

# Naturalization and Citizenship: Eligibility Guide

A comprehensive guide from EB5 Attorneys

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Naturalization is the process by which a lawful permanent resident becomes a U.S. citizen. The application is Form N 400. Most applicants must be at least 18 years old, have held a green card for five years (or three years if married to and living with a U.S. citizen spouse), meet continuous residence and physical presence requirements, demonstrate good moral character, pass an English language test and a civics test, and attend an interview. After approval, the applicant takes the Oath of Allegiance at a naturalization ceremony.

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## Eligibility Requirements: The Foundation of the N 400 Application

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Naturalization eligibility under INA 316 requires satisfying multiple statutory requirements simultaneously. An attorney or paralegal reviewing an N 400 application evaluates each requirement independently because failing any one of them results in denial.

**Age requirement:** the applicant must be at least 18 years old at the time of filing Form N 400. Children may acquire citizenship automatically in some circumstances, or may apply through their LPR parent's naturalization, but those are separate pathways analyzed under INA 320 and INA 322 rather than the N 400 process.

**Lawful permanent resident status:** the applicant must have held LPR status continuously from the time of admission as a permanent resident through the date of naturalization. Conditional permanent residence obtained through a spousal petition (two year green card) must be removed before the N 400 is filed, unless filing during the conditional period is permissible under specific circumstances.

**Statutory residence period:** under INA 316(a), the general requirement is five years as an LPR immediately preceding the N 400 filing date. Under INA 319(a), spouses of U.S. citizens who have been married to and living in marital union with the citizen spouse for three years, and where the citizen spouse has been a citizen for those three years, may apply after three years as an LPR. This three year exception is one of the most significant eligibility differentiators in naturalization practice.

**Age 50 or 55 exemptions from the English requirement:** applicants who have been LPRs for 20 years and are at least 50 years old, or who have been LPRs for 15 years and are at least 55 years old, are exempt from the English language test under INA 312(b). They must still pass the civics test, which may be taken through an interpreter.

**Good moral character:** INA 316(a)(3) requires demonstrating good moral character for the statutory period (five years or three years as applicable) through the oath ceremony. Good moral character is defined in part by INA 101(f) and has been interpreted through extensive case law. Failure to meet this requirement is a common basis for N 400 denial.

## Continuous Residence and Physical Presence Requirements

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Two distinct but related requirements govern an applicant's ties to the United States during the statutory period: continuous residence and physical presence.

Continuous residence under INA 316(a)(1) means the applicant has maintained their principal domicile in the United States throughout the statutory period. Absences disrupt continuous residence under specific circumstances. A single absence of six months or more but less than one year creates a rebuttable presumption that continuous residence has been broken under INA 316(b). The applicant may rebut this presumption by establishing that they did not abandon their U.S. residence during the absence (for example, by showing continued employment, maintained housing, payment of U.S. taxes, and a fixed intent to return). A single absence of one year or more breaks continuous residence presumptively and requires the applicant to meet the rebuttable presumption standard or, if the absence was for qualifying employment under INA 316(b), to have preserved their residency by filing an N 470 (Application to Preserve Residence for Naturalization Purposes) before departing.

Physical presence under INA 316(a)(3) requires the applicant to have been physically present in the United States for at least half of the statutory period: 30 months out of the five year period for general applicants, or 18 months out of the three year period for spousal applicants. Physical presence is calculated differently from continuous residence: every day spent outside the United States is counted against physical presence, without the six month threshold that applies to continuous residence. Even short frequent trips can erode the physical presence count.

Calculating physical presence requires tallying all absences from the United States from the date of LPR admission through the N 400 filing date. USCIS reviews passport stamps, I 94 records, and airline records in making this determination. An applicant who is borderline on physical presence should carefully calculate their days before filing to avoid a denial for failure to meet the requirement.

The continuous residence period may begin no earlier than 90 days before the statutory period is complete under INA 334(a). For a five year applicant, the earliest permissible filing date is four years and nine months after the date LPR status was granted.

## Good Moral Character: The Requirement Most Often Missed

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Good moral character (GMC) is evaluated for the statutory period (five or three years) preceding the N 400 filing date and continuing through the oath ceremony. Under INA 101(f), certain conduct permanently bars a finding of good moral character, while other conduct creates rebuttable presumptions against it.

Permanent bars to GMC under INA 101(f) include: murder; aggravated felony convictions for conduct committed on or after November 29, 1990; and being a habitual drunkard. These bars apply regardless of when the conduct occurred if it falls within the statutory definition.

