

## Department of Homeland Security

## § 335.2

who has been admitted to citizenship, in accordance with section 340 of the Act and § 335.5 of this chapter.

[56 FR 50496, Oct. 7, 1991]

### §§ 334.6–334.10 [Reserved]

#### § 334.11 Declaration of intention.

(a) *Application.* Any person who is a lawful permanent resident over 18 years of age may file an application for a declaration of intention to become a citizen of the United States while present in the United States. Such application, with the requisite fee, shall be filed on the form specified by USCIS, in accordance with the form instructions.

(b) *Approval.* If approved, USCIS will retain the application in the file and advise the applicant of the action taken.

(c) *Denial.* If an application is denied, the applicant shall be notified in writing of the reasons for denial. No appeal shall lie from this decision.

[58 FR 49913, Sept. 24, 1993, as amended at 74 FR 26941, June 5, 2009; 76 FR 53801, Aug. 29, 2011]

### §§ 334.12–334.15 [Reserved]

## PART 335—EXAMINATION ON APPLICATION FOR NATURALIZATION

Sec.

335.1 Investigation of applicant.

335.2 Examination of applicant.

335.3 Determination on application; continuance of examination.

335.4 Use of record of examination.

335.5 Receipt of derogatory information after grant.

335.6 Failure to appear for examination.

335.7 Failure to prosecute application after initial examination.

335.8 [Reserved]

335.9 Transfer of application.

335.10 Withdrawal of application.

AUTHORITY: 8 U.S.C. 1103, 1443, 1447.

#### § 335.1 Investigation of applicant.

Subsequent to the filing of an application for naturalization, the Service shall conduct an investigation of the applicant. The investigation shall consist, at a minimum, of a review of all pertinent records, police department checks, and a neighborhood investiga-

tion in the vicinities where the applicant has resided and has been employed, or engaged in business, for at least the five years immediately preceding the filing of the application. The district director may waive the neighborhood investigation of the applicant provided for in this paragraph.

[56 FR 50497, Oct. 7, 1991]

#### § 335.2 Examination of applicant.

(a) *General.* Subsequent to the filing of an application for naturalization, each applicant shall appear in person before a USCIS officer designated to conduct examinations pursuant to 8 CFR 332.1. The examination shall be uniform throughout the United States and shall encompass all factors relating to the applicant's eligibility for naturalization. The applicant may request the presence of an attorney or representative who has filed an appearance in accordance with part 292 of this chapter.

(b) *Completion of criminal background checks before examination.* USCIS will notify applicants for naturalization to appear before a USCIS officer for initial examination on the naturalization application only after the USCIS has received a definitive response from the Federal Bureau of Investigation that a full criminal background check of an applicant has been completed. A definitive response that a full criminal background check on an applicant has been completed includes:

(1) Confirmation from the Federal Bureau of Investigation that an applicant does not have an administrative or a criminal record;

(2) Confirmation from the Federal Bureau of Investigation that an applicant has an administrative or a criminal record; or

(3) Confirmation from the Federal Bureau of Investigation that the fingerprint data submitted for the criminal background check has been rejected.

(c) *Procedure.* Prior to the beginning of the examination, USCIS shall make known to the applicant the official capacity in which the officer is conducting the examination. The applicant shall be questioned, under oath or affirmation, in a setting apart from the

public. Whenever necessary, the examining officer shall correct written answers in the application for naturalization to conform to the oral statements made under oath or affirmation. USCIS shall maintain, for the record, brief notations of the examination for naturalization. At a minimum, the notations shall include a record of the test administered to the applicant on English literacy and basic knowledge of the history and government of the United States. USCIS may have a stenographic, mechanical, electronic, or videotaped transcript made, or may prepare an affidavit covering the testimony of the applicant. The questions to the applicant shall be repeated in different form and elaborated, if necessary, until the officer conducting the examination is satisfied that the applicant either fully understands the questions or is unable to understand English. The applicant and USCIS shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(d) *Witnesses.* Witnesses, if called, shall be questioned under oath or affirmation to discover their own credibility and competency, as well as the extent of their personal knowledge of the applicant and his or her qualifications to become a naturalized citizen.

