



MEMORANDUM

TO: Naturalization Applicant
FROM: Seyfarth Shaw Business Immigration Group
RE: Preserving Residence for Naturalization Purposes

GENERAL

There is no requirement that a person eligible for naturalization pursue the same, but there may be certain advantages to becoming a naturalized U.S. citizen. For example, a naturalized U.S. citizen is not subject to removal from the United States as would be a permanent resident who may have violated U.S. law. Further, a naturalized U.S. citizen is generally permitted to travel and live abroad for extended periods of time without loss of U.S. citizenship; this is in contrast to a permanent resident, for whom an extended absence from the United States can result in a finding that permanent residence has been abandoned. There may be certain estate tax planning vehicles that are available for U.S. citizens that may not be available to permanent residents. In addition, a naturalized U.S. citizen is permitted to vote in local, state, and federal elections, but a permanent resident is not permitted to vote. Because naturalization of both parents may confer derivative naturalization on minor children, parents may wish to consider naturalization prior to the child turning 18. Finally, a person may want to consider naturalization in order to ensure that future legislation that restricts the rights of non-citizens will not apply.

DUAL CITIZENSHIP

The United States does not require that a naturalization applicant surrender his or her home country citizenship in order to become a naturalized U.S. citizen. Once a person becomes a naturalized U.S. citizen, however, the United States government does not recognize the foreign citizenship of the naturalized citizen. Further, it may be that -- under the laws of the home country -- the act of becoming a naturalized U.S. citizen (including the taking of the required oath of allegiance to the United States) is an expatriating act that could result in loss of the home country citizenship. Thus, the naturalization applicant should consult with an authority in his or her home country to determine the effect on home country citizenship of becoming a naturalized U.S. citizen. Please contact Seyfarth Shaw if you need assistance in determining if your home country citizenship will be affected by your application for U.S. citizenship.

NATURALIZATION PROCEDURE

The Form N-400 Application for Naturalization is filed to the United States Citizenship and Immigration Services ("USCIS") Service Center of the with jurisdiction over the place of residence in order to begin the naturalization process. Within approximately two to six months of filing the application, the applicant may be instructed to have fingerprints taken at an Application Support Center ("ASC") fingerprinting facility. In certain cases, USCIS is able to utilize previously collected biometrics for the processing of the application, and if so, will issue a notice indicating so.

After the background check has been completed, the applicant will receive a notice from the USCIS scheduling an interview at the local USCIS Field Office. The applicant will be tested on English literacy and knowledge of United States history and government. In rare circumstances, the applicant may be able to take the Oath the same day as the interview. If that option is not available or if the applicant prefers a ceremony at a later date, USCIS will notify the applicant of the ceremony date with a "Notice of Naturalization Oath Ceremony" (at which time citizenship is formally conferred).

NATURALIZATION REQUIREMENTS

For a person to qualify for U.S. citizenship by judicial naturalization, the following general requirements must be met:

- 1. Lawful Permanent Resident.** The applicant must be a lawful permanent resident (i.e. a green card holder) of the United States.
- 2. No Removal Proceeding or Order.** A person with a pending removal proceeding or an outstanding final finding of removability may not be naturalized.
- 3. Prescribed Residence After Entry.** An applicant for naturalization must meet certain residency requirements before being eligible for naturalization. The applicant must have been admitted as a lawful permanent resident for at least five years and must have been physically present in the United States for 2.5 years of that five-year period. If the applicant has been married to and living with the same U.S. citizen for at least three years, the required period of residence is three years (with at least 1.5 years of physical presence in the U.S.), which includes any time spent in conditional green card status. The applicant must maintain continuous residency in the United States from the date of filing the application for naturalization to the time of admission to citizenship. Further, during that five (or three) year period, the applicant generally must not have been physically outside of the United States for a continuous period of more than six months.
- 4. Age.** A person must be 18 years of age to file an application for naturalization (there are exceptions for children of U.S. citizens). Children under age 18 are able to derive citizenship. Please see Section V, below, for additional information.
- 5. Mental Capacity.** It has been determined that a person must be legally competent to be eligible for naturalization as he or she must demonstrate a knowledge of the Constitution and the government of the United States and must be able to make an oath of allegiance.
- 6. Educational Requirements.** An applicant must be able to pass a simple and reasonable literacy test to show that he/she can read, write and speak words in ordinary usage in the English language (there is an exception to this requirement for persons physically incapable of compliance, as well as for persons over the age of 50 who have been lawful permanent residents for at least 20 years or for persons over 55 who have been lawful permanent residents for at least 15 years).

