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Citizenship in America

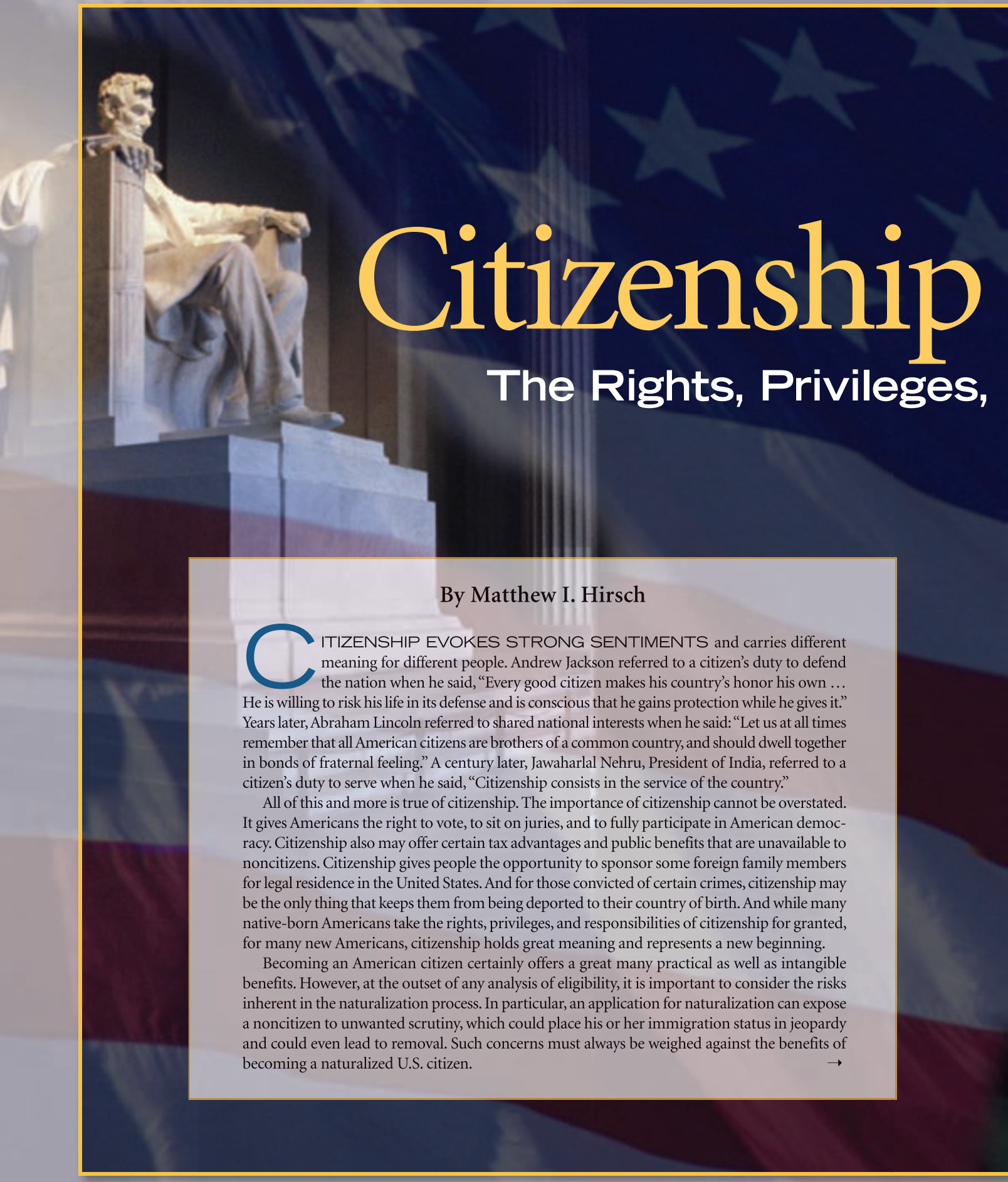
Its Rights, Privileges, and Responsibilities

"Let us at all times remember that all American citizens are brothers of a common country, and should dwell together in bonds of fraternal feeling."

