Chapter 3

Citizenship / Naturalization

Citizenship can be obtained in the United States through birth in the United States or its territories (jus soli), by relationship with a U.S. citizen (jus sanguinis) or by naturalization. The following law will examine some concepts about citizenship including the ongoing statutory evolution expanding citizenship rights. Indeed, it is interesting to note how citizenship rights have expanded over the years as the United States has expanded its territorial holdings.

Secondly, with Americans traveling and living all over the world, it is inevitable that children will be born to these U.S. citizens overseas. State Department reports indicate that thousands of children are born to U.S. citizens overseas each year. Therefore, preserving and protecting these children's right to U.S. citizenship becomes an important function of the State Department and U.S. citizen parents.

Finally, citizenship can be acquired through naturalization. A permanent resident alien is eligible for Naturalization five years after becoming a legal permanent resident in this country or, in the cases of alien spouses of U.S. citizens, within three years of acquiring permanent resident status. Congress has granted special reduced times for naturalization for battered spouses, veterans of the U.S. armed forces, and other special categories of immigrants. Becoming a naturalized citizen requires passing a test on citizenship, history, and ability to read, write and comprehend the English language. There are certain exclusions and exceptions from the testing requirements primarily to benefit older or mentally handicapped individuals. More about the naturalization process later in the chapter!

The Law

"Born in the USA!"

United States Constitution: Amendment 14

> ***"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.*** No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Sec. 301 Nationals and Citizens of United States at Birth
[8 U.S.C. 1401]

The following shall be nationals and citizens of the United States at birth:

301(a) a person born in the United States, and subject to the jurisdiction thereof;

301(b) a person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe: Provided, That the granting of citizenship under this subsection shall not in any

manner impair or otherwise affect the right of such person to tribal or other property;

301(c) a person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has had a residence in the United States or one of its outlying possessions, prior to the birth of such person;

301(d) a person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year prior to the birth of such person, and the other of whom is a national, but not a citizen of the United States;

301(e) a person born in an outlying possession of the United States of parents one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year at any time prior to the birth of such person;

301(f) a person of unknown parentage found in the United States while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in the United States;

301(g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years: Provided, ***

301(h) a person born before noon (Eastern Standard Time) May 24, 1934, outside the limits and jurisdiction of the United States of an alien father and a mother who is a citizen of the United States who, prior to the birth of such person, had resided in the United States.

***

Sec. 302 Persons Born in Puerto Rico on or after April 11, 1899
[8 U.S.C. 1402]

All persons born in Puerto Rico on or after April 11, 1899, and prior to January 13, 1941, subject to the jurisdiction of the United States, residing on January 13, 1941, in Puerto Rico or other territory over which the United States exercises rights of sovereignty and not citizens of the United States under any other Act, are hereby declared to be citizens of the United States as of January 13, 1941. All persons born in Puerto Rico on or after January 13, 1941, and subject to the jurisdiction of the United States, are citizens of the United States at birth.

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Sec. 303 Persons Born in the Canal Zone or Republic of Panama on or after February 26, 1904
[8 U.S.C. 1403]

303(a) Any person born in the Canal Zone on or after February 26, 1904, and whether before or after the effective date of this Act, whose father or mother or both at the time of the birth of such person was or is a citizen of the United States, is declared to be a citizen of the United States.

303(b) Any person born in the Republic of Panama on or after February 26, 1904, and whether before or after the effective date of this Act, whose father or mother or both at the time of the birth of such

person was or is a citizen of the United States employed by the Government of the United States or by the Panama Railroad Company, or its successor in title, is declared to be a citizen of the United States.

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Sec. 304 Persons Born in Alaska on or after March 30, 1867
[8 U.S.C. 1404]

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Sec. 305 Persons Born in Hawaii
[8 U.S.C. 1405]

CERTIFICATION OF LIVE BIRTH

STATE OF HAWAII
HONOLULU

DEPARTMENT OF HEALTH
HAWAII U.S.A.

