

Naturalization on the Rise: Practical Answers to Newer Practitioners' Naturalization Questions—Part I

by Giselle Carson

The current national focus on immigration has led to an increase in the number of naturalization filings. Part I of this two-part article aims to provide newer practitioners with practical answers to common questions they might encounter with naturalization clients.

Basic Statutory Requirements for Naturalization INA §§312, 316, 319, and 334(b); 8 CFR §316

- Be 18 years old;
- Be lawfully admitted as a lawful permanent resident (LPR);
- Continuous residence as an LPR for at least five years (or three years if married to a U.S. citizen spouse);
- Physical presence for half of the required period of residence (30 months if five years and 18 months if three years).
Note: Exceptions to residence or physical presence can be found at INA §§317, 319, and 328–29;
- Continuous residence from the date of the application up to the time of admission to citizenship;
- Residence in the filing district for at least three months;
- Good moral character (GMC), particularly during the relevant statutory period (the five or three years preceding the application);
- English language skills (exceptions if 50 years old and 20 years as LPR, or 55 years old and 15 years as LPR);
- Knowledge of U.S. history and government, unless applicant qualifies for a medical waiver (N-648); and
- Attachment to the principles of the U.S. Constitution.

Can I apply for naturalization if an I-751 (petition to remove conditions on residence) is still pending?

Yes. Assuming the applicant is still married and living with the U.S. citizen spouse, contact the local office so that it

has the “A” file available at the time of the naturalization interview. If so, the office can adjudicate the I-751 at the same time.

Client has been absent from the United States for several months at a time during the past few years. Can he or she file for naturalization?¹

The law permits some absences during the prescribed period. If the applicant is absent for less than six months at a time, there is no presumed break in continuous residence, and the applicant can file, according to INA §316(b) and 8 CFR §316.5(c). If the applicant has been abroad for five months and comes back for one week and leaves again for five months, be ready for an adjudicator to try to challenge the continuity of residence, though, and have evidence to show that there is no break in residence, as would be needed if there was an absence of more than six months, discussed below.

If the applicant is absent for more than six months but less than a year, there is a rebuttable presumption of abandonment of permanent residence. File with proof that the applicant did not intend to disrupt the continuity of his or her LPR status. Submit evidence of the person’s ties to the United States, such as a re-entry permit (Form I-131), bank account, filing tax returns, principal dwelling, family, and clients. If the person is absent for more than one year, there is a conclusive presumption of abandonment, unless the applicant applied to preserve residence for naturalization purposes (Form N-470). If continuity is broken, re-application is possible four years and one day after re-entry. See INA §316(b); 8 CFR §316.5(c)(1)(ii).

My client has a criminal history. Can he or she apply for naturalization?

A client with a criminal record might have problems satisfying the GMC requirement. The person must show GMC during the five (or three) years immediately preceding the application and through the administration of the oath. INA §§316(a), 101(f). GMC does not mean the highest degree of moral excellence. See USCIS

Interpretation 316.1(e)(1). U.S. Citizenship and Immigration Services (USCIS) can consider the applicant’s conduct during his or her entire lifetime.



GMC is not specifically defined by statute. INA §101(f) and 8 CFR §316.10 set forth certain conducts that preclude a finding of GMC. If your client has a criminal conviction for which he or she has been in prison for six months or more, he or she would have difficulty showing the required GMC. If your client has been convicted of murder or an aggravated felony (after Nov. 29, 1990), he or she is permanently barred from naturalization.

If the applicant engaged in any potentially disqualifying conduct during the relevant period, it is best to postpone the application until the applicant can show no criminal history during the prescribed period. If the applicant engaged in potentially disqualifying conduct during or outside the statutory period, consider submitting evidence such as letters and affidavits reflecting the person’s rehabilitated character.

Because an application may trigger removal proceedings, carefully study your client’s criminal history before applying for naturalization. Obtain certified arrest reports and court dispositions for each of your client’s arrests and a copy of your client’s FBI rap sheet.

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¹For additional information, see Marketa Lindt, “Residence Requirements for Naturalization: How to Keep the Stopwatch Running,” 2 *Immigration & Nationality Law Handbook* 255 (2001–02 ed.); and David Grunblatt, “Continuity of Residence & Qualifying for Naturalization: When Is an Absence Really an Interruption,” *Fourth Annual AILA New York Chapter Immigration Law Symposium* 38 (2001).