



# NATURALIZATION FIELD GUIDE

## *Resources for Red Flag Screenings and Application Reviews*

By ILRC Attorneys

### I. Overview of the Notice to Appear Memo

On June 28, 2018, U.S. Citizenship and Immigration Services (“USCIS”) issued a memorandum expanding the circumstances in which it will issue a Notice to Appear (NTA) to applicants requesting immigration benefits.<sup>1</sup> An NTA is the charging document that initiates removal proceedings. USCIS has always had the authority to issue NTAs to applicants who are removable. But this recent guidance represents a significant departure from prior USCIS practices in that it *requires* USCIS to issue an NTA in many circumstances, including certain cases involving fraud, criminal histories, and where the benefit is denied and the applicant is removable.

The NTA Memo specifically mentions naturalization applications twice. First, it directs USCIS to issue an NTA “in all cases if the N-400 [naturalization application] has been denied on good moral character (GMC) grounds based on the underlying criminal offense and provided the [applicant] is removable.”<sup>2</sup> Second, it authorizes USCIS to issue an NTA *pre*-adjudication in certain circumstances when the applicant is deportable. This new guidance signals a dramatic expansion of the agency’s role in immigration enforcement, shifting away from its primary focus on determining eligibility for immigration benefits.

### II. Screening Naturalization Applicants

It has always been important to screen naturalization applicants thoroughly to ensure that they are, in fact, eligible for naturalization, and to assess any potential issues that could cause them to be denied or deported. The laws governing how and when someone is eligible to naturalize, and how and when someone is deportable have not changed. Thus, the issues we should look for when screening applicants are the same. But the importance of screening applicants has increased in light of the new NTA Memo. Instead of warning deportable applicants that they *may* be referred to removal proceedings, we now need to warn deportable applicants that they *will* likely be referred to removal proceedings.

<sup>1</sup> U.S. Citizenship & Immigration Serv., PM-602-0050.1, *Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens* (June 28, 2018) [hereinafter NTA Memo].

<sup>2</sup> NTA Memo, p. 7.

This packet is prepared to assist practitioners in screening naturalization applicants for any issues that may cause them to be denied and deported and includes the following:

1. **Red Flag Checklist for Screeners.** This checklist has a series of questions to ask applicants that could (but not always) indicate an eligibility or deportability issue.
2. **Annotated Red Flag Checklist for Screeners.** This document is a companion to the Red Flag Checklist and explains for the practitioner why each question is being asked and the corresponding eligibility criteria or deportability ground.
3. **Guide for Legal Reviewers.** This guide is prepared for legal workers who are reviewing naturalization applications and identifies questions to go over with the clients as a final check on eligibility and any potential risks going forward.

### III. Additional Naturalization Resources

While the resources included in this are to help practitioners screen applicants and applications for potential issues, ILRC also has a number of additional resources that address various stages of the U.S. citizenship and naturalization process. Below are a few resources that may be of interest. Please visit the Citizenship and Naturalization section of our website at <https://www.ilrc.org/citizenship-and-naturalization> for additional material.

- *Naturalization and U.S. Citizenship: The Essential Legal Guide.* This comprehensive manual thoroughly addresses the entire process of representing a naturalization applicant from the initial client meeting through the oath of allegiance. Available for purchase at <https://www.ilrc.org/naturalization-and-us-citizenship>.
- *Updated Guidance for the Referral of Cases and Issuance of Notices to Appear: Tips and Strategies for Working with Clients.* This practice advisory provides an overview of the new USCIS NTA Memo and gives tools for identifying possible red flags that could trigger enforcement actions by Immigration and Customs Enforcement (ICE). It also identifies some precautions that advocates should take when preparing affirmative applications in light of this new policy. Available at <https://www.ilrc.org/updated-guidance-referral-cases-and-issuance-notices-appear-tips-and-strategies-working-clients>.
- *Representing Naturalization Clients in the Wake of USCIS's New NTA Memo.* This practice advisory outlines the NTA Memo's impact on naturalization cases. Specifically, this advisory discusses the NTA Memo's particular directives for naturalization cases; provides the legal context for when a naturalization applicant can be placed in removal proceedings; discusses best practices for preparing a naturalization application under the new NTA Memo; and offers practice tips if your naturalization client is placed in removal proceedings. Available at <https://www.ilrc.org/representing-naturalization-clients-wake-usciss-new-nta-memo>.
- *A Step-by-Step Guide to Completing the New Naturalization Application.* All naturalization applicants must use the Form N-400 to apply for U.S. citizenship. This guide was written to help attorneys, accredited representatives, and others learn how to complete the form and assist applicants complete it. Available at <https://www.ilrc.org/step-step-guide-completing-new-naturalization-application>.

## Red Flag Checklist for Screeners

It is possible that instead of helping someone apply for naturalization, you may be helping the immigration service take away the applicant's green card and deport them.

**PLEASE BE CAREFUL AND TAKE NOTE OF THE FOLLOWING ADVICE!** To avoid increased risks, please make sure to refer applicants to an experienced attorney or community agency if the applicant **might** fall into one of the categories listed below. The applicant may have no problems, or they may have problems with the naturalization application but not be in danger of losing their green card or being deported. But, because the risks are so high, anyone who falls within any of these categories should check with an expert in immigration law before applying for naturalization. Sometimes it may be best for an applicant who falls into some of these categories not to apply for naturalization, so they will not run the risk of being deported.

**NOTE:** This red flag screening checklist is not for the applicant to use to self-identify red flags. This document is for practitioners to use when working with applicants.