CERTIFICATE NO.

CHILD'S NAME
BARACK HUSSEIN OBAMA II

DATE OF BIRTH
August 4, 1961

HOUR OF BIRTH
7:24 PM

SEX
MALE

CITY, TOWN OR LOCATION OF BIRTH
HONOLULU

ISLAND OF BIRTH
OAHU

COUNTY OF BIRTH
HONOLULU

MOTHER'S MAIDEN NAME
STANLEY ANN DUNHAM

MOTHER'S RACE
CAUCASIAN

FATHER'S NAME
BARACK HUSSEIN OBAMA

FATHER'S RACE
AFRICAN

DATE FILED BY REGISTRAR
August 8, 1961

OHSM 1.1 (Rev.11/01) LASER

This copy serves as prima facie evidence of the fact of birth in any court proceeding. [HRS 338-13(b), 338-19]

ANY ALTERATIONS INVALIDATE THIS CERTIFICATE

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Sec. 306 Persons Living in and Born in the Virgin Islands
[8 U.S.C. 1406]

306(a) The following persons and their children born subsequent to January 17, 1917, and prior to

February 25, 1927, are declared to be citizens of the United States as of February 25, 1927: ***

306(b) All persons born in the Virgin Islands of the United States on or after January 17, 1917, and prior to February 25, 1927, and subject to the jurisdiction of the United States are declared to be citizens of the United States as of February 25, 1927; and all persons born in those islands on or after February 25, 1927, and subject to the jurisdiction of the United States, are declared to be citizens of the United States at birth.

***

Sec. 307 Persons Living in and Born in Guam
[8 U.S.C. 1407]

307(a) The following persons, and their children born after April 11, 1899, are declared to be citizens of the United States as of August 1, 1950, if they were residing on August 1, 1950, on the island of Guam or other territory over which the United States exercises rights of sovereignty: ***

307(b) All persons born in the island of Guam on or after April 11, 1899 (whether before or after August 1, 1950) subject to the jurisdiction of the United States, are hereby declared to be citizens of the United States: Provided, That in the case of any person born before August 1, 1950, he has taken no affirmative steps to preserve or acquire foreign nationality.

307(c) Any person hereinbefore described who is a citizen or national of a country other than the United States and desires to retain his present political status shall have made, prior to August 1, 1952, a declaration under oath of such desire, said declaration to be in form and executed in the manner prescribed by regulations. From and after the making of such a declaration any such person shall be held not to be a national of the United States by virtue of this Act.

***

Sec. 308 Nationals but Not Citizens of the United States at Birth
[8 U.S.C. 1408]

Unless otherwise provided in section 301 of this title, the following shall be nationals, but not citizens of the United States at birth:

308(1) A person born in an outlying possession of the United States on or after the date of formal acquisition of such possession;

308(2) A person born outside the United States and its outlying possessions of parents both of whom are nationals, but not citizens, of the United States, and have had a residence in the United States, or one of its outlying possessions prior to the birth of such person;

308(3) A person of unknown parentage found in an outlying possession of the United States while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in such outlying possession; and

308(4) A person born outside the United States and its outlying possessions of parents one of whom is an alien, and the other a national, but not a citizen, of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than seven years in any continuous period of ten years--

308(4)(A) during which the national parent was not outside the United States or its outlying possessions for a continuous period of more than one year, and

308(4)(B) at least five years of which were after attaining the age of fourteen years.

The proviso of section 301(g) shall apply to the national parent under this paragraph in the same manner as it applies to the citizen parent under that section.

***

Sec. 309 Children Born Out of Wedlock
[8 U.S.C. 1409]

309(a) The provisions of paragraphs (c), (d), (e), and (g) of section 301, and of paragraph (2) of section 308, shall apply as of the date of birth to a person born out of wedlock if--

309(a)(1) a blood relationship between the person and the father is established by clear and convincing evidence,

309(a)(2) the father had the nationality of the United States at the time of the person's birth,

309(a)(3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and

309(a)(4) while the person is under the age of 18 years--

309(a)(4)(A) the person is legitimated under the law of the person's residence or domicile,

309(a)(4)(B) the father acknowledges paternity of the person in writing under oath, or

309(a)(4)(c) the paternity of the person is established by adjudication of a competent court.

