

## **8CFR 316.5(d)**

(d) Application for benefits with respect to absences; appeal.

(1) Preservation of residence under Section 316(b) of the Act.

(i) An application for the residence benefits under section 316(b) of the Act to cover an absence from the United States for a continuous period of one year or more shall be submitted to the Service on Form N-470 with the required fee, in accordance with the form's instructions. The application may be filed either before or after the applicant's employment commences, but must be filed before the applicant has been absent from the United States for a continuous period of one year.

(ii) An approval of Form N-470 under Section 316(b) of the Act shall cover the spouse and dependent unmarried sons and daughters of the applicant who are residing abroad as members of the applicant's household during the period covered by the application. The notice of approval, Form N-472, shall identify the family members so covered.

(iii) An applicant whose Form N-470 application under Section 316(b) of the Act has been approved, but who voluntarily claims nonresident alien status to qualify for special exemptions from income tax liability, raises a rebuttable presumption that the applicant has relinquished a claim of having retained lawful permanent resident status while abroad. The applicant's family members who were covered under Section 316(b) of the Act and who were listed on the applicant's Form N-472 will also be subject to the rebuttable presumption that they have relinquished their claims to lawful permanent resident status.

(2) Preservation of residence under Section 317 of the Act. An application for the residence and physical presence benefits of Section 317 of the Act to cover any absences from the United States, whether before or after December 24, 1952, shall be submitted to the Service on Form N-470 with the required fee, in accordance with the form's instructions. The application may be filed either before or after the applicant's absence from the United States or the performance of the functions or services described in Section 317 of the Act.

(3) Approval, denial, and appeal. The applicant under paragraphs (d)(1) or (d)(2) of this section shall be notified of the Service's disposition of the application on Form N-472. If the application is denied, the Service shall specify the reasons for the denial, and shall inform the applicant of the right to appeal in accordance with the provisions of part 103 of this chapter.

8 USC 1427

**(a) Residence**

No person, except as otherwise provided in this subchapter, shall be naturalized unless such applicant, (1) immediately preceding the date of filing his application for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his application has been physically present therein for periods totaling at least half of that time, and who has resided within the State or within the district of the Service in the United States in which the applicant filed the application for at least three months, (2) has resided continuously within the United States from the date of the application up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

**(b) Absences**—Absence from the United States of more than six months but less than one year during the period for which continuous residence is required for admission to citizenship, immediately preceding the date of filing the application for naturalization, or during the period between the date of filing the application and the date of any hearing under [section 1447\(a\) of this title](#), shall break the continuity of such residence, unless the applicant shall establish to the satisfaction of the Attorney General that he did not in fact abandon his residence in the United States during such period. Absence from the United States for a continuous period of one year or more during the period for which continuous residence is required for admission to citizenship (whether preceding or subsequent to the filing of the application for naturalization) shall break the continuity of such residence, except that in the case of a person who has been physically present and residing in the United States, after being lawfully admitted for permanent residence, for an uninterrupted period of at least one year, and who thereafter is employed by or under contract with the Government of the United States or an American institution of research recognized as such by the Attorney General, or is employed by an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof more than 50 per centum of whose stock is owned by an American firm or corporation, or is employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence, no period of absence from the United States shall break the continuity of residence if—

**(1)**

prior to the beginning of such period of employment (whether such period begins before or after his departure from the United States), but prior to the expiration of one year of continuous absence from the United States, the person has established to the satisfaction of the Attorney General that his absence from the United States for such period is to be on behalf of such Government, or for the purpose of carrying on scientific research on behalf of such institution, or to be engaged in the development of such foreign trade and commerce or whose residence abroad is necessary to the protection of the property rights in such countries in such firm or corporation, or to be employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence; and

**(2)**

such person proves to the satisfaction of the Attorney General that his absence from the United States for such period has been for such purpose.

The spouse and dependent unmarried sons and daughters who are members of the household of a person who qualifies for the benefits of this subsection shall also be entitled to such benefits during the period for which they were residing abroad as dependent members of the household of the person.

**(c) Physical presence**

The granting of the benefits of subsection (b) of this section shall not relieve the applicant from the requirement of physical presence within the United States for the period specified in subsection (a) of this section, except in the case of those persons who are employed by, or under contract with, the Government of the United States. In the case of a person employed by or under contract with Central Intelligence Agency, the requirement in subsection (b) of an uninterrupted

period of at least one year of physical presence in the United States may be complied with by such person at any time prior to filing an application for naturalization.

**(d) Moral character**

No finding by the Attorney General that the applicant is not deportable shall be accepted as conclusive evidence of good moral character.

**(e) Determination**

In determining whether the applicant has sustained the burden of establishing good moral character and the other qualifications for citizenship specified in subsection (a) of this section, the Attorney General shall not be limited to the applicant's conduct during the five years preceding the filing of the application, but may take into consideration as a basis for such determination the applicant's conduct and acts at any time prior to that period.

**(f) Persons making extraordinary contributions to national security**

**(1)**

Whenever the Director of Central Intelligence, the Attorney General and the Commissioner of Immigration determine that an applicant otherwise eligible for naturalization has made an extraordinary contribution to the national security of the United States or to the conduct of United States intelligence activities, the applicant may be naturalized without regard to the residence and physical presence requirements of this section, or to the prohibitions of [section 1424 of this title](#), and no residence within a particular State or district of the Service in the United States shall be required:

Provided

, That the applicant has continuously resided in the United States for at least one year prior to naturalization:

Provided further

, That the provisions of this subsection shall not apply to any alien described in clauses (i) through (v) of [section 1158\(b\)\(2\)\(A\) of this title](#).

**(2)**

An applicant for naturalization under this subsection may be administered the oath of allegiance under [section 1448\(a\) of this title](#) by any district court of the United States, without regard to the residence of the applicant. Proceedings under this subsection shall be conducted in a manner consistent with the protection of intelligence sources, methods and activities.

**(3)**

The number of aliens naturalized pursuant to this subsection in any fiscal year shall not exceed five. The Director of Central Intelligence shall inform the Select Committee on Intelligence and the Committee on the Judiciary of the Senate and the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives within a reasonable time prior to the filing of each application under the provisions of this subsection.