

AILA Citizenship Day Naturalization Application Training

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August 15, 2024



AILA Citizenship Day



- AILA's 19th annual Citizenship Day will take place on or around Saturday, September 21, 2024.
- Citizenship Day is a single-day nationwide event hosted by AILA chapters across the country and their local grassroots partners. Each year, Citizenship Day helps thousands of eligible legal permanent residents to prepare and apply for U.S. naturalization.
- Every year, AILA chapters across the country host free or low-cost naturalization drives on the same day to amplify our pro bono impact and our voices.
- AILA members have helped thousands of LPRs take the final step towards citizenship over the past 19 years, but there are still nearly 9 million people eligible to naturalize in the US today.



Agenda

- Eligibility requirements
- The new N-400 naturalization application
- Additional resources





ELIGIBILITY REQUIREMENTS

Basic Requirements for Naturalization

- At least 18 years old
- Lawful permanent resident
- Five years of continuous residence
- Physical presence for half of the five years
- Good moral character
- Be able to pass exams on English and U.S. government and history
- Take a loyalty oath and be attached to the U.S. Constitution

Rapport

Applicants must trust you

- confidence that the information shared is confidential
- belief that you are acting in her best interests

Applicant must understand what information you need

- explain the legal and documentary requirements
- ensure the applicant understands that you can help her best with complete and accurate information

Beware!

- Past Denials
- Criminal Convictions
- Removals



When in doubt, refer it out!

Red Flag Checklist

Call an attorney or trained staff member to verify if applicant is eligible to apply if they answer yes to the following questions:

1. Have you been outside the U.S. for six months or more since becoming a Lawful Permanent Resident?
2. Have you EVER claimed to be a U.S. citizen (in writing or any other way)?
3. Have you EVER registered to vote in any federal, state, or local election in the United States?
4. Are you younger than 18?
5. Have you EVER lied to any U.S. government official to gain entry into the United States?
6. Have you EVER been arrested, cited, or detained by any law enforcement officer (including USCIS and military officers) for any reason?
7. Have you EVER been charged or convicted of committing a crime or offense?
9. Have you EVER had your criminal record cleared?
10. Since becoming a Lawful Permanent Resident, have you EVER failed to file a required federal, state, or local tax return?
11. Do you owe ANY overdue taxes, whether federal, state, or local?

In general, if you are unsure on any of these questions please speak with an attorney or trained staff member for assistance.

Lawful Permanent Residence

- Is your client actually an LPR?
- Ask how the client obtained green card
 - Was it through a fraudulent marriage?
 - Did the client lie about eligibility?
 - Was the client eligible for the green card?

Absences Can Affect Naturalization

LPR requirement

- Can be found to have abandoned LPR

Continuous Residence

- Can be found not to have continuous residence

Physical Presence

- Can break physical presence by spending too much time outside U.S.

3 Month District/State Residence

- Can be found not to have 3 month residence

Continuous Residence: Three-Year Rule



Must have three years of continuous residence in U.S. if married to a U.S. citizen before qualifying for naturalization (can apply three months early)

- LPR for three years
- Married to and living with U.S. citizen for three years
- Spouse must have been U.S. citizen for at least three years
- $3+3+3=3$

Physical Presence

Physical presence requirement. INA § 316 and 8 CFR § 316.2(a)(4).

- Must have been physically present in U.S. for half of five-year period which is 30 out of last 60 months. ($365 \times 5 \div 2 = 912$ days)
- If married to a U.S. citizen, then must be physically present for half of the three-year period which is 18 out of last 36 months. ($365 \times 3 \div 2 = 547$ days)

Physical Presence Trips Outside the U.S.

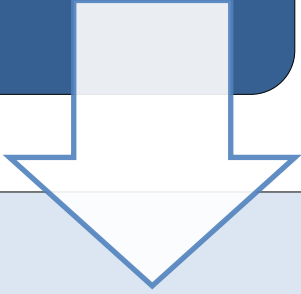
TIME	RESULT	CONSEQUENCES
Trips of one consecutive year and greater	Breaks Continuous Residence	Wait 4 years + 1 day from date of return (or 2 years + 1 day for 3-year applicants) to apply
Trips greater than 6 months, less than one year	Presumption (Rebuttable) of Abandonment; provide explanation & proof that didn't establish primary residence outside U.S.	Wait 4 years + 6 months from date of return (or 2 years + 6 months for 3-year applicants) if unable to rebut presumption of abandonment
Exceed 912 days outside U.S. in 5 years (or 547 days for 3-year applicants)	Breaks Physical Presence Rule	WAIT: Apply when total falls below 912 or 547 day maximum; still must maintain Physical Presence until swearing in (no trips longer than 6 months).

