Naturalization on the Rise; Practical Answers to Newer Practitioners' Naturalization Questions: Part II

by Giselle Carson

This is a continuation of an article aimed at providing newer practitioners with answers to some common naturalization issues. You can find Part I in the September/October 2006 Issue of Dispatch.

How do I obtain an FBI rap sheet?

Write to the FBI, Criminal Justice Information Services (CJIS) Division, Special Correspondence Unit, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, WV 26306. Your request should include: client's full name; date and place of birth; a set of fingerprint impressions; a certified check or money order for $18 payable to the "Treasurer of the United States" (a personal or law firm check will be rejected); a return address for returning the rap sheet; and client's authorization to release the information to you. It is taking six to eight weeks to obtain FBI's response.

My client has residence in two states. Where should he file for naturalization?

File in the state where your client files the federal income tax return. See 8 CFR §316.5(b)(4).

My client has not resided in the district of application for three months. Can she file for naturalization?

Yes, as long as your client will have resided in the state or district for the three months prior to the interview.

Can my client travel between filing the application for naturalization and the taking of the oath?

Yes. As long as there are no other bars to reentry, the applicant should be able to travel. The law requires that the applicant must reside continuously in the United States between the filing of the application and the oath ceremony. To satisfy this requirement, the applicant does not need to remain physically present in the United States during this entire period.

My client failed to register for Selective Service. How does this affect his naturalization application?

Failure to register for Selective Service is not a permanent bar to naturalization. Failure to register could be grounds for denying the application based on lack of good moral character (GMC), if the person knowingly and willfully failed to register during the period that the applicant is required to establish GMC (*i.e.*, during the five-year period or three-year period, if qualifying under the citizen-spouse exemption prior to the application).

Generally, every U.S. citizen or lawful permanent resident (LPR) male who resides in the United States between the ages of 18 and 26 must register. Foreign nationals on nonimmigrant status are not required to register; however, undocumented males are required to register. For additional information regarding registration, see the Selective Service website at *www.sss.gov.*

The requirement to register ceases when a man reaches 26 years of age. If your client is between 26 and 31 years of age, did not register, and wishes to apply for naturalization, he must provide evidence that his failure to register was not knowing and willful. If your client is more than 31 years old at the time of the application, failure to register alone should not prevent approval of his application. For additional information, see INS memorandum from William R. Yates, "Effect of Failure to Register for Selective Service on Eligibility for Naturalization" (June 18, 1999), *published on* AILA InfoNet at Doc. No. 99010740 (*posted* July 1, 1999).

My client had a DUI last year. Can he apply for naturalization?

The answer depends on multiple factors, such as the specific state statute for DUI, the mental state requirement, and the precedent decisions.

The decisions from the Board of Immigration Appeals (BIA) and federal courts are inconsistent as to whether a DUI is a crime of moral turpitude (CMT). In general, a conviction of a simple misdemeanor DUI is not a CMT, and the applicant is not precluded from showing the GMC required for naturalization. On the other hand, a DUI offense combined with an aggravating factor that contains

In *Leocal v. Ascroft*, 543 U.S. 1 (2004), the U.S. Supreme Court considered the case of an LPR who was convicted under §316.193(3)(a)(2), Fla. Stat., of two counts of DUI and causing serious bodily injury. Leocal was in removal proceedings for a "crime of violence" under 18 USC §16 and aggravated felony under INA §101(a)(43)(F). The Court unanimously held that where the DUI statute has no mens rea requirement or only requires negligent vehicular operation, the DUI is not a crime of violence that would render the alien removable for an aggravated felony. Accordingly, DUI offenses must include a mens rea or at least recklessness to qualify as a crime of violence.

It is prudent to consult with local immigration attorneys to determine the prevailing view in the district you are planning to file. In some districts, any conviction for DUI during the five (or three) years preceding the application is a ground for denial of the application. For additional information, see "An Overview of Good Moral Character with Special Emphasis on Alcohol Dependence or Alcohol Abuse as Evidence of a Lack of Good Moral Character," by R. Patrick Murphy, 1 *Immigration & Nationality Law Handbook* 606 (2004–05 ed.)

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If you are a YLD member and would like to write an article for *Dispatch*, contact YLD Chair Sarah Buffett at *sarahbuffett@mvalaw.com*.