1. Anyone who was absent from the U.S. for more than six months at a time.
2. Anyone who moved to live in another country while still a permanent resident of the U.S.
3. Anyone who has left the United States for 30 days or more while receiving public benefits.
4. Anyone who willfully failed or refused to support their dependents (especially children, but also alimony to spouse).
5. Anyone who has helped smuggle someone into the U.S., even if it was a relative.
6. Anyone who claimed they were a U.S. citizen but was not.
7. Anyone who committed fraud to receive or continue to receive welfare or other public benefits.
8. Anyone who has registered to vote without being eligible to do so or voted illegally in the United States.
9. Anyone who, since becoming a permanent resident, has failed to file a local, state or federal tax return, failed to pay his/her taxes, or presently owes back taxes.
10. Anyone who has been involved in certain political activities such as anarchism, totalitarianism, communism, or with groups considered to be terrorist organizations.
11. Anyone who has been arrested for, convicted of, or admitted to having committed any crime.
12. Anyone who has been in jail for 180 days or more.
13. Anyone who is now on probation or parole for having been convicted of a crime.
14. Anyone who has violated a protection order which was issued by a court to protect against violent or threatening acts of domestic violence.
15. Anyone who is or has been a habitual drunkard, drug addict, or drug abuser.
16. Anyone who has engaged in prostitution.
17. Anyone who you think USCIS might accuse of being a drug trafficker.
18. Anyone who came to the U.S. to practice polygamy (have more than one spouse at a time).
19. Anyone who lives off illegal gambling.
20. Anyone who committed fraud or lied to get his green card or other immigration benefit.
21. Anyone who has ever been ordered deported or is now in deportation or removal proceedings.
22. Anyone who has not registered for the Selective Service (the "Draft") but was supposed to.
23. Anyone who has any contradictions on their application.

## Annotated Red Flag Checklist for Screeners

This document explains why certain categories are listed in the *Red Flag Checklist for Screeners* and connects these categories to questions on the naturalization application (N-400). This resource can help advocates understand and therefore explain to applicants why they are asking certain questions and what the consequences are for giving false or incorrect information.

### Using the Annotated Red Flag Screening Checklist

The *Annotated Red Flag Checklist for Screeners* is a supplement to the *Red Flag Screening Checklist for Screeners*. This document is not intended to be read from start to finish, but rather to serve as a reference guide as you work through the *Red Flag Screening Checklist for Screeners* with the applicant. If a potential red flag comes up, refer to the corresponding annotated red flag in this document.

For each red flag, we have included a brief explanation of why this information is important, followed by additional questions you may want to ask the applicant. **This is not a complete explanation of the law.** Rather, it is a quick overview to help you identify red flags and thus recognize cases that should be referred to an experienced immigration attorney for further review.

The ILRC recommends explaining the law to the applicant before asking questions so that the applicant 1) understands why they are being asked these questions that they may otherwise think are unnecessary or intrusive and 2) can provide information knowing what the consequences of their answers could be.

## Red Flag Checklist for Screeners

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**NOTE:** This red flag screening checklist is not for the applicant to use to self-identify red flags. This document is for practitioners to use when working with applicants.

### 1. Anyone who was absent from the U.S. for more than six months at a time.

When someone applies to naturalize, the applicant must show that they met the continuous residence requirement and physical presence requirement.

For the continuous residence requirement, an applicant must have resided continuously in the U.S. as a lawful permanent resident for the last five years immediately prior to applying for naturalization. For some applicants married to U.S. citizens, the continuous residence period is three years. The applicant can disrupt their continuous residence if, during the continuous residence period, they: 1) fail to maintain continuously a principal dwelling place in the U.S.; 2) depart the U.S. under an order of removal; or 3) leave the U.S. for one year or more, and in some cases six months or more, depending on the facts.

For the physical presence requirement, the applicant must have been physically present in the U.S. for at least half (30 months) of the previous five years (or 18 months of the previous three years if married to a U.S. citizen). The physical presence requirement is an additional and separate requirement that looks at the number of cumulative days the applicant spent in the U.S. during the statutory period. While it will be important to look at *all* trips out of the U.S., even for a weekend or just to Canada or Mexico, for this calculation, you will want to pay close attention to longer trips to make sure the applicant has met the physical presence requirement.

***Additional questions you may want to ask the applicant:***

*When you apply to naturalize, you must show that you meet the continuous residence requirement of either five or three years and that you meet the physical presence requirement of two-and-a-half or one-and-a-half years. In order to do this, USCIS will look at the time you have spent outside of the U.S.*

- *Are all your absences from the U.S. in the last five years listed on the N-400? Even if you left for just a weekend, you still need to write it down. Even if you only went to Canada or Mexico, you still need to write it down.*
- *Were you ever gone six months or longer at any one time?*

**Please Note:** Long absences also can cause one to be found to have abandoned their residence. Please see the answer to Question Number 2 below for more information.

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## **2. Anyone who moved to live in another country while still a permanent resident of the U.S.**

In addition to the continuous residence and physical presence requirements discussed above, an applicant must also show they have not abandoned their permanent residence. If a person intentionally moves to another country and lives outside of the U.S., they may be found to have abandoned their lawful permanent resident status and they may be denied citizenship and deported. There is no set time period for measuring how long a permanent resident's absence can be before they may be found to have abandoned their residence, unlike with the continuous residence and physical presence requirements discussed above. Rather, the determination is made on a case-by-case basis and depends on whether the applicant intended to move their home from the U.S. to another country.

***Additional questions you may want to ask the applicant:***

*Travel comes up in several different ways when applying for citizenship. In addition to continuous residence and physical presence, USCIS may also check to make sure you have not abandoned your lawful permanent resident status.*

- *Since getting your green card, were you ever gone from the United States for six months or more at one time or gone many times from the United States?*
- *Did you ever leave the United States to move or live in another country?*
- *Did you ever have a trip abroad without a return date? Why?*
- *Since getting your green card, did you ever leave the United States to work in another country?*
- *While on your trip to another country, where did you work? Did you keep your job in the U.S.?*

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### **3. Anyone who committed fraud to receive or continue to receive welfare or other public benefits.**

If the applicant has been receiving public benefits, they are still eligible to naturalize. Receipt of public benefits is not a problem for naturalization unless the applicant committed fraud to receive the benefits. If the applicant received public benefits by fraud or by lying, USCIS might deny the applicant for failing to show good moral character. Some USCIS offices will verify that the applicant properly received the benefit. If they suspect fraud, the officer may request that the applicant obtain a letter from the agency administering the benefit indicating that the agency knew about the situation about which the USCIS has questions.