—Abraham Lincoln

Foreign-Born Scientists & Engineers

Exhaustion of Administrative Remedies



Citizenship

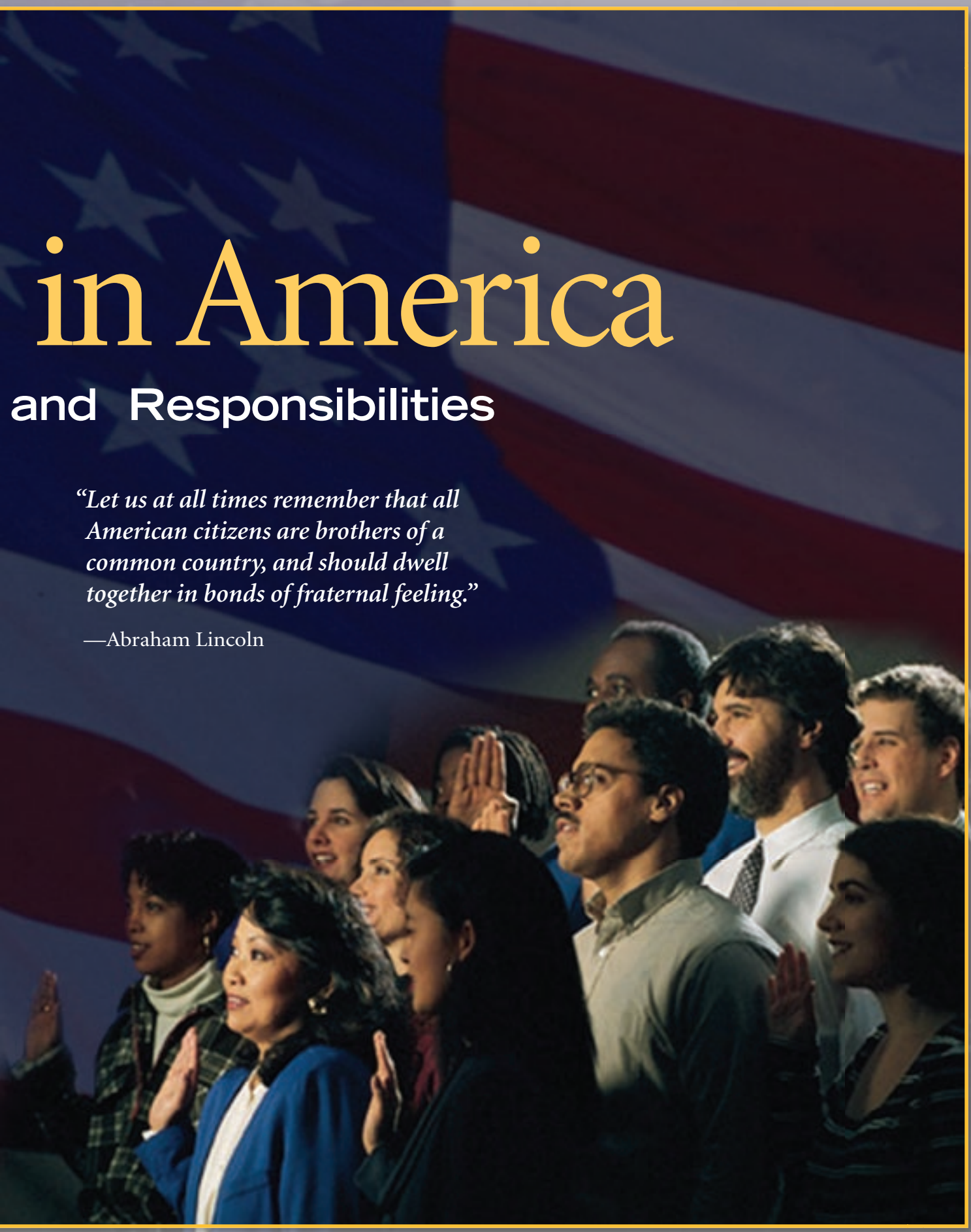
The Rights, Privileges,

By Matthew I. Hirsch

CITIZENSHIP EVOKES STRONG SENTIMENTS and carries different meaning for different people. Andrew Jackson referred to a citizen's duty to defend the nation when he said, "Every good citizen makes his country's honor his own … He is willing to risk his life in its defense and is conscious that he gains protection while he gives it." Years later, Abraham Lincoln referred to shared national interests when he said: "Let us at all times remember that all American citizens are brothers of a common country, and should dwell together in bonds of fraternal feeling." A century later, Jawaharlal Nehru, President of India, referred to a citizen's duty to serve when he said, "Citizenship consists in the service of the country."

All of this and more is true of citizenship. The importance of citizenship cannot be overstated. It gives Americans the right to vote, to sit on juries, and to fully participate in American democracy. Citizenship also may offer certain tax advantages and public benefits that are unavailable to noncitizens. Citizenship gives people the opportunity to sponsor some foreign family members for legal residence in the United States. And for those convicted of certain crimes, citizenship may be the only thing that keeps them from being deported to their country of birth. And while many native-born Americans take the rights, privileges, and responsibilities of citizenship for granted, for many new Americans, citizenship holds great meaning and represents a new beginning.

