

Legal Corner

CITIZENSHIP APPLICATION AND EASY PITFALLS

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I often get phone calls from people getting ready to file for U.S. citizenship. Most of the time they just need to ask some basic questions and want to file for citizenship on their own, without appointing an Attorney. Most of them feel that it is a straightforward application which does not require a lot of supporting documents, hence they can do it without the help of an Attorney. Well ... this may be true for some but not so true for others.

It is common knowledge that if one is not a U.S. citizen by birth, one can become U.S. citizen through the process of naturalization. The process of naturalization and the application form itself may appear simple to some people, but if you are unaware of certain legalities you may end up having your application denied, being placed in removal proceedings, or in some cases even end up losing your permanent residency (green card).

To be initially eligible for naturalization a person must be:

1. A permanent resident for 5 years or 3 years if the permanent residency was based on marriage to a U.S. citizen and the marriage is still intact;

2. A person of good moral character for statutory period of five years or three years if permanent residency was gained through marriage to a U.S. citizen;

3. Not have any criminal convictions that will affect his eligibility to naturalize.

In order to become a citizen the applicant must also be:

4. Able to read and write English and pass the English reading and writing test;

5. Able to pass the U.S. civics and history test.

Waiver of language and history test is available for those who qualify.

In this article I will touch upon some issues that can lead a citizenship applicant to trouble instead of the oath ceremony. There are quite a few things that can jeopardize the citizenship application, however, the two most common factors that will potentially affect your eligibility to become a citizen are:

a) Your physical and continuous presence in U.S. after becoming a permanent resident;

b) Your past criminal record.

Due to space limitations, I will limit myself to the above two issues in this article. It is necessary meet and pass the two prong test of continuous and physical presence requirement. A lot of people are mistaken and misinterpret this by believing that if they refrain from traveling during the statutory period (5 or 3 years whichever applicable) preceding the filing of the citizenship application, they have met the physical and continuous residence requirement. This interpretation is not true, particularly in cases where a person has been a permanent residence for way over the

statutory period. In such cases screening only last five years preceding the filing of citizenship, for physical and continuous presence can be detrimental, especially if the continuous residence requirement has been interrupted at any stage.

If you are applying for citizenship after three years of becoming a permanent resident, and, if you have been present in the U.S. for at least 18 months out of the three years of being a permanent resident you satisfy the physical presence requirement. Similarly if during this time you have not taken any trip outside the U.S. for longer than six months, then you have also met your continuous residence requirement. For those who are applying after five years of being permanent residents they have to be physically present in U.S. for at least 30 months of that five year period. Any trip taken outside the U.S.A for longer than six months interrupts the continuous residence requirement even if you have a re-entry permit. The clock will begin to count your continuous residence from your re-entry.

In cases where you lived outside the U.S. for over a year and did not have a re-entry permit but were still allowed to re-enter, there is a strong likelihood that filing citizenship may trigger the USCIS to initiate the process for abandonment of permanent residency. In other words while trying to get citizenship you may even end up losing your permanent residence. It is extremely important that permanent residents secure a re-entry permit any time they think they will be outside the United States for over six months.

Applicants serving in U.S. Armed forces are exempt from physical and continuous residence requirements. The information above is general in nature, if you feel you have any such issues, you should consult with an immigration attorney before moving forward and filing your application.

The other danger zone is criminal record/convictions. You must always be honest in informing USCIS about all your past convictions, arrests, charges filed against you and any other violations of law that you might have committed or were charged for.

Many people tend to think that if they get their criminal record expunged or sealed they do not need to disclose it. This is not true for immigration related matters and is particularly

dangerous in cases where people answer in the negative on the citizenship application about the past criminal convictions/arrests. It becomes even more complicated when at the time of interview the naturalization applicants again answer in the negative when asked about past criminal record. You can not hide your criminal record from USCIS Immigration Officers, they will know about your criminal record even if it is expunged. Hence, not disclosing your criminal conviction because it was expunged will not only be incorrect but will also make you look like someone who knowingly misrepresented the facts. As a result you may also be accused of misrepresenting facts, lying to an immigration officer or making false statements under oath. This will result in making your case even more complicated. It is important that you disclose all the information honestly and accurately and better yet have an immigration attorney to represent you.

There are certain types of crimes that bar your ability to naturalize permanently. This is especially true for any aggravated felony. On the other hand there are certain crimes that bar your ability temporarily.

Instead of all types of crimes relevant to our topic, I would like to point out a few crimes in particular. You should be careful if you have committed any crime involving moral turpitude (CIMT), within the statutory period preceding naturalization, even if it is a misdemeanor. If you have committed two CIMTs, whether in the statutory period before filing citizenship or prior to that, you may even be placed in removal proceedings. In addition there are other crimes including drug related offences, firearm offences, certain crimes of domestic violence, stalking, or child abuse, neglect or abandonment, which may trigger the removal proceedings. In some cases an immigration attorney may be able to get the applicant a post conviction relief after which the citizenship application can be filed easily. Similarly an immigration attorney may advise you to hold off filing for sometime and in some cases you may be advised not to file the application altogether.

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