceptance of the gift or use of the donated facility would violate, or create the appearance of a violation of the Hatch Act; [38]
- The acceptance of the gift or use of the donated facility might reasonably create the appearance of preferential treatment or official endorsement of an outside entity; or
- The acceptance of the gift or use of the donated facility would be inconsistent with USCIS' interest in upholding theimportance, dignity, and solemnity of the occasion.

The authorized agency officials may consider various factors, including the following, in their determination:

- The identity of the donor;
- The purpose of the gift as described in any written statement or oral proposal by the donor;
- The monetary or estimated market value or the cost to the donor;
- The identity of any other expected recipients of the gift on the same occasion, if any;
- The timing of the gift;
- The number of times the donor has offered gifts to USCIS;
- The nature and sensitivity of any matter pending before the agency that may affect the interest of the donor;
- The importance or consequence of an individual employee's role in any matter affecting the donor (for example, if benefits of the gift will accrue to the employee); and
- The nature of the offered gift.

At the end of the gift offer process, USCIS provides notification of the acceptance or rejection of the gift offer to the appropriate person or organization.

J. Coordination with External Organizations

When USCIS hosts an administrative naturalization ceremony [39] in which an external organization (such as another federal agency or a local community-based organization) plays a role, [40] USCIS is ultimately responsible for ensuring that the event is important, dignified, and solemn. While USCIS welcomes participation from external organizations, USCIS does not formally co-host ceremonies with external organizations. The naturalization ceremony must always be the focus of any program.

1. USCIS Responsibilities

In conducting administrative ceremonies, USCIS is responsible for the following:

- Approving the ceremony facility – USCIS follows internal policies and procedures regarding the use of space, including donations of space. [41] Prior to selecting the facility, USCIS reserves the right to conduct a site visit of the proposed space.
- Planning the ceremony – USCIS determines the ceremony program, including the order of events, the order of speakers, and the seating arrangements of the speakers on stage.
- Ensuring the ceremony remains the focus of the event.

- Ensuring proper use and placement of the DHS seal and signature according to approved guidelines. [42] When coordinating with an external entity, USCIS must avoid perceived endorsement.
- Selecting, inviting, and approving guest speakers – USCIS must approve all guest speakers. While the collaborating organization may recommend guest speakers to USCIS, the selection is at the discretion of USCIS. USCIS may request to review guest speaker remarks in advance of the ceremony for content and length. Inappropriate remarks, including political (partisan or otherwise), commercial, or religious statements, are not permitted. [43]
- Determining which naturalization candidates will participate in the ceremony – Organizations may not request that specific lawful permanent residents (LPRs) be naturalized at any ceremony (for example, only LPRs from a particular country). USCIS does not consider such requests, which may create a conflict of interest or the appearance of preferential treatment to specific LPRs.
- Ensuring that voter registration applications are offered to new citizens at the end of the ceremony. [44]
- Selecting and approving organizations requesting to distribute voter registration applications, and the methods by which such efforts are to be conducted.
- Preserving the importance, dignity, and solemnity of naturalization ceremonies.

USCIS may brief all ceremony participants on expected behavior.

2. External Organizations

The external organization is responsible for:

- Following all USCIS policies and procedures, including guidance from field leadership.
- Coordinating with USCIS on media coverage of the naturalization ceremony.
- Seeking approval from USCIS prior to distributing any materials at the ceremony. If the external organization wishes to distribute American flags to ceremony guests, those flags should be made in the United States. USCIS provides flags for all naturalization candidates.

3. Conferences and Conventions

USCIS may not schedule a ceremony as part of, or in conjunction with, another organization's event, including conferences or conventions. USCIS may determine it is operationally feasible to hold a naturalization ceremony in which conference or convention participants are invited to attend, but the ceremony must remain a separate event.

Footnotes

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1. [^] This guidance 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 guidance 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 the military member to carry the materials.

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. [^] 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].

5. [^] USCIS offices may incorporate a live performance as an alternative to the version on the video. If any proprietary versions of the national anthem, or any other songs, are being used, the user must ensure that the intellectual property rights of the holder(s) are respected, and the necessary legal permissions are acquired.

6. [^] Opening (welcoming) remarks include, but are not limited to, an introduction of ceremony principals and an overview of the ceremony program.

7. [^] The designated official reads aloud a list of countries represented by the naturalization candidates' former nationalities.

8. [^] See Chapter 2, The Oath of Allegiance [12 USCIS-PM J.2]. See INA 337. See 8 CFR 337.1(a) and 8 CFR 337.1(b).

9. [^] 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.

10. [^] Only USCIS leadership and officers may present the Certificates of Naturalization to the naturalized U.S. citizens.

11. [^] The presentation is provided to all field offices in an electronic format and includes a PowerPoint and video materials.

12. [^] Certain prominent guest speakers, which may include elected officials and cabinet members, should receive their invitation to speak from USCIS leadership at headquarters. Therefore, local field leadership should coordinate with headquarters as early as possible and list ceremony details in the National Ceremony Scheduler.

13. [^] If a guest speaker makes inappropriate remarks during an administrative naturalization ceremony, field leadership should inform the speaker and notify the appropriate USCIS supervisor or manager. 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.

14. [^] See 5 U.S.C. 7321-7326 (Hatch Act).

15. [^] See Chapter 5, Administrative Naturalization Ceremonies [12 USCIS-PM J.5].

16. [^] See Section D, Guest Speakers [12 USCIS-PM J.5(D)].