Becoming an American citizen certainly offers a great many practical as well as intangible benefits. However, at the outset of any analysis of eligibility, it is important to consider the risks inherent in the naturalization process. In particular, an application for naturalization can expose a noncitizen to unwanted scrutiny, which could place his or her immigration status in jeopardy and could even lead to removal. Such concerns must always be weighed against the benefits of becoming a naturalized U.S. citizen. →



in America

and Responsibilities

"Let us at all times remember that all American citizens are brothers of a common country, and should dwell together in bonds of fraternal feeling."

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Practitioners need to be aware of any possible defect in the application for LPR status, or if the noncitizen was inadmissible or not otherwise entitled to LPR status, because he or she will not be eligible for naturalization.

General Principles of Citizenship

Some people are citizens at birth or become citizens by operation of law; others become citizens through a legal process called naturalization. For example, all persons born in the United States[1] or who are born abroad to two U.S. citizen parents are citizens at birth. *See* INA §301(a), (c).

Others can become citizens by operation of law, such as children who automatically become citizens upon the naturalization of their parents. INA §322(a). Still others can acquire citizenship through naturalization,[2] which requires an affirmative application and satisfaction of statutory eligibility requirements. INA §310 *et seq.* This article discusses both acquisition of citizenship at birth and by naturalization, with emphasis on the latter.

➤ Naturalization Authority

The INA gives the attorney general the sole authority to naturalize persons as citizens of the United States. U.S. Citizenship and Immigration Services (USCIS) administers the naturalization process. The oath of allegiance—which is the final act in the naturalization process and which formalizes the acquisition of citizenship—may be administered judicially (by a state or federal court) or administratively (by a USCIS official). INA §310(a).

➤ Requirements for Naturalization

The INA sets forth several substantive requirements for naturalization. In general, unless subject to exception, an applicant for naturalization must:

- be 18 years old;
- be lawfully admitted for permanent residence;
- have five years of continuous residence as a lawful permanent resident (LPR);
- have been physically present in the United States for at least half that time;
- have resided continuously in the United States from the date of application up to the citizenship ceremony;
- have resided for at least three months in the USCIS district where the application is being filed;
- be a person of good moral character who is attached to the principles of the U.S. Constitution, and well-disposed to the good order and happiness of the United States;
- demonstrate basic literacy in the English language;
- demonstrate knowledge of U.S. civics and history;
- take an oath of allegiance to the United States.

There are numerous exceptions to these general rules and each element requires a more detailed review.

Applicants must be 18 years of age: INA §334(b).

There are two exceptions to this general rule. The first is for persons who honorably served in the military during designated periods of armed conflict, who may naturalize regardless of age. The second is for minors with at least one U.S. citizen parent, who can file for naturalization on behalf of the minor.

Applicants must be lawfully admitted for permanent residence: INA §318.

Practitioners need to be aware of any possible defect in the application for LPR status, or if the noncitizen was inadmissible or not otherwise entitled to LPR status, because he or she will not be eligible for naturalization. Moreover, a noncitizen who does become a naturalized citizen but who was not "lawfully admitted for permanent residence" may have citizenship status revoked at any time.

An exception to this general rule is found at INA §329(a). According to that section, a person who has served honorably in the U.S. Armed Forces is eligible for naturalization if the person (1) served in times of war or other declared hostilities; (2) received an honorable discharge; or (3) enlisted or was inducted while in the United States or its territories or on board a public vessel, without regard to whether he or she was lawfully admitted for permanent residence provided the person can meet the next requirement.

Applicants must have requisite period of continuous residence: INA §316(a).

In order to be naturalized, a noncitizen must be an LPR with five years of continuous residence in the United States immediately preceding the date of filing the application for naturalization (Form N-400).

The term "continuous residence" means that the noncitizen has maintained a residence in the United States without significant interruptions. Indications of residence would include—but not be limited to—where a person lives, holds a job, keeps personal property and assets, registers automobiles, pays taxes, etc.

An exception to the five-year rule exists for persons who are married to U.S. citizens. INA §319(a). For spouses of U.S. citizens, the period of continuous residence is reduced to three years.

To qualify, the married couple must be living "in marital union" for the entire three years, and the U.S. citizen spouse must have been a U.S. citizen throughout this period. Divorce, death, or expatriation of the U.S. citizen spouse prior to taking of the oath renders an applicant ineligible for naturalization under this special provision.

A person who acquired LPR status through a self-filing under

the Violence Against Women Act (VAWA),[3] who was married to a U.S. citizen or was the child of a U.S. citizen, may also apply for naturalization based on a three-year, rather than five-year, continuous residence requirement. Such person is exempt from the *marital union* requirement. INA §319(a).

