



# HOW TRAVEL ABROAD CAN AFFECT NATURALIZATION ELIGIBILITY AND CAUSE ABANDONMENT OF LAWFUL PERMANENT RESIDENT STATUS

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## I. Introduction

In order to qualify for naturalization, lawful permanent residents must meet several residence and physical presence requirements that are often mistaken for one another and muddled together. Traveling outside of the United States can not only affect these requirements for naturalization, but they can cause United States Citizenship and Immigration (USCIS) officials to find that a person abandoned their lawful permanent resident status, which can have severe consequences.

The four residence and physical presence requirements are: **residing for three months** in the state or USCIS district where the application is filed; **residing continuously** in the United States for **five years** immediately prior to applying for naturalization; being **physically present** in the United States for **at least half of the five-year** residence period immediately prior to submitting the application; and **continuously residing** in the United States from the date the application is filed until the applicant is admitted to citizenship. Unlike these requirements, abandonment of lawful permanent resident is not specifically tied to a naturalization requirement or a particular length of time abroad, but depends on various factors including whether a person had an **intent to return to the United States**.

In this practice advisory, we will review these requirements in detail as well as the related issues surrounding abandonment of residence. For a more complete description of these requirements and issues, see our manual titled, *Naturalization and U.S. Citizenship: The Essential Legal Guide*, available on our website at [www.ilrc.org](http://www.ilrc.org).

## II. How Travel Abroad Can Affect Naturalization Eligibility

First, it is important to note that the four residence and physical presence requirements concern travel outside of the United States only. For these purposes, the “United States” generally refers to “the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.”<sup>1</sup> This means that persons who traveled within these locations would still be considered to be inside of the United States.

Second, if a practitioner believes that the applicant might have issues with any of these requirements, it is imperative to determine whether you can gather enough evidence to argue that the applicant continues to meet these requirements or whether you can simply wait and file for naturalization at a later time when the applicant does qualify. We will discuss these approaches in detail throughout this advisory.

### A. Three Months Local Residence

In order to qualify for naturalization, applicants must have resided in the state or USCIS district where they file their naturalization application for at least three months immediately before submitting the application.<sup>2</sup> Generally, a person's residency is considered to be the person's domicile or principal actual dwelling.<sup>3</sup> When a person travels outside of the United States for less than a year, the residency continues to be the place where the person last resided before they departed.<sup>4</sup> The amount of time the person is abroad continues to count for purposes of the three months of local residence requirement if they return to the same state or USCIS district before a year elapses.<sup>5</sup>

**Example:** Jordan just moved to California three months ago where he purchased a new home. Two months ago, Jordan flew to Egypt to visit his family and returned after a month. Jordan wants to file his naturalization application from California. Has Jordan met the three-month local residence requirement?

**Answer:** Jordan started accruing his residency in California three months ago when he moved there. Although he travelled to Egypt a month after moving to California, his trip was less than a year. As such, the month he spent abroad counts towards his three-month local residence requirement. Jordan has met the three-month residency requirement to file his application in California.

### B. Five Years of Continuous Residence

Applicants for naturalization must have resided continuously in the United States as a lawful permanent resident for at least five years immediately preceding the date the person files the naturalization application.<sup>6</sup> In practice, this means that immigration officials will not take into account any travel prior to the statutory required five-year period to determine whether a person meets the continuous residence requirement.

Importantly, there are some groups who do not need to meet the five-year continuous residence requirement or are subject to modifications of the rule. These include spouses of U.S. citizens; children subjected to battery or extreme cruelty; spouses and children of U.S. citizens stationed abroad or who died in combat; lawful permanent residents serving in the U.S. Armed Forces; certain veterans; refugees and asylees; and employees of certain U.S. media organizations. For example, spouses of U.S. citizens can apply for naturalization if they have continuously resided in the United States for at least three years, so long as they were married to and living with their U.S. citizen spouse for the three years, and the spouse was a U.S. citizen for the entire three-year period.<sup>7</sup> This is true even if the applicant did not acquire lawful permanent resident status by marrying the U.S. citizen spouse.

The important question regarding continuous residence for naturalization purposes is, what types of absences from the United States break an applicant's continuous residence such that they are ineligible for naturalization? The answer to this question depends on the amount of time the applicant was outside of the United States during any particular absence.

**Note:** Assuming that lawful permanent residents complied with the three-month local residence requirement discussed in the previous section, they can file their naturalization application three months before accruing the required five or three years of residence. In practice, this means that applicants who are subject to the five-year continuous residence requirement can submit their application after continuously residing in the United States for four years and nine months (or two years and nine months for spouses of U.S. citizens, so long as they have been living with and married to the U.S. citizen for at least three years, and the spouse has been a U.S. citizen for the three years).

