



# **Naturalization: Are You Eligible and Should You Apply?**

Presented by: Victoria Donoghue, Esq.



**Nachman**  
**& Associates**  
Immigration & Nationality Law

# Rights of Citizenship



- Ability to petition for the permanent residence of parents, children and spouse with no backlog
- Ability to bestow USC on child born abroad
- USC cannot be placed in removal proceedings
- Right to vote, hold office, and serve on juries
- Right to live abroad indefinitely

# Liabilities of Citizenship



- May lose citizenship in native country
- Could highlight a ground for removal
- May lose property owned in home country

# Eligibility for NATZ by Application



- Must be LPR
- Must be at least 18 years old
- Must be a resident continuously for 5 years subsequent to LPR status (3 years if married to USC)
- Must have resided for at least 3 months in the state in which the petition is filed
- Must be physically present in the US for at least ½ of the 5 yrs
- Must reside continuously within the US from the date the application is filed up to the time of admission to CITZ

# Eligibility for NATZ (cont.)



- Must not be absent from the US for a continuous period of more than one year during the period for which continuous residence is required
- Must be a person of good moral character for 5 yrs prior to filing
- Must be attached to the principles of the US Constitution
- Must be willing to bear arms for the US
- Must not be otherwise barred (subversive, communist, etc)
- Must be able to satisfy the Civics and English language requirement

# Continuity of Residence



- An absence of < 6 months does not break the alien's continuity of residence for NATZ purposes
- An absence of 6 months or more but < 1 year breaks the continuity of the alien's residence for NATZ purposes absent a reasonable explanation (like an overseas assignment with a US employer)
- An absence of 1 yr or more automatically breaks the continuity of the alien's residence for NATZ purposes, unless the alien takes steps prior to the expiration of the yr to preserve the continuity of residence

# Avoiding a break in the continuity of residence



- The result of a break in the continuity of the alien's residence is that the alien must start all over again to accumulate the 5 yrs upon returning to the US
- Ways to avoid a break:
  - Return to the US every 6 mnths or every yr if there is a reasonable explanation for the absence
  - Apply for extended absence benefits (N-470) to preserve continuity of residence. Note: Unless the alien is a government employee, he still must be actually physically present in the US for at least ½ of the 5 year period

# N-470 Eligibility Requirements



- Alien must be physically present and residing in the US as a LPR for an uninterrupted period of one yr prior to the absence
- Must be employed abroad by the US gov't, a US research institute, a US corporation or mjty owned subsidiary, or an international organization
- Must request extended absence benefits before the alien has been absent from the US for one year
- The absence must be in furtherance of overseas employment

# Reentry Permit



- Alien can also request an I-131 request for a reentry permit along with the N-470
- The purpose of the reentry permit is to maintain lawful permanent residence status. If the client wants to make sure to maintain continuous residence for NATZ purposes, he/she must also file an N-470.

# Good Moral Character (GMC)



- An individual must be of good moral character for the requisite 5 yrs (or 3 yrs if married to a USC) prior to filing a NATZ application and up to the time of admission as a USC. This is called the “statutory period.”

# People who are NOT of GMC



- Habitual drunkards
- Certain individuals are inadmissible under 212(a)(2)
- One who's income is derived principally from gambling
- One who has given false testimony to obtain a benefit under the INA
- One who is convicted of an aggravated felony
- One who has committed genocide or torture
- One who has been imprisoned (after a conviction) during the "statutory period" for an aggregated period of 180 days or more
- One who has voted unlawfully or made a false claim to USC

# Grounds of Inadmissibility Under INA § 212 (a)(2)



- Conviction or admission to the essential elements of crimes of moral turpitude (CIMT)
- Conviction or admission to the essential elements of controlled substance violations
- Multiple criminal violations
- Trafficking in controlled substance
- Prostitution and commercialized vice
- Smugglers of aliens
- Practicing polygamists

***THESE ARE ALSO GROUNDS OF REMOVAL!***

# What is a CIMT?



- Not defined in the act- no exhaustive list
- Conduct which is inherently base, vile, depraved or contrary to accepted rules of morality
- Felonies and Misdemeanor
- Criminal statute must be examined

# Exceptions to CIMT



- Petty Offense
- Juvenile Offenders
- Purely Political Crimes

# Nonstatutory/Discretionary GMC Grounds



- Nonsupport of dependents
- Homosexuality- But cannot be only basis for barring NATZ
- Adultery tending to destroy an existing marriage
- Knowing & willful failure to register with selective service between 18-26 within statutory period
- Drunk driving
- Other bad acts showing poor moral character

# Civics & English Language Requirement



- NATZ applicant must demonstrate:
  - An elementary level reading, writing and understanding of English
  - A knowledge and understanding of the fundamentals of US history & government

# Proof of Civics & English Knowledge



- All NATZ applicants must pass an examination. At the examination, the CIS examiner will do 3 things:
  - Go over the NATZ application in detail, questioning about any problems such as an arrest
  - Gauge the alien’s ability to understand and respond to questions (alien will be asked to write a sentence).
  - Test the alien’s knowledge of US gov’t & history through the use of standard questions on the subject
    - If the alien does not pass, a second examination will be scheduled within 90 days

# Exceptions to English Language Requirement



- Persons over 50 and living in the US for 20 yrs subsequent to becoming a LPR
- Persons over 55 and living in the US for 15 years subsequent to becoming a LPR
- Special consideration in determining the knowledge requirements to persons over 65 with 20 yrs as a LPR (a test of 10 questions in the person's native language where only 6 need to be correct)