The law permits a person to file an application for naturalization three months prior to the accrual of the statutory period for eligibility. Thus, a person can file an application for naturalization four years and nine months after the grant of LPR status (or two years and nine months for marriage to U.S. citizens or VAWA cases.). However, in all cases, the five-year requirement (or three-year requirement) must be fulfil1ed before citizenship is granted.

Extended absences from the United States may interrupt the period of continuous residence. According to statute, absences of six months or less will not be considered interruptions of continuous residence. However, an absence of more than six months but less than one year raises a rebuttable presumption of abandonment of continuous residence for naturalization purposes. This presumption may be overcome by a preponderance of the evidence that the noncitizen has not intentionally terminated his or her continuous residence. An absence of one year or more constitutes a break in continuous residence. INA §316(a).

There are exceptions to the continuous residence requirement—in particular, overseas employees of certain U.S. government agencies, U.S.-owned companies, and international governmental organizations in which the United States participates.

To qualify, the person must (1) have at least one continuous year of residence in the United States after being lawfully admitted as an LPR and must be employed by or under contract with the U.S. government or an American institution of research recognized as such by the attorney general; (2) be employed by a U.S. majority-owned American firm involved in foreign trade and commerce or a subsidiary thereof; or (3) be employed by a public international organization in which the United States participates by treaty or statute. INA §316(b).

To benefit from this provision, the person must file an application to preserve residence (Form N-470) with USCIS and establish that the absence from the United States is for a permitted purpose. The spouse and dependent (unmarried) children residing with the overseas employee may also preserve continuity of residence so long as they are included in the principle's application.

Exceptions to the continuous residence requirements also exist for religious missionaries employed abroad by a religious denomination and for persons serving abroad in the U.S. Armed Forces. →

Naturalization

The law includes special provisions that permit several different classes of persons to become

Spouses and Ex-spouses of U.S. Citizens Who Obtained LPR Status Through Self Petition as a Battered Spouse under INA §319(a).

Any person who obtained status as an LPR by reason of his or her status as a spouse (or as the child) of a U.S. citizen who battered him or her or subjected him or her to extreme cruelty is eligible under the provisions of INA §319(a) to apply for naturalization after *three years* of permanent resident status. This section of the INA is in force, although the regulations have not yet been amended to include this subgroup.

Spouses of U.S. Citizens Stationed Abroad—Accelerated Naturalization of Married Persons under INA §319(b).

Noncitizens whose U.S. citizen spouses are stationed abroad as employees of the U.S. government or certain other designated organizations and who, by reason of this enforced absence from the United States, cannot otherwise meet the normal residence requirements may nonetheless be naturalized. This provision allows for naturalization of spouses with no meaningful presence in the United States.

In these cases, the applicant for naturalization must have an intention to join or accompany the U.S. citizen spouse abroad and must intend to return immediately to the United States upon termination of the U.S. citizen spouse's employment abroad.

For persons eligible to naturalize under INA §319(b), no specified period of residence or physical presence in the United States is required. The foreign spouse can qualify for naturalization immediately upon entry as an LPR. Moreover, no state residence is required. The applicant may file an application for naturalization anywhere in the United States regardless of actual residence.

Naturalization for Persons with Service in the U.S. Armed Forces.

An applicant with an aggregate of three years' honorable service at any time in the U.S. Armed Forces is eligible for naturalization. INA §328, 329. To qualify, the applicant must be lawfully admitted to the United States for permanent residence before the application is filed and, if discharged, must have been honorably discharged. No residence in the United States and no physical presence are required and the application may be filed with any USCIS office.

In addition, an honorably discharged serviceman or woman may file an application for naturalization after separating from service, so long as the application is filed within six months of his or her date of discharge.

Also, a person who has served on active duty in the U.S. Armed Forces during war or in other periods of military hostilities, as defined in the INA, may also benefit from special naturalization procedures. This includes veterans of World War II, Korea, Vietnam, Grenada, the Persian Gulf War, and the "War on Terrorism," beginning on September 11, 2001. To qualify, the person must be a noncitizen or national during the time of active service and must have been separated under honorable conditions. Neither residency in the United States nor physical presence is required under this provision. INA §329(a).

The INA includes provisions for special consideration and procedures for other identified classes of persons including people who expatriated themselves by serving in the Armed Forces of an enemy country during World War II; surviving spouses of U.S. citizens who died during a period of honorable service in an active duty status in the U.S. Armed Forces; employees of certain U.S. nonprofit corporations disseminating information overseas that promote the interests of the United States; Filipino World War II Veterans; Hmong veterans; and persons who have made an extraordinary contribution to the national security of the United States or to the conduct of U.S. intelligence activities.