Conditional bars to GMC that prevent a finding during the statutory period include: conviction or admission of facts constituting a crime involving moral turpitude (CIMT) (unless a petty offense exception applies); two or more gambling offenses; income primarily from illegal gambling; drug offenses (with a single simple possession exception for 30 grams or less of marijuana under INA 101(f)(6)); habitual drunkard status during the period; confinement in a penal institution for 180 or more days during the statutory period; giving false testimony to obtain an immigration benefit; and failing to support a dependent family member.

The petty offense exception under INA 212(a)(2)(A)(ii) excuses a single CIMT if the maximum sentence for the offense was one year or less and the actual sentence imposed was six months or less. This exception requires careful legal analysis of the offense and sentencing record.

Criminal convictions that occurred before the statutory period may also be relevant. USCIS adjudicators may look beyond the statutory period when the conduct reflects on the applicant's present character. Under the principle established in *Matter of Marin*, 16 I&N Dec. 581 (BIA 1978), conduct outside the statutory period remains relevant if it shows the applicant's character has not genuinely reformed.

N 400 applicants must disclose all arrests, citations, convictions, and criminal charges on the application, including those that were expunged, dismissed, or occurred as a juvenile. Failure to disclose is itself a basis for denial for lack of good moral character (false testimony) and may trigger fraud charges.

## The English Language and Civics Tests

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USCIS administers two tests at the naturalization interview: an English language test and a civics test. Both are required unless an exemption applies.

The English language test under INA 312(a)(1) assesses the applicant's ability to read, write, speak, and understand English. The reading test requires the applicant to read aloud one of three sentences correctly. The writing test requires the applicant to write one of three sentences correctly. Speaking ability is assessed throughout the interview. An applicant who cannot communicate in basic English at the interview level will fail the English test and the naturalization interview overall. English language exemptions apply to: persons 50 years or older who have lived in the United States as LPRs for 20 years; persons 55 or older who have lived as LPRs for 15 years; and persons with medical disabilities under Form N 648 who have a certified medical condition that affects their ability to learn English.

The civics test under INA 312(a)(2) covers U.S. history and government. USCIS provides a list of 100 potential civics questions and answers, available publicly on the USCIS website. The officer asks the applicant up to 10 questions from the list, and the applicant must correctly answer at least six to pass. Officers typically stop asking questions once the applicant has answered six correctly or has made four incorrect answers.

Applicants 65 years or older who have been LPRs for at least 20 years qualify for the modified civics test, where USCIS asks only from a shorter list of 20 questions marked with asterisks on the 100 question list. These applicants must still answer six of 10 questions correctly from the shorter list.

An applicant who fails either the English or civics test is given a second chance within 60 to 90 days of the initial interview. If the applicant fails on the second attempt, the N 400 is denied. The applicant may refile.

## The Naturalization Interview Process

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After filing Form N 400 and completing biometrics, USCIS schedules a naturalization interview at the local field office with jurisdiction over the applicant's residential address. Interview scheduling varies by field office; current wait times range from two months to over a year after filing in backlogged offices.

At the interview, a USCIS officer reviews the N 400 application, verifies identity and LPR status, asks questions about eligibility and good moral character, administers the English and civics tests, and decides whether to approve, continue, or deny the application.

The officer may ask detailed questions about information disclosed on the N 400, including: travel history; any criminal history; tax filing compliance; registration with the Selective Service (for males who lived in the United States between ages 18 and 26, regardless of immigration status); affiliations with organizations; support of the U.S. Constitution; and attachment to the principles of the Constitution. Applicants should review their N 400 thoroughly before the interview and be prepared to explain all answers completely and accurately.

If the officer approves the application at the interview, the applicant is typically given a date for the oath ceremony. Some applicants are approved at the interview and scheduled for an oath ceremony within weeks; others wait months. If the officer needs to continue the application for additional evidence or investigation, the applicant receives a written notice of the continuation and what is needed to complete adjudication. If the officer denies the application, the applicant receives a written denial notice explaining the grounds and information about the right to request a hearing before a USCIS officer under INA 336(a) within 30 days.

USCIS field offices process N 400 applications under varying local procedures; some offices are more efficient and thorough than others. An attorney familiar with the practices at the specific field office can help the applicant prepare appropriately.

## The Oath Ceremony and Certificate of Naturalization

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The oath ceremony is the final step in the naturalization process. At the ceremony, the applicant takes the Oath of Allegiance to the United States under INA 337(a), formally renouncing allegiance to foreign sovereigns and pledging loyalty to the United States. After taking the oath, the applicant receives a Certificate of Naturalization, which is the official document evidencing U.S. citizenship.

