

## CHAPTER 1

### INTRODUCTION

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#### § 1.1 Introduction to Citizenship

There are four ways one can become a United States citizen. First, the Fourteenth Amendment to the U.S. Constitution provides that anyone born in the United States and subject to the jurisdiction of the U.S. is a U.S. citizen.<sup>1</sup> Second, people who are born in another country to parents who are U.S. citizens may, depending on certain rules explained in **Chapter 12** of this manual, become U.S. citizens at birth through **acquisition of U.S. citizenship**. Third, people can become U.S. citizens through a process called “Naturalization.” Fourth, people who are lawful permanent residents of the U.S. and whose parent or parents are United States citizens through naturalization, birth in the United States or other ways such as acquisition of citizenship, derivation of citizenship, or Section 322 citizenship, may, depending on certain rules explained in **Chapter 12** of this manual, become U.S. citizens through **derivation of citizenship**.

There are many advantages to becoming a U.S. citizen. Some of these include: the right to vote in U.S. elections, the right to travel with a U.S. passport, the right to help some relatives immigrate to the U.S. more quickly, the right to obtain certain government jobs, the right to obtain certain government benefits, the right not to be excluded or removed (deported) from the U.S., and the right to live in another country without losing the right to legally return to the U.S.<sup>2</sup>

**IMPORTANT NOTE:** The Immigration and Naturalization Service (INS) was for many years the main federal government agency that administered US immigration law. However, effective

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<sup>1</sup> INA § 301(a). The exception to the rule that everyone born in the U.S. is a U.S. citizen applies to children born to high-ranking foreign diplomats while in the U.S. See 8 CFR § 101.3(b) and *INS Interpretations* 301.1(a)(4).

<sup>2</sup> Green card holders (i.e., lawful permanent residents) can lose their permanent residence status and be removed (deported from the U.S.) if they have “abandoned their residence” due to having moved to another country with the intention of residing there while still a permanent resident of the U.S. For more information on this subject, refer to Chapter 4.

March 1, 2003, Congress dissolved the INS, and all of its functions were assumed by the newly created Department of Homeland Security (DHS). Immigration laws are now administered and enforced by three separate divisions within the DHS: U.S. Customs and Border Protection (CBP), U.S. Citizenship and Immigration Services (USCIS), and U.S. Immigration and Customs Enforcement (ICE).

CBP's main immigration responsibility is apprehending immigrants attempting to enter into the U.S. illegally, and, checking freight and baggage entering the United States for compliance with customs and trade laws. ICE's mission includes managing investigations of document, identity, visa, and immigration fraud; investigating immigration violations and migrant smuggling; and detaining, prosecuting, and removing undocumented aliens. USCIS' mission is the adjudication of all immigration related petitions and applications for relief, including naturalization and citizenship applications.

Becoming a citizen of the U.S. is not necessarily the right path for everyone who is a lawful permanent resident. For some, U.S. citizenship may mean they have to give up citizenship in their own country. This is something some people are not willing to do. For others, the naturalization application may actually start an investigation by USCIS and/or ICE that could lead to the applicant losing her green card and being deported. Still others may feel reluctant to go through what can be a difficult and, at times, unpleasant process. Both the advocate and the client must thoroughly consider all of the facts in order to make an informed decision about whether or not to apply for naturalization. Such a discussion between the advocate and client cannot take place until the advocate gives a complete and understandable explanation of the legal requirements to the client and together they decide whether or not the client is eligible to naturalize.

A record number of immigrants applied for naturalization during the mid and late 1990s. Yet, it is estimated that 8.8 million people are still eligible to naturalize but have not yet applied for naturalization.

There are four major reasons why during the mid to late 1990's there was a large increase in the number of naturalization applicants. First, close to three million people who legalized their status through the amnesty program became eligible to apply for naturalization starting in the mid-1990s. Second, USCIS instituted a green card renewal program<sup>3</sup> that forced green card holders to obtain new green cards and encouraged many to apply for naturalization rather than go through the green card renewal process. Third, during the mid-1990s the INS publicly stated that it intended to make naturalization a priority. Thus, during the Citizenship U.S.A. program of the

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<sup>3</sup> USCIS has instituted a program requiring everyone to renew his or her green card every ten years. Additionally, everyone with an I-151 "green card" (generally the permanent resident cards issued prior to 1978) instead of an I-551 "green card" was supposed to apply for a new green card by March 20, 1996. The official name for a "green card" is an Alien Registration Card. It is important to note that even if he or she did not apply for a new green card by this date, he or she does remain a permanent resident. Starting in the late 1980s, all new green cards issued by USCIS expire ten years after issuance. The expiration dates are noted on the Alien Registration Card.

mid-1990s, the INS made naturalization adjudications and outreach a priority. Fourth, the increased anti-immigrant hysteria of the mid and late 1990s encouraged many immigrants to become citizens so they could legalize their loved ones, vote, and better organize to combat the anti-immigrant sentiments. Now that we are in the post 9-11 era and politicians are renewing their unjust attacks on immigrants, more immigrants are coming forward to be involved in social and political change. Immigrants realize that one important way to try and change the anti-immigrant landscape is to naturalize and vote. Hopefully, this manual will assist you in helping more immigrants apply for naturalization and realize the American Dream than ever before.