Good Moral Character

- ✓ Must prove GMC for required statutory period (3/5 Years)
- ✓ CIS can consider prior “bad acts”
- ✓ Not moral excellence

Good Moral Character

You can't be placed in removal proceedings merely for not having GMC.



But you could be denied naturalization or some forms of relief from removal.

3 Step Analysis for GMC

1. Is the applicant deportable?

→ **INA § 237**

2. Is the applicant statutorily barred from showing good moral character?

→ **INA § 101(f)**

3. Does the applicant have issues that raise discretionary concerns?

→ **BALANCING TEST (based on case law)**

3 Step Analysis for GMC

1. Is the applicant deportable?

See grounds of deportability at INA § 237,
including:

- Criminal convictions
- Alien smuggling
- Unlawful voting
- False claims to USC
- Abandonment of LPR status
- Any fraud/misrepresentation in past applications

3 Step Analysis for GMC

2. Are there any bars to demonstrating GMC?

a) Permanent Bars to GMC: Murder, aggravated felonies*, persecution, genocide, torture of others

b) Conditional Bars (for acts during statutory period)

- Certain criminal convictions/conduct (e.g. probation)
- Habitual drunkard (watch out for DUIs) & illegal gambling
- Alien Smuggling
- False testimony under oath in seeking immigration benefit
- Failure to support dependents & adultery
- Unlawful acts: certain criminal convictions, illegal voting, claim to USC, failure to file income tax returns, failure to register for selective service

3 Step Analysis for GMC

3. **Does the applicant have issues that raise discretionary concerns? In other words, what is the likelihood that applicant will demonstrate GMC?**
 - Conduct outside statutory period still counts (to negate rehabilitation for example), but cannot be sole reason to deny.
 - **USCIS *should* do balancing test:** negative GMC factors v. positive ones. Determined on a case by case basis.
 - If no deportability grounds apply, then only risks denial of application (time & money) and can apply again later if denied (accumulate clean statutory period).

Good Moral Character

- Habitual drunkard
- Income principally from illegal gambling
- Convicted of two or more gambling offenses
- Confined to penal institution for 180 days or more
- Giving false testimony under oath
- Convicted of/admitted CIMT
- Any offense related to a drug offense
- Multiple offenses where aggregate sentence is 5 years or more
- Reason to believe drug trafficker
- Prostitution
- Alien smuggler
- Polygamy

Good Moral Character

Will not be granted if:

- Still on probation or parole
- Willful failure to pay court-ordered child support or alimony payments
- **Beware: Drunk driving (D.W.I/D.U.I)**

Other bad factors:

- Selective Service
- Failure to Pay Taxes
- Unlawful voting/ false claim to USC
- Other bad acts

Criminal Record

Applicants who have been arrested, cited, or detained must provide:

- A certified copy of the record of conviction, such as court dispositions, sentencing documents, complaint.
- If a traffic incident was related to alcohol or drugs, applicants may need to submit documentation for traffic fines.
- If person convicted of a crime such as driving while intoxicated (DWI) or domestic violence, must first speak with an immigration attorney before submitting an application.

Using the IDP Chart for Criminal Consequences of Crimes

- The Immigrant Defense Project (IDP)'s widely used two-page *Immigrant Consequences of Crimes Summary Checklist* can be found here:

<https://www.immigrantdefenseproject.org/updated-immigration-consequences-convictions-checklist/>

CRIMINAL BARS ON OBTAINING U.S. CITIZENSHIP – Will prevent an LPR from being able to obtain U.S. citizenship.