The Oath of Allegiance reads in part: I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen. Applicants with sincere religious or conscientious objection to bearing arms may take a modified oath omitting the phrase about bearing arms on behalf of the United States.

Oath ceremonies are conducted in two formats: administrative ceremonies at USCIS field offices (where the USCIS officer administers the oath during the interview or at a separate USCIS ceremony); and judicial ceremonies at federal, state, or local courts. Judicial ceremonies are more common for large group ceremonies and sometimes include special events on Independence Day or Constitution Day. Many applicants prefer judicial ceremonies for their symbolic significance.

After receiving the Certificate of Naturalization, new citizens should immediately apply for a U.S. passport to establish proof of citizenship for travel and other identification purposes. The Certificate of Naturalization should be safeguarded; a replacement requires filing Form N 565 with a \$555 fee (as of the April 2024 USCIS fee schedule). Certified copies of the certificate are not issued; the certificate itself must be presented as proof of citizenship.

Any children who were lawful permanent residents and under 18 years old when the parent naturalizes automatically acquire U.S. citizenship under INA 320 if the child was residing in the United States in the legal and physical custody of the naturalizing parent. No separate application is required; an expedited U.S. passport or a Certificate of Citizenship (Form N 600) can confirm the citizenship.

## Dual Citizenship Considerations

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The United States does not officially recognize or encourage dual citizenship but does not legally prohibit it in most circumstances. When naturalizing as a U.S. citizen, the Oath of Allegiance requires renouncing allegiance to all foreign sovereigns. However, the United States does not take steps to enforce this renunciation, and many naturalized citizens retain citizenship in their country of origin if that country's law permits it.

Retaining citizenship in your original country after naturalizing as a U.S. citizen depends entirely on that country's laws. Some countries automatically strip citizenship when a national voluntarily acquires another country's citizenship. Others allow dual citizenship with or without conditions. Common countries with varying rules include: Mexico (allows dual citizenship); the Philippines (allows retention of Filipino citizenship through a separate registration process under Republic Act 9225); India (does not allow dual citizenship; Indian nationals who naturalize as U.S. citizens typically lose Indian citizenship); China (does not allow dual citizenship; Chinese nationals who naturalize as U.S. citizens lose Chinese citizenship under Chinese law); and Germany (has complex rules with exceptions available in certain circumstances).

A naturalized U.S. citizen who voluntarily acquires the citizenship of another country does not lose U.S. citizenship under INA 349 unless they intend to relinquish U.S. citizenship. The intent element is critical; courts have held that most acts of obtaining foreign citizenship do not demonstrate the required intent to relinquish U.S. citizenship under *Vance v. Terrazas*, 444 U.S. 252 (1980).

Tax implications of dual citizenship are significant. The United States taxes citizens on worldwide income under the Internal Revenue Code regardless of where they reside. U.S. citizens and certain long term residents living abroad may be subject to both U.S. and host country taxation, though foreign tax credit provisions and tax treaties may reduce or eliminate double taxation. U.S. citizens who relinquish citizenship with assets above a threshold face an expatriation tax under IRS Form 8854. Consultation with an international tax attorney is advisable for applicants with substantial foreign income or assets.

## Common Denials, Fee Waivers, and Military Naturalization

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N 400 applications are denied on several common grounds. The most frequent include: failure to meet the continuous residence requirement due to long absences; failure to meet the physical presence requirement; criminal history that affects good moral character; failure to disclose arrests or convictions on the application; failure to register for Selective Service (applicable to males); outstanding federal or state tax obligations; and failure to pass the English or civics test on two attempts.

When USCIS denies an N 400, the applicant receives a written denial notice. Within 30 days, the applicant may request a hearing before a USCIS officer to review the denial under INA 336(a) and 8 CFR 336.2. This administrative appeal is separate from any judicial review. If the hearing officer also denies the application, the applicant may seek review in the U.S. district court with jurisdiction under INA 310(c), where a federal judge conducts a de novo review of the naturalization application.

Fee waivers for the N 400 filing fee are available for applicants who receive means tested public benefits or whose household income is at or below 150 percent of the federal poverty guidelines. The N 400 filing fee is currently \$760 (\$710 for online filers), plus a separate biometrics fee of \$85, for a total of \$845 (or \$795 online). Applicants aged 75 or older pay only \$760 with no biometrics fee. Fee waivers are submitted using Form I 912 (Request for Fee Waiver) with supporting documentation of income and benefit receipt.

