

## CHAPTER 1

### INTRODUCTION AND OVERVIEW

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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 14** 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 14** 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 relatives immigrate to the U.S. more quickly, the right to obtain certain government jobs, 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 March 1, 2003, Congress dissolved the INS, and the then newly created Department of Homeland Security (DHS) assumed all of INS’s functions. Immigration laws are now administered and enforced by three separate divisions within the DHS: U.S. Customs and Border Protection (CBP),

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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(a) and 7 USCIS-PM 3.

<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.

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 immigrants. 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. An estimated 8.8 million people are still eligible to naturalize but have not yet applied for naturalization. For some, U.S. citizenship may mean they have to give up citizenship in their own country, which 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 their green card and deportation. Still others may feel reluctant to go through what could become 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 the client is eligible to naturalize.

In spite of these concerns, for many, naturalization is the right path. The number of naturalizations continues to grow and now hundreds of thousands of immigrants naturalize each year. During the mid- and late-1990s, a record number of immigrants applied for naturalization. There are four major reasons for the 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 INS publicly stated that it intended to make naturalization a priority. Thus, during the Citizenship U.S.A. program of the mid-1990s, 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 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 get involved in social and political change. Immigrants realize that one

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<sup>3</sup> USCIS 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 a person did not apply for a new green card by this date, they 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.

important way to try to 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.

## **§ 1.2 Overview of the Basic Requirements for Naturalization**

To become a naturalized citizen, an applicant must meet eight basic requirements. The basic requirements for naturalization are found in the Immigration and Nationality Act (INA) §§ 312 through 337, and 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 14**);
- have good moral character, keeping in mind certain specific “bars” to naturalization (see **Chapters 6 and 7**);
- be able to pass an English exam (see **Chapter 8**);
- be able to pass a test on U.S. history and government (see **Chapter 8**);
- 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 11**).<sup>5</sup>

When a client wants to apply for naturalization, one of the first things their 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. See **Chapter 2** for an example of how to explain the legal requirements to a client. 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 does not have to individually explain the requirements. For a more complete

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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 implement 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 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.

discussion of information sessions and group processing of naturalization applications, please see **Chapter 12**.

### **§ 1.3 How to Use This Manual**

This naturalization and citizenship 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 and citizenship cases will find this manual extremely useful.

This manual will 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 active participation of the naturalization applicant is so essential to the success of the case, this manual also has many ideas about how to communicate legal requirements and procedures to applicants, so they can be active and informed participants in their own naturalization process. Applicants, their families, and friends can do 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. Engaging with applicants on their case is more efficient and it helps to build a stronger case. A client who has a handle on the naturalization requirements and process will be more helpful in gathering relevant information for the attorney or another legal worker and in organizing answers to questions on the application. Additionally, an applicant that knows the legal requirements and what to expect of the naturalization process may be better prepared to deal with the stress of applying, answer questions more accurately, and have a higher possibility of success.

In the appendices to this manual, there are checklists, completed 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 their 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. These 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 contact Eric Cohen at the ILRC ((415) 321-8526 or [ecohen@ilrc.org](mailto:ecohen@ilrc.org)).

The ILRC first published this manual in 1995. We have continued to update it on a regular basis since then. Reader input is one source of information we use to help improve this manual. We encourage you to read it with a critical eye and give us any input about changes in (or differences of opinion about) the law, the application procedures, how to work with clients, or anything else in this manual. We would greatly appreciate information on specific tendencies of how the different USCIS offices treat certain situations. 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, 8, 9** and **11** contain detailed explanations of these legal requirements. **Chapters 2, 10,** and **12** explain application procedures and suggest ways to work with clients when helping them apply for naturalization. **Chapter 12** 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 13** discusses what to do if USCIS denies a naturalization application. **Chapter 14** covers topics involving children and citizenship, including the ever-important issues of Acquisition and Derivation of citizenship, and **Chapter 15** provides a summary of how a naturalized citizen can lose his or her citizenship. **Chapter 16**, the last chapter, is a collection of information that is extremely valuable to everyone helping naturalization applicants. We strongly encourage you to read **Chapter 16** very carefully because it covers many of the ways people can immigrate to the U.S. Additionally, **Chapter 16** discusses ways to work with immigrants in trying to improve the naturalization process. **Chapter 16** 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 terms 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 <http://www.uscis.gov/policymanual/HTML/PolicyManual.html>. USCIS intends for the online USCIS Policy Manual (USCIS-PM) to be the central repository of its policies and replace 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.” 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 term for the group of acts that may bar persons from being *admitted* into the U.S. These grounds used to be called the

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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 <http://www.uscis.gov/policymanual/HTML/PolicyManual-Updates.html>.

“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 and everyone should have a current copy of the INA. Copies may be purchased at government bookstores and accessed 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 an updated 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 OIs that go against the United States Constitution, the INA, or 8 CFR, the OIs 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 8 CFR, the interpretations can and should be challenged. For the most part, USCIS has replaced the INS Interpretations with their policy manual. However, 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 (Ninth Circuit Court of Appeals in California, for instance) and even eventually to the U.S. Supreme Court. A naturalization applicant can appeal a denial to the Federal District Court.

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