Naturalization for Children Born Outside the United States Whose Parents are U.S. Citizens.

Under INA §322, a child (as defined by INA §101(b)) with one U.S. citizen parent who has been physically present in the United States for five years, two of which were after age 14, may apply for a Certificate of Citizenship (Form N-600) if the child is under 18 and the child is residing outside the United States in the legal and physical custody of the U.S. citizen parent.

INA §322 also applies to children whose U.S. citizen parent *does not* meet the physical presence requirements: (1) if the child is under 18, present in the United States pursuant to lawful admission and is an LPR; or (2) if the child is under age 18, present in the United States pursuant to lawful admission, and a grandparent (parent of the U.S. citizen parent) has been physically present in the United States for five years, two of which are after the grandparent's 14th birthday.

Outside the Norm

naturalized citizens outside of the ordinary procedures. These include:

Derivative Citizenship of Children Under 18 Based on Naturalization of One or Both Parents.

Under the Child Citizenship Act (CCA), Pub. L. 106-395, §101, 114 Stat. 1631, which became law on February 27, 2001, a child derives citizenship under INA §320 if *one* parent is a U.S. citizen, *by birth or naturalization,* and the child is under 18, is an LPR, and is residing in the United States in the legal and physical custody of the U.S. citizen parent. Stepchildren are *not* eligible for such consideration under this law. For the CCA to apply, all requirements must be met on or after date of enactment. Citizenship dates from the time that all requirements are met, not from birth and not from the date of the Certificate of Citizenship. The Certificate of Citizenship is merely evidence of citizenship; it does not confer citizenship.

Citizenship at Birth.

Under the 14th Amendment, all persons born *in* the United States are citizens. This generally includes Puerto Rico and the U.S. Virgin Islands. There are exceptions to this general rule: children born (1) in the United States to foreign heads of state; (2) to diplomats on the "Blue List"; (3) on foreign vessels in U.S. waters; and (4) in certain U.S. possessions (these individuals are considered "nationals" not U.S. citizens under the INA. *See* INA §101(a)(21)).

Additionally, certain individuals born outside the United States are citizens at birth. Acquisition is dependent on the birth date of the child, whether one or both parents are U.S. citizens, and, if one is, which parent and whether the birth was in or out of wedlock. INA §309. All parental requirements must be met *before* the child's birth. Proof of citizenship will be the U.S. consulate-issued Registered Birth Abroad and/or Certificate of Citizenship (via N-600 application).

Dual Citizenship.

Dual citizenship situations arise because there is no single international norm on the acquisition of citizenship. Some countries follow the *jus soli* principle (citizenship arising from the place of birth), while others adhere to the *jus sanguinis* rule (citizenship by parentage). Dual citizenship often arises as a matter of law and often requires little or no action on the part of the dual citizen.

Dual citizenship situations include the following but are not limited to:

- By birth in the United States to parents who are nationals of a country that bases its citizenship on parentage.
- By birth in a foreign country that follows *jus soli* to at least one U.S. citizen parent, and by operation of INA §301(g).
- By naturalization of a U.S. citizen in a foreign state, provided the U.S. citizen is not found to harbor the intent to expatriate him- or herself by such naturalization.
- By naturalization in the United States of a foreign national where the foreign country (*e.g.*, Great Britain) does not recognize any expatriation.

Although the United States generally does not favor dual citizenship because of the complications it presents, it is not prohibited. U.S. law does not require a dual national to elect one nationality over another. Additionally, whether the U.S. oath of allegiance effectively expatriates the person from his or her native citizenship depends on the law of the other country.

It is important to note that a U.S. citizen who makes explicit contemporaneous statements of intent not to relinquish U.S. citizenship at the time of the naturalization in a foreign state, and who continues to meet the obligations of U.S. citizenship, is unlikely to have expatriated him- or herself by the naturalization; in fact, there is a presumption that the citizen did not intend to lose U.S. citizenship.

Children who formally have renounced their U.S. nationality before a U.S. diplomatic or consular officer are considered to have expatriated themselves, unless they assert their claim to U.S. nationality in a manner prescribed by regulation within six months after attaining the age of 18.

Special Rules for 9/11 Victims.

Section 114 of the DOS & Related Agency Appropriations Act of 2002, Pub. L. 107-77, provides for posthumous citizenship for certain 9/11 victims, "notwithstanding any provision of Title III [§§310 *et seq.*] of the [INA]." It specifically provides exceptions for §312 (understanding of English language, U.S. history, etc.) and §322 (children born and residing outside the United States), and provides for other special considerations.