7. **History and United States Government.** The applicant must also have a knowledge of the history, principles and form of government of the United States. The questions vary, but they generally include questions about the three branches of the federal government, the Bill of Rights, the flag, important events in U.S. history, and often a knowledge of the original 13 colonies. There are brochures and “Americanization” courses available to help prepare for this test. See [here](#) for study materials.
8. **Selective Service.** A permanent resident male must register with the Selective Service System (www.sss.gov) when he is between the ages of 18 and 26 (Note: this does not include living in the United States as a lawful nonimmigrant). Although not noted in the statutory definition of good moral character, the USCIS views a knowing and willful failure to register for selective service during this time period as evidencing a lack of good moral character. If between ages 26 and 31, a knowing and willful failure to register with the selective service will not necessarily result in an automatic denial of naturalization, but will be taken into consideration in determining the applicant’s good moral character. If over the age of 31, a failure to register with the selective service is less problematic.
9. **Good Moral Character.** During the prescribed period of residency, the applicant must show good moral character. Interpretations as to good moral character vary; however, there are certain criminal convictions and/or conduct that preclude the establishment of good moral character, as well as does the giving of false testimony for naturalization. It is most important that an applicant be as truthful as possible in this regard, as a deliberate falsification of even the most innocuous or distant incident requires a denial of the application, even if disclosure of the true facts would not have led to such a denial.
10. **Loyalty and Allegiance to the United States.** Applicants must be “attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States.” From time to time, an unwillingness to bear arms (except for conscientious objectors), membership in subversive organizations, desertion from the armed forces, and draft evasion have precluded naturalization. The oath which will be required to be taken is as follows:

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.

SPECIAL RULES FOR MINOR CHILDREN

Children who are unmarried and under the age of 18 at the time that either parent is naturalized automatically become U.S. citizens by virtue of naturalization of the parent. The child must be a lawful permanent resident prior to reaching age 18.. Evidence of U.S. citizenship may be obtained by filing the [Form N-600](#) once the naturalization of the parent has been completed, but is not required for the child to obtain a U.S. passport.

FORMS AND DOCUMENTS REQUIRED FOR NATURALIZATION

The forms and supporting documentation that need to be filed with the USCIS are as follows:

- 1. Form G-28 - Notices of Entry of Appearance as Attorney or Representative.** This form authorizes Seyfarth Shaw to represent the applicant with respect to the naturalization.
- 2. Form N-400 - Application for Naturalization.** This is the naturalization form.
- 3. Photographs.** Two color, passport-style photographs of the applicant taken within the last 30 days are required; the applicant's name and alien registration number should be lightly penciled on the reverse side of each photograph.
- 4. Photocopy of Passport Biographic Page.** A clear or color photocopy of the applicant's passport biographic page is required.
- 5. Photocopy of Form I-551.** A clear or color photocopy of the front and reverse of the Form I-551 ("green card") for the applicant is required.
- 6. Criminal/Traffic Violation.** The applicant should be able to provide certified dispositions of every arrest, every citation, etc. (including traffic violations), especially during the last three/five years, with proof that all fines have been paid and/or sentences have been served. If copies of dispositions/citations/etc. are unavailable, the applicant should attempt to obtain copies from the local court or police department with jurisdiction over the offense; if the court/police department has no record of the offense, the applicant should obtain a letter from the court/police department stating that the office has no citation/offense on file for the applicant.
- 7.** If applying on the basis of your marriage to a U.S. Citizen, you will also need to provide documentation confirming your continued bona fide marriage. This may include the following: children's birth certificate; federal tax return with W-2s, bank statements in both your names, mortgages and/or leases in both your names, utility bills in both your names, insurance documents, and a selection of 8 to 10 family photos (please label the photos with approximate date, location, and identify any others in the photo).

APPLYING FOR A U.S. PASSPORT

Once the applicant has been conferred U.S. citizenship through the Oath ceremony, the applicant can apply for a U.S. passport. Please visit http://travel.state.gov/passport/passport_1738.html for information about how and where to apply for a U.S. passport, including instructions for obtaining a passport on an expedited basis.