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IMMIGRATION AND NATURALIZATION

This handout is intended as a general overview of the immigration and naturalization process. This handout will address how to make your spouse a US citizen.

Please be aware that on 1 March 2003, the Immigration and Naturalization Services (INS) became part of the Department of Homeland Security and the traditional functions of the INS were reorganized under the Bureau of Citizenship and Immigration Services (BCIS). For comprehensive information on immigration and naturalization, including contact information and forms visit www.bcis.gov.

Naturalization Overview

Naturalization is the process which the U.S. confers citizenship upon a foreign citizen or national after he or she fulfills the requirements established by Congress in the Immigration and Nationality Act (INA). The general requirements for administrative naturalization include:

1. A period of continuous residence and physical presence in the United States;
2. Residence in a particular BCIS District prior to filing;
3. An ability to read, write and speak English;
4. A knowledge and understanding of U.S. history and government;
5. Good moral character;
6. Attachment to the principles of the U.S. Constitution; and,
7. Favorable disposition toward the United States.

General Naturalization Requirements

1. Applicants must be at least 18 years old.
2. An applicant must have been lawfully admitted to the United States for permanent residence. Lawfully admitted for permanent residence means having been legally accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws.

Individuals who have been lawfully admitted as permanent residents will be asked to produce an I-551, Alien Registration Receipt Card, as proof of their status.

3. An applicant is eligible to file if, immediately before the filing of the application, he or she:
 - a. Has been lawfully admitted for permanent residence (see preceding section);
 - b. Has resided continuously as a lawful permanent resident in the U.S. for at least 5 years prior to filing with no single absence from the United States of more than one year;
 - c. Has been physically present in the United States for at least 30 months out of the previous five years (absences of more than six months but less than one year shall disrupt the applicant's continuity of residence unless the applicant can establish that he or she did not abandon his or her residence during such period), OR
 - d. Has resided within a state or district for at least three months.
4. Generally, an applicant must show that he or she has been a person of good moral character for the statutory period (typically five years or three years if married to a U.S. citizen or one year for Armed Forces expedite) prior to filing for naturalization. An applicant is permanently barred from naturalization if he or she has ever been convicted of murder. An applicant is also permanently barred from naturalization if he or she has been convicted of an aggravated felony as defined in section 101(a)(43) of the Act on or after November 29, 1990. A person also cannot be found to be a person of good moral character if during the last five years he or she:
 - a. Has committed and been convicted of one or more crimes involving moral turpitude
 - b. Has committed and been convicted of 2 or more offenses for which the total sentence imposed was 5 years or more
 - c. Has committed and been convicted of any controlled substance law, except for a single offense of simple possession of 30 grams or less of marijuana
 - d. Has been confined to a penal institution during the statutory period, as a result of a conviction, for an aggregate period of 180 days or more
 - e. Has committed and been convicted of two or more gambling offenses
 - f. Is or has earned his or her principal income from illegal gambling
 - g. Is or has been involved in prostitution or commercialized vice
 - h. Is or has been involved in smuggling illegal aliens into the United States
 - i. Is or has been a habitual drunkard
 - j. Is practicing or has practiced polygamy
 - k. Has willfully failed or refused to support dependents
 - l. Has given false testimony, under oath, in order to receive a benefit under the Immigration and Nationality Act.
5. An applicant must show that he or she is attached to the principles of the Constitution of the United States.

6. Applicants for naturalization must be able to read, write, speak, and understand words in ordinary usage in the English language. Applicants exempt from this requirement are those who on the date of filing:
 - a. Have been residing in the United States subsequent to a lawful admission for permanent residence for periods totaling 15 years or more and are over 55 years of age;
 - b. Have been residing in the United States subsequent to a lawful admission for permanent residence for periods totaling 20 years or more and are over 50 years of age; or
 - c. Have a medically determinable physical or mental impairment, where the impairment affects the applicant's ability to learn English.
7. An applicant for naturalization must demonstrate a knowledge and understanding of the fundamentals of the history and of the principles and form of government of the United States. Applicants exempt from this requirement are those who, on the date of filing, have a medically determinable physical or mental impairment, where the impairment affects the applicant's ability to learn U.S. History and Government.

Applicants who have been residing in the U.S. subsequent to a lawful admission for permanent residence for at least 20 years and are over the age of 65 will be afforded special consideration in satisfying this requirement.

8. To become a citizen, one must take the oath of allegiance. By doing so, an applicant swears to:
 - a. Support the Constitution and obey the laws of the U.S.;
 - b. Renounce any foreign allegiance and/or foreign title; and
 - c. Bear arms for the Armed Forces of the U.S. or perform services for the government of the U.S. when required.

In certain instances, where the applicant establishes that he or she is opposed to any type of service in armed forces based on religious teaching or belief, INS will permit these applicants to take a modified oath.

Overview of the Naturalization Process

1. Obtain the "Application for Naturalization" Form N-400. The application fee is \$260 + \$50 for fingerprinting (current as of April 2003).
2. Read the BCIS booklet "A Guide to Naturalization."
3. Complete the N-400 Naturalization application--be thorough and truthful.
4. The N-400 may require additional documentation to be filed with it. Make sure you send this in— incomplete applications will not be processed and will be delayed
5. Get two photographs taken for submission with your application. They must be in a specific format; see the application for instructions.
5. Send your application, any necessary supporting documents, and fee to the appropriate BCIS Service Center for processing. Keep a photocopy of the entire package for yourself. You should receive a receipt from BCIS within a few weeks—keep this, as the receipt number is how BCIS will track the progress of your application.