The application for naturalization requires disclosure of arrests, citations, and convictions, and the application process includes fingerprinting and other background checks that should reveal any prior criminal history.

Residency in the United States must be maintained from the time the application is filed until the time of admission to citizenship. This does not mean that the applicant must remain physically present in the United States during all such times, only that he or she cannot take up residence outside the United States during that period.

Applicants must have requisite physical presence: INA §316(a).

Physical presence means that the person has actually been in the United States for the required period. Most applicants would need to show 30 months of actual physical presence in the United States. The spouse of a U.S. citizen, applying after only three years of resident status, would need to show only 18 months of physical presence. Persons employed overseas by U.S. corporations or by international organizations, who may preserve continuity of residence for naturalization purposes, still must satisfy the physical presence requirement. INA §316(c).

Applicants must be residing in the district where the application is filed.

The law states that an applicant for naturalization must reside in the state or within the USCIS district where the application will be filed for at least three months immediately preceding the filing of the application. If an application is filed early, the person must reside in the state or district for the three months immediately preceding the examination (interview). If the person maintains residences in more than one state, regulations provide that the applicant is considered a resident of the state from which the annual federal income tax returns have been and are being filed.

Applicants must be of good moral character: INA §316(a).

The statute specifically requires that the applicant be a person of good moral character during the qualifying period—generally five years, sometimes three years. USCIS, however, may take into account an applicant's prior conduct and acts, and may consider whether such conduct indicates a lack of good moral character during the relevant period. The prior conduct, however, cannot be the sole basis for denial of the application.

In order to be naturalized, a person must demonstrate good moral character during the statutory period and from the date of application through the administration of the oath of allegiance. Good moral character is not specifically defined under the statute. In general, good moral character has been interpreted as character that measures up to the standards of average citizens of the community in which the applicant resides, and, thus, it does not necessarily require the highest degree of moral excellence.

Though not affirmatively defined, the statute and regulations identify with specificity certain classes of persons who, by definition, do not possess "good moral character." *See* INA §101(f) and 8 CFR §316.10. For example, habitual drunkards, persons with certain criminal arrests and/or convictions, professional gamblers, persons with two or more convictions for illegal gambling, persons who have been incarcerated for 180 days or more, persons who have given false testimony, and persons who have committed aggravated felonies (as defined by INA §101(a)(43) and case law) are not regarded as having good moral character.

The regulations further define these terms and add additional grounds for such things as failing to pay child support and engaging in extramarital affairs.

The statute and regulations are not all-inclusive and applicants can be found to lack good moral character on any number of bases, including such things as failing to register for the Selective Service. Selective Service registration was reinstated in 1980. Since then, virtually all men upon reaching age 18 or before age 26 must register. The exceptions to this rule are very few and include cadets and midshipmen in the Service Academies and certain other U.S. military colleges as well as nonimmigrants on student, visitor, tourist, or diplomatic visas.

In order for failure to register for the Selective Service to be considered "lack of good moral character," the failure must be while the person was between the ages of 18 and 26, and, most importantly, the failure to register must be knowing and intentional. If an applicant who is required to do so has failed to register for the Selective Service, then it is necessary to include with the N-400 a statement explaining that the failure was neither knowing nor intentional.

An applicant who has been on probation, parole, has received a suspended sentence, or is participating in a pretrial intervention program during all or part of the statutory period is not precluded from establishing good moral character. However, USCIS may consider such probation, parole, or suspended sentence in determining good moral character. No application will be approved until after the probation, parole, or suspended sentence has been completed.

PRACTICE POINTER: For potential applicants still on parole or probation and otherwise eligible for naturalization, it may be possible to file a motion in the appropriate criminal court for early discharge from parole or probation supervision.

In addition, since the enactment of the Illegal Immigration Reform & Immigrant Responsibility Act (IIRAIRA)[4] in 1996, →

state court expungements are no longer considered to ameliorate the immigration consequences of a criminal conviction. And although *Lujan-Armendariz v. INS*, 222 F.3d 726 (9th Cir. 2000), appears to allow state equivalents of the Federal First Offender Act (FFOA)[5] to ameliorate the immigration consequences of certain minor drug offenses, the Board of Immigration Appeals (BIA) has reaffirmed its position that state equivalents of the FFOA do not ameliorate the consequences of such convictions outside of the Ninth Circuit.

With naturalization, as with other areas of immigration law, the availability of an immigration benefit may turn on the question of whether the noncitizen has committed a "crime involving moral turpitude," whether the alien has a "conviction" for immigration purposes, or whether the crime is considered an "aggravated felony." These questions are highly complex and turn on the specific state or federal statute under which the individual has been convicted along with applicable circuit court and BIA case law.