(1) *Issuance of subpoenas.* Subpoenas requiring the attendance of witnesses or the production of documentary evidence, or both, may be issued by the examining officer upon his or her own volition, or upon written request of the applicant or his or her attorney or representative. Such written request shall specify, as nearly as possible, the relevance, materiality, and scope of the testimony or documentary evidence sought and must show affirmatively that the testimony or documentary evidence cannot otherwise be produced. The examining officer shall document in the record his or her refusal to issue a subpoena at the request of the applicant.

(2) *Service of subpoenas.* Subpoenas will be issued on the form designated by USCIS and a record will be made of service. The subpoena may be served by any person over 18 years of age, not a

party to the case, designated to make such service by USCIS.

(3) *Witness fees.* Mileage and fees for witnesses subpoenaed under this section shall be paid by the party at whose instance the subpoena is issued, at rates allowed and under conditions prescribed by the Service. Before issuing a subpoena, the officer may require the deposit of an amount adequate to cover the fees and mileage involved.

(4) *Failure to appear.* If the witness subpoenaed neglects or refuses to testify or to produce documentary evidence as directed by the subpoena, the district director shall request that the United States Attorney for the proper district report such neglect or refusal to any District Court of the United States, and file a motion in such court for an order directing the witness to appear and to testify and produce the documentary evidence described in the subpoena.

(5) *Extraterritorial testimony.* The testimony of a witness may be taken outside the United States. The witness's name and address shall be sent to the Service office abroad which has jurisdiction over the witness's residence. The officer taking the statement shall be given express instructions regarding any aspect of the case which may require special development or emphasis during the interrogation of the witness.

(e) *Record of examination.* At the conclusion of the examination, all corrections made on the application form and all supplemental material shall be consecutively numbered and listed in the space provided on the applicant's affidavit contained in the application form. The affidavit must then be subscribed and sworn to, or affirmed, by the applicant and signed by the USCIS officer. The affidavit shall be executed under the following oath (or affirmation): "I swear (affirm) and certify under penalty of perjury under the laws of the United States of America that I know that the contents of this application for naturalization subscribed by me, and the evidence submitted with it, are true and correct to the best of my knowledge and belief." Evidence received by the officer shall

be placed into the record for determination of the case. All documentary or written evidence shall be properly identified and introduced into the record as exhibits by number, unless read into the record. A deposition or statement taken by a USCIS officer during the initial examination or any subsequent examination shall be included as part of the record on the application.

(f) *Use of interpreter.* If the use of an interpreter is authorized pursuant to 8 CFR 312.4, the examining officer shall note on the application the use and identity of any interpreter. If the USCIS officer is proficient in the applicant's native language, the USCIS officer may conduct the examination in that language with the consent of the applicant.

[56 FR 50497, Oct. 7, 1991, as amended at 58 FR 49913, Sept. 24, 1993; 63 FR 12987, 12988, Mar. 17, 1998; 76 FR 53801, Aug. 29, 2011]

**§ 335.3 Determination on application; continuance of examination.**

(a) USCIS shall grant the application if the applicant has complied with all requirements for naturalization under this chapter. A decision to grant or deny the application shall be made at the time of the initial examination or within 120-days after the date of the initial examination of the applicant for naturalization under § 335.2. The applicant shall be notified that the application has been granted or denied and, if the application has been granted, of the procedures to be followed for the administration of the oath of allegiance pursuant to part 337 of this chapter.

(b) Rather than make a determination on the application, USCIS may continue the initial examination on an application for one reexamination, to afford the applicant an opportunity to overcome deficiencies on the application that may arise during the examination. The officer must inform the applicant in writing of the grounds to be overcome or the evidence to be submitted. The applicant shall not be required to appear for a reexamination earlier than 60 days after the first examination. However, the reexamination on the continued case shall be scheduled within the 120-day period

after the initial examination, except as otherwise provided under § 312.5(b) of this chapter. If the applicant is unable to overcome the deficiencies in the application, the application shall be denied pursuant to § 336.1 of this chapter.