#### ***Additional questions you may want to ask the applicant:***

*You are still able to naturalize if you receive public benefits for which you are eligible. However, USCIS wants to make sure you did not lie, hide information, or commit fraud in order to receive public benefits or continuing getting public benefits or else you could be denied naturalization.*

- *Do you receive any public benefits or other support from the government?*
- *Has your situation changed in any way since you started receiving that benefit (e.g. you got a raise at work)?*
- *Did you ever lie or give false information to receive benefits?*
- *Did you let the agency that gives you the benefit know about that change?*

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### **4. Anyone who has left the United States for 30 days or more while receiving public benefits.**

USCIS may suspect fraud if the applicant left the U.S. but continued to receive a public benefit when they shouldn't have. For example, some public benefit programs, such as Supplemental Security Income (SSI), forbid someone from receiving benefits while they are out of the U.S. for more than 30 consecutive days. In this case, USCIS may require the applicant to bring a letter from the Social Security Administration stating the agency was aware of the absence in question. Additionally, if the applicant was gone more than 180 days while receiving benefits, they were possibly inadmissible, or ineligible for entry, when they returned to the U.S. If they are inadmissible, then they may actually be deportable now.

***Additional questions you may want to ask the applicant:***

One type of fraud USCIS might look at is if you continued to receive a public benefit while you were out of the U.S. for a long period of time. This will depend on how long you were gone, what type of benefit you received, and if you let the agency giving you the benefit know you were going to be gone. Such fraud could cause you to be denied naturalization and, if convicted of certain fraud crimes, possibly even deported.

- *Did you leave the U.S. while receiving a public benefit?*
- *How long were you gone? Can you list out all of the trips where you continued to receive benefits?*
- *Did you let the agency that gives you the benefit know you were going to be out of the country for that long?*

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## **5. Anyone who willfully failed or refused to support their dependents (especially children, but also alimony to spouse).**

The immigration service can find that someone lacks good moral character, and thus deny a naturalization application, if the applicant purposefully failed to pay child support. USCIS, however, must look at why the applicant was not supporting their children and determine if it was purposeful before they use this as a ground to deny an application. For instance, check to see if they were not paying child support because they have been unemployed, or they tried to support their dependents, but they could not because they cannot find them, or the dependents refuse their support, or their family does not need their support. In any of these situations, the failure to pay child support was not willful so it should not cause the immigration service to deny the application.

***Additional questions you may want to ask the applicant:***

*USCIS may deny your naturalization application if you refused to pay child support even though you could have. If you haven't been paying child support because you have not been able to, then you have a stronger case that you should be able to naturalize.*

- *Have you ever been ordered to pay child support or alimony?*
- *If you have been ordered to pay child support or alimony but haven't been paying, why not?*
- *Have you ever been unable to pay child support or alimony?*
- *Do you have children under the age of 18 years old?*
- *Do they live with you? If no, with whom do they live? Do you know how to contact them?*
- *Do you help support your children who are under 18 years old?*
- *Do these children need your support? Have you tried to pay and they refused it?*

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## 6. Anyone who has helped smuggle someone into the U.S., even if it was a relative.

Alien smuggling can pose an immigration problem in a few ways. A federal conviction for alien smuggling, harboring, or transporting is an aggravated felony, unless it was a first offense for assisting only a parent, spouse or child. A conviction of an aggravated felony makes someone deportable and is a permanent bar to establishing good moral character (GMC) (if the conviction occurred on or after November 29, 1990).

Even without a conviction, a finding of alien smuggling is a statutory bar to establishing GMC and, depending on the circumstances, can make someone deportable. There are some activities or categories that are listed at § 101(f) of Immigration and Nationality Act (INA) that prevent a person from establishing GMC. Some bars are permanent and a person will never be able to naturalize. But, there are other bars for certain activities or categories that only apply during the GMC period. So if the person did one of these activities or falls into one of these categories during the five or three years before applying to naturalize, they cannot establish GMC. Instead, they have to wait until five or three years have passed since these activities, and then they can establish GMC when they apply to naturalize. Alien smuggling is one of these statutory bars to establishing GMC. Note that alien smuggling even before the GMC statutory period can make someone deportable if it occurred before, during, or within five years of any entry to the U.S., so this is an important red flag to discuss with potential applicants.

The person does not have to admit to or be convicted of alien smuggling to be barred from establishing GMC or deportable.

**WARNING:** Alien smuggling does not just cover professional smugglers; it also applies to people who bring in their family members.

### *Additional questions you may want to ask the applicant:*

*When you apply to naturalize, USCIS looks at whether you have good moral character for the five (or three) years before you apply. One thing that might prevent you from showing good moral character is if you helped a family member or anyone else come into the U.S. illegally. USCIS may consider this alien smuggling, and you may be denied citizenship and even deported. Depending on the circumstances, there may be a waiver available.*

- *Do you have a spouse or child that came to the U.S. illegally?*
- *If yes, did you help them enter the U.S. in any way?*
- *Are there any other relatives or friends you helped to enter the U.S. illegally?*

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## 7. Anyone who claimed they were a U.S. citizen but was not.

There are some activities or categories that are listed at § 101(f) of Immigration and Nationality Act (INA) that prevent a person from establishing GMC. Some bars are permanent and a person will never be able to naturalize. But, there are other bars for certain activities or categories that only apply during the GMC period. So if the person did one of these activities or falls into one of these categories during the five or three years before applying to naturalize, they cannot establish GMC during the statutory period.



