

# NEW JERSEY LAWYER

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# IMMIGRATION LAW

## Immigrant Representation in New Jersey

## Naturalization, Jersey Style

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# Naturalization, Jersey Style

## The Process, the Perks, and the Pitfalls

by Angie Garasia

**U**.S. naturalization, as established by the Immigration and Nationality Act (INA), is simply the process by which a foreign citizen or national, who is a lawful permanent resident of the United States, is granted U.S. citizenship.<sup>1</sup> The process is initiated on Form N-400 and requires the applicant to appear before an Immigration Services officer (ISO) to demonstrate, among other things, good moral character, a steadfast attach-

ment to the principles of the U.S. Constitution,<sup>2</sup> and knowledge of basic English, U.S. history and government.<sup>3</sup>

One might wonder whether naturalization is worth pursuing, given that permanent residents (or green card holders) already enjoy the legal right to reside in the U.S. indefinitely. The fact is that, for many, citizenship extends far beyond a person's immigration status. It is something meaningful that resonates deeper, as it reflects an individual's values and loyalties, and invokes a spirit of nationalism and patriotism.



Naturalization is a voluntary act wherein an individual willingly renounces allegiance to his or her native country of birth or nationality and plants deeper roots in another nation.

In 2016, amid a heated, polarizing presidential election, a resurgence of nativist rhetoric, and a proposed application fee hike, the stakes to apply were especially high. The United States Citizenship and Immigration Services (USCIS) reported a surge in N-400 applications filed nationwide. From June 2015, when Donald Trump first announced his candidacy, until June 30, 2016, the number of N-400 applications exceeded a staggering one million.<sup>4</sup> In New Jersey, the spike was proportionately equal. The state experienced a tremendous uptick, compared to the same 12-month period in the previous year.<sup>5</sup> With such a significant spurt in the filing of naturalization applications, now is a good time to briefly examine the history, procedures, and policy behind the USCIS adjudications process.

### USCIS's Authority to Naturalize

Traditionally, Congress has held the exclusive authority under its constitutional power to establish a uniform rule of naturalization and to enact legislation that confers citizenship upon individuals.<sup>6</sup> However, in 1991, Congress delegated the authority to naturalize to the attorney general (now the secretary of the Department of Homeland Security (DHS)).<sup>7</sup> In furtherance of that power, the DHS secretary has commissioned USCIS to perform such acts as are necessary to properly carry out the naturalization authority.<sup>8</sup>

USCIS's role is to preserve the United States' long-revered history and tradition of being a nation of immigrants by administering and conferring immigration and naturalization benefits with fairness and integrity.<sup>9</sup> Clearly, it is critical that the system by which these benefits are granted remains streamlined, simple, and efficient.

### The N-400 Process

The initial step is the mailing of the N-400 application to a USCIS Service Center in Dallas, TX or Phoenix, AZ. Once the 20-page application for naturalization is filed, the service center acknowledges receipt of the application, processes the filing fee, performs a cursory review of the application and schedules a biometrics appointment. USCIS then conducts a criminal background and security check on the applicant.<sup>10</sup> Once the biometrics and preliminary processes are concluded, USCIS schedules the applicant for an interview, which entails administering the U.S. history and government exam as well as determining whether the applicant has demonstrated the requisite level of English proficiency.<sup>11</sup>

The field office assigned to handle an applicant's scheduled interview is determined by his or her place of residence.<sup>12</sup> In New Jersey, there are two field offices: Newark and Mount Laurel. The Newark field office handles all counties north of and including Middlesex County, while the Mount Laurel office handles all southern counties.

Upon filing, and during the interview, an applicant for naturalization must demonstrate that he or she meets all the statutory criteria. To be eligible, an applicant must:

- be at least 18 years old;
- have lawful permanent resident (LPR) status for at least five continuous years (three continuous years if married to a U.S. citizen and spouse-based eligibility requirements are met);
- meet the requisite physical presence in the United States;
- satisfy the continuous residence requirement in the United States;<sup>13</sup>
- demonstrate basic proficiency in speaking and understanding English;
- demonstrate the ability to read and write English;
- demonstrate knowledge of U.S. histo-

ry and government;<sup>14</sup>

- substantiate 'good moral character' for the statutory period;
- be attached to the principles of the U.S. Constitution and be willing to take the Oath of Allegiance to the United States.<sup>15</sup>

### More Than Just a Form

Generally speaking, most applicants satisfy the criteria requirements to become naturalized citizens. This is not to say, however, that applying is a mere formality. For many, demonstrating basic English proficiency can be challenging, especially for those with no formal schooling and those who do not routinely take tests. Many candidates for citizenship may struggle with terms found in the application itself, such as *communism*, *totalitarian dictatorship*, *genocide*, *guerilla group*, *vigilante group*, *paramilitary group*, *exclusion proceedings*, etc. An applicant's failure to understand such terms and unequivocally state they have no connection to or affiliation with those groups, may result in a denial.

Moreover, it is not uncommon for applicants to pass the English and civics test, but nevertheless be denied. Problems may arise, for instance, when an applicant has taken extensive trips abroad. Even a single trip of six months or more will trigger scrutiny and possibly disrupt continuity of residence. In such cases, the applicant bears the burden of proof of establishing that he or she maintained his or her residence and domicile in the United States despite being physically absent.<sup>16</sup>

If the applicant is approved for naturalization, he or she will be extended the same privileges, rights and responsibilities a natural-born citizen possesses (with the exception of attaining the office of president). Whether natural-born or naturalized, a citizen enjoys an enviable panoply of rights and protections under the Constitution and laws of the United States, including but not limited to the

right to vote; petition for family members; apply for federal jobs; run for elected office; travel with a U.S. passport; seek protection under the aegis of the U.S. government; and insulation from deportation.<sup>17</sup>

### **Perks of Living and Applying in New Jersey**

In New Jersey, the applicant is ordinarily apprised at the conclusion of the interview whether his or her application for naturalization is being recommended for approval. New Jersey is one of only a handful of jurisdictions that offer same-day oath ceremonies. During the oath ceremony, the applicant takes the Oath of Allegiance and pledges to support the Constitution and laws of the United States, to renounce any foreign allegiances, and to bear arms on behalf of the United States when required to do so by law.<sup>18</sup> The certificate of naturalization is issued at the conclusion of the ceremony.