6. You will eventually receive a letter from BCIS indicating where to go for fingerprinting and an interview. Make sure you go at the time appointed. Bring any additional documents requested by BCIS. If you must reschedule, let BCIS know well in advance.
7. Attend interview; answer questions about your application. Take English and U.S. civics test.
8. Attend naturalization ceremony (scheduled by BCIS) to take oath of citizenship. You will return your Permanent Resident card ("green card") just before the ceremony.
9. Receive your Certificate of Naturalization. Keep this document in a safe place! It is your proof of U.S. citizenship. It is also recommended you obtain a U.S. passport at the earliest opportunity; the passport will also be proof of U.S. citizenship.

Waivers, Exceptions and Special Cases

Spouses of U.S. Citizens:

Generally, certain lawful permanent residents married to a U.S. citizen may file for naturalization after residing continuously in the United States for three years if immediately preceding the filing of the application:

- 1) The applicant has been married to and living in a valid marital union with the same U.S. citizen spouse for all three years;
 - a) The U.S. spouse has been a citizen for all three years and meets all physical presence and residence requirements; and
 - b) The applicant meets all other naturalization requirements.

There are also exceptions for lawful permanent residents married to U.S. citizens stationed or employed abroad. Some lawful permanent residents may not have to comply with the residence or physical presence requirements when the U.S. citizen spouse is employed by the U.S. Government (including the U.S. Armed Forces).

Derivative Citizenship for Minor Children of Naturalized Citizen

Some minor children automatically become US citizens when their parent(s) naturalize. This rule applies to minor (under 18), unmarried children of persons who naturalize.

You do not need to apply to BCIS for the child's citizenship; it is automatic. However, if you want documentation from BCIS showing the child is a citizen, you may file Form N-600 to obtain a certificate of citizenship for the child. The fee is \$185 (current as of April 2003).

1. Currently, BCIS is Not Automatically Issuing Documents Showing a Child's Citizenship. Unfortunately, BCIS is not able to automatically provide adoptive parents with documentation of their child's citizenship at this time. This will be available in the future. If you want documentation of your child's U.S. citizenship, you may obtain a Certificate of Citizenship from BCIS and/or a U.S. passport from the Department of State. You do not need a Certificate of Citizenship issued by BCIS in order to obtain a passport for your child. If you want to file for a Certificate of Citizenship for your child at this time, file Form N-643, Application for Certificate of Citizenship in Behalf of an Adopted Child.

2. Child Citizenship Act is Not Retroactive. If the child is over 18, it does not apply.
Individuals who are 18 years of age or older on February 27, 2001, do not qualify for citizenship under the CCA, even if they meet all other criteria. If they wish to become U.S. citizens, they must apply for naturalization and meet eligibility requirements that currently exist for adult lawful permanent residents.
3. If Foreign-Born Child Lives Abroad, the Child Citizen Act Does Not Apply.
In order for a foreign-born child living outside the United States to acquire citizenship, the U.S. citizen parent must still apply for naturalization on behalf of the child. The naturalization process for such a child cannot take place overseas. The child will need to be in the United States temporarily to complete naturalization processing and take the oath of allegiance. If the naturalization application is approved, the child must take the same oath of allegiance administered to adult naturalization applicants. If the child is too young to understand the oath, BCIS may waive the oath requirement.
4. Requirements for child naturalization:
 - a. Both parents naturalize OR Surviving parent naturalizes OR Parent w/Legal custody (if divorced) naturalizes.
 - b. Child must be under 18 and unmarried when parent(s) naturalized.
 - c. Child was a lawful permanent resident ("green card" resident) before his/her 18th birthday.
 - d. Good moral character (presumed if the child is under 14 years of age).
5. If naturalizing parent is still married to the child's other parent (who is a non-citizen), but only one parent is naturalizing:
 - a. Child must be in the legal custody of the naturalizing parent.
 - b. Child must be under 18, unmarried, and must be a lawful permanent resident ("green card" resident) when parent naturalizes.
6. If child is not a lawful permanent resident ("green card" resident):
 - a. Child must be under 18 and unmarried at time when parent naturalizes.
 - b. Child must be in the legal custody of the naturalizing parent.
 - c. The naturalizing parent must have lived in the U.S. for 5 years, at least 2 of which were after the parent's 14th birthday.
 - d. Child must be lawfully in the U.S. in a valid nonimmigrant status (B-2 visitor, F-1 Student); if the child entered the U.S. illegally, or overstayed their authorized visa period, this complicates the situation. See your Legal Assistance Attorney.
7. Foreign-born Adopted Children:
 - a. Most foreign-born adopted children (adopted by U.S. citizens) automatically acquire U.S. citizenship on the date that they immigrate to the United States. Requirements are:
 - At least one adoptive parent is a U.S. citizen.
 - Child is under 18 years of age.
 - There is a full and final adoption of the child.
 - The child is admitted to the United States as an Immigrant.