Yet, even offenses not listed in § 101(f) can cause someone to be denied naturalization for failure to demonstrate GMC. Under certain circumstances, someone who falsely claimed U.S. citizenship could be denied naturalization. Additionally, with a few exceptions one who falsely claims U.S. citizenship on or after September 30, 1996 for any purpose or benefit under the Immigration and Nationality Act, or any Federal or State could be deported.

***Additional questions you may want to ask the applicant:***

*It is against the law for someone to claim U.S. citizenship. If you have ever said you were a U.S. citizen, your naturalization application may be denied and you may be deported. Depending on the circumstances, there may be an exception.*

- *Have you ever claimed to be a U.S. citizen for any reason?*
- *Have you ever said that you were a U.S. citizen in order to get a job? Did you fill out any forms and check a box saying you were a U.S. citizen?*
- *Have you ever used a U.S. citizen's passport or driver's license or other document?*
- *Have you ever said you were a U.S. citizen to register to vote?*

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## **8. Anyone who has registered to vote without being eligible to do so or voted illegally in the U.S.**

Unlawful voting is a crime that may result in a fine, detention, and even deportation. If a person has voted when they were not supposed to, even if they were not convicted, their naturalization application may be denied and they may be deported. Additionally, usually if someone voted they registered to vote and thus made a false claim to U.S. citizenship (see the answer to Question 6 above). Although neither illegal voting nor a false claim to U.S. citizenship is a permanent or statutory bar to U.S. citizenship, either can be the cause of a naturalization denial based on a finding of a lack of good moral character, depending on the balance of the positive versus the negative equities in the case. Illegal voting and false claim are both also grounds of deportability.

***Additional questions you may want to ask the applicant:***

*It is against the law for someone to vote in an election if they were not eligible to vote. In many elections, noncitizens, including green card holders, are not eligible to vote. If you have ever voted and you were not supposed to, your naturalization application may be denied, and you may be deported. Depending on the circumstances, there may be an exception.*

- *Have you ever voted in an election in the U.S?*
- *When and for what?*
- *Did you think you were eligible to vote in the election? Why?*

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**9. Anyone who, since becoming a permanent resident, has failed to file a local, state, or federal tax return, failed to pay their taxes, or presently owes back taxes.**

USCIS considers failure to file income taxes evidence of a lack of good moral character (GMC). USCIS is primarily concerned with what the applicant has done for the last five years (the period for which good moral character is required—three years for applicants married to U.S. citizens) but USCIS may look at the applicant’s conduct prior to that five-year period. If an applicant has not paid all of their taxes but they were supposed to, this could be a negative factor in their GMC determination. It could even cause their citizenship application to be denied if they cannot show steps to pay the taxes owed and positive equities to offset this negative factor.

***Additional questions you may want to ask the applicant:***

*USCIS looks at whether every applicant has paid all of the taxes they were supposed to. If someone has not paid their taxes when they were supposed to, USCIS considers that as evidence against good moral character.*

- *Have you always filed state or federal tax return and always paid your taxes when you were supposed to?*
- *If not, why not? What happened? How was it resolved?*
- *Do you presently owe back taxes?*
- *Did you make enough money to have to file taxes?*

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**10. Anyone who has been involved in certain political activities such as anarchism, totalitarianism, communism, or with groups considered to be terrorist organizations.**

Membership in, assistance to, or support for (including financial support) certain groups that have attacked others or attempted to overthrow another country’s government will result in a denial for the naturalization application. Depending on the activity, the applicant may have to wait ten years after stopping that activity before they can apply to naturalize. In some circumstances, depending on the activity, the applicant may be deported.

***Additional questions you may want to ask the applicant:***

*USCIS looks closely at people who have ever been involved, in any way, including by providing monetary support, with a group or organization in the U.S. or abroad that attempted to overthrow a government or used weapons against or threatened others. If you have, you could be denied naturalization and even deported. But, perhaps you were forced to cooperate with such groups and/or you did not know they were groups involved in such activities.*

- *Have you ever been involved, in any way, including by providing monetary support, with a group or organization in the U.S. or abroad that attempted to overthrow a government or used weapons against or threatened others?*
- *If yes, was your involvement voluntary or were you forced to participate? Did you feel like you had to participate in order to get a job or survive?*
- *Did you know the organization or group took part in those activities? What did you think the organization or group was for?*
- *Are you still involved with any of these organizations or groups?*

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## 11. Anyone who has been arrested for, convicted of, or admitted to having committed any crime.

Arrests and convictions may impact a naturalization application and could cause one to be deportable. USCIS will look at the type of arrests and convictions as well as the amount of time the person spent incarcerated and when the convictions, arrests, or admissions took place in order to determine if they cause the person to be deportable, barred from GMC, or are negative factors in the GMC determination.

### *Additional questions you may want to ask the applicant:*

*If you have been arrested for certain crimes, you may be denied citizenship and (only if convicted) deported. It is important that you are truthful in this section because the immigration service will have a copy of your record and will find out if you lie on your application.*

- *Have you ever been arrested? Even if it was a long time ago, it is important to share that information.*
- *Have you ever had any contact with the police, including immigration?*
- *Have the police ever taken your fingerprints?*
- *What were you arrested for?*
- *When did this happen?*
- *Do you have a copy of your criminal record?*

**WARNING:** If someone has been arrested or convicted in the past, it is critical for the person to obtain the criminal records, review them with an experienced immigration attorney, and make sure that the case was resolved in a way that does not make the applicant deportable. Otherwise they could be issued an NTA and placed in removal proceedings when they apply to naturalize.

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## 12. Anyone who has been in jail for 180 days or more.

There are some activities or categories that are listed at § 101(f) of Immigration and Nationality Act (INA) that prevent a person from establishing GMC. Some bars are permanent and a person will never be able to naturalize. But, there are other bars for certain activities or categories that only apply during the GMC period. So if the person did one of these activities or falls into one of these categories during the five or three years before applying to naturalize, they cannot establish GMC. Instead, they have to wait until five or three years have passed since these activities, and then they can establish GMC when they apply to naturalize.

