

THE ABC'S OF IMMIGRATION - NATURALIZATION - RESIDENCY REQUIREMENTS, PART I

While there are a number of substantive requirements for naturalization, the most complex of these is residence in the US. As a general rule, an applicant for naturalization must have been a permanent resident of the US for at least five years and also meet certain requirements dealing with the time actually physically spent in the US.

During the five years immediately preceding the application, the person must have resided in the US, with half of that time physically spent in the US. During the three months preceding the application, the person must have resided in the INS district where the application will be filed. Between the filing of the naturalization application and the granting of citizenship, the applicant must continue to reside in the US. Residence is defined as a person's place of general abode. In other words, the place a person makes "their principle, actual dwelling place in fact, without regard to intent."

Simply being absent from the US during these periods does not terminate the period of physical presence. However, absences of between six months and one year need to be dealt with carefully. They are presumed to break the period of continuous residence, but this presumption can be overcome by demonstrating that the applicant did not abandon their US residence. Evidence that can be used in this regard includes continuing US employment, family in the US, maintaining a home in the US, and not obtaining employment abroad.

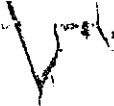
Absences of more than one year will terminate continuous residence unless the applicant complies with the following requirements. First, the applicant must have been physically present in the US for one continuous year following admission as a permanent resident. Any absence from the US, however brief, is not allowed during this period. Second, the applicant must be employed by one of the following:

- The US government
- A US research institution recognized by the Attorney General
- A US business engaged in the development of foreign trade and commerce
- A public international organization of which the US is a member

Before the one-year period outside the US is up, the applicant must demonstrate that they are employed by one of the organizations listed above. The applicant must then prove again that their absence from the US was because of employment. Even when these requirements are met, it is important to remember that the requirement that half of the five years prior to filing the naturalization application be spent in the US still applies. The only exception to this requirement is for time outside of the US during which a person is considered to be "constructively present" in the US. The most common example of this is overseas military service.

If an applicant is the spouse of a U.S. citizen who is one of the following:

- A member of the U.S. Armed Forces;

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- An employee or an individual under contract to the U.S. Government;
 - An employee of an American institution of research recognized by the Attorney General;
 - An employee of an American-owned firm or corporation engaged in the development of foreign trade and commerce for the United States;
 - An employee of a public international organization of which the United States is a member by law or treaty; or
 - A person who performs ministerial or priestly functions for a religious denomination or an interdenominational organization with a valid presence in the United States

AND

Your citizen spouse is working overseas for at least 1 year according to an employment contract or order, then the residency requirements are actually waived.

There are also special exceptions to the residence requirement for religious workers. They must be engaged in religious work abroad and must meet the following requirements. First, at any time between admission as a permanent resident and filing the application for naturalization, they must spend one uninterrupted year physically in the US. This period may be before or after the religious work abroad. Second, the applicant must demonstrate that their absence was to perform religious work.

After filing the naturalization application, the applicant must continue to reside in the US, but absences are allowed.

THE ABC'S OF IMMIGRATION - NATURALIZATION - RESIDENCY REQUIREMENTS, PART II

Last week we discussed the general residency requirements for people seeking naturalization. This week we will cover the requirements for spouses of US citizens and other special classes.

One of the most important benefits spouses of US citizens have with regard to naturalization is that they may seek US citizenship after only three years as a permanent resident, rather than five, as is generally the case. As is the case under the general rule, one half of this time must be spent physically in the US. The couple must have been living in marriage for the entire three years, and the citizen member of the couple must have been a citizen for the entire three year period. Should the couple no longer be living together as husband and wife, the residency requirement for naturalization will revert to the normal five years.

Under section 319(b) of the Immigration and Nationality Act, spouses of US citizens who are employed abroad also benefit from an expedited naturalization process. The US citizen must be employed by a qualifying organization, which can be:

- The US government,
- A recognized US research institution,
- A US business engaged in foreign trade,
- An international organization of which the US is a member or participant, or
- A religious denomination, for the purpose of performing religious work,

The regulations specify that the citizen spouse's employment abroad must be for a period of at least one year, but if this requirement is met, the naturalization application can be filed before the employment abroad begins. Also, there is no minimum required residence in the US, nor a minimum period for which the applicant must have been a permanent resident. The applicant must, however, declare their intention to reside permanently in the US upon the termination of their spouse's foreign employment.

Unfortunately, many INS officials are not familiar with this rule and we have received numerous reports over the years of people who encountered difficulties as a result of INS officials failing to grasp the actual law on this subject.