309(b) Except as otherwise provided in section 405, the provisions of section 301(g) shall apply to a child born out of wedlock on or after January 13, 1941, and before December 24, 1952, as of the date of birth, if the paternity of such child is established at any time while such child is under the age of twenty-one years by legitimation.

309(c) Notwithstanding the provision of subsection (a) of this section, a person born, after December 23, 1952, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

***

Naturalization

Sec. 311 Eligibility for Naturalization
[8 U.S.C. 1422]

The right of a person to become a naturalized citizen of the United States shall not be denied or abridged because of race or sex or because such person is married.

***

Sec. 312 Requirements as to Understanding the English Language, History, Principles, and Form of Government of the United States
[8 U.S.C. 1423]

312(a) No person except as otherwise provided in this title shall hereafter be naturalized as a citizen of the United States upon his own application who cannot demonstrate--

312(a)(1) an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language: Provided, That the requirements of this paragraph relating to ability to read and write shall be met if the applicant can read or write simple words and phrases to the end that a reasonable test of his literacy shall be made and that no extraordinary or unreasonable conditions shall be imposed upon the applicant; and

312(a)(2) a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States.

312(b)

312(b)(1) The requirements of subsection (a) shall not apply to any person who is unable because of physical or developmental disability or mental impairment to comply therewith.

312(b)(2) The requirement of subsection (a)(1) shall not apply to any person who, on the date of the filing of the person's application for naturalization as provided in section 334, either--

312(b)(2)(A) is over fifty years of age and has been living in the United States for periods totaling at least twenty years subsequent to a lawful admission for permanent residence, or

312(b)(2)(B) is over fifty-five years of age and has been living in the United States for periods totaling at least fifteen years subsequent to a lawful admission for permanent residence.

312(b)(3) The Attorney General, pursuant to regulations, shall provide for special consideration, as determined by the Attorney General, concerning the requirement of subsection (a)(2) with respect to any person who, on the date of the filing of the person's application for naturalization as provided in section 334, is over sixty-five years of age and has been living in the United States for periods totaling at least twenty years subsequent to a lawful admission for permanent residence.

***

Sec. 316 Requirements of Naturalization
[8 U.S.C. 1427]

316(a) Residence.--No person, except as otherwise provided in this title, shall be naturalized, unless such applicant,

316(a)(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,

316(a)(2) has resided continuously within the United States from the date of the application up to the time of admission to citizenship,

316(a)(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.

316(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 336(a), 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 ***

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.

316(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.

316(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.

316(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.

***

Sec. 336 Hearings on Denials of Applications for Naturalization
[8 U.S.C. 1447]

336(a) Request for hearing before immigration officer.--If, after an examination under section 335, an application for naturalization is denied, the applicant may request a hearing before an immigration officer.

336(b) Request for hearing before District Court.--If there is a failure to make a determination under section 335 before the end of the 120-day period after the date on which the examination is conducted under such section, the applicant may apply to the United States district court for the district in which the applicant resides for a hearing on the matter. Such court has jurisdiction over the matter and may either determine the matter or remand the matter, with appropriate instructions, to the Service to determine the matter.

***

Sec. 340 Revocation of Naturalization
[8 U.S.C. 1451]

340(a) Concealment of material evidence; refusal to testify.--It shall be the duty of the United States attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any district court of the United States in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively: Provided, That refusal on the part of a naturalized citizen within a period of ten years following his naturalization to testify as a witness in any proceeding before a congressional committee concerning his subversive activities, in a case where such person has been convicted of contempt for such refusal, shall be held to constitute a ground for revocation of such person's naturalization under this subsection as having been procured by concealment of a material fact or by willful misrepresentation. If the naturalized citizen does not reside in any judicial district in the United States at the time of bringing such suit, the proceedings may be instituted in the United States District Court for the District of Columbia or in the United States district court in the judicial district in which such person last had his residence.