If an applicant spent 180 days or more in jail during the GMC period as a result of one or more convictions (other than for a purely political offense), then they cannot establish GMC and may be denied citizenship. It does not matter when the offense was committed. USCIS is only looking at how much time the applicant spent in jail during the GMC period.

***Additional questions you may want to ask the applicant:***

One thing that USCIS looks at to determine good moral character is if you spent 180 days or more in jail during the five (or three) years prior to applying. It doesn't matter what the offense was for or when it happened. Rather USCIS is looking at the total number of days spent in jail.

- Have you spent any time in jail in the past five (or three) years?
- How much time did you spend in jail? Do you know the dates?
- Is all of the time you spent in jail listed in Item 28.B in Part 12? Even if it was for less than 1 day, did you spend any other time in jail?

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**13. Anyone who is now on probation or parole for having been convicted of a crime.**

Although a person can apply for naturalization while still on probation or parole, anyone who is still on probation or parole cannot be naturalized until they finish their probation or parole. Of course, anyone who is or was on probation or parole was convicted of a crime, so it is important to check to see if the underlying criminal conviction(s) could lead to a denial of naturalization and/or deportation.

***Additional questions you may want to ask the applicant:***

*If you are currently on probation or parole, you cannot naturalize.*

*It is important that you are truthful in this section because the immigration service will have a copy of your record and will find out if you lie on your application.*

- Have you ever been arrested? Even if it was a long time ago, it is important to share that information.
- Have you ever had any contact with the police, including immigration?
- Have the police ever taken your fingerprints?
- What were you arrested for?
- When did this happen?
- Do you have a copy of your criminal record?
- Are you still on probation or parole?
- How much longer will you be on probation or parole?

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#### **14. Anyone who has violated a protection order which was issued by a court to protect against violent or threatening acts of domestic violence.**

Violators of protective orders can be deportable and such a violation could be a negative factor in showing GMC.

***Additional questions you may want to ask the applicant:***

*USCIS will look at certain findings and convictions related to domestic violence.*

- *Have you ever been convicted of hurting your child or spouse?*
- *Has the court ever ordered you to stay away from your child or spouse?*
- *When did that happen?*
- *Have you ever been found to have violated that order?*
- *Is the order still in place?*
- *Do you have a copy of that order?*

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#### **15. Anyone who is or has been a habitual drunkard, drug addict, or drug abuser.**

There are some activities or categories that are listed at § 101(f) of Immigration and Nationality Act (INA) that prevent a person from establishing GMC. Some bars are permanent and a person will never be able to naturalize. But, there are other bars for certain activities or categories that only apply during the GMC period. So if the person did one of these activities or falls into one of these categories during the five or three years before applying to naturalize, they cannot establish GMC. Instead, they have to wait until five or three years have passed since these activities, and then they can establish GMC when they apply to naturalize.

Although not very common, alcohol use may fall into this statutory bar category. If USCIS determines a person is habitual drunkard, that person can be denied U.S. citizenship, but only if the applicant is or was a habitual drunkard during the statutory period of five years or years if applying as the spouse of a United States citizen.

If one is or has been a drug abuser or drug addict, they can be deportable.

***Additional questions you may want to ask the applicant:***

*USCIS will look at alcohol and drug use to help determine good moral character for the five (or three) years prior to naturalizing. If USCIS finds that you are a habitual drunkard, drug addict, or drug abuser, then your naturalization application could be denied and, in the case of a drug addiction or drug abuse, you could actually be denied. Merely drinking alcohol is not a way to be denied—only if you are a habitual drunkard (drunk a lot and, in the ILRC's opinion, there is a medical diagnosis of a drinking problem).*

*Have you ever been arrested or stopped for an alcohol or drug related incident?*

- *When did this happen?*
- *What were you arrested for?*
- *What happened after you were arrested?*
- *Have you ever been stopped for a drug related offense?*

- *Were you arrested?*
- *What happened after the arrest?*
- *Do you drink a lot or are you a drug addict or drug abuser? If so, which one and can you please explain a bit about it?*

**WARNING:** Some states have legalized marijuana use as well as activities related to its production and sale. However, despite this legalization at the state level, it is still a crime to possess, use, purchase, sell, and cultivate marijuana at the federal level. This means that for immigration purposes, it is still against the law to buy, sell, or grow marijuana. For more information, please see ILRC's *Warning for Immigrants About Medical and Legalized Marijuana*, available at <https://www.ilrc.org/warning-immigrants-about-medical-and-legalized-marijuana>.

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## **16. Anyone who has engaged in prostitution.**

There are some activities or categories that are listed at § 101(f) of Immigration and Nationality Act (INA) that prevent a person from establishing GMC. Some bars are permanent and a person will never be able to naturalize. But, there are other bars for certain activities or categories that only apply during the GMC period. So if the person did one of these activities or falls into one of these categories during the five or three years before applying to naturalize, they cannot establish GMC. Instead, they have to wait until five or three years have passed since these activities, and then they can establish GMC when they apply to naturalize.

Engaging in prostitution is one of these statutory bars. If USCIS finds that you have engaged in prostitution during the GMC period, they may deny your naturalization request.

### ***Additional questions you may want to ask the applicant:***

*USCIS will look at if you engaged in sex work or prostitution. If you have been engaged in prostitution or commercialized vice during the GMC period, they may deny your naturalization application.*

- *In the past five (or three) years, have you been arrested or stopped by the police for prostitution?*
- *When did this happen?*
- *What happened after you were arrested or stopped?*
- *Were you convicted of prostitution?*

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## **17. Anyone who you think USCIS might accuse of being a drug trafficker.**

There are some activities or categories that are listed at § 101(f) of Immigration and Nationality Act (INA) that prevent a person from establishing GMC. Some bars are permanent and a person will never be able to naturalize. But, there are other bars for certain activities or categories that only apply during the GMC period. So if the person did one of these

activities or falls into one of these categories during the five or three years before applying to naturalize, they cannot establish GMC. Instead, they have to wait until five or three years have passed since these activities, and then they can establish GMC when they apply to naturalize.

