§ 316.5 Residence in the United States.

(a) General. Unless otherwise specified, for purposes of this chapter, including § 316.2(a)(3), (a)(5), and (a)(6), an alien’s residence is the same as that alien’s domicile, or principal actual dwelling place, without regard to the alien’s intent, and the duration of an alien’s residence in a particular location is measured from the moment the alien first establishes residence in that location.

(b) Residences in specific cases—(1) Military personnel. For applicants who are serving in the Armed Forces of the United States but who do not qualify for naturalization under part 328 of this chapter, the applicant’s residence shall be:

(i) The State or Service District where the applicant is physically present for at least three months, immediately preceding the filing of an application for naturalization, or immediately preceding the examination on the application if the application was filed early pursuant to section 334(a) of the Act and the three month period falls within the required period of residence under section 316(a) or 319(a) of the Act;

(ii) The location of the residence of the applicant’s spouse and/or minor child(ren); or

(iii) The applicant’s home of record as declared to the Armed Forces at the time of enlistment and as currently reflected in the applicant’s military personnel file.

(2) Students. An applicant who is attending an educational institution in a State or Service District other than the applicant’s home residence may apply for naturalization:

(i) Where that institution is located;

(ii) In the State of the applicant’s home residence if the applicant can establish that he or she is financially dependent upon his or her parents at the time that the application is filed and during the naturalization process.

(3) Commuter aliens. An applicant who is a commuter alien, as described in § 211.5 of this chapter, must establish a principal dwelling place in the United States with the intention of permanently residing there, and must thereafter acquire the requisite period of residence before eligibility for naturalization may be established. Accordingly, a commuter resident alien may not apply for naturalization until he or she has actually taken up permanent residence in the United States and until such residence has continued for the required statutory period. Such an applicant bears the burden of providing evidence to that effect.

(4) Residence in multiple states. If an applicant claims residence in more than one State, the residence for purposes of this chapter shall be determined by reference to the location from which the annual federal income tax returns have been and are being filed.

(5) Residence during absences of less than one year. An applicant’s residence during any absence of less than one year shall continue to be the State or Service district where the applicant last resided at the time of the applicant’s departure abroad.

(6) Spouse of military personnel. Pursuant to section 319(e) of the Act, any period of time the spouse of a United States citizen resides abroad will be treated as residence in any State or district of the United States for purposes of naturalization under section 316(a) or 319(a) of the Act if, during the period of time abroad, the applicant establishes residence in a State or Service district other than the one in which he or she last resided, the applicant must complete three months at that new residence to be eligible for naturalization.
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Forces in marital union in accordance with 8 CFR 319.1(b).

(c) Disruption of continuity of residence—(1) Absence from the United States—(i) For continuous periods of between six (6) months and one (1) year. Absences from the United States for continuous periods of between six (6) months and one (1) year during the periods for which continuous residence is required under § 316.2 (a)(3) and (a)(6) shall disrupt the continuity of such residence for purposes of this part unless the applicant can establish otherwise to the satisfaction of the Service. This finding remains valid even if the applicant did not apply for or otherwise request a nonresident classification for tax purposes, did not document an abandonment of lawful permanent resident status, and is still considered a lawful permanent resident under immigration laws. The types of documentation which may establish that the applicant did not disrupt the continuity of his or her residence in the United States during an extended absence include, but are not limited to, evidence that during the absence:

(A) The applicant did not terminate his or her employment in the United States;

(B) The applicant’s immediate family remained in the United States;

(C) The applicant retained full access to his or her United States abode; or

(D) The applicant did not obtain employment while abroad.

(ii) For period in excess of one (1) year. Unless an applicant applies for benefits in accordance with § 316.5(d), absences from the United States for a continuous period of one (1) year or more during the period for which continuous residence is required under § 316.2 (a)(3) and (a)(5) shall disrupt the continuity of the applicant’s residence. An applicant described in this paragraph who must satisfy a five-year statutory residence period may file an application for naturalization four years and one day following the date of the applicant’s return to the United States to resume permanent residence.

(2) Claim of nonresident alien status for income tax purposes after lawful admission as a permanent resident. An applicant who is a lawfully admitted permanent resident of the United States, but who voluntarily claims nonresident alien status to qualify for special exemptions from income tax liability, or fails to file either federal or state income tax returns because he or she considers himself or herself to be a nonresident alien, raises a rebuttable presumption that the applicant has relinquished the privileges of permanent resident status in the United States.