## § 1.2 Overview of the Basic Requirements for Naturalization

To become a naturalized citizen, an applicant must meet eight basic requirements. These requirements are found in the Immigration and Nationality Act (INA) §§ 312 through 337, and volume 8 Code of Federal Regulations (CFR) §§ 310 through 331.<sup>4</sup> To qualify for naturalization, an applicant must:

- be a lawful permanent resident (see **Chapter 4**);
- be at least 18 years old (see **Chapter 12**);
- have good moral character, keeping in mind certain specific “bars” to naturalization (see **Chapter 6**);
- be able to pass an English exam (see **Chapter 7**);
- be able to pass a test on U.S. history and government (see **Chapter 7**);
- have lived continuously in the U.S. for at least five years (except in certain circumstances such as being married to a U.S. citizen or being in the military—see **Chapter 5**);
- have been physically present in the U.S. for at least half of the five year period (except in certain circumstances such as being married to a U.S. citizen or being in the military—see **Chapter 5**); and
- swear loyalty to the U.S. by taking a loyalty oath (see **Chapter 9**).<sup>5</sup>

When a client wants to apply for naturalization, one of the first things her legal representative should do is explain the legal requirements for naturalization. There is obviously not a single correct way to explain the requirements, but any explanation must be thorough and easily understood. For an example of one way to explain the legal requirements to a client, please see

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<sup>4</sup> Practitioners should become familiar with both the INA and 8 CFR when helping clients prepare naturalization applications. The INA is the immigration law passed by Congress, and 8 CFR contains the regulations used to carry out the law. Often the INA and 8 CFR have analogous section numbers. Thus, if a practitioner finds a part of the INA that is relevant to her client’s case, chances are she can find the relevant 8 CFR section under the same number as the INA section dealing with the same topic. For instance, the requirements for good moral character can be found in INA § 316 and 8 CFR § 316.

<sup>5</sup> There are some exceptions to these eight requirements for several “Special Classes” of people who may be naturalized. Some of these exceptions are discussed in this manual in Chapters 4 and 5. For more information on these “Special Classes,” please see 8 CFR §§ 319 through 331.

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**Chapter 2.** It is also useful to give the client something in writing that explains naturalization. For sample sheets in English, Chinese, Spanish, please see **Appendix 2-B**.

One very efficient and effective way to explain the requirements for naturalization is in a group setting, often called an information session. This way, all the potential applicants can listen to the requirements together and learn from each other's questions. Additionally, it saves the advocate time because she doesn't have to explain the requirements to each person individually. For a more complete discussion of information sessions and group processing of naturalization applications, please see **Chapter 10**.

### § 1.3 How to Use This Manual

This naturalization manual is designed to assist attorneys, paralegals, volunteers, and other advocates. We wrote this manual for people working at non-profit agencies and for private lawyers. Lawyers with varying degrees of experience in naturalization cases will find this manual extremely useful.

This manual is fashioned in a manner that can guide you through the entire process of handling a naturalization case, beginning with the first time you meet a potential applicant through the completion and filing of the N-400 (the Naturalization Application), the naturalization interview, the appeal (if necessary), and the swearing-in ceremony.

This manual is not simply a discussion of legal requirements and procedures. Because the input and work of the naturalization applicant is so essential to the success of the case, this manual is also filled with many ideas about how to communicate legal requirements and procedures to applicants, so the applicants can be active and informed participants in their own naturalization process. Applicants, their families, and friends can help legal workers by doing much of the work while applying for naturalization. For instance, most applicants can complete a draft of the N-400, collect the necessary documentation, and prepare for their naturalization interview and exam. Working with applicants is not just more efficient for a legal worker. The client's active and informed participation actually helps to build a stronger case. A client who has a handle on the requirements and the process will be more helpful in gathering relevant information for the attorney or another legal worker and in organizing the answers to the questions on the application. Additionally, it will be likely that she will be better prepared to deal with the stress of the naturalization examination, answer the questions more accurately, and have a higher possibility of success if she knows the legal requirements and what to expect.

In the appendix to this manual, there are checklists, completed and blank applications, sample explanations of the legal requirements, and outreach flyers containing a list of the legal requirements that will facilitate the applicant's participation in building her case. We encourage you to use these appendices as much as possible. Feel free to copy them onto your own letterhead and make any changes you feel are necessary.