Conviction or admission of the following crimes bars the finding of good moral character required for citizenship for up to 5 years:

- **Controlled Substance Offense** (unless single offense of simple possession of 30g or less of marijuana)
- **Crime Involving Moral Turpitude** (unless single CIMT and the offense is not punishable > 1 year (e.g., in New York, not a felony) + does not involve a prison sentence > 6 months)
- 2 or more offenses of any type + aggregate prison sentence of 5 years
- 2 gambling offenses
- **Confinement** to a jail for an aggregate period of 180 days

Conviction of an **Aggravated Felony** on or after Nov. 29, 1990 (and conviction of murder at any time) permanently bars the finding of moral character required for citizenship

IDP Chart for Criminal Consequences of Crimes

Immigration Consequences of Crimes Summary Checklist

For more comprehensive legal resources, visit the Immigrant Defense Project website at immdefense.org or call 212-725-6422 for individual case support.

CRIMINAL INADMISSIBILITY GROUNDS

Will or may prevent a noncitizen from being able to obtain lawful admission status in the U.S. May also prevent a noncitizen who already has lawful admission status from being able to return to the U.S. from a future trip abroad.

Conviction or admission of a **Controlled Substance Offense**, or DHS reason to believe that the individual is a drug trafficker

Conviction or admission of a **Crime Involving Moral Turpitude (CIMT)**, including:

- Offenses with an *intent to steal or defraud* as an element (e.g., theft, forgery)
- Offenses in which *bodily harm* is caused or threatened by an intentional act or *serious bodily harm* is caused or threatened by a reckless act (e.g., murder, rape, some manslaughter/assault offenses)
- Most sex offenses
- *Petty Offense Exception* – for one CIMT if the client has no other CIMT + the offense is not punishable >1 year + does not involve a prison sentence > 6 mos.

Prostitution (e.g., conviction, admission, or intent to engage in U.S.) and other unlawful **Commercialized Vice**

Conviction of **two or more offenses of any type + aggregate prison sentence of 5 yrs.**

CRIMINAL BARS ON 212(h) WAIVER OF CRIMINAL INADMISSIBILITY based on extreme hardship to USC or LPR spouse, parent, son or daughter

- Conviction or admission of a **Controlled Substance Offense** other than a single offense of simple possession of 30 g or less of marijuana
- Conviction or admission of a **violent or dangerous crime** is a presumptive bar.
- In the case of an LPR (except one who adjusted to LPR status inside U.S. and who has not entered as an LPR from outside U.S.), conviction of an **Aggravated Felony** [see Criminal Deportability Gds], or any **Criminally Inadmissible offense** if removal proceedings initiated before 7 yrs of lawful residence in U.S.

CRIMINAL BARS ON ASYLUM based on well-founded fear of persecution in country of removal OR WITHHOLDING OF REMOVAL based on threat to life or freedom in country of removal

Conviction of a **"Particularly Serious Crime" (PSC)**, including the following:

- **Aggravated Felony** [see Criminal Deportability Gds]
 - ◆ All aggravated felonies will bar asylum
 - ◆ Aggravated felonies with aggregate 5 years sentence of imprisonment will bar withholding, & aggravated felonies involving unlawful trafficking in controlled substances are a presumptive bar to withholding of removal
- **Violent or dangerous crime** will presumptively bar asylum
- **Other PSCs** – no statutory definition; see case law

CRIMINAL BARS ON 209(c) WAIVER OF CRIMINAL INADMISSIBILITY based on humanitarian purposes, family unity, or public interest (only for persons who have asylum or refugee status)

- DHS reason to believe that the individual is a **drug trafficker**
- **Violent or dangerous crime** is a presumptive bar

CRIMINAL BARS ON NON-LPR CANCELLATION OF REMOVAL based on continuous physical presence in U.S. for 10+ years; and "exceptional and extremely unusual" hardship to USC or LPR spouse, parent or child

- Conviction of an offense described under the criminal inadmissibility or deportability grounds, regardless of whether or not the ground would apply to the person, e.g., one CIMT with a potential sentence of 1 year or longer [see Criminal Deportability Gds] even if the offense was not w/in five years of an admission to the US
- Conviction or admission of crimes barring required finding of good moral character during 10 year period [see Criminal Bars on Obtaining U.S. Citizenship]

CRIMINAL DEPORTABILITY GROUNDS

Will or may result in deportation of a noncitizen who already has lawful admission status, such as a lawful permanent resident (LPR) green card holder or a refugee.

