



U.S. Department of Justice

Civil Rights Division

*Office of Special Counsel for Immigration-Related
Unfair Employment Practices - NYA
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MAY 30 2012

Via First Class Mail and E-Mail (ezendejas@crla.org)

Esmeralda Zendejas
Migrant Attorney
California Rural Legal Assistance, Inc.
145 E. Weber Avenue
Stockton, CA 95202

Dear Ms. Zendejas:

This is in response to your February 1, 2012, email seeking clarity as to when eligibility for naturalization begins for a lawful permanent resident as applied under the anti-discrimination provision. Specifically, you write in your email: "Your website identifies the exception to protection to legal permanent residents is that citizenship status discrimination does not apply to permanent residents who do not apply for naturalization within six months of eligibility. I was wondering if you could clarify when eligibility would kick in for an LPR." You further ask whether the eligibility timeframe is typically within three to five years of obtaining LPR status or whether that timeframe can vary.

As you know, the Office of Special Counsel for Immigration-Related Unfair Employment Practices ("OSC") investigates and resolves charges of national origin and citizenship status discrimination, as well as over-documentation in the employment eligibility verification process ("document abuse") and retaliation under the anti-discrimination provision of the Immigration and Nationality Act ("INA"), 8 U.S.C. §1324b. Please note that OSC cannot provide an advisory opinion on any particular instance of alleged discrimination or on any set of facts involving a particular individual or entity; however, we can provide some general guidelines regarding compliance with the anti-discrimination provision of the Immigration and Nationality Act (INA).

As you correctly note, "an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible" is not a "protected individual" under 8 U.S.C. § 1324b(3)(B) and is thus not protected from citizenship status discrimination. However, all work-authorized individuals are protected against other forms of discrimination under the anti-discrimination provision, including document abuse – the request for more or different documents, or the rejection of reasonably genuine looking documents in the employment eligibility verification process based on national origin or citizenship status. United States v. Townsend Culinary, Inc., 8 OCAHO no. 1032 (1999) (relief ordered for all victims of document abuse without distinction as to status as a "protected individual"); United States v. Guardsmark,

United States v. Guardsmark, Inc., 3 OCAHO no. 572 (1993) (all work authorized individuals are protected from document abuse).

The eligibility requirements for naturalization are discussed at length in the Immigration and Nationality Act (“INA”), 8 U.S.C. §§ 1421-59 and most specifically, at 8 U.S.C. § 1427. The six-month period under § 1324b(3)(B) begins tolling as soon as the alien meets all of the requirements under the INA and is eligible to naturalize. Most often, a lawful permanent resident becomes eligible after five years of lawful permanent resident status, but still must meet a number of additional criteria. Because the requirements differ according to those criteria, there is no set length of time that every lawful permanent resident must hold permanent resident status prior to becoming eligible. For instance, a permanent resident who has been married for three years to the same U.S. citizen would become eligible after continuous residency for three years. However, additional factors may influence the timeframe, such as periods of residence outside of the United States. For more information about naturalization eligibility criteria you may visit the USCIS website naturalization subpage, available at <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543fd1a/?vgnextoid=598da2f39b1ab210VgnVCM100000082ca60aRCRD&vgnextchannel=598da2f39b1ab210VgnVCM100000082ca60aRCRD>. You may also contact USCIS by telephone at 1-800-375-5283.

We hope this information is of assistance to you.

Sincerely,



Seema Nanda
Acting Deputy Special Counsel