PRACTICE POINTER: Different outcomes are possible for seemingly similar crimes in different jurisdictions, and assessment within a jurisdiction changes on a regular basis. It is essential that an attorney working with a client possessing a prior criminal history conduct a careful legal and factual review of these issues so as to thoroughly understand the ramifications of the client's past conduct.

The application for naturalization requires disclosure of arrests, citations, and convictions, and the application process includes fingerprinting and other background checks that should reveal any prior criminal history. It is important that applicants for naturalization understand that the filing of an application may lead to the opening of an investigation resulting in serious adverse consequences.

Applicants must demonstrate attachment to the principles of the Constitution: INA §316(a)(3).

Statutory provisions require an applicant for naturalization to be attached to the principles of the U.S. Constitution and well disposed to the good order and happiness of the United States. INA §316(a)(3). Over the years, "well disposed" has been interpreted by the courts as meaning "not hostile." It includes dissenters but not advocates of change through violence. "Attachment" is a stronger term and implies a depth of conviction that would lead to the active support of the Constitution. The requirement contemplates the denial of applicants who are hostile to the basic form of the U.S. government.

Other sections of the INA identify classes of noncitizens who are barred by law from being naturalized. These include individuals who advocate or teach opposition to all organized government, or are members of or affiliated with any organization that advocates opposition to organized government, as well as members of or those affiliated with the Communist Party or of any other totalitarian party.

The Act also includes bars against persons who, although not members of the Communist Party, personally advocate the doctrines of world communism or the establishment of a totalitarian dictatorship in the United States, as well as "persons who advocate or teach the overthrow of the United States government by force or violence," and "persons who write or publish subversive material or cause such to be published or are members of any organization that publishes any of the foregoing, *i.e.*, violent overthrow of government."

Also barred from naturalizing are persons who deserted the U.S. Armed Forces or fled U.S. jurisdiction to avoid the draft while the country was at war, if the person was convicted by a court martial or by a civil court of competent jurisdiction (INA §314). Individuals who have received presidential pardons are not barred, including those pardoned for Selective Service violations during the Vietnam War.

In addition, persons under an order of deportation are barred from naturalizing (INA §318). No application for naturalization may be adjudicated while deportation proceedings are underway, nor while an applicant has an outstanding final order of deportability pursuant to a warrant of arrest.

PRACTICE POINTER: In some situations where a person is prima facie eligible for naturalization, notwithstanding the fact that the individual is deportable, it may be possible to file a motion with the immigration court for termination of removal proceedings. The U.S. Immigration and Customs Enforcement (ICE) Office of General Counsel will, in many cases, stipulate to a termination. If not, it may be appropriate to resort to filing an action in district court.

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Finally, the statute provides that noncitizens who apply for and receive an exemption or discharge from training or service in the U.S. Armed Forces are permanently ineligible to become citizens (INA §315). This provision does not apply to persons who served in the Armed Forces of his or her country prior to claiming exemption from service in the U.S. Armed Forces, or where the noncitizen was not eligible for military service. Selective Service records constitute conclusive evidence of relief or discharge.

Applicants must demonstrate basic English literacy: INA §312(a).

Since the early 1900s, applicants for citizenship have been tested on their ability to read, write, and speak words in ordinary usage in the English language. The standard is elementary reading, writing, and speaking ability. To test literacy, a USCIS examiner will usually ask an applicant to write a simple sentence in English.

There are exceptions to the literacy requirement for those applicants who are physically unable to comply or who, because of age and length of residence, are exempt from the requirement. In the case of a disability, it must be such that the applicant is unable to learn to speak, read, or write English and not merely because of advanced age or limited intelligence. (INA §312(b); 8 CFR §312.1(b))

To be exempt from the literacy requirement, an applicant must submit an attestation from a licensed medical doctor, osteopath, or licensed clinical psychologist that supports the disability claim. Applicants are not required to use a designated civil surgeon, but the physician must be experienced in the area of the applicant's disability.

The law also allows persons who meet certain age and residency requirements to be excused from the literacy test. Specifically, applicants who are more than 50 years of age and who have resided in the United States for 20 years as LPRs as of the date of filing the application do not have to pass a literacy test. Applicants for naturalization who are more than 55 years of age and who have resided in the United States for 15 years as LPRs as of the date of filing may also be excused. INA §312(b)(2).

Applicants must demonstrate knowledge of U.S. history and government: INA §312(a)(2).

An important part of the naturalization process is demonstrating knowledge of American history and government. Even if exempt due to age/residence from the literacy requirement, applicants for citizenship must still pass an oral examination on U.S. history and government. USCIS permits an interpreter to help administer the test.