Conviction of a **Controlled Substance Offense** EXCEPT a single offense of simple possession of 30g or less of marijuana

Conviction of a **Crime Involving Moral Turpitude (CIMT)** [see Criminal Inadmissibility Gds]

- One CIMT committed within 5 years of admission into the US and for which a prison sentence of 1 year or longer may be imposed
- Two CIMTs committed at any time after admission and "not arising out of a single scheme"

Conviction of a **Firearm or Destructive Device Offense**

Conviction of a **Crime of Domestic Violence, Crime Against Children, Stalking, or Violation of Protection Order** (criminal or civil)

Conviction of an **Aggravated Felony**

- *Consequences*, in addition to deportability:
 - ◆ Ineligibility for most waivers of removal
 - ◆ Permanent inadmissibility after removal
 - ◆ Enhanced prison sentence for illegal reentry
- *Crimes included*, probably even if not a felony:
 - ◆ **Murder**
 - ◆ **Rape**
 - ◆ **Sexual Abuse of a Minor**
 - ◆ **Drug Trafficking** (including most sale or intent to sell offenses, but also including possession of any amount of flunitrazepam and possibly certain second or subsequent possession offenses where the criminal court makes a finding of recidivism)
 - ◆ **Firearm Trafficking**
 - ◆ **Crime of Violence + at least 1 year prison sentence***
 - ◆ **Theft or Burglary + at least 1 year prison sentence***
 - ◆ **Fraud or tax evasion + loss to victim(s) >\$10,000**
 - ◆ **Prostitution business offenses**
 - ◆ **Commercial bribery, counterfeiting, or forgery + at least 1 year prison sentence***
 - ◆ **Obstruction of justice or perjury + at least 1 year prison sentence***
 - ◆ **Various federal offenses – money laundering, certain firearms and explosive materials offenses (including arson), alien smuggling, etc. – and analogous state offenses**
 - ◆ **Other offenses listed at 8 USC 1101(a)(43)**
 - ◆ **Attempt or conspiracy to commit any of the above**

* The "at least 1 year" prison sentence requirement includes a suspended prison sentence of 1 year or more.

CRIMINAL BARS ON LPR CANCELLATION OF REMOVAL based on LPR status of 5 yrs or more and continuous residence in U.S. for 7 yrs after admission (only for persons who have LPR status)

- Conviction of an **Aggravated Felony**
- **Offense triggering removability referred to in Criminal Inadmissibility Grounds if committed before 7 yrs of continuous residence in U.S.**

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"CONVICTION" as defined for immigration purposes

A formal judgment of guilt of the noncitizen entered by a court, OR, if adjudication of guilt has been withheld, where:

