

Chapter Twenty-Eight Immigration, Obtaining U.S. Citizenship through Military Service

By Allan Wernick

Introduction

Naturalization is the process in which a permanent resident of the United States (sometimes called a green card holder) becomes a U.S. citizen.

U.S. citizenship provides many benefits. You must be a U.S. citizen to serve as an officer in the armed forces. In the civilian world, U.S. citizenship means you can vote, hold public office, get public assistance not available to permanent residents, and work in jobs usually open only to U.S. citizens, including police officer and fire-fighter. Some private jobs, for instance where a military contract is involved, also require U.S. citizenship.

Getting U.S. citizenship has other advantages. As a U.S. citizen, you can get a U.S. passport, which often makes it easier to travel abroad. Some countries allow U.S. citizens entry without a visa, and if you need help while traveling, as a citizen you can call on U.S. embassy and consulate representatives to help you. Also, a U.S. citizen can live abroad as long as he or she likes without losing citizenship. A permanent resident who spends too much time abroad can be barred from reentry. Finally, the U.S. government cannot remove (deport) a

U.S. citizen based on an act that occurred after naturalization, except acts of expatriation (such as treason) or formally renouncing U.S. citizenship. Commission of certain crimes can result in the removal (deportation) of a permanent resident, but not a U.S. citizen.

U.S. immigration and nationality laws provide special rules for the naturalization of non-citizens who have served in the U.S. military. Usually, simply serving in the armed forces, even in times of war, does not automatically result in U.S. citizenship. The servicemember or veteran must apply. However, current law requires the U.S. Citizenship and Immigration Services (USCIS) to waive filing fees for naturalization applicants applying based on military service.

Under order of President George Bush, any person serving on active duty in the armed forces on or after September 11, 2001 benefits from special “active hostilities” or “wartime” naturalization rules. “Active duty” means serving full-time in any capacity in the United States Military, including training duty, attendance at a military school while in active military service, and service in non-combatant duty. Active duty DOES NOT include service in the standby reserves.

In considering the rules for naturalization, we discuss both the general rules that apply to all applicants and the rules for those in military service. We focus on naturalization of current active-duty servicemembers and recently discharged veterans. Special rules apply also to active-duty veterans of World War I, World War II, the Korean War, the Vietnam War, and the Persian Gulf conflict. These rules are discussed in the Immigration and Nationality Act at Section 329. You can find the Act at the U.S. Citizenship and Immigration Services Web site at www.uscis.gov.

One final note as we end this introduction: Immigration laws can be confusing. If you have any doubts about whether you qualify for naturalization, consult an expert before applying. Sometimes a naturalization applicant, particularly one with a criminal record, can end up getting removed from the United States. You don’t want that to happen to you. At the end of this chapter, under “Where to Get Help with Your Naturalization Application,” we provide information on where to get help with your application.

Naturalization Requirements

For a permanent resident to become a U.S. citizen, he or she must be naturalized. That is, the person must apply for citizenship and the U.S. Citizenship and Immigration Services must grant that status. The main exception is for certain children who get citizenship automatically through a parent. Below we discuss naturalization requirements with an emphasis on the special rules that apply to active-duty members of the armed forces, veterans, and those who have died during military service. Note that the rules for active-duty members of the armed forces apply to applicants who apply while in the service, or within six months of honorable discharge.

The Age Requirement

To naturalize, most applicants must be at least age 18. Active-duty members of the armed forces during times of active hostilities may naturalize regardless of age. Other individuals not yet 18 sometimes get citizenship through a U.S. citizen parent.

The Continuous Residence Requirement

With exceptions for active-duty members of the U.S. armed forces, to naturalize you must have resided continuously in the United States as a permanent resident. Most applicants must have resided in the United States for five continuous years. Permanent residents who have been married to and living with the same U.S. citizen spouse while a permanent resident qualify after three years of permanent residence.

Continuous Residence Rules During Periods of Active Hostilities

For those serving during a period of active hostilities, the law waives the continuous permanent residence requirement. Thus, non-citizens who are currently serving honorably are eligible to apply for naturalization without regard to any period of lawful permanent residence. To benefit from this rule you must apply for citizenship while a member of the armed forces, or within six months of separation. Note that if the servicemember is dishonorably discharged before five years of honorable service, he or she may lose his or her citizenship.

Note that here we refer to “non-citizens” applying for citizenship. While the law requires permanent residence for entry into the armed services, should a person in another status, including an undocumented immigrant, serve during periods of hostilities, he or she may naturalize.

Continuous Residence During Peacetime Service

Active-duty servicemembers serving during peacetime may sometimes naturalize under rules different from those that apply to other applicants.

Permanent residents who have served honorably in the armed forces for at least one year who apply within six months of termination of service qualify for naturalization regardless of their time residing or present in the United States. The one year may be a combination of active duty and inactive reserve duty.

Continuous Residence Requirements for Other than Active-Duty Servicemembers

Veterans who do not apply within six months of termination of service must meet the same continuous residence and physical presence requirements as other applicants. However, any time spent in the service, including time spent abroad, counts toward meeting these requirements.