340(b) Notice to party.--The party to whom was granted the naturalization alleged to have been illegally procured or procured by concealment of a material fact or by willful misrepresentation shall, in any such proceedings under subsection (a) of this section, have sixty days' personal notice, unless waived by such party, in which to make answer to the petition of the United States; ***

340(c) Membership in certain organizations; prima facie evidence.--If a person who shall have been naturalized after December 24, 1952 shall within five years next following such naturalization become a member of or affiliated with any organization, membership in or affiliation with which at the time of naturalization would have precluded such person from naturalization under the provisions of section 313, it shall be considered prima facie evidence that such person was not attached to the principles of the Constitution of the United States and was not well disposed to the good order and happiness of the United States at the time of naturalization, and, in the absence of countervailing

evidence, it shall be sufficient in the proper proceeding to authorize the revocation and setting aside of the order admitting such person to citizenship and the cancellation of the certificate of naturalization as having been obtained by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively.

340(d) Applicability to citizenship through naturalization of parent or spouse.--Any person who claims United States citizenship through the naturalization of a parent or spouse in whose case there is a revocation and setting aside of the order admitting such parent or spouse to citizenship under the provisions of subsection (a) of this section on the ground that the order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation shall be deemed to have lost and to lose his citizenship and any right or privilege of citizenship which he may have, now has, or may hereafter acquire under and by virtue of such naturalization of such parent or spouse, ***

340(e) Citizenship unlawfully procured.--When a person shall be convicted under section 1425 of title 18 of the United States Code of knowingly procuring naturalization in violation of law, ***

340(f) Cancellation of certificate of naturalization.--Whenever an order admitting an alien to citizenship shall be revoked and set aside or a certificate of naturalization shall be canceled, or both, as provided in this section, the court in which such judgment or decree is rendered shall make an order canceling such certificate ***

340(g) Applicability to certificates of naturalization and citizenship.--The provisions of this section shall apply not only to any naturalization granted and to certificates of naturalization and citizenship issued under the provisions of this title, but to any naturalization heretofore granted by any court, ***

340(h) Power to correct, reopen, alter, modify, or vacate order.--Nothing contained in this section shall be regarded as limiting, denying, or restricting the power of the Attorney General to correct, reopen, alter, modify, or vacate an order naturalizing the person.

***

Sec. 349 Loss of Nationality by Native-Born or Naturalized Citizen; voluntary action; burden of proof; presumptions
[8 U.S.C. 1481]

349(a) A person who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality--

> 349(a)(1) obtaining naturalization in a foreign state upon his own application or upon an application filed by a duly authorized agent, after having attained the age of eighteen years; or
>
> 349(a)(2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof, after having attained the age of eighteen years; or
>
> 349(a)(3) entering, or serving in, the armed forces of a foreign state if

349(a)(3)(A) such armed forces are engaged in hostilities against the United States, or

349(a)(3)(B) such persons serve as a commissioned or non-commissioned officer; or 349(a)(4)

349(a)(4)(A) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, after attaining the age of eighteen years if he has or acquires the nationality of such foreign state; or

349(a)(4)(B) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, after attaining the age of eighteen years for which office, post, or employment an oath, affirmation, or declaration of allegiance is required; or

349(a)(5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; or

349(a)(6) making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense; or

349(a)(7) committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the United States, violating or conspiring to violate any of the provisions of section 2383 of title 18, United States Code, or willfully performing any act in violation of section 2385 of title 18, United States Code, or violating section 2384 of said title by engaging in a conspiracy to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, if and when he is convicted thereof by a court martial or by a court of competent jurisdiction.