Parts of this manual are dedicated to presenting and discussing the basic legal requirements for naturalization. Some of the legal requirements are clear cut and probably inflexible. Yet others are murky, not clearly defined, and probably flexible depending on which USCIS office you are working with and which USCIS naturalization adjudicator is reviewing the applicant's case. We strongly encourage you to investigate challenging USCIS' interpretation of any legal requirement that is not firmly grounded in the Immigration and Nationality Act (INA) or in case law. Our legal staff would be more than happy to discuss any ideas you have about USCIS' interpretations or conduct that you think is unfair or wrong.

Although we have thoroughly researched the legal requirements presented in this manual, we do not suggest that you use it as a substitute for your own research and knowledge. Immigration law changes constantly and can be complex. Further research must be done on issues not discussed in this manual or on new developments in the field. Additionally, each USCIS jurisdiction (and even to some extent, each USCIS naturalization adjudicator) has different procedures and different interpretations about some of the legal requirements. It is very important for you to research the interpretation that the USCIS office in your jurisdiction has for each legal requirement. To do this, ask other, more experienced local practitioners.

Another way to obtain information about how USCIS handles specific issues in your jurisdiction is to set up a periodic USCIS citizenship branch liaison meeting between local community agencies and the local USCIS office. The meetings will give you an opportunity to ask USCIS officials what their interpretations are on each of the specific legal requirements. These meetings are presently occurring in many USCIS districts. The meetings have been a valuable asset to legal workers handling naturalization cases. For more information on how to set up such a meeting, feel free to call Eric Cohen at the ILRC (415-321-8526 or [ecohen@ilrc.org](mailto:ecohen@ilrc.org)). The ILRC distributes a packet on how to set up such meetings. This packet can be downloaded freely from our website: [www.ilrc.org/resources/establishing-liaison-meetings](http://www.ilrc.org/resources/establishing-liaison-meetings).

The ILRC first published this manual in 1995. We have continued to update it on a regular basis since then. We use input from our readers as one source of information to help us improve this manual. We encourage you to read it with a critical eye and give us any input about any changes in (or differences of opinion about) the law, the application procedures, how to work with clients, or anything else in this manual. Specific tendencies of how the different USCIS offices treat certain situations would also be greatly appreciated. Please send any suggestions to:

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## § 1.4 Contents of the Manual

This manual is divided into fourteen chapters. **Chapter 3** is an overview of the legal requirements and the procedures when applying for naturalization. **Chapters 4, 5, 6, 7, and 9** contain detailed explanations of the legal requirements. **Chapters 2, 8, and 10** explain application procedures and suggest ways to work with clients when helping them apply for naturalization. **Chapter 10** is especially interesting because it outlines Group Processing, which is an efficient and very effective way to help many naturalization applicants at the same time. **Chapter 11** discusses what to do if a naturalization application is denied. **Chapter 12** covers topics involving children and citizenship, including the ever-important issues of Acquisition and Derivation of citizenship, and **Chapter 13** provides a summary of how a naturalized citizen can lose his or her citizenship. The ways one can lose citizenship status are especially important for advocates, as well their clients, to know so that clients do not do anything that may cause them to lose the benefits of naturalization for which they worked so hard. **Chapter 14**, the last chapter, is a collection of information that is extremely valuable to everyone helping naturalization applicants. We strongly encourage you to read **Chapter 14** very carefully because it covers many of the ways people can immigrate to the U.S. Additionally, **Chapter 14** discusses ways to work with immigrants in trying to improve the naturalization process. **Chapter 14** includes suggestions about how to use the media, organize with the immigrant community, and train and work with lay advocates around naturalization issues.

## § 1.5 Key Definitions

Although we have attempted to remove unnecessary legalese or technical words from this manual, some are unavoidable. The technical terms you encounter frequently in this manual are defined below.

**USCIS:** U.S. Citizenship and Immigration Services is the federal government agency in charge of adjudicating naturalization and other immigration applications.

**USCIS Policy Manual:** As part of an ongoing review of its internal adjudication policies, USCIS has created an online policy manual, available at [www.uscis.gov/policymanual/HTML/PolicyManual.html](http://www.uscis.gov/policymanual/HTML/PolicyManual.html). USCIS intends this policy manual to be the central repository of its policies and replace its other policy repositories. The manual is structured to house several volumes pertaining to different areas of immigration benefits administered by the agency such as citizenship and naturalization, adjustment of status, admissibility, protection and parole, nonimmigrants, refugees, asylees, immigrants, waivers, and travel and employment. The USCIS Policy Manual specifically supersedes the Adjudicator's Field Manual and the USCIS policy memoranda. It is unclear whether this policy manual also replaces the INS Interpretations. The ILRC urges advocates to use the policy manual as well as continue to use helpful clarifications and guidance

from INS Interpretations unless and until it is specifically superseded by the USCIS Policy Manual.<sup>6</sup>

**Lawful Permanent Resident:** Someone who has an immigrant visa, or a “green card,” is a lawful permanent resident. Lawful permanent residents have been granted the right to reside permanently in the U.S. and can work and travel freely.

**Green Card:** A green card is proof of status as a lawful permanent resident. It looks like an ID card, and is not actually green. The official name of a green card is an “Alien Registration Card,” or Form I-551.

**Removed:** The term used to describe what happens when the U.S. government makes an immigrant leave the U.S. is “removed” instead of “deported.” Immigrants can be “removed” if they fall within the grounds of deportability or inadmissibility. The term “removed” has combined into one term, what used to be called “deported” and “excluded” from the U.S. For more information on this topic, please see INA § 237 and the ILRC’s manuals, *A Guide for Immigration Advocates* and *Inadmissibility and Deportability*.

**Grounds of Inadmissibility:** The “grounds of inadmissibility” is the name of the group of acts that may bar persons from being *admitted* into the U.S. These grounds used to be called the “grounds of exclusion.” The grounds of inadmissibility can be found in INA § 212(a) and apply to those seeking admission into the U.S. at a border, or apply for admission within the U.S. through an adjustment of status. For more information on this topic, please see the ILRC’s manuals, *A Guide for Immigration Advocates* and *Inadmissibility and Deportability*.

**Grounds of Deportability:** The grounds of deportability are the laws that Congress passed to determine what types of acts can cause people to be “deported” (also called “removed”) from the U.S. Both the grounds of inadmissibility and grounds of deportability are acts that can cause someone to be “removed” from the U.S. For more information on this topic, please see INA § 237 and the ILRC’s manuals, *A Guide for Immigration Advocates* and *Inadmissibility and Deportability*.

**INA:** The Immigration and Nationality Act (INA) is the complete law which Congress passed dealing with all issues of immigration and naturalization. The law changes frequently. Everyone should have a copy of the INA. Copies may be purchased at government bookstores and accessed

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<sup>6</sup> This manual cites the USCIS Policy Manual where applicable. This manual also points out inconsistencies between the USCIS Policy Manual and previous policy memoranda, the Adjudicator’s Field Manual, and/or INS Interpretations. In many places the USCIS Policy Manual is silent on subjects discussed at length in prior USCIS policy statements. In the absence of guidance to the contrary from the USCIS Policy Manual, the ILRC believes advocates should continue to use helpful clarifications and guidance from prior USCIS policy statements. As the USCIS Policy Manual is an evolving document, please check the USCIS Policy Manual updates page for recent additions and changes at [www.uscis.gov/policymanual/HTML/PolicyManual-Updates.html](http://www.uscis.gov/policymanual/HTML/PolicyManual-Updates.html).



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through the USCIS website at [www.uscis.gov](http://www.uscis.gov). These laws may also be found in Title 8 of the United States Code (8 USC).

**8 CFR:** Volume 8 of the Code of Federal Regulations (8 CFR) contains the rules that USCIS established to implement the immigration laws. These codes change frequently. Everyone should have a copy of the regulations contained in 8 CFR and learn how to use them. If a provision in the 8 CFR conflicts with the intent of the INA or with the United States Constitution, it may be challenged in court and be declared wrong and void. Copies of 8 CFR may be purchased at government bookstores and accessed through the USCIS website at [www.uscis.gov](http://www.uscis.gov).

**INS Operations Instructions:** The INS Operations Instructions (OIs) provide useful insight into the internal guidelines and procedures to be followed by USCIS personnel when doing their job and implementing the law. These Instructions are not the law, and if USCIS is following Operations Instructions that go against the United States Constitution, the INA, or the 8 CFR, they can and should be challenged.

**INS Interpretations:** The INS Interpretations are the internal USCIS policies about what the law is. They act as guidance for USCIS officers. These Interpretations are not the law, and if USCIS is following Interpretations that go against the United States Constitution, the INA, or the 8 CFR, they can and should be challenged. For the most part, USCIS has replaced the INS Interpretations with their policy manual. But, when INS Interpretations are good on a subject, we encourage advocates to use them while arguing your client's eligibility for a certain program.

**Executive Office for Immigration Review (EOIR), Board of Immigration Appeals (BIA), and Federal Circuit Courts of Appeal:** The EOIR is the court system set up to adjudicate certain immigration issues. The trial court is called the immigration court. The Board of Immigration Appeals (BIA) is the appeals court of the EOIR court system. The BIA and the immigration courts are part of the Department of Justice. Often cases decided at the BIA can be appealed to the federal circuit courts (9<sup>th</sup> Circuit Court of Appeals in California, for instance) and even to the U.S. Supreme Court. A naturalization applicant can appeal a denial to the Federal District Court.