If USCIS has acquired “reason to believe” the applicant is or was a drug trafficker during the GMC period, then USCIS may deny their naturalization application. A person does not have to be charged or convicted of drug trafficking to be denied naturalization on this ground.

***Additional questions you may want to ask the applicant:***

- *Have you ever been stopped or questioned for drug trafficking?*
- *When did this happen? What happened as a result of this?*
- *Would USCIS have any reason to think you are involved in drug trafficking?*
- *Have you ever been arrested or convicted of a drug crime?*

**WARNING:** Some states have legalized marijuana use as well as activities related to its production and sale. However, despite this legalization at the state level, it is still a crime to purchase, sell, and cultivate marijuana at the federal level. This means that for immigration purposes, it is still against the law to possess, use, buy, sell, or grow marijuana. For more information, please see ILRC’s *Warning for Immigrants About Medical and Legalized Marijuana*, available at <https://www.ilrc.org/warning-immigrants-about-medical-and-legalized-marijuana>.

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## **18. Anyone who came to the U.S. to practice polygamy (have more than one spouse at a time).**

There are some activities or categories that are listed at § 101(f) of Immigration and Nationality Act (INA) that prevent a person from establishing GMC. Some bars are permanent and a person will never be able to naturalize. But, there are other bars for certain activities or categories that only apply during the GMC period. So if the person did one of these activities or falls into one of these categories during the five or three years before applying to naturalize, they cannot establish GMC. Instead, they have to wait until five or three years have passed since these activities, and then they can establish GMC when they apply to naturalize.

Polygamy is one of these statutory bars. Polygamy is the ideology or religious practice of having many wives. It is different from bigamy, which is the crime of being married to more than one person at a time. People who believe in the ideology of polygamy, have practiced or are practicing polygamy, and intend to practice it in the U.S., are barred from establishing GMC. Polygamy is not a common GMC bar in naturalization cases, but if USCIS does find it applies in your case, your client will be denied naturalization. Luckily, polygamy is not a deportation ground, so it cannot make your client removable.

***Additional questions you may want to ask the applicant:***

*Polygamy is the belief in having more than one wife at a time. People who believe in polygamy, have practiced polygamy before coming to the U.S., or plan to practice it in the U.S. will be denied naturalization. It is important to note that just because someone got married while being married to someone else does not mean they were engaged in polygamy for naturalization purposes. In fact, in most, if not all, states in the U.S., if you marry someone before divorcing your present spouse, your new marriage is invalid and thus you have really only been married once and it is to your first spouse. Thus,*

in such a situation, you do not need to note your second “marriage” on your naturalization application as it was not a valid marriage.

- Are you married?
- Do you want to have more than one wife or husband?
- How many times have you been married?
- Did you get divorced before your next marriage?
- Why not? Did you want to have more than one wife or husband?

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### 19. Anyone who lives off illegal gambling.

There are some activities or categories that are listed at § 101(f) of Immigration and Nationality Act (INA) that prevent a person from establishing GMC. Some bars are permanent and a person will never be able to naturalize. But, there are other bars for certain activities or categories that only apply during the GMC period. So if the person did one of these activities or falls into one of these categories during the five or three years before applying to naturalize, they cannot establish GMC. Instead, they have to wait until five or three years have passed since these activities, and then they can establish GMC when they apply to naturalize.

Some activities related to illegal gambling may be one of these statutory bars. If a person has lived off of illegal gambling or had two or more convictions for illegal gambling during the GMC period, they will be denied naturalization.

#### *Additional questions you may want to ask:*

*Supporting yourself off of illegal gambling can cause you to be denied naturalization. If you have lived off of illegal gambling or if you have been convicted of illegal gambling more than once, USCIS may deny your naturalization request.*

- Have you ever been arrested for illegal gambling?
- If yes, when? How many times?
- What happened after you were arrested? Were you convicted?
- In the past five (or three) years, have you relied on illegal gambling for your income?

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### 20. Anyone who committed fraud or lied to get their green card or other immigration benefit.

There are some activities or categories that are listed at § 101(f) of Immigration and Nationality Act (INA) that prevent a person from establishing GMC. Some bars are permanent and a person will never be able to naturalize. But, there are other bars for certain activities or categories that only apply during the GMC period. So if the person did one of these activities or falls into one of these categories during the five or three years before applying to naturalize, they cannot



establish GMC. Instead, they have to wait until five or three years have passed since these activities, and then they can establish GMC when they apply to naturalize.

Giving false testimony (referring to sworn statements or testimony under oath) in order to get or retain an immigration benefit is a statutory bar to showing GMC. Additionally, it is vital to determine exactly how the applicant received their green card and if they were eligible for it. Always ask the applicant how they became an LPR and look at the code on the green card. If the applicant was not eligible for a green card but lied on their application in order to get it, they could now be denied naturalization and deported. In fact, even if they told the truth on the green card application, but if the applicant was not eligible for the green card, they could be denied naturalization and even deported.