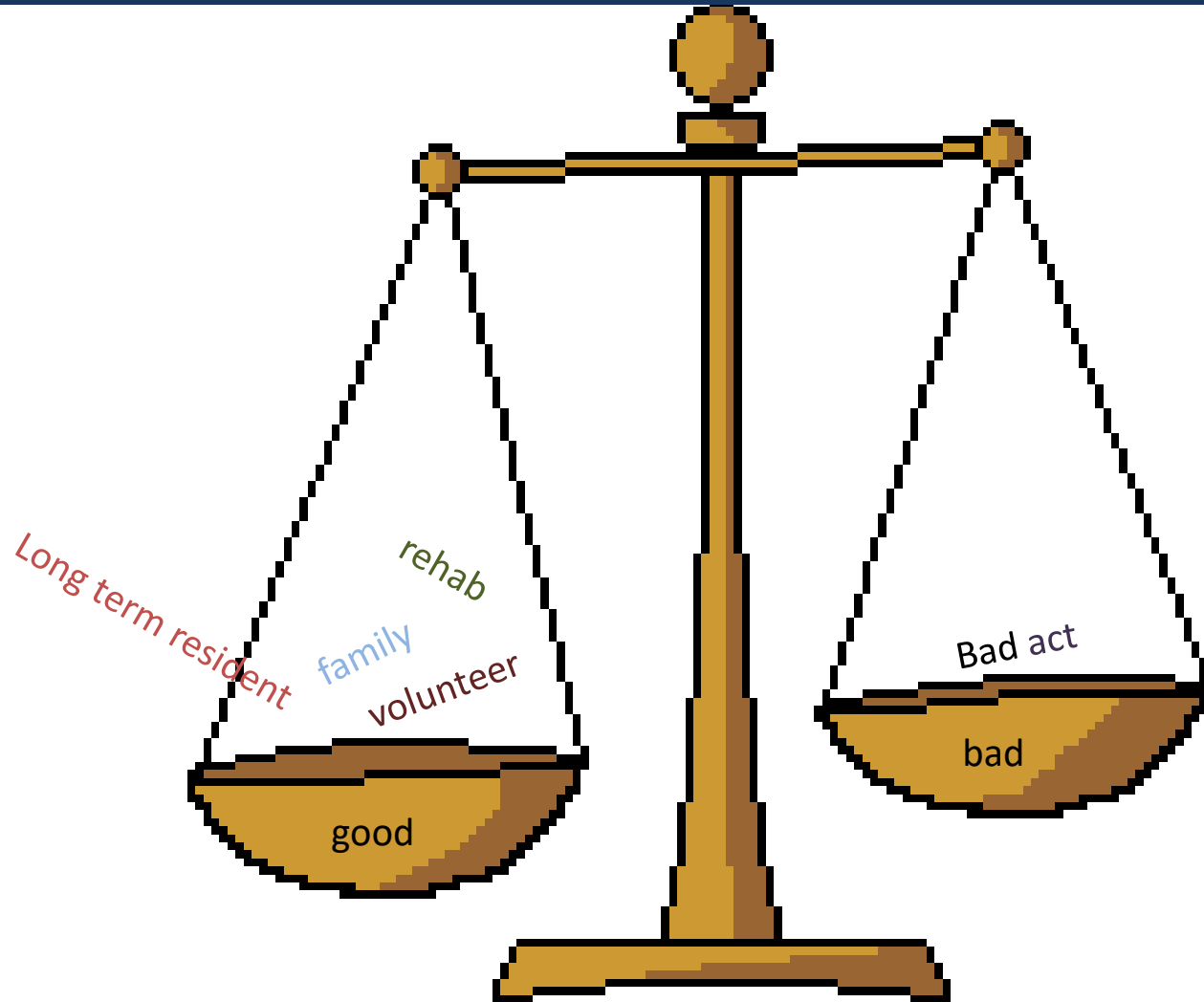
- (i) A judge or jury has found the noncitizen guilty or the noncitizen has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) The judge has ordered some form of punishment, penalty, or restraint on the noncitizen's liberty to be imposed

THUS:

- A court-ordered drug treatment or domestic violence counseling alternative to incarceration disposition IS a conviction for immigration purposes if a guilty plea is taken (even if the guilty plea is or might later be vacated)
- A deferred adjudication without a guilty plea IS NOT a conviction
- **NOTE:** A youthful offender adjudication IS NOT a conviction if analogous to a federal juvenile delinquency adjudication



Good Moral Character



English & Civics Requirements

Applicant must demonstrate that they:

- can speak, read, and write basic English, and
- know basic facts about civics, that is, U.S. history and government.

English. The applicants must be able to answer questions on their **application**, write a sentence in English and read a sentence in English.

Civics. The applicant must answer 10 correct questions out of 20 on the civics test. Most applicants will be required to study from a list of 100 possible questions.

English and Civics Waiver

Applicants are exempt from demonstrating English proficiency if:

- they are **50 and have been a** Permanent Resident for at least **20** years.
- they are **55 and have been a** Permanent Resident for at least **15** years.
- **If the applicant is 65 and have been a Permanent Resident for at least 20 years, they can study from a** designated list of just 20 questions.

In most instances, the applicant must bring an interpreter to the interview.

Certain medical conditions may be exempt from one or both exams. The applicant's medical doctor or specialist must complete the Form N-648 (Medical Certification for Disability Exceptions).



THE NEW N-400 (REVIEW FROM ANNOTATED FILE)

How can I participate?

Download additional tools and tips sheets

www.ilrc.org/citizenship-and-naturalization

Disseminate information about the importance of Citizenship – promote the NALEO Educational Fund hotline, (888) 839-8682

For additional assistance



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