To meet the continuous residence requirement, you must have resided continuously in the United States as a lawful permanent resident for at least five years. If you are the spouse of a U.S. citizen, you can naturalize three years after becoming a permanent resident if you have been married to and living with that U.S. citizen for the entire three years. Continuous residence does not mean that you must have been in the United States without ever leaving during the statutory period. It does mean, however, that during the five (or three) years before naturalizing you did not abandon your permanent residence, the United States was your principal residence, and you were never out of the country for more than one year at a time, or 365 consecutive days.

If you have been out of the country for more than six months at one time, but less than one year, you must prove that you never intended to abandon your U.S. residence. Proof might include close family, a house or apartment, a job, and bank or utility accounts in the United States. If you are going abroad to work for a U.S. business or research institution, to do religious work, or to

work for the U.S. government, you may be absent for more than a year without breaking your continuous residence if you get prior approval from the USCIS. Again, time spent abroad in military service does not affect compliance with the continuous residence requirement.

The Physical Presence Requirement

Except for the rules discussed above for active-duty servicemembers, to qualify for naturalization, you must have been physically present in the United States for half the required five- (or three-) year required period of continuous residence. Applicants may count time spent abroad doing religious work or in military service toward the required days in the United States.

The Good Moral Character Requirement

To naturalize, an applicant must be a person of good moral character. Good moral character does not mean moral excellence. If you have a record of criminal activity; have failed to pay required family support; have had problems with alcohol or drugs; have been involved in illegal gambling, prostitution, or procuring; have failed to pay your taxes; have failed to register with the Selective Service; or have lied to the USCIS to gain immigration benefits, you may fail the good moral character requirement. Parking tickets, disorderly conduct convictions, and many other minor offenses usually will not prevent you from proving that you have good moral character. However, the USCIS may contend that you do not have good moral character if you have repeated convictions for even minor violations.

The question of who has good moral character under U.S. law is not easy to answer. If you have any doubts, particularly regarding a criminal record, you should speak with an immigration law expert before filing your naturalization application. See “Where to Get Help with Your Naturalization Application,” near the end of this chapter.

If you are convicted of certain serious crimes called “aggravated felonies,” the law may permanently bar you from naturalization. In the bizarre world of immigration law, even some misdemeanors are aggravated felonies. Other crimes may not be a permanent bar to naturalization but are grounds for deportation.

For naturalization law purposes, a finding of guilt after a court-martial is the same as a criminal conviction. Further, some actions, such as trafficking in illicit drugs, may count against an applicant even without a conviction. If you have ever been arrested or charged with a crime, in or out of the service, get the advice of an immigration law expert before applying for citizenship.

Failure to willfully pay child support is a common reason for a finding of a lack of good moral character. Child support refers to financial support that you provide to your children when they are not living with you.

Other common indications of a lack of good moral character include failure to file tax returns when the law requires you to do so, being a habitual drunkard or a user or dealer of drugs, and earning income from illegal gambling, prostitution, or drug dealing.

Some controversy exists around how the USCIS should apply the rules about good moral character to naturalization applicants applying under the special rules for (active-duty) servicemembers. Generally, you must show good moral character for the period of continuous residence required to naturalize. The USCIS view is that to qualify to naturalize under the special rules for servicemembers, you must show at least one year of good moral character. For other applicants, you must have at least five years of good moral character (three years if you are applying under the special rules that relate to the spouse of a U.S. citizen).

Less-than-Honorable Discharge, Desertion, Failure to Appear for Induction, Draft Avoidance Based on Alienage

Persons not honorably discharged may not avail themselves of the special rules that apply to those in active service. Further, citizenship granted because of service in the U.S. military may be revoked if the person is dishonorably discharged at any point prior to five years of honorable service. However, a dishonorable discharge and the crime of failure to appear for induction do not necessarily indicate a lack of good moral character and do not bar naturalization.

Note that military law describes five types of discharges: honorable discharge, general discharge under honorable conditions, discharge under other than honorable conditions, bad conduct discharge and dishonorable discharge. The USCIS considers an honorable discharge and general discharge under honorable conditions to meet the definition of “honorable discharge.”

Desertion is a permanent bar to naturalization. However, if you are the beneficiary of an individual pardon or a group pardon for any crime or offense, including desertion, you may naturalize.

Non-citizens who avoided the draft because they are not citizens are not eligible to apply for naturalization, though many exceptions apply.

The English Language Requirement

With some exceptions, every naturalization applicant must pass an English language speaking, reading, and writing test. If a question arises at the interview that needs to be discussed in detail—for instance, whether you made required child support payments—you have the right to have the discussion in your native language.

You are exempt from the English language requirement if you have been a permanent resident for at least 20 years and you are over 50 years old or if you have been a permanent resident for at least 15 years and you are over 55 years old. If you qualify for this exemption, you must still pass the U.S. history and civics test, but the USCIS will test you in your native language.

If you are incapable of speaking, reading, or writing because of a mental impairment or physical disability, you are exempt from the English language requirement.

The Civic Knowledge Requirement

To naturalize, you must have a basic understanding of U.S. history and government. You must correctly answer several questions from a list of 100 questions provided by the USCIS. If you are over 65 years of age and you have been a permanent resident for at least 20 years, you need answer only six out of ten simple questions from a list of 25.