**Example:** Juan and Emmanuel have been married and living together since March 12, 2016. Juan became a lawful permanent resident on January 10, 2017. Emmanuel has been a U.S. citizen since March 2, 2010. Is Juan subject to the five-year continuous residence requirement? When can Juan submit his naturalization application?

**Answer:** Because Juan is married to Emmanuel who is a U.S. citizen, they have been living with each other for the three years, and Emmanuel has been a U.S. citizen for the entire period, Juan is subject to the three-year continuous residence requirement and can qualify for naturalization on January 10, 2020, which is three years after he became a lawful permanent resident. Moreover, because Juan has already been living with and married to Emmanuel for at least three years, Juan can submit his naturalization application three months early; that is, on October 10, 2019.

### 1. Disrupting Continuous Residence – Travel Abroad for Six Months or Less

When looking at any trips taken abroad, immigration officers will assess the length of time persons were outside of the United States during the five- or three-year requirement to determine whether a person has disrupted their continuous residence.<sup>8</sup> The statute and regulations are silent on what happens if persons are absent from the United States for **six months or less** during the required period. Generally, an absence from the United States for six months or less at one time will not cause one to be ineligible for naturalization. However, USCIS' Policy Manual states that USCIS officers can review whether an applicant with multiple trips of less than six months has become ineligible for naturalization due to breaking the continuous residence requirement.<sup>9</sup> The ILRC is aware of a naturalization denial because a person was absent from the United States for six months or less, but it is not common. Essentially, the USCIS rationale for such a denial is that the applicant may not be able to establish that their actual dwelling place was in the United States during the absence(s) in question and thus disrupted their residence in the United States.

### 2. Disrupting Continuous Residence – Travel Abroad for More Than Six Months, But Less Than a Year

For persons who have an absence of more than six months but less than a year at a time during the five- or three-year requirement, there is a rebuttable presumption that the person's absence broke their continuous residence.<sup>10</sup> The evidence may include, but is not limited to, documentation that during the absence:

- The applicant did not terminate his or her employment in the United States.
- The applicant did not obtain employment while abroad.
- The applicant's immediate family remained in the United States.
- The applicant retained full access to his or her United States abode.<sup>11</sup>

### 3. Disrupting Continuous Residence – Travel Abroad for More Than a Year

Persons who are absent for one year or more during the five- or three-year requirement will always break the required continuous residence except in a few rare instances.<sup>12</sup> Unlike with absences of more than six months but less than a year, there is no rebuttable presumption for absences of one year or more.

### 4. Waiting to Reapply if the Applicant Has Disrupted Their Continuous Residence

If a person is found to have disrupted their continuous residence, how long do they have to wait before being able to re-apply for naturalization? For absences of one year or more, the Immigration and Nationality Act, USCIS Policy Manual, and the regulations state that an applicant needs to wait four years and one day (or two years and one day if applying as the spouse of a U.S. citizen).<sup>13</sup>

However, USCIS and the regulations are silent on how long applicants have to wait before reapplying when they are absent for more than six months but less than a year and are unsuccessful in rebutting the presumption that they did not disrupt their continuous residence. Some argue that the applicant would have to wait five years from the date the

person returned from the trip that disrupted their continuous residence. Others argue that they should only wait until enough time has passed so that they no longer have an absence of more than six months during the required statutory period (i.e. four years, six months, and one day or two years, six months, and one day for those applying as the spouse of a U.S. citizen).

Courts are guided by the long-standing principle that “statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, . . . avoid an unjust or an absurd conclusion.” *Lau Ow Bew v. United States*, 144 U.S. 47 (1892). Therefore, one could argue that applicants with absences of over six months, but less than a year should not have to wait longer to apply than their counterparts with absences of *over one year*. Accordingly, applicants with absences of over six months, but less than a year should also only have to wait four years and one day (or two years and one day if applying as the spouse of a U.S. citizen). However, because this is an unsettled issue, different USCIS offices could have different interpretations.

**Example:** Hanna became a lawful permanent resident in 2000 through a petition filed by her U.S. citizen spouse. It is now 2019 and Hanna is ready to apply for naturalization, but she is worried about the multiple trips she took to Germany to visit friends in 2003, 2004, and 2017-2018. The trips in 2003 and 2004 were for more than six months, but less than a year. The trip in 2017-2018 was for more than a year (she returned to the United States on February 1, 2018). Did Hanna break her continuous residence at any point?

**Answer:** First, the required period is three years of continuous residence immediately preceding the naturalization application because Hanna is applying as the spouse of a U.S. citizen (Hanna’s spouse was born a U.S. citizen and they have been living together since 2000). The trips in 2003 and 2004 were outside of the three-year continuous residence period, so these absences should not impact Hannah’s continuous residence. However, the trip in 2017-2018 was within the three-year continuous residence period. Because the trip was longer than a year, Hanna disrupted her continuous residence and there is no rebuttable presumption. Hanna can apply for naturalization on February 2, 2020, which is two years and a day after she returned from her trip abroad on February 2, 2018. However, as you will also learn, Hanna should make sure that none of her trips trigger issues of abandonment of residence.