***Additional questions you may want to ask the applicant:***

*If you lied to get your green card or some other immigration benefit or you were not eligible to get your green card in the first place, and the immigration service discovers this, you could be denied naturalization and deported.*

- *When you applied for your green card, did you disclose all the crimes on your record?*
- *When you applied for your green card, were you a member of a group that could trigger security concerns?*
- *Were there any problems with your green card application? Were those problems waived? What was the result?*
- *If your parent who was a LPR or U.S. citizen applied for you to get a green card and you were married when you became a LPR, you may not have been eligible for the green card and could be denied naturalization and deported (especially relevant for those who obtain LPR status through a LPR parent). Was your parent who applied for you a LPR or USC and were you married when you became a LPR?*

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**21. Anyone who has ever been ordered deported or is now in deportation or removal proceedings.**

If a person had previously been placed in deportation or removal proceedings, they may not have been eligible for their green card when they received it. If they had been placed in deportation or removal proceedings, USCIS will find this out when they apply for citizenship. As a result, their citizenship application could be denied and they could be deported.

***Additional questions you may want to ask the applicant:***

- *Have you ever been placed in deportation or removal proceedings?*
- *How and when did it get resolved?*

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## 22. Anyone who has not registered for the Selective Service (the “Draft”) but was supposed to.

All men in the U.S., including immigrants (with or without legal status), must register for the selective service when they turn 18 years old. A person can register late up until the age of 26. If the applicant did not register and was supposed to, USCIS could deny their application for U.S. citizenship for failing to meet the good moral character requirement.

### *Additional questions you may want to ask the applicant:*

*The rules are that if you had known you were supposed to register and you did not register, you could be denied naturalization. But, if you did not know you were supposed to register, you might still be able to naturalize.*

- *Did you register with the selective service?*
- *Did you know you were supposed to register? Had you known, would you have registered?*
- *If not, are you younger than 26?*
- *If yes, will you register before you apply for naturalization?*

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## 23. Anyone who has any contradictions on their application.

It is very important that the information listed in your green card application was correct and accurate. If not, USCIS may consider it false information and as a result, your naturalization application may be denied. Contradictions on their application may be an indication that there is false information included in the application and must be thoroughly investigated and resolved before submitting an application.

### *Additional questions you may want to ask the applicant:*

*If there are any misstatements or contradictions on any immigration forms or applications, you must be careful as such errors could cause one to be eventually be denied naturalization and/or deported.*

- *Was all the information on your green card application accurate and true?*
- *Will all the information on your naturalization application be accurate and true and not contradict the information on your green card application?*

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## N-400 Application Legal Review Guide

Once the applicant has completely filled out the N-400, a volunteer should do a review of the application before sending the applicant to the next stage of the group processing. Even though the applicants have already filled out the forms, it is critical to ask the applicant the most important questions to ensure that applicants have not omitted any information that could affect their applications as well as identify any possible red flags on the application.

**WARNING:** In June 2018, USCIS issued new guidance vastly expanding the circumstances under which it will issue a Notice to Appear (NTA) to place applicants in removal proceedings. Although this guidance is only partially implemented, it is already much riskier for deportable applicants to apply for naturalization, even if they are otherwise eligible. The NTA guidance specifically authorizes USCIS to issue an NTA when someone is deportable before adjudicating the naturalization application. Therefore, it is important to make sure applicants are not deportable or otherwise ineligible for legal permanent resident status. If there is any uncertainty or questions, refer the applicant to an experienced attorney or community organization.

The volunteer must ask the applicant the following quick questions. If the volunteer identifies any of the 23 factors listed at the end of this document, the applicant should be referred to an experienced attorney or organization before applying.

**Part 1:** Is this your A-number?

*Note to Reviewer:* Be sure to check that the A# is written correctly on each page.

**Part 2, Question 5, Social Security Number:** It is against the law to use a fake social security number. You should only indicate your real social security number on this application. Do not write any fake numbers you had before getting your real one. Is this social security number correct?

**Part 2, Question 9, Date Applicant Became a Lawful Permanent Resident:** Before getting your green card, did you ever live in the U.S. without status or as an undocumented immigrant for six months or more and then left the United States for any reason? If yes, did you receive a “waiver” (a type of pardon) for living without papers in the United States during that time? *If they did not receive a waiver, refer to an expert in immigration law.*

**Part 2, Questions 12 and 13:** (In English) Can you speak English well enough to answer questions in English in your interview? Do you fall into any of the categories exempting you from the English requirements? *If no, encourage the applicant to register for English classes as soon as possible.*

**Part 5, Question 1.A.:** Is this the address where you physically live? It is very important this is the address where you live. It is okay if it is different from the address immigration has on file.

**Part 9, Absences from the U.S.:** When you apply to naturalize, USCIS must determine if you met the continuous presence requirement, physical presence requirement, and that you have not abandoned your green card status. If you intended to move and live outside of the U.S., you may be denied citizenship and deported. Are these all your absences from the United States in the last five years? Even if you left for just a weekend, you still need to write it down. Even if you only went to Canada or Mexico, you still need to write it down. Were you ever gone longer than six months? *If yes, see an expert in immigration law.*

How about since getting your green card, did you ever leave the United States to work in another country? Since getting your green card, were you ever gone from the United States for six months or more? *If yes, see an expert in immigration law.*

*Note to Reviewer: Consider all entries and exits that could trigger abandonment of residence or an inadmissibility bar because of a new admission and thus a finding of deportability. If either abandonment of residence or inadmissibility/deportability is a possible concern, refer the applicant to an expert in immigration law.*

**Part 10, Marriages:** If the applicant has been divorced and the marriage was short be on the alert. If you committed fraud by marrying just to get your green card and the immigration service finds this out, they could deny your application and place you in removal proceedings. Did you get your green card through your marriage? If so, did you tell the truth on the green card application?

*Note to Reviewer: If the applicant obtained their LPR status by marrying a U.S. citizen (or even a by marrying an LPR), politely scrutinize the marriage for potential issues with the marriage. Consider asking the following questions:*

- *Did they get divorced before the conditional status expired?*
- *Did they get divorced after the consular processing interview but before entering the U.S. thus rendering them inadmissible at admission?*
- *Were all prior marriages dissolved legally before marrying the U.S. citizen or LPR who petitioned for the applicant to obtain LPR status?*

*If the applicant has a spouse or child (see next section) who came to the U.S. illegally, ask:*

If you helped a relative enter the U.S. illegally, you may be guilty of alien smuggling and you could be denied naturalization and even deported if the immigration service discovers this. There are waivers in some circumstances. Did you help your relative enter the U.S. in any way? *If yes, see an expert in immigration law.*

**Part 11, Children:** You must list **all** your children, whether adopted, biological, or step; born in or outside the U.S.; born before, during, or after you were married; married or single; documented, or undocumented; and living in or outside of the U.S.