In choosing the subject-matter and in phrasing the questions, the USCIS examiner may take into consideration the extent of the applicant's education, background, age, length of residence in the United States, opportunities available, and efforts made to acquire the requisite knowledge, plus any other relevant elements or factors.

U.S. history and government questions are derived from the federal textbooks on citizenship, available from the U.S. Government Printing Office. The USCIS Web site (*www.uscis.gov*) has materials to help applicants prepare for this part of the naturalization process, including a *Guide to Naturalization*, which is available in several languages. *See http://uscis.gov/graphics/services/natz/guide.htm.*

Not all applicants for naturalization are required to take this examination. Specifically, a noncitizen who is physically unable to comply with this requirement is excused from it upon satisfactory proof of physical or developmental disability or mental impairment. INA §312(b)(1). Also, an applicant who is over 65 and has been an LPR for over 20 years can receive "special consideration." This usually refers to a shorter and less challenging set of questions on history and government.

Applicants must take the oath of allegiance.

All applicants for naturalization must take an oath or affirmation of allegiance to the United States, without any mental reservation. The text of the oath is codified at INA §337. If an applicant holds a deeply held religious or moral belief that limits his or her willingness to bear arms and/or perform noncombatant services in the U.S. Armed Forces, the applicant may take a modified oath. Children too young to understand its meaning, as well as physically or mentally disabled persons, may be excused from the oath requirement altogether. →

Naturalization Application and Procedures

In order to be naturalized, in addition to meeting the substantive requirements set forth above, an applicant must submit the N-400, pay a fee, and otherwise comply with the administrative requirements for naturalization. In recent years, the application has been expanded and now consists of 10 pages, not including instructions. Applications and supporting documentation are filed with one of four USCIS regional service centers, depending on the applicant's place of residence. Applications are accompanied by photographs and evidence of LPR status. Fingerprints are no longer required to be filed with the application; however, after filing the application, applicants are instructed to report to a USCIS application support center for fingerprinting.

Some time after the application is filed, USCIS will schedule an interview at the local district office. Prior to the interview, various name checks and security clearances will be conducted to ensure that the applicant does not have a criminal past or represent a threat to national security.

At the naturalization interview, the USCIS examiner will review the application, make any necessary changes or corrections, and evaluate the applicant's eligibility for naturalization—including whether he or she falls under any of the above classes of ineligibility.

PRACTICE POINTER: The USCIS examiner must make a decision within 120 days of the interview (although many USCIS officers request that the applicant sign a waiver of this requirement). If the naturalization examiner denies an application, the applicant may appeal to another USCIS officer in the same office. If the application is again denied, or if no decision is made within 180 days, counsel for the applicant may seek *de novo* review in federal district court. The attorney also can seek review in federal court if USCIS does not make a decision on the application within 120 days after the interview.[6]

USCIS may, on its own motion, reopen and deny the naturalization application of an applicant who fails to appear for the final hearing *(i.e.,* the oath ceremony). Additionally, the regulations give USCIS authority to reopen any case where it has evidence that naturalization was procured by fraud, misrepresentation, concealment, or mistake.

Conclusion

For many, American citizenship is precious and comes only after years of hard work and struggle. Recent geopolitical events have made U.S. citizenship even more important to many. Many legal residents who had not previously felt a compulsion to apply for citizenship did so in the months after 9/11. Domestic political events also bring attention to citizenship, as some people seek naturalization in order to participate in national, state, and local elections.

Regardless of motive, for most people, the oath ceremony is a meaningful and emotional event, which raises their awareness of American citizenship and its importance in the world. For some of us, it's a gift, for others it's a prize. In either case, being a U.S. citizen is a status that carries important responsibilities and provides great opportunities.

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Notes

[1] Except for children of foreign diplomatic officers. 8 CFR §101.3(a).

[2] Article I, Section 8 of the U.S. Constitution explicitly gives Congress the power "to establish a uniform rule of naturalization."

[3] Violence Against Women Act, Pub. L. 103-322, 108 Stat. 1796; INA §§204(a)(1)(A)(iii), (iv), §§204(a)(1)(B)(ii), (iii). *See also* the Battered Immigrant Women Protection Act of 2000 (VAWA 2000), Pub. L. 106-386, 114 Stat. 1464 at §1501–13.

[4] Pub. L. 104-208, 110 Stat. 3009.

[5] 18 USC §3607(a).

[6] *See also* L. Rose, "Is the Government Dragging Its Feet on a Naturalization Application?" 23 *Immigration Law Today* 51 (May/June 2004).