

This month's article discusses the requirements for naturalization in more depth, in particular, the two primary residence requirements which can be very complicated depending on your individual situation, and involve analysis of whether you have abandoned your residence, and whether you are eligible for citizenship, and what, if any, steps can be taken to reduce any negative impact of time spent abroad.

Residence requirements:

Residence requirements can be confusing and applicants must give careful attention to satisfying these requirements when applying for naturalization. In general, in order to apply for naturalization, an applicant will have to be a Legal Permanent Resident (LPR) for at least 5 years. The period is reduced to 3 years, if your spouse has been a U.S. Citizen for the last three years and you have lived with your spouse during that time. An applicant can speed up the whole process by filing their application for naturalization 90 days prior to the five-year or three-year mark.

Below, is a summary of the residence requirements, but it cannot replace the value of an individual consultation with an experienced attorney who is able to conduct a complete analysis based on an applicant's individual circumstances.

1. Continuous Residence:

The applicant must reside in the United States as a LPR for five years and must have been under the jurisdiction of the USCIS district or state where he or she files the petition for at least 3 months. A continuity of residence must be maintained and an evaluation of continuity revolves around the amount of time an applicant has spent on each trip outside the United States. Typically trips of less than six months outside the United States will not lead to a break in continuity of residence, but any departures lasting more than a year will automatically result in a break of continuity of residence, for naturalization purposes. Equally, important to note is that a failure to file federal income taxes because an applicant believed him/herself to be a non-resident of the United States leads to the presumption that continuous residence has not been established. Extended absences from the United States caused by unforeseen circumstances such as an illness or natural disaster, are exceptions to the rule and will not lead to finding of abandonment of residence. Some of the other exceptions to the rule in establishing continuous residence are: U.S. armed forces personnel sent abroad on military orders, employees of the U.S. Government, and employees of certain public international organizations.

2. Physical Presence: This is a confusing area of law and the physical presence requirement is distinct and in addition to the continuous residence requirement discussed above. The physical presence residence requirement mandates an applicant to have been physically present in the United States for at least half of the requisite period of lawful permanent residence necessary to qualify for naturalization. Therefore, spouses of a U.S. Citizen must demonstrate that they have been physically present in the United States for at least 18 months (i.e. half of the three year period). All other applicants must demonstrate at least 30 months physical presence in the

United States (i.e. half of the five year period). Thus, an applicant will have to calculate the exact time spent outside the United States by reviewing his/her passport and determining exit and entry dates stamped on the passport. If the total number of days required for physical presence has not yet accrued, it is suggested that an applicant wait long enough to meet the eligibility requirement before applying.

If you would like to see a particular topic/issue covered in future issues please send me an email at ISW_e-Sandesh@mithraslaw.com with “ISW e-Sandesh” as the subject.

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