**Example:** Sandra received her lawful permanent residency through a U visa on January 2, 2015. On March 1, 2018, Sandra returned to the United States after being abroad in Italy for eight months. She applied for her naturalization on January 2, 2020, after being a lawful permanent resident for five years. Unable to rebut the presumption, USCIS found that Sandra disrupted her continuous residence by being abroad for more than six months but less than a year. When would Sandra be eligible to reapply for her naturalization?

**Answer:** Because USCIS and the regulations are silent on this issue, it is unclear whether Sandra has to wait another five years; four years and six months, and one day; or four years and one day from March 1, 2018 when she returned from the trip that broke her continuous residence. Sandra can try and argue that she is eligible four years and one day after March 1, 2018 based on the sensible construction principle, but it might depend on how the particular USCIS office interprets this. It could be that USCIS makes Sandra wait five years after March 1, 2018.

### C. Continuous Residence After Submitting the Application

A separate but similar issue regarding eligibility for naturalization requires applicants to also maintain continuous residence *after* the applicant submits the application and up to when the applicant is admitted for citizenship.<sup>14</sup> However, this does not mean that applicants are forbidden from traveling. Rather, the same rules apply when analyzing disruptions in continuous residence – whether the absence from the United States is less than six months; more than six months, but less than a year; or more than a year.<sup>15</sup> Like with continuous residence prior to submitting the application, there are the same exceptions and modifications to continuous residence during the period from submission of the application to swearing into citizenship.

**Example:** Liliana became a lawful permanent resident in 2010 through her U.S. Citizen spouse and submitted her naturalization application eight months ago. Seven months ago, Liliana decided to travel abroad for seven months and just returned. The decision on her application is still pending today. Should Liliana be worried?

**Answer:** Because Liliana applied for naturalization but has not received citizenship yet, she needs to maintain continuous residence throughout the process. The travel for seven months will trigger a rebuttable presumption that she disrupted her continuous residence. As such, Liliana may need to provide evidence, such as employment in the United States, proof that her U.S. citizen spouse and other family members resided in the United States, and control over her residence in the United States.

#### D. Physical Presence

To qualify for naturalization, persons must be physically present in the United States for at least half of the required residence period discussed in the previous section.<sup>16</sup> Generally, this is half of five years, but as you read there are some exceptions and modifications. For example, persons applying as the spouse of a U.S. citizen can be physically present for half of three years.<sup>17</sup>

This requirement is separate and distinct from the continuous residence requirement in that instead of analyzing a person's residence and the length of a person's trips, immigration officers look at the number of days an applicant has spent cumulatively during the required period in the United States.

**Example:** Rodrigo became a lawful permanent resident on January 1, 2014 through a petition filed by his U.S. citizen brother. Rodrigo has lived and remained in the United States except for the following dates on which he traveled to Mexico:

- June 10, 2014 – October 10, 2014 (4 months)
- December 05, 2014 – May 05, 2015 (5 months)
- September 01, 2016 – June 01, 2017 (9 months)
- September 01, 2017 – June 01, 2018 (9 months)
- September 01, 2018 – June 01, 2019 (9 months)

Pretend that it is now June 10, 2019 and Rodrigo wants to apply for naturalization today. He has sufficient evidence to rebut the presumption that he has not been continuously residing in the United States for each of his trips taken for nine months. Should he be worried about the physical residence requirement?

**Answer:** First, assuming Rodrigo is not applying as a spouse of a U.S. citizen, the relevant time period for continuous residence is five years immediately prior to submitting the naturalization application on June 10, 2019. This means that he needs to prove that he has been physically present in the United States for at least 30 months, which is half of five years, prior to June 10, 2019. Unfortunately, Rodrigo has been outside of the country for 36 months. This means that he was only physically present in the United States for 24 months. Although Rodrigo does not currently meet the physical presence requirement, if he waits six months without traveling again, Rodrigo can meet the physical presence requirement.

### III. How Traveling Can Affect Abandonment of Lawful Permanent Resident Status

Absences from the United States can not only affect a person's ability to naturalize, but it can lead to a finding that the person has abandoned their lawful permanent resident status. This in turn can cause the person to be deported from the United States. This is because lawful permanent residents have the right to reside in the United States permanently so long as their status does not change.<sup>18</sup>

A person can travel and return to the United States if the visit is considered temporary.<sup>19</sup> Unlike the continuous residency requirements discussed above for naturalization eligibility, when assessing the issue of abandonment of residence, the

Department of Homeland Security and Department of Justice often look at a person's intent of returning to the United States within a relatively short period, and if the person's trip is not considered temporary, the person's status is considered to have changed.<sup>20</sup>

While the issue of abandonment of residence can arise at any point, especially when one is returning to the United States from a visit abroad, a USCIS officer during a naturalization adjudication can analyze whether any absences from the United States caused the person to abandon their residence. At that point, if a USCIS officer believes that a person has abandoned their lawful permanent resident status, they can refer the case to ICE and the person can be placed in removal proceedings instead of naturalizing.