If you cannot answer questions or learn due to a mental impairment or physical disability, you are exempt from the civic knowledge test. You must apply for that exemption with your initial application. You can get the questions and answers at the USCIS website, www.uscis.gov.

Oath of Allegiance to the United States

To naturalize, you must take an oath of allegiance to the United States. You may have the oath requirement waived based on religious belief.

To become a U.S. citizen, you must express your allegiance to the United States and its form of government. You may omit that part of the oath relating to bearing arms or performing in military service. However, if you are not willing to bear arms, you must be willing to perform some form of military service, or to perform civilian work of national importance. If you meet conscientious objector standards, you can take an abbreviated form of the oath, declaring that you are willing to perform only civilian service. You must, however, be willing to perform some form of government service.

Dual Citizenship

If you become a naturalized U.S. citizen, do you have to give up your citizenship in another country? That depends on the laws of that country. When you become a U.S. citizen, the U.S. government asks that you renounce all other citizenship. Some countries do not recognize this renunciation and will consider you, a naturalized U.S. citizen, to be a citizen of both countries.

If you are worried that you will lose citizenship in another country, check with that country's consulate or embassy before you naturalize. If you are already a U.S. citizen and want to become a citizen of another country, you probably can do so without jeopardizing your U.S. citizenship.

Posthumous Naturalization and Benefits for the Family of Deceased Servicemembers

A non-citizen who served honorably in active-duty service and died as result of injury or disease incurred during that service may be granted posthumous naturalization. The next-of-kin must make the request.

Family members of a deceased servicemember may be eligible for immigration benefits as well. The spouse, parent, or child of a U.S. citizen who served honorably in the armed forces and died because of injury or disease incurred in or aggravated by combat may self-petition for permanent residence (a green card). The relative must file the petition within two years of the U.S.

citizen's death. These rules apply regardless of whether the deceased was a U.S. citizen at the time of his or her death or naturalized posthumously.

For a spouse to self-petition under these rules, the spouse may not have legally separated from the deceased U.S. citizen and may not remarry until he or she gets permanent residence.

A child may self-petition even if he or she becomes 21 or marries after the citizen's death, and a parent may self-petition regardless of the child's age.

Note also that the spouse of a person who was posthumously naturalized may naturalize without proving any particular period of physical presence or continuous residence in the United States.

Application Procedures

According to the USCIS, “[E]very military installation has a designated point-of-contact to assist with filing the military naturalization packet.” Nevertheless, reports are that this is not always the case. It's great if you can get help from military officials, but you may apply for citizenship without official help. The form and filing instructions are available by calling the USCIS Form Line at: (800) 870-3676 to request the “Military Packet” and obtain a copy of the handbook, *A Guide to Naturalization*. You can also get the form and information at the USCIS Web site, www.uscis.gov.

Besides USCIS form N-400, Application for Naturalization, members of the armed services and veterans must submit USCIS Form N-426, Certificate of Military or Naval Service, and USCIS form G-325B, Biographic Information.

The USCIS charges no fee for an applicant's applying for naturalization based on his or her active-duty military service.

If you are an active-duty member of the military, you may be interviewed for citizenship abroad or in the United States. If you are in the United States for a limited period, the USCIS will expedite the processing of your application.

Where to Get Help with Your Naturalization Application

Navigating the naturalization process can be difficult. While many people apply for U.S. citizenship without legal assistance, it is best if you get help. Start by learning as much about the process as possible. A good place to begin your

research is the USCIS Web site, www.uscis.gov. Also, you may want to try the USCIS Military Help Line: (877) CIS-4MIL ([877] 247-4645).

Once you have learned all you can about the process, contact the AILA Military Assistance Program (AILA-MAP). AILA-MAP is a collaborative effort between the American Immigration Lawyers Association (AILA) and the Legal Assistance Offices (LAO) of the United States military Judge Advocates General Corps. The LAO provides free assistance to active duty, reserve component, and retired military personnel. You can get information and submit a request for assistance at www.aila.org/military.

If you want to hire a private lawyer, try contacting a bar association legal referral panel. You can get a list of panels at the American Bar Association (ABA) Web site at www.abanet.org/legalservices/lris/directory/. If you cannot afford a private attorney, try a not-for-profit immigration law center. Most of these agencies charge a nominal fee. Some provide free services. The U.S. Board of Immigration Appeals (EOIR) has a list of agencies at www.usdoj.gov/eoir/probono/states.htm. You can also find a list of not-for-profit agencies (sometimes called voluntary agencies or VOLAGS) at my Web site, www.allanwernick.com.

Allan Wernick is a professor at Baruch College, City University New York (CUNY), and Chair of CUNY's Citizenship and Immigration Project. His weekly column, "Immigration and Citizenship," is syndicated by King Features Syndicate, and his column "Immigration Law" appears twice weekly in the *New York Daily News*. He is the author of *U.S. Immigration and Citizenship—Your Complete Guide, 4th Edition*. Research assistance was provided by Shoshana Grossman-Crist and Charlotte Page.