### **The Pitfalls**

As desirable as the benefits of citizenship may be, the process must still be approached with a degree of circumspection. An individual should never file an application for naturalization in haste. There are a number of pitfalls that one needs to be mindful of.

When an applicant is scheduled to appear for his or her naturalization interview, the Immigration Service officer (ISO) will have the applicant's entire A-file at hand.<sup>19</sup> This A-file embodies the applicant's entire immigration history. In addition to any previously filed applications with USCIS, it may possess any and all encounters with Customs and Border Patrol (CBP) and Immigration and Customs Enforcement (ICE) and any applications filed abroad with the Department of State (DOS). Any false or misleading information, misrepresentations, or fraudulent documentation submitted in the past is fair game for scrutiny (unless it was already satisfactorily

'waived' by USCIS). In essence, any 'sins' of the past that may have remained buried for years can potentially surface and decimate any chances of acquiring U.S. citizenship. In some cases, the applicant may be referred to removal proceedings as a result of this newly discovered information.

In New Jersey, a Third Circuit decision, *Garcia v. Attorney General of the United States*,<sup>20</sup> may offer some safeguard to those in the aforementioned predicament. In fact, the Third Circuit remains the only circuit where immigrants can rely on the statute of limitations for protection from USCIS where a green card may have been issued in error five or more years earlier. In *Garcia*, the court ruled that a five-year statute of limitation applies with regard to both rescission and removal proceedings if USCIS seeks to rescind a green card that was obtained questionably.<sup>21</sup> However, in a subsequent decision, *Matter of Paula Cruz de Ortiz*,<sup>22</sup> the Board of Immigration Appeals limited the contours of that protection to those who adjusted their status in the U.S. The five-year statute of limitations does not apply to individuals who obtained their immigrant visas abroad.

Omission of criminal history and previous immigration court proceedings are other common snares that may jeopardize an applicant's status. Today, USCIS officials are mandated to check the fingerprint records of all applicants for naturalization against several databases. Those who slipped through the cracks many years ago, perhaps due to neglect or outdated technology, should not presume these issues will go unnoticed. The Department of Homeland Security and the Federal Bureau of Investigation (FBI) have and continue to allocate a significant amount of resources, manpower and time to prevent fingerprint oversights that may have plagued the agencies in the past.

In light of this, every arrest, court sentence, and conviction should be thor-

oughly reviewed before lodging an application for naturalization. Even in instances where criminal charges are dismissed either through pre-trial intervention (PTI), conditional discharge, or conditional dismissal, immigration officers conduct an exacting review of the record to ensure that no guilty plea or admission of culpability was previously entered. Under certain conditions, a plea of guilt may survive a dismissal of the underlying charge and constitute a conviction for immigration purposes. There have been many unsuspecting applicants who unwittingly exposed themselves to removal proceedings by failing to appreciate the nuances and interplay between criminal and immigration law.

Some other issues that may decelerate or imperil a naturalization application are unlawful voting, failure to file taxes, willfully failing to support dependent children, and failure to register for the selective service.

### **The Role of the Advocate**

Given the plethora of potential issues that can arise from a single naturalization filing, the role of the attorney is extremely critical. Even before the application is filed, the attorney plays an indispensable role in evaluating the viability of an application both legally and practically. The client's immigration, criminal and personal history must all be thoroughly assessed. If there are complications, the attorney needs to formulate an ethical strategy that addresses those taxing issues if necessary. Other times, the attorney needs to exercise restraint and counsel forbearance if filing is improvident.

When an applicant is represented by an attorney, a signed G-28 form must be submitted to the government. Whenever an examination is required before USCIS, an applicant has the right to be represented by an attorney.<sup>23</sup> During the interview or examination, the attorney's role is to ensure that the rights of the



applicant are zealously protected. This requires an intricate knowledge of federal law, regulations, and administrative and circuit case law, as well as local practice and procedure. ❧

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#### ENDNOTES

1. Immigration and Nationality Act (INA) § 316(a).

2. INA § 316.
3. INA § 312(a)(1)(2).
4. U.S. Citizenship and Immigration Services, report available at <https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-n-400-application-naturalization>.
5. *Id.*
6. See *Chirac v Chirac*, 15 U.S. 259 (1817).
7. INA § 310(a).
8. INA § 310.
9. See United States and Immigration Services, USCIS Policy Manual, Volume 12, Part B–Chapter 1 available at [www.uscis.gov/policy-manual/HTML](http://www.uscis.gov/policy-manual/HTML)
10. INA § 335.
11. See USCIS Policy Manual, *supra*, Chapter 3.
12. See USCIS Policy Manual, *supra*, Part D, Chapter 6.
13. INA § 316(a).
14. INA § 312.
15. INA § 316 (d)(e).
16. INA § 316.
17. See USCIS Policy Manual, *supra*, Part A, Chapter 1.
18. INA § 337.
19. See USCIS Policy Manual, *supra*, Part B, Chapter 3.
20. 553 F.3d 724 (3d Cir. 2009).
21. *Id.*
22. 25 I & N Dec 601 (BIA 2011).
23. 8 C.F.R. § 335.2(a).

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