*If the applicant is not living with their children and/or spouse, ask – Part 12, Question 30.H.:*

The immigration service can deny your naturalization application if you purposefully failed to pay child support. The immigration service, however, must look at why you were not supporting your children before they deny your application. For instance, if you were not paying child support because you have been unemployed, or you tried to support them but you could not because you cannot find them, or they refuse your support, or your family does not need your support, then your failure to pay child support should not cause the immigration service to deny your application. Do you help support your children who are under 18 years old? Has a court ordered you to pay child support and/or alimony? If you have been ordered to pay child support but haven't been paying, why not?

**Part 12, Questions 1-3:** In this section USCIS is trying to evaluate whether you have good moral character. With these questions, USCIS wants to make sure you have never claimed to be a U.S. citizen and that you never voted illegally. If you have, USCIS may deny your application and even deport you. Have you ever claimed to be a United States citizen, ever registered to vote in the U.S. when you weren't eligible to do so, or ever voted illegally in an election in the U.S.? *If yes, see an expert in immigration law.*

**Part 12 Questions 6-7:** USCIS also looks at whether you have paid taxes when you were supposed to. If you have not paid all of your taxes but you were supposed to, your citizenship application may be denied. Have you always filed state or federal tax return and always paid your taxes when you were supposed to? *If no, see an expert in immigration law.* Do you presently owe back taxes? *If yes, see an expert in immigration law.*

**Part 12, Question 9 and 14-21:** Membership in certain groups or certain activities may make it difficult to show good moral character. In addition, if you engaged in these activities, you may be denied citizenship and even, in some circumstances, deported. Have you ever been involved, in any way, including by providing monetary support, with a group or organization in the United States or abroad that attempted to overthrow a government or used weapons against or threatened others? If yes, was your involvement voluntary or were you forced to participate? Did you know the organization or group took part in those activities? *If yes, see an expert in immigration law.*

Did you ever apply for or receive asylum, Temporary Protected Status, or benefits under NACARA? If yes, do you have a copy of your application?

**Part 12, Questions 22-29:** If you have been arrested for certain crimes, you may be denied citizenship and deported. It is important that you are truthful in this section because the immigration service will have a copy of your record and will find out if you lie on your application. Have you ever been arrested? Have you ever had any contact with the police? Have the police ever taken your fingerprints? *If the police took an applicant's fingerprints, it was presumably an arrest. An apprehension by immigration is an arrest. If an applicant has been arrested, they should see an expert in immigration law.*

*Volunteers may have to press applicants a little if they appear hesitant. Many applicants do not want to tell strangers about arrests that were embarrassing — particularly if they seem unimportant or happened a long time ago. Some may admit the arrest to a volunteer, but be hesitant to list it on their applications. It may help to tell an applicant that USCIS will be able to find out about any arrests because they have the applicant's fingerprints, and that they can be denied naturalization if they don't tell the truth. Arrests must be reported on the naturalization application no matter how long ago they occurred. Additionally, certain arrests and convictions could cause DHS to deny the naturalization application, place the applicant in removal proceedings, and an immigration judge could take away their green card and try to deport them.*

**Part 12, Questions 31-32:** It is very important that the information listed in your green card application was correct and accurate. If not, USCIS may consider it false information and as a result, your naturalization application may be denied. Are you sure you (or whoever filled out your forms) told immigration the truth when you applied for your green card? *If no, see an expert in immigration law.*

Did you give any false information when you applied for your green card? *If yes, see an expert in immigration law.*

*Note to Reviewer: It is vital to determine exactly how the applicant received their green card and if they were eligible for it. Always ask the applicant how they became an LPR and look at the code on the green card. If the applicant was not eligible for a green card but lied on their application in order to get it, they could now be denied naturalization and deported. In fact, even if they told the truth on the green card application, but if the applicant was not eligible for the green card, they could be denied naturalization and even deported. Below are some additional questions you may want to ask to help determine if they were eligible for their green card in the first place:*

- *When you applied for your green card, did you disclose all the crimes on your record?*
- *When you applied for your green card, were you a member of a group that could trigger security concerns?*
- *Were there any problems with your green card application? Were those problems waived? What was the result?*
- *If your parent who was a LPR or United States citizen applied for you to get a green card and you were married when you became a LPR, you may not have been eligible for the green card and could be denied naturalization and deported (especially relevant for those who obtain LPR status through a LPR parent). Was your parent who applied for you a LPR or USC and were you married when you became a LPR?*

**Part 12, Questions 32-36:** If you have ever been placed in deportation or removal proceedings before, you may not have been eligible for a green card. If you had been in deportation or removal proceedings, USCIS will find out when you apply for citizenship and your application could be denied and you could be deported. Have you ever been placed in deportation or removal proceedings? How did it get resolved? *If yes, see an expert in immigration law.*

**Part 12, Question 44:** (for men only) All men in the U.S. must register for the selective service when they turn 18 years old. You can register late up until the age of 26. If you did not register and you were supposed to, USCIS could deny your application for U.S. citizenship. Have you registered with the selective service? If not, are you younger than 26? *If yes, the volunteer should tell the applicant to register before he applies for naturalization, if he wants to naturalize now. If not, see an expert in immigration law.*

Once applicants have answered all these questions and the volunteer has reviewed the entire application making sure there were no questions left blank and there were no other problems with the application, the applicants can continue to the next stage.



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#### About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.