[56 FR 50497, Oct. 7, 1991, as amended at 58 FR 49914, Sept. 24, 1993; 76 FR 53801, Aug. 29, 2011]

**§ 335.4 Use of record of examination.**

In the event that an application is denied, the record of the examination on the application for naturalization, including the executed and corrected application form and supplements, affidavits, transcripts of testimony, documents, and other evidence, shall be submitted to the USCIS officer described in 8 CFR 332.1 of this chapter to conduct hearings on denials of applications for naturalization in accordance with part 336 of this chapter. The record of the examination shall be used for examining the petitioner and witnesses, if required to properly dispose of issues raised in the matter.

[56 FR 50498, Oct. 7, 1991, as amended at 76 FR 53801, Aug. 29, 2011]

**§ 335.5 Receipt of derogatory information after grant.**

In the event that USCIS receives derogatory information concerning an applicant whose application has already been granted as provided in § 335.3(a) of this chapter, but who has not yet taken the oath of allegiance as provided in part 337 of this chapter, USCIS shall remove the applicant's name from any list of granted applications or of applicants scheduled for administration of the oath of allegiance, until such time as the matter can be resolved. USCIS shall notify the applicant in writing of the receipt of the specific derogatory information, with a motion to reopen the previously adjudicated application, giving the applicant 15 days to respond. If the applicant overcomes the derogatory information, the application will be granted and the applicant will be scheduled for administration of the oath of allegiance. Otherwise the motion to reopen will be granted and the application will

### § 335.6

be denied pursuant to § 336.1 of this chapter.

[56 FR 50498, Oct. 7, 1991, as amended at 58 FR 49914, Sept. 24, 1993; 76 FR 53801, Aug. 29, 2011]

### § 335.6 Failure to appear for examination.

(a) An applicant for naturalization shall be deemed to have abandoned his or her application if he or she fails to appear for the examination pursuant to § 335.3 and fails to notify USCIS of the reason for non-appearance within 30 days of the scheduled examination. Such notification shall be in writing and contain a request for rescheduling of the examination. In the absence of a timely notification, USCIS may administratively close the application without making a decision on the merits.

(b) An applicant may reopen an administratively closed application by submitting a written request to USCIS within one (1) year from the date the application was closed. Such reopening shall be without additional fee. The date of the request for reopening shall be the date of filing of the application for purposes of determining eligibility for naturalization.

(c) If the applicant does not request reopening of an administratively closed application within one year from the date the application was closed, USCIS will consider that application to have been abandoned, and shall dismiss the application without further notice to the applicant.

[58 FR 49914, Sept. 24, 1993, as amended at 60 FR 6651, Feb. 3, 1995; 76 FR 53801, Aug. 29, 2011]

### § 335.7 Failure to prosecute application after initial examination.

An applicant for naturalization who has appeared for the examination on his or her application as provided in 8 CFR 335.2 will be considered as failing to prosecute such application if he or she, without good cause being shown, either failed to excuse an absence from a subsequently required appearance, or fails to provide within a reasonable period of time such documents, information, or testimony deemed by USCIS to be necessary to establish his or her eligibility for naturalization. USCIS will deliver notice of requests for appearance or evidence as provided in 8 CFR

### 8 CFR Ch. I (1–1–25 Edition)

103.8. In the event that the applicant fails to respond within 30 days of the date of notification, USCIS will adjudicate the application on the merits pursuant to 8 CFR 336.1.

[76 FR 53801, Aug. 29, 2011]

### § 335.8 [Reserved]

### § 335.9 Transfer of application.

(a) *Request for transfer of application.* An applicant who, after filing an application for naturalization, changes residence, or plans to change residence within three months, may request, in writing, that a pending application be transferred from the current USCIS office to the USCIS office having jurisdiction over the applicant's new place of residence. The request shall be submitted to the office where the application was originally filed. The request shall include the applicant's name, alien registration number, date of birth, complete current address including name of the county, complete address at the time of filing the application, reason for the request to transfer the application, and the date the applicant moved or intends to move to the new jurisdiction.

(b) *Discretion to authorize transfer.* The USCIS may authorize the transfer of an application for naturalization after such application has been filed. In the event that the USCIS does not consent to the transfer of the application, the application shall be adjudicated on its merits by USCIS office retaining jurisdiction. If upon such adjudication the application is denied, the written decision pursuant to § 336.1 of this chapter shall also address the reason(s) for USCIS's decision not to consent to the transfer request.

[56 FR 50498, Oct. 7, 1991, as amended at 58 FR 49914, Sept. 24, 1993; 76 FR 53801, Aug. 29, 2011; 76 FR 73477, Nov. 29, 2011]

### § 335.10 Withdrawal of application.

An applicant may request, in writing, that his or her application, filed with USCIS, be withdrawn. If USCIS consents to the withdrawal, the application will be denied without further notice to the applicant and without prejudice to any future application. The withdrawal by the applicant will constitute a waiver of any review pursuant

## Department of Homeland Security

## § 336.2

to part 336 of this chapter. If USCIS does not consent to the withdrawal, the application for naturalization shall be adjudicated on its merits.

[56 FR 50498, Oct. 7, 1991, as amended at 76 FR 53801, Aug. 29, 2011]

### PART 336—HEARINGS ON DENIALS OF APPLICATIONS FOR NATURALIZATION

Sec.

336.1 Denial after section 335 examination.

336.2 USCIS hearing.

336.3-336.8 [Reserved]

336.9 Judicial review of denial determinations on applications for naturalization.

AUTHORITY: 8 U.S.C. 1103, 1443, 1447, 1448.

SOURCE: 56 FR 50499, Oct. 7, 1991, unless otherwise noted.

#### § 336.1 Denial after section 335 examination.

(a) After completing all examination procedures contained in part 335 of this chapter and determining to deny an application for naturalization, USCIS will serve a written notice of denial upon an applicant for naturalization no later than 120 days after the date of the applicant's first examination on the application.

(b) A notice of denial shall be prepared in a written, narrative format, and shall recite, in clear concise language, the pertinent facts upon which the determination was based, the specific legal section or sections applicable to the finding of ineligibility, and the conclusions of law reached by the examining officer in rendering the decision. Such notice of denial shall also contain a specific statement of the applicant's right either to accept the determination of the examining officer, or request a hearing before an immigration officer.

(c) Service of the notice of denial must be by personal service as described in 8 CFR 103.8, or upon the attorney or representative of record as provided in part 292 of this chapter.

[56 FR 50499, Oct. 7, 1991, as amended at 76 FR 53802, Aug. 29, 2011]

#### § 336.2 USCIS hearing.

(a) The applicant, or his or her authorized representative, may request a

hearing on the denial of the applicant's application for naturalization by filing a request with USCIS within thirty days after the applicant receives the notice of denial.

(b) Upon receipt of a timely request for a hearing, USCIS will schedule a review hearing, within a reasonable period of time not to exceed 180 days from the date upon which the appeal is filed. The review will be with an officer other than the officer who conducted the original examination or who rendered determination upon which the hearing is based, and who is classified at a grade level equal to or higher than the grade of the examining officer. The reviewing officer will have the authority and discretion to review the application for naturalization, to examine the applicant, and either to affirm the findings and determination of the original examining officer or to re-determine the original decision in whole or in part. The reviewing officer will also have the discretion to review any administrative record which was created as part of the examination procedures as well USCIS files and reports. He or she may receive new evidence or take such additional testimony as may be deemed relevant to the applicant's eligibility for naturalization or which the applicant seeks to provide. Based upon the complexity of the issues to be reviewed or determined, and upon the necessity of conducting further examinations with respect to essential naturalization requirements, such as literacy or civics knowledge, the reviewing immigration officer may, in his or her discretion, conduct a full *de novo* hearing or may utilize a less formal review procedure, as he or she deems reasonable and in the interest of justice.

(c) *Improperly filed request for hearing—(1) Request for hearing filed by a person or entity not entitled to file—(i) Rejection without refund of filing fee.* A request for hearing filed by a person or entity who is not entitled to file such a request must be rejected as improperly filed. In such a case, any filing fee will not be refunded.

(ii) *Request for hearing by attorney or representative without proper Form G-28.* If a request for hearing is filed by an attorney or representative who has not