

Naturalization Overview

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N-400 Eligibility

- ✓ 18 years of age
- ✓ Lawfully admitted to Permanent Residence
- ✓ Continuous Residence for statutory period
- ✓ Physical Presence for $\frac{1}{2}$ statutory period
- ✓ Good Moral Character
- ✓ Speak, read & write basic English
- ✓ Pass a test of U.S. civics & history
- ✓ Willing to swear Oath of Allegiance

Statutory Eligibility Period

- 5 years, per INA §316(a) - 90% of applicants
- 3 years, per INA §319(a) – married to, & “living in marital union with” US citizen spouse
- May file up to 3 months before eligibility

Basis of Permanent Residence

- A person not *lawfully* admitted to PR is barred from naturalization under INA §318

AND

- Subject to rescission, if within 5 years
- Subject to removal

Continuous Residence

- Required for full 5-year/3-year period
- In same state for at least 3 months
- Actual primary abode, not domicile

“Living Together In Marital Union”

Under §319(a), must show continuous residence living with USC spouse for whole 3 years

- Leases/mortgage statements
- Joint tax returns
- Insurance policies
- Bills, bank statements

Exceptions: a) Involuntary Separation
 b) VAWA

Breaks in Continuous Residence

Abandonment of LPR:

- Non-Resident Tax Return raises rebuttable presumption per 8 CFR §316.5(c)(2)
- 1 year + outside U.S.

Red Flags for Broken Continuity:

- Re-Entry Permit
- Job or Family Abroad, factors at §316.5(c)(1)(i)
- Commuter aliens

INA §316(b): Rebuttable presumption >6 month absence

Physical Presence

- Required for $\frac{1}{2}$ the statutory period
- Travel days partly in U.S. count as “present”
- All periods of honorable military service, even overseas, count as “present” in U.S.

Good Moral Character

- Statutory bars at INA §101(f)
- Regulatory bars at 8 CFR §316.10
- Non-criminal bars –The “D” list:
Drunkards, Deserters, Deadbeat dads,
Draft-dodgers, Dudes who Didn't register
& Destroyers of marriages

Crimes & Good Moral Character

- When was the offense, conviction & any restraint on liberty?
- Is the applicant removable?
- Was the person inadmissible after travel?
- CIMT? Aggravated felony? Firearms?

Is Client Already a Citizen?

- Birth in US (*jus soli*)
- Through a parent's US citizenship (*jus sanguinis*)
- Child Citizenship Act (INA §322)
Automatic Acquisition or Expedited
Naturalization - as of Feb 27, 2001
- Through naturalization of parent: per law in
effect on child's Date of Birth

False Claims to U.S. Citizenship

- **Willful** misrepresentation to one making a legitimate inquiry, per 18 USC §911, or
- With **intent** to vote or obtain government benefit, per 18 USC §1015
- After Sept. 30, 1996, includes claims to private parties to gain any benefit, e.g. Form I-9
- May also fall within INA §101(f)(6), INA §212(a)(6)(C)(ii), INA §237(a)(3)(D)

English language & civics test

- Language Exemptions: 55/15 & 50/20 rules at INA §312(b)(2)
- “Special Consideration” for 65/20 at INA §312(b)(3) – reduced list of questions
- Medical Waivers: Form N-648 signed by Dr. w/ DSM code & written explanation

U.S. Government

- Basic knowledge of U.S. history & civics
- Attached to the principles of the Constitution
- Well-disposed to good order & happiness of the U.S.
- Willing to bear arms, perform non-combat service, or do work of national importance
- Swear oath of allegiance to the U.S.