349(b) Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after the enactment of this subsection under, or by virtue of, the provisions of this or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence. Any person who commits or performs, or who has committed or performed, any act of expatriation under the provisions of this or any other Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

The Naturalization Process - Tricks and Traps for the Unwary

On its face, naturalization seems fairly simple: after all, as long as a permanent resident has complied with the residency requirements, appears to speak, write and read English fairly well and has a passable knowledge of US History and Civics, he or she should be able to apply for naturalization right?

Answer: Wrong!

Nothing could be further from the truth. While naturalization seems to be a fairly simple and

benign process and one that is looked on with great favor by the US population in general, it holds substantial risks for the applicant who thinks he or she is eligible for naturalization but does not realize that there may be factors which not only make him ineligible for naturalization but could result in deportation.

Some of the factors which could make a person ineligible for naturalization are simple: for instance, a person may not have the necessary residency requirement prior to applying for naturalization. Or, a person may have emigrated in a certain visa status (let us say spouse of US Citizen) which allows for naturalization within three years, but subsequently got divorced from his or her US Citizen spouse and therefore is ineligible for the benefit of naturalization in three years. That person would be eligible to naturalize only five years (not three) after the initial grant of permanent residence.

Likewise, many aliens believe that they are eligible for naturalization but are tripped up on the basis of "good moral character". In some USCIS jurisdictions, even a simple DUI within the last five years may be sufficient to deny naturalization as lacking good moral character.

An additional caveat along the same lines for applicants with criminal convictions: Many a time an applicant may think that his or her conviction was for a relatively minor offense or that the conviction was a very long time ago and therefore not worthy of mentioning. Sometimes an applicant may have had the conviction sealed or expunged. Therefore, the applicant may not even think to list the conviction on his or her application for naturalization.

A criminal conviction could be the "kiss of death" for a naturalization applicant. In certain egregious cases, if the criminal conviction is for a crime that is also a deportable offense, not only will the USCIS deny the naturalization application, but the alien may find himself or herself in removal proceedings! This is clearly a double whammy - not only is the alien denied naturalization, but he or she now faces the threat of deportation from the country he considers home.

Likewise, there may be some question or perhaps even fraud in the underlying permanent residency application. If an alien applying for naturalization unwittingly provides information to the USCIS during the naturalization process which calls into question the bonafides of the underlying application for permanent residency, not only will the naturalization application be denied but also the alien would be placed into removal proceedings. Double whammy again!

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As a practice pointer, as counsel, you should examine the following factors of any applicant for naturalization:

- Carefully count the duration of residency in the USA following the grant of permanent residency - deduct any time outside the USA, however short;
- Check on any and all prior criminal and traffic records however insignificant the applicant may think they are - do they have any potential deportation consequences?
- Make sure the applicant knows and understands the extent of the history and civics questions for the naturalization exam and has a comprehensive grasp of the English Language;
- Verify whether the applicant is eligible for any waivers from the history, civics or English requirements for the naturalization;
- Check on the applicant's background - make sure that the applicant's permanent residency application does not hold any surprises;
- Check on whether the applicant has paid taxes regularly and whether the applicant has any unpaid taxes or unpaid child support - both grounds for potential denial of the application.

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Permanent bars to Naturalization

An alien convicted of an aggravated felony after November 29, 1990, (as defined under the INA) is permanently ineligible for naturalization under the INA. INA § 316.10(b).

Additionally, commission of certain offenses during the 5-year statutory period also make the applicant ineligible for naturalization. Excludable offenses (thought the applicant has not been placed in removal proceedings) could also make the applicant ineligible for naturalization since the alien is deemed to lack the requisite good moral character. Even offenses such as failure to support dependents under an order of child support, or having an extramarital affair which would tend to destroy an existing marriage are basis for finding lack of good moral character.

The above list is not intended to be exhaustive, but it is a reminder that the benign and favored petition for naturalization may not be as beneficial to a prospective applicant as one would like to believe. Make sure you know the nuances of your client's case before you file any application.