Military naturalization under INA 329 provides an expedited pathway for members of the U.S. armed forces who serve honorably during a period of designated hostilities. Current and former service members serving honorably during a designated period may apply with no LPR requirement, no minimum period of residence, and no physical presence requirement. One year of honorable service during non hostility periods also allows naturalization with reduced requirements under INA 328. Applications from service members are processed by USCIS field offices or Military Immigration Support offices embedded with military units, and filing fees are waived under the National Defense Authorization Act.

# Frequently Asked Questions

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## 1. How long do I have to wait before applying for citizenship?

The general requirement under INA 316(a) is five years as a lawful permanent resident immediately preceding the N 400 filing date. However, you may file 90 days early (at four years and nine months) under INA 334(a). If you are married to and living in marital union with a U.S. citizen spouse who has been a citizen for at least three years, you may qualify under the three year rule of INA 319(a) and file at two years and nine months as an LPR. Members of the U.S. armed forces may qualify for expedited naturalization under INA 328 or 329 with shorter or no residence requirements. All applicants must also meet the physical presence and continuous residence requirements within the applicable period.

## 2. What is the three year rule for naturalization?

Under INA 319(a), a lawful permanent resident who has been married to and living in marital union with a U.S. citizen for at least three years, where the citizen spouse has been a U.S. citizen for at least three years, may apply for naturalization after just three years as an LPR rather than the standard five. The applicant must also meet continuous residence (no breaks of six months or more), physical presence of at least 18 months within the three year period, good moral character, English language ability, and civics test requirements. The marital union must be genuine; a legally valid marriage that is not a bona fide marital relationship does not qualify.

## 3. What happens at the naturalization interview?

At the naturalization interview, a USCIS officer reviews your N 400 application, confirms your identity and LPR status, asks questions about the information provided on the form (including travel history, criminal history, tax compliance, and organizational affiliations), administers the English reading and writing tests, and asks up to 10 civics questions from the USCIS 100 question list. You must answer at least six civics questions correctly to pass. If everything is satisfactory, the officer will approve your application and provide information about your oath ceremony date. If additional evidence or investigation is needed, the officer will issue a written notice of continuation. If you fail the English or civics test, you receive one additional opportunity within 60 to 90 days.

#### **4. Will my criminal record prevent me from getting citizenship?**

It depends on the nature and timing of the criminal record. Certain conduct permanently bars a finding of good moral character under INA 101(f), including murder and aggravated felony convictions for conduct after November 29, 1990. Other criminal convictions may create conditional bars during the statutory period (five or three years), including CIMTs, drug offenses, and extended incarceration. The petty offense exception under INA 212(a)(2)(A)(ii) may excuse a single CIMT if the maximum sentence was one year or less and the sentence imposed was six months or less. All criminal history, including arrests, citations, dismissed charges, and expunged convictions, must be disclosed on the N 400.

#### **5. What is the civics test and how do I prepare for it?**

The civics test requires correctly answering at least six of 10 questions that USCIS selects from a publicly available list of 100 questions covering U.S. history, government structure, and the Constitution. The full list of questions and answers is available on the USCIS website at [uscis.gov/citizenship/find-study-materials](https://uscis.gov/citizenship/find-study-materials). Common topics include the branches of government, the Bill of Rights, significant historical events, the founding documents, and the names of current elected officials (which change and should be checked close to the interview date). Applicants 65 or older with 20 or more years as LPRs are tested only from a 20 question subset. Study materials, practice tests, and free USCIS online resources are available to help prepare.

#### **6. Does becoming a U.S. citizen affect my original citizenship?**

Retaining your original citizenship after naturalizing as a U.S. citizen depends on the laws of your country of origin, not U.S. law. The United States does not legally prohibit dual citizenship, though the Oath of Allegiance formally renounces allegiance to foreign sovereigns. Some countries automatically revoke citizenship when a national voluntarily acquires U.S. citizenship; others permit dual nationality freely. India and China generally do not permit dual citizenship. Mexico and many other countries allow it. You should research your country of origin's citizenship law or consult with an attorney familiar with that country's rules before naturalizing if retaining your original citizenship is important to you.

## 7. How much does it cost to apply for naturalization, and can fees be waived?

The current N 400 filing fee is \$760 for paper filers and \$710 for online filers, plus an \$85 biometrics fee, for a total of \$845 or \$795. Applicants aged 75 or older pay only the application fee with no biometrics fee. Fee waivers are available using Form I 912 for applicants who receive means tested public benefits (such as Medicaid, SNAP, or SSI) or whose household income is at or below 150 percent of the federal poverty guidelines. Members of the U.S. armed forces pay no filing fee. Fee waiver applications must include documentation supporting the claim of financial hardship. USCIS processes fee waiver requests before adjudicating the underlying N 400 application.

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