(3) Removal and return. Any departure from the United States while under an order of removal (including previously issued orders of exclusion or deportation) terminates the applicant’s status as a lawful permanent resident and, therefore, disrupts the continuity of residence for purposes of this part.

(4) Readmission after a deferred inspection or exclusion proceeding. An applicant who has been readmitted as a lawful permanent resident after a deferred inspection or by the immigration judge during exclusion proceedings shall satisfy the residence and physical presence requirements under § 316.2 (a)(3), (a)(4), (a)(5), and (a)(6) in the same manner as any other applicant for naturalization.

(d) Application for benefits with respect to absences; appeal—(1) Preservation of residence under section 316(b) of the Act.

(i) An application for the residence benefits under section 316(b) of the Act to cover an absence from the United States for a continuous period of one year or more shall be submitted to the Service on Form N–470 with the required fee, in accordance with the form’s instructions. The application may be filed either before or after the applicant’s employment commences, but must be filed before the applicant has been absent from the United States for a continuous period of one year.

(ii) An approval of Form N–470 under section 316(b) of the Act shall cover the spouse and dependent unmarried sons and daughters of the applicant who are residing abroad as members of the applicant’s household during the period covered by the application. The notice

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of approval, Form N–472, shall identify
the family members so covered.

(iii) An applicant whose Form N–470
application under section 316(b) of the
Act has been approved, but who volun-
tarily claims nonresident alien status
to qualify for special exemptions from
income tax liability, raises a rebuttable
presumption that the applicant has
relinquished a claim of having retained
lawful permanent resident status while
abroad. The applicant’s family mem-
bers who were covered under section
316(b) of the Act and who were listed on
the applicant’s Form N–472 will also be
subject to the rebuttable presumption
that they have relinquished their
claims to lawful permanent resident
status.

(2) Preservation of residence under sec-
tion 317 of the Act. An application for
the residence and physical presence
benefits of section 317 of the Act to
cover any absences from the United
States, whether before or after Decem-
ber 24, 1952, shall be submitted to the
Service on Form N–470 with the re-
quired fee, in accordance with the
form’s instructions. The application
may be filed either before or after the
applicant’s absence from the United
States or the performance of the func-
tions or services described in section
317 of the Act.

(3) Approval, denial, and appeal. The
applicant under paragraphs (d)(1) or
(d)(2) of this section shall be notified of
the Service’s disposition of the applica-
tion on Form N–472. If the application
is denied, the Service shall specify the
reasons for the denial, and shall inform
the applicant of the right to appeal in
accordance with the provisions of part
103 of this chapter.

§ 316.6 Physical presence for certain
spouses of military personnel.

Pursuant to section 319(e) of the Act,
any period of time the spouse of a
United States citizen resides abroad
will be treated as physical presence in
any State or district of the United
States for purposes of naturalization
under section 316(a) or 319(a) of the Act
if, during the period of time abroad,
the applicant establishes that he or she
was:

(a) The spouse of a member of the
Armed Forces;

(b) Authorized to accompany and re-
side abroad with that member of the
Armed Forces pursuant to the mem-
ber’s official orders; and

(c) Accompanying and residing
abroad with that member of the Armed
Forces in marital union in accordance
with 8 CFR 319.1(b).

§§ 316.7–316.9 [Reserved]

§ 316.10 Good moral character.

(a) Requirement of good moral character
during the statutory period. (1) An appli-
cant for naturalization bears the bur-
den of demonstrating that, during the
statutorily prescribed period, he or she
has been and continues to be a person
of good moral character. This includes
the period between the examination
and the administration of the oath of
allegiance.

(2) In accordance with section 101(f)
of the Act, the Service shall evaluate
claims of good moral character on a
case-by-case basis taking into account
the elements enumerated in this sec-
tion and the standards of the average
citizen in the community of residence.
The Service is not limited to reviewing
the applicant’s conduct during the five
years immediately preceding the filing
of the application, but may take into
consideration, as a basis for its deter-
mination, the applicant’s conduct and
acts at any time prior to that period, if
the conduct of the applicant during the
statutory period does not reflect that
there has been reform of character
from an earlier period or if the earlier
conduct and acts appear relevant to a
determination of the applicant’s
present moral character.

(b) Finding of a lack of good moral
character. (1) An applicant shall be
found to lack good moral character, if
the applicant has been:

(i) Convicted of murder at any time;
or

(ii) Convicted of an aggravated felony
as defined in section 101(a)(43) of the
Act on or after November 29, 1990.