Analysis

Analysis of citizenship rights is tricky issue. Confused enough? Detailed tables are available to analyze citizenship claims for persons born outside the U.S. between certain periods. Depending on the changes in the laws and the modifications of the effective dates, it becomes critical to analyze citizenship claims comprehensively and effectively under the applicable version of the statute.

Can Citizenship Be Revoked?

Citizenship can certainly be revoked. However, please note this important difference: Citizenship by birth cannot be revoked. A citizen by birth of the United States will always be a citizen of the United States until he or she makes an expatriating act - meaning that he or she knowingly and voluntarily performs certain acts set forth in the INA which would result in a loss of citizenship. These acts are discussed in detail above and include the following:

1. Obtaining naturalization after turning eighteen;
2. Entering or serving in the armed forces of a foreign state if such armed forces are engaged in hostilities against the USA, or such person serves as a commissioned or non-commissioned office;
3. Making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State;
4. Committing any act of treason against or attempting to force to overthrow or bear arms against the United States or generally to overthrow, put down or destroy by force the Government of the United States.

As noted above, this is not an exhaustive list. The Supreme Court held in Vance v. Terrazas, 444 U.S. 252 (1980) that in proving expatriation, an expatriating act and an intent to relinquish citizenship must be proved by a preponderance of the evidence. The court also held that if one of the statutory expatriating acts is proved, the burden falls upon the expatriate to prove that it was not a voluntary act.

In case of a naturalized citizen, citizenship can be revoked through a process known as denaturalization. (INA Section 340, above). In order for denaturalization to be upheld, the following four requirements apply:

1. The naturalized citizen must have misrepresented or concealed some fact;
2. The misrepresentation or concealment must have been willful;
3. The fact must have been material; and
4. The naturalized citizen must have procured citizenship as a result of the misrepresentation or concealment.

The standard of proof that the Government is held to in the naturalization proceedings is "clear, unequivocal and convincing" evidence. The Government must show facts were suppressed, which, if known, would have warranted denial of citizenship or that their disclosure might have been useful in an investigation possibly leading to the discovery of other facts warranting denial of citizenship.

Of course, naturalized citizens can also expatriate themselves through the acts described above. Therefore, naturalized citizens may be stripped of their citizenship in two methods, first through denaturalization and secondly through expatriation.

Cases

United States of America, Plaintiff-appellee,
v. John Demjanjuk, Defendant-appellant

United States Court of Appeals, Sixth Circuit. - 367 F.3d 623

Argued: December 10, 2003
Decided and Filed: April 30, 2004
Rehearing Denied June 28, 2004

Jonathan C. Drimmer (argued and briefed), Michelle Heyer (argued), United States Department of Justice, Office of Special Investigations, Washington, DC, Michael Anne Johnson (argued), Assistant United States Attorney, Cleveland, OH, for Appellee.

Before: COLE and CLAY, Circuit Judges; COLLIER, District Judge.*

CLAY, Circuit Judge.
1

Defendant, John Demjanjuk, appeals from the district court's order revoking Defendant's citizenship, due to Defendant's illegal procurement of such citizenship, and allowing his naturalization to be set aside pursuant to 8 U.S.C. § 1451(a). Because we find that Plaintiff, the United States of America ("Government"), sustained its burden of proving through clear, unequivocal and convincing evidence that Defendant, in fact, served as a guard at several Nazi training and concentration camps during World War II ("WW II"), we concur with the district court that he was not legally eligible to obtain citizenship under the Displaced Persons Act of 1948 ("DPA"). DPA, 62 Stat. 1013. We therefore AFFIRM the district court's order.
2

There are six prior decisions (three by this Court) on matters related to Defendant's citizenship:
3

1.) United States v. Demjanjuk, 518 F.Supp. 1362 (N.D.Ohio 1981) (revoking Defendant's citizenship and naturalization; this result was later set aside by Demjanjuk 6)[Fn1];
4

2.) United States v. Demjanjuk, 680 F.2d 32 (6th Cir.1982) (per curiam) (affirming Demjanjuk 1);
5