Once in removal proceedings, the government has a strict burden of proving that the person abandoned his lawful permanent resident status by clear, unequivocal, and convincing evidence.<sup>21</sup> There is no formula to assess whether a person has abandoned their status, but the applicant's intent is key in determining if they abandoned their residence. According to case law, the relevant assessment is whether the person had an objective intention to return to the United States after a temporary visit abroad, which is fixed by an early event, or whether the person intended that the trip would end after an event that would occur within a relatively short period of time.<sup>22</sup> Some of the relevant factors often used in evaluating abandonment of residence include the purpose and intended duration of the visit abroad, and the person's family ties, property, and business affiliations in the United States and abroad.<sup>23</sup>

**Example:** Julius became a lawful permanent resident through his father in 2010. His father was the only remaining family member in the United States and has since decided to move permanently to his home country in Spain. When visiting his father in Spain in 2011 for an expected short vacation, Julius met and fell in love with Lucia and decided to prolong his visit in Spain. Julius took the following trips to Spain between 2011 and 2013 until Julius and Lucia ended their relationship:

- March 01, 2011 – May 01, 2012 (14 months)
- September 01, 2012 – April 01, 2013 (7 months)
- May 01, 2013 – December 01, 2013 (7 months)

It is now 2019, and Julius is ready to apply for his citizenship. Should he worry about any issues?

**Answer:** It seems like Julius is generally eligible for citizenship. This is because the trips that Julius took were outside of the five-year continuous presence period and nothing suggests that he does not meet the other residence and physical presence requirements for naturalization. That being said, Julius should be prepared to argue that he did not abandon his lawful permanent residence. This is because Julius no longer has any family members in the United States and one absence was for a long period of time and the next two absences were immediately following the first absence. From the trips he took, he was only in the United States one to four months at a time before leaving for Spain again. The USCIS could try to make the argument that Julius intended to remain abroad with his girlfriend, Lucia. For these reasons, Julius should be prepared with evidence to show that his intent was to return to the United States and remain living in the United States. Perhaps, Julius was still employed in the United States or he planned to marry Lucia and help her immigrate to the United States or he had other significant ties to the United States. Julius and his advocate need to develop a strategy to show that he did not abandon his residence. [For a more complete description of these requirements and issues, see our manual titled, \*Naturalization and U.S. Citizenship: The Essential Legal Guide\*, available on our website at \[www.ilrc.org\]\(http://www.ilrc.org\).](#)

## IV. Conclusion

As you read, traveling outside of the United States can not only affect the residence and physical presence requirements for naturalization and thus cause a denial of naturalization, but it can cause issues related abandonment of lawful permanent resident status, which can result in a person losing their permanent residence. For these reasons, advocates should thoroughly assess a person's trips abroad prior to applying for naturalization.

## End Notes

<sup>1</sup> INA § 101(a)(38).

<sup>2</sup> INA § 316(a)(1).

<sup>3</sup> 8 C.F.R. § 316.5(a).

<sup>4</sup> 8 C.F.R. § 316.5(b)(5)(i).

<sup>5</sup> 8 C.F.R. § 316.5(b)(5)(ii).

<sup>6</sup> INA § 316(a)(1).

<sup>7</sup> INA § 319(a).

<sup>8</sup> INA § 316(b).

<sup>9</sup> 8 C.F.R. § 316.5(c)(1)(i); 12 USCIS-PM D.3(C).

<sup>10</sup> INA § 316(b); 12 USCIS-PM D.3(C)(1).

<sup>11</sup> 12 USCIS-PM D.3(C)(1).

<sup>12</sup> INA § 316(b).

<sup>13</sup> INA § 319(a); 12 USCIS-PM D(3)(C)(3); 8 CFR § 316.5(c)(1)(ii).

<sup>14</sup> INA § 316(a)(2).

<sup>15</sup> INA § 316(b).

<sup>16</sup> INA § 316(a)(1).

<sup>17</sup> INA § 319(a).

<sup>18</sup> INA § 101(a)(20).

<sup>19</sup> *Singh v. Reno*, 113 F.3d 1512, 1514 (9th Cir. 1997).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*; *Matter of Huang*, 19 I. & N. Dec. 749, 753 (B.I.A. 1988).

<sup>23</sup> *Id.*



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