# Redesigned NATZ Exam



- In the past, the NATZ testing process and test content varied in each USCIS district office
- CIS revised the process to ensure uniformity
- CIS began administering the new test in October 2008

# Redesigned NATZ test



- Applicants will still have 3 chances to read & write a sentence. However, the study material will include a civics-based vocabulary list
- Sentences will focus on civics and history instead of broad range of subjects
- Civics questions will be drawn from a new list of questions

# Individuals Exempt from the Civics & English requirements



- Physically/developmentally disabled or mentally impaired including:
  - Individuals with Alzheimers, Parkenson's Disease, senile dementia or a related disability

# Disability Waivers



- Must establish a physical or developmental disability or mental impairment
- A medical doctor, osteopath, or clinical psychologist “experienced in diagnosing” these disabilities must complete an N-648 to be filed with NATZ application

# Disability Waivers (cont.)



- Even with a disability waiver the applicant still must meet the moral character, residence, and other NATZ requirements
- However, the oath can be waived if the person is unable to understand or communicate the meaning of it.

# Designated Representative



- A representative of a person who is developmentally or physically disabled or suffering from mental impairment can complete the N-400 exam (including the oath) by attesting orally and submitting documentation that the applicant qualifies for NATZ
- Representative may be a legal guardian, surrogate, USC spouse, parent or adult sibling
- An MD, osteopathic doctor, or clinical psychologist must provide an evaluation attesting to the impairment and the ability to take the oath

# Adjudications of N-648



- CIS will look for:
  - A complete description of the medical diagnosis
  - An explanation of how the disability affects the applicant and prevents him from learning or demonstrating knowledge of English/Civics
  - The MD's conclusion with a focus on the nexus between the disability and the applicant's ability to learn or demonstrate knowledge of English/Civics
  - CIS may request documentation if the interview raises questions about the extent of the disability

***CIS MAY NOT SECOND GUESS THE MD***

# Reasonable Accommodations



- Section 504 of the Rehabilitation Act of 1973 requires the CIS make reasonable accommodations/modifications to make it possible for NATZ applicants to get through the process
- This is the case regardless of whether the applicant has applied for a disability waiver

# GMC Review



- An individual must be of good moral character for the requisite 5 yrs (or 3 yrs if married to a USC) prior to filing a NATZ application and up to the time of admission as a USC. This is called the “statutory period.”
- However, some criminal activity serves as an absolute bar to NATZ even if it occurred before the statutory period.

# Absolute Bars to NATZ



- Aggravated felony convictions that occurred after 11/29/1990 render the person ineligible to establish GMC even when the conviction was before the statutory period
- Convictions for murder, even before 11/29/1990, render the person permanently ineligible to establish GMC

# Definition of Aggravated Felony



- Murder, rape, or sexual abuse of a minor
- Trafficking in a controlled substance
- Trafficking in firearms or explosive material
- Money laundering
- Crimes of violence w/ an imprisonment term of > 1 yr
- A theft offense w/ an imprisonment term of > 1 yr
- Crimes related to prostitution & child pornography
- Offenses related to national security
- Fraud offenses
- Offenses related to bribery, counterfeiting or forgery
- Perjury

# Deportation



- If an individual with a conviction applies for naturalization, and he or she is removable under §237(a) on the basis of that conviction, the NATZ unit may (and usually will) issue a Notice to Appear (NTA), commencing removal proceedings against the individual

***ALWAYS MAKE SURE THAT A CLIENT HAS NOT COMMITTED A CRIME SUBJECTING HIM/HER TO DEPORTATION BEFORE FILING A NATZ PETITION***

# Exceptions to the Normal NATZ Requirements



- Veterans/Military Service during hostilities
  - If a person served in US Armed Forces during hostilities and continues to be in Armed Forces or was honorable discharged- he/she need not be a LPR to naturalize.
  - Physical presence and residency requirements inapplicable
  - 9/11/2001 to present is a period of hostilities for NATZ purposes

# Exceptions to the Normal NATZ Requirements



- Veterans/Military Service (not during hostilities)
  - If a person served in the Armed Forces for a period aggregating one year (and separated honorably) and if NATZ application is filed during the service or within 6 months after separation, physical presence & residency requirements are inapplicable. No need to be a LPR.
  - If person files after 6 months, he/she must be LPR to naturalize

# Exceptions to the Normal NATZ Requirements



- Spouses of USC's- eligible for NATZ 3 yrs after obtaining LPR status (instead of 5)
- Spouses (in LPR status) of USC's who are assigned abroad by their qualifying US employer (next slide) are exempt from continuous residence and physical presence requirements. They are permitted to naturalize prior to accompanying their USC spouses abroad
- Must be physically present in US at time of naturalization

# Exceptions to Normal NATZ Requirements



- The USC spouse assigned abroad **MUST** be working for:
  - The US government
  - An American Research Institute
  - A US firm engaged in the development of foreign trade or commerce
  - A public international organization that the US is a member of

# Exceptions to Normal NATZ Requirements



- Battered Spouses- a victim of domestic abuse perpetrated by a USC spouse is eligible for NATZ after he/she has resided continuously in the US for a period of at least 3 years
- No requirement that the abused spouse be living with the abuser in marital union
- Must have obtained LPR status based on a battered spouse filing, or through AOS or cancellation of removal
- Abusive spouse need not be alive at the time of filing a NATZ petition

# Questions?



Please feel free to contact our office if you still have questions:

[Victoria\\_donoghue@visaserve.com](mailto:Victoria_donoghue@visaserve.com)

201-670-0006 ext. 101

<http://www.visaserve.com>

*Thank you.*