3.) Demjanjuk v. Petrovsky, 612 F.Supp. 571 (N.D.Ohio 1985) (denying habeas, thus allowing the executive branch to extradite Defendant to Israel, id. at 574; but this ruling was later vacated by Demjanjuk 5);
6

4.) Demjanjuk v. Petrovsky, 776 F.2d 571 (6th Cir.1985) (affirming Demjanjuk 3);
7

5.) Demjanjuk v. Petrovsky, 10 F.3d 338 (6th Cir.1993) (reopening the case sua sponte, id. at 339, after Defendant was extradited to Israel and there acquitted of all crimes. This Court held that the Government perpetrated fraud in its discovery, and accordingly vacated Demjanjuk 3); and
8

6.) United States v. Demjanjuk, No. C77-923, 1998 U.S. Dist. LEXIS 4047 (N.D.Ohio 1998) (setting aside Demjanjuk 1, on the basis of the findings of prosecutorial misconduct in Demjanjuk 5).
9

Subsequently, on May 19, 1999, the Government filed a second complaint in the district court, seeking to denaturalize Defendant on the ground that he illegally procured his United States citizenship. The first claim alleged Defendant's unlawful admission into the United States, in violation of 8 U.S.C. § 1427(a)(1), and was based on his alleged persecution of civilians during WWII, in violation of the DPA, 62 Stat. 219, 227. The second claim alleged Defendant's unlawful admission into the United States, again in violation of 8 U.S.C. § 1427(a)(1), and was based on Defendant's alleged membership or participation in a movement hostile to the United States, in violation of the DPA, 64 Stat. 227. The third claim charged Defendant with illegally procuring a certificate of naturalization by making willful misrepresentation to immigration officials, in violation of 8 U.S.C. § 1451(a).
10

Defendant filed an Omnibus Motion to Dismiss the Complaint, which was denied by the district court in a Memorandum Opinion and Order on February 17, 2000. Defendant thereafter applied for a writ of mandamus directing the district court to dismiss the denaturalization proceeding; on April 28, 2000, this Court denied that request. Defendant then filed a counterclaim, alleging that Plaintiff tortured and harassed him and his family; this was dismissed by the district court on July 10, 2000, in a Memorandum Opinion and Order.
11

The case was tried without a jury on the Government's claims of Defendant's illegal procurement of United States citizenship, on May 29, 2001. On February 21, 2002, the district court released Findings of Fact and Conclusions of Law, United States v. Demjanjuk, 2002 WL 544622 (N.D.Ohio Feb.21, 2002) ("Demjanjuk 7.a"), and a Supplemental Opinion, United States v. Demjanjuk, 2002 WL 544623 (N.D.Ohio Feb.21, 2002) ("Demjanjuk 7. b"). The district court entered judgment revoking Defendant's citizenship and naturalization, and ordering Defendant to surrender and deliver his Certificate of Naturalization and any passport or other documentary evidence of citizenship to the U.S. Attorney General, within ten days.

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14

In Demjanjuk 4, 776 F.2d 571, 575, this Court set forth the factual background for the various cases involving Defendant. We therefore recite only those facts most relevant to the appeal before us. John Demjanjuk is a native of the Ukraine, a republic of the former Soviet Union. Demjanjuk was conscripted into the Soviet Army in 1940 and then captured by the Germans, during WWII, in 1942. Later that year, after short stays in several German POW camps and a probable tour at the Trawniki SS training camp in Poland, Demjanjuk became a guard at the Treblinka concentration camp in Poland. Demjanjuk was admitted to the United States in 1952 under the Displaced Persons Act of 1948 and became a naturalized United States citizen in 1958. Defendant denied that he was a Ukrainian guard at Treblinka who was known as "Ivan or Iwan Grozny," that is, "Ivan the Terrible." He has resided in the Cleveland, Ohio area since his arrival in this country.
15

In the current proceeding, the Government alleges that Mr. Demjanjuk persecuted civilians at Trawