

OUR PRACTICE

Naturalization

The end of the road in the immigration process for someone who entered the U.S. as an alien is "naturalization" to citizenship. But first one must become and remain a permanent resident for 5 years (3 years if married to a U.S. citizen). In addition, the naturalization applicant must meet other residency, English literacy, U.S. history and government, and good moral character requirements.

USCIS has published a surprisingly good, very detailed handbook called *A Guide to Naturalization* which provides an in depth look at the responsibilities of being a U.S. citizen and the requirements and procedures for applying. The USCIS website also discusses various aspects of naturalization. Thus, many persons successfully prepare their own applications for naturalization and manage the process without a lawyer, while others prefer the security and simplicity of having an immigration lawyer handle it. Because of the possibility of huge unexpected problems, including denial, deportation, or even imprisonment, someone should definitely consult an immigration lawyer, before applying, if she has any uncertainties about eligibility or if she has any complications in her prior immigration eligibility or processing.

This page gives an overview of the following aspects of naturalization:

- The Naturalization Process
- Basic Requirements
- Physical Presence and Abandonment
- Applications to Preserve Residence for Naturalization
- Those Excluded from Naturalizing and Favored Classes
- Risks to Applying for Naturalization
- How We Can Help

The Naturalization Process

Once the applicant has become eligible and has lived in the present geographic area (USCIS jurisdiction) within the U.S. for at least 3 months, she may file an application ([Form N-400](#)) with USCIS, typically attaching only a copy of the permanent resident card. In fact, most people may apply 90 days before being technically eligible for naturalization. After filing, USCIS schedules "biometrics" (fingerprint, photo, and signature) locally at an "Application Support Center." (Only USCIS takes the fingerprints anymore – not even local law enforcement officials can do it). Then an interview is scheduled at a local USCIS office. In some cases, USCIS holds cases from interview pending national security analysis. Some applicants have had to bring lawsuits to get USCIS to act.

At the interview, the applicant will take an English literacy and basic U.S. History and government test. The USCIS website provides sample sentences for the written English test and study guides and questions for the history and government test. USCIS chooses the history and government questions from among a limited set that can be memorized, so one should carefully study the "100 Questions & Answers" and take a sample test generated from those 100 questions on the USCIS website. If the applicant fails the literacy or the history aspect of the examination, he may be allowed 1 re-examination between 60 and 120 days after the first examination. The interview can also focus on other problems with the applicant's deportability or ineligibility for naturalization.

Applicants who have been residing in the U.S. for at least 20 years after obtaining permanent residence and are over age 65 must answer only 6 questions correctly from 10 questions asked from a set of 25 of the 100 standard questions. There is an exemption from the English literacy requirement for applicants who are over age 55 and have been permanent residents for 15 years, or who are over age 50 and have been permanent residents for 20 years. Someone with a mental impairment affecting his ability to learn English, history and government may seek exemption from these requirements by filing form N-648 certified by a licensed doctor or clinical psychologist.

If the applicant changes addresses while the naturalization application is pending, the applicant should report the change to USCIS by calling the USCIS National Customer Service Center (1-800-375-5283) *in addition* to filing Form AR-11 or giving online notice for both purposes. The service center handling the case then will coordinate further processing with the USCIS local office with jurisdiction over the new residence, ostensibly preserving the applicant's place in line for processing in relation to others who have originally filed from that jurisdiction.

Once the exam takes place, the act requires the USCIS to make the decision on the application within 120 days. Sometimes, especially regarding national security analysis, that does not happen, and legal counsel can press for a decision, sometimes through the courts.

Even when the USCIS examiner approves the application, the process is not finished until the applicant has taken the oath of allegiance to the U.S. in a formal ceremony. The law allows the oath to be administered either by the USCIS or by a court, but the judges of each federal court district (i.e., Northern District of Illinois) may choose to have their court be the exclusive means of the oath. (Note: this is one of the only pleasant things federal judges get to do, and for handling the ceremonies the courts receive important federal monies that can subsidize other court operations). Sometimes a court district makes temporary exceptions, allowing USCIS ceremonies, if the court-scheduled ceremonies are oversubscribed. If the application is approved, the applicant should ask if he has a choice about when and where to be sworn in, and most people, given the choice, prefer the earliest option, but some prefer a court ceremony for the grandeur of it. A court ceremony might be necessary if the applicant wishes to change her name as part of the naturalization process (which is an option— an alternative to a state court filing for name change), but judicial name change might not be necessary if the applicant has already changed her name through marriage or usage, or if the USCIS has merely misspelled her name in the past.

At the ceremony, the applicant will be required to sign a form N-445 (confirming the absence of any criminal matters or other incidents that might require new review for eligibility) and take the oath of allegiance. The oath includes renunciation of all allegiance and fidelity to any foreign principality or sovereignty of whom one has been a subject or citizen. If a person taking this oath wishes to retain dual citizenship with another country, she should confirm before signing the oath whether the other country views such an oath as an act expatriation causing the applicant to lose their other citizenship. (Obviously, this is a decision that should be evaluated before filing a naturalization application in the first place). After the ceremony USCIS will take away the naturalized citizen's permanent resident card and issue a certificate of naturalization. The applicant can then file the certificate with a [passport application](#), often in the post office in the same building as the courthouse.

Basic Requirements

The USCIS has provided a helpful worksheet to assist potential applicants in determining if they meet the requirements for naturalization. Anyone who does not clearly meet those requirements should consult an immigration lawyer before applying.

The most important requirement is to have been a lawful permanent resident (i.e., with a "green card") and to have continuously maintained a residence in the U.S. for 5 years (or 3 years while having been "living in

marital unity with" a U.S. citizen). The application may be filed as early as 90 days before the end of the 5 or 3 year required residency.

The applicant must also have been "of good moral character" for at least the 5 year or 3 year period of required residence. The USCIS website provides a description of the "good moral character" requirement. Aside from criminal violations, a willful failure to support family or dependents, an extra-marital affair that tended to destroy an existing marriage, or failure to file tax returns, could result in a rebuttable presumption of the lack of good moral character. Some minor crimes may not preclude good moral character, but USCIS takes the position that any probation must be completed before naturalization can be granted. Some courts have questioned that position. Occasionally USCIS officers deny naturalization for minor crimes, and applicants may challenge that decision by bringing a lawsuit against USCIS in federal court after administrative appeal.

Physical Presence and Abandonment

The USCIS will look to the applicant's physical presence in the United States when establishing whether the alien had "continuous residence" for the required 5 or 3 year residence period. "Residence" is defined as a "place of general abode; principal, actual dwelling place in fact, without regard to intent." This does not mean the person must be physically present in the U.S. during that whole 5 or 3 years. In order to be considered "continuously resident" the alien must have been physically present at least *half* of the required 5 or 3 years, looking back from the day of filing the naturalization application.

It also matters how long the permanent resident has been outside the U.S. on a particular trip. A trip outside the U.S. for more than 1 year at a time generally breaks continuous residence and starts the 5 or 3 year clock over. A trip that lasts between 6 months and 1 year creates a rebuttable presumption of a break in continuity, and the alien must prove that he did not intend to abandon residence. A trip for 6 months or less is not usually a problem in this regard. When an issue of abandonment arises, USCIS tends to look at several factors that can tend to show abandonment: quitting U.S. employment and taking on employment abroad; immediate family members not remaining in the U.S.; not retaining full access to the U.S. home; and not paying U.S. taxes as a resident (a crucial factor).

There are several exceptions to the normal rules about physical presence and residence, mostly for people who have served with the U.S. Government or military abroad or certain religious workers.

Absences from the U.S. after obtaining permanent residence also give rise to a separate, but closely related issue: whether the person has **abandoned permanent residence** and therefore lost the status of permanent resident. Obviously, a finding of abandonment of residence would prevent someone from eligibility for naturalization.

Applications to Preserve Residence for Naturalization

Those permanent residents who anticipate having an absence of one year or more and who wish to naturalize are advised to take 2 steps in insuring that their absence does not break continuous residence:

1. While in the U.S., if qualified to do so (see below), file an application for a Re-entry Permit to reduce the chance that the absence(s) will result in abandonment, and loss, of permanent resident status, and
2. Make an Application to Preserve Permanent Residency to avoid interrupting "continuous residence" for purposes of eligibility for naturalization.

In order to be eligible to file to preserve residence for naturalization purposes (i.e., to excuse an absence of more than one year), the person must show the following:

3. One year of uninterrupted physical presence in the U.S. after becoming a permanent resident and before departing.
4. Employment by, or contract work with:
 - the U.S. government,
 - U.S. institution of research recognized by the USCIS,
 - a U.S. business owned more than 51% by U.S. nationals engaged in the development of foreign trade or commerce of the U.S. or a subsidiary owned at least 50% by such a company (which can be presumed from stock traded exclusively on an American exchange),
 - public international organization for which the alien was not employed before becoming a permanent resident or of which the U.S. is a member by treaty or statute, or
 - a religious denomination for whom the alien is assigned abroad as a minister, priest, missionary brother, nun or sister
5. The Application to Preserve Residency was made before the expiration of 1 year abroad. This application can be made from abroad but it is usually advised to file before the alien departs the United States.
6. The extended absence is for the purpose of such employment or contract work.

The applicant's spouse and unmarried children may be included in the application. The approval of an application to preserve residency does not exempt applicants (except for certain U.S. Government employees and religious workers) from being physically present in the United States for half the required residency period as discussed above.

Exclusions from Naturalization and Favored Classes

Certain classes of persons are barred by the law from naturalizing, including: anarchists, military deserters, draft evaders, people who have avoided U.S. military service on the basis of alienage, nationals of country at war with the U.S., and people in removal proceedings or subject to an order of removal.

Conversely, there are certain classes of people who are specially favored for the purposes of naturalizing. These classes of people include, among others, certain asylees and refugees, legalization (amnesty) recipients, spouses of citizens stationed abroad as government, U.S. company, or religious workers, and certain battered spouses. U.S. soldiers and their families receive special treatment in processing.

The USCIS web site lists in a very general sense the special cases, waivers and exemptions, but in fact the rules concerning the exceptions can be quite complex, and advice from an immigration attorney is suggested.

Risks to Applying for Naturalization

Some people have a risk in filing for naturalization beyond just having the application denied. The USCIS, when reviewing the application, may discover that permanent residence was inappropriately granted in the first place (perhaps the residency was based on a misrepresentation that is now apparent), that permanent residence has been abandoned (such as from a long absence), or that the applicant is subject to a ground of deportability (such as a criminal conviction). This could lead to removal proceedings. Any person who might conceivably be subject to such a finding should contact an immigration attorney before filing.

How We Can Help

Baker Donelson's Immigration Group advises U.S. citizens in the full range of citizenship matters. We evaluate clients' eligibility for naturalization and prepare the necessary papers, although sometimes we advise clients not to apply because of the risks of denial and possible deportation. We help solve complex questions arising from periods of presence outside the U.S. and determine whether exceptions to requirements may apply. We press claims for citizenship through naturalization, passport, and certificate of citizenship applications. We

press for interviews and decisions on naturalization cases, represent clients in interviews when dangerous issues have arisen, and seek review of denials of naturalization, both administratively and in federal court. We appear in removal proceedings for residents who have ill-advisedly filed for naturalization.

Important Links

- [USCIS: Citizenship](#)