17. [^] See Section A, Materials Distributed, Subsection 5, Other Materials [12 USCIS-PM J.5(A)(5)].

18. [^] See Section D, Guest Speakers [12 USCIS-PM J.5(D)].

19. [^] See Section D, Guest Speakers [12 USCIS-PM J.5(D)].

20. [^] See the U.S. Election Assistance Commission.

21. [^] See National Voter Registration Act of 1993, Pub. L. 103-31 (PDF) (May 20, 1993). See 52 U.S.C. 20501(a).

22. [^] See 52 U.S.C. 20507(a)(5).

23. [^] Non-governmental organizations must be qualified and approved according to the criteria in Subsection 3, Registration by Non-governmental Organizations [12 USCIS-PM J.5(F)(3)].

24. [^] See 52 U.S.C. 20506.

25. [^] If a field office is unable to distribute voter registration forms in any of the above three manners, field leadership must notify their chain of command within the Field Operations Directorate.

26. [^] USCIS may approve the request on a one-time or standing basis, but USCIS may remove the organization at any time if the organization does not meet the participation requirements.

27. [^] See 18 U.S.C. 241 and 18 U.S.C. 242. See 52 U.S.C. 20506(a)(5) and 52 U.S.C. 20511.

28. [^] 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. See 52 U.S.C. 20506(a)(5)(B).

29. [^] See 52 U.S.C. 10101, 52 U.S.C. 10301, and 52 U.S.C. 10303(f)(2).

30. [^] Strict civil or criminal penalties may be imposed for the unauthorized purchase and use of voter registration information.

31. [^] See 52 U.S.C. 20702 (regarding the theft, destruction, concealment, mutilation, or alteration of voter records).

32. [^] The conclusion of the ceremony is after the Master of Ceremonies (USCIS official) has dismissed the new citizens.

33. [^] For example, volunteers must not perform any of the USCIS employee's duties within the ceremony check-in process.

34. [^] This includes any type of indoor or outdoor facility.

35. [^] Such as by representing applicants or petitioners before USCIS or by contracting with USCIS.

36. [^] USCIS provides Form G-1194 to the donor.

37. [^] See DHS Form 112-02-001. USCIS Office of Chief Counsel's Ethics Division and the USCIS Director must both sign the form.

38. [^] See 5 U.S.C. 7321-7326.

39. [^] See Chapter 6, Judicial and Expedited Oath Ceremonies [12 USCIS-PM J.6] for information on non-administrative ceremonies.

40. [^] External organizations may support USCIS naturalization ceremonies in one or more of the following ways: participating in the event agenda as determined by USCIS; promoting the event within the community; and offering to donate a neutral space in which to hold the naturalization ceremony. See Section I, Offers to Donate Use of Facilities [12 USCIS-PM J.5(I)].

41. [^] See Section I, Offers to Donate Use of Facilities [12 USCIS-PM J.5(I)].

42. [^] The seal and signature of external organizations may only be used in accordance with DHS Management Directive 123-06: Use of the Department of Homeland Security Seal. Local offices should consult with the USCIS Office of the Chief Counsel's Ethics Division for guidance.

43. [^] See Section D, Guest Speakers [12 USCIS-PM J.5(D)].

44. [^] See Section F, Voter Registration Services [12 USCIS-PM J.5(F)].

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] 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] 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]

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

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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] United Statescitizens are eligible to receive a certificate from USCIS documenting their U.S. citizenship. [2] 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]
- The Certificate of Naturalization is the official record that the applicant is a naturalized U.S. citizen. [4]

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]

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

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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 automatically acquired or derived citizenship at birth or after birth; [1] 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] 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]

B. Contents of Certificate of Citizenship

1. Information about the Applicant

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]
- 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]

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] 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]

Change of Legal Name on Certificate of Citizenship

In general, a Certificate of Citizenship includes an applicant's full legal name [8] 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]

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]

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]

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]

Footnotes

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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. See Part H, Children of U.S. Citizens [12 USCIS-PM H].

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 (PDF) (January 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] 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]

B. Contents of Certificate of Naturalization

1. Information about the Applicant

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]
- 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]

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] 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]

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] 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]

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]

Footnotes

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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. See6 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]

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]

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] In addition, an applicant who has legally changed his or her gender may apply for a replacement certificate reflecting the new gender. [4]

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]

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]

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] No filing fee is required when an application is filed based on a USCIS error.

Footnotes

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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]

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]

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] 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]

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]

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] All cases relating to cancellation of certificates should be coordinated through the USCIS OCC office with jurisdiction.

Footnotes

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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] For criminal revocation of naturalization, the U.S. Attorney’s Office files criminal charges in Federal District Court. [2]

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] 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] A person’s naturalization can only be revoked after a final order in a judicial proceeding to revoke his or her naturalization. [5] 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] 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] 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] 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

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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 toGorbach 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 [12USCIS-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]

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]

B. Concealment of Material Fact or Willful Misrepresentation [3]

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]

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]

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] 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]

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 U.S. citizen through naturalization on the basis of honorable service in the U.S. armed forces; [8]
- 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]

Footnotes

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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] 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 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. All cases relating to cancellation of certificates should be coordinated through the USCIS Office of Chief Counsel office with jurisdiction. [2]

C. Effects of Revocation on Citizenship of Certain Spouses and Children [3]

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] A child residing in

the United States or abroad may become a U.S. citizen through his or her parent's naturalization. [5] 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]

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 U.S. 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]

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 U.S. 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]

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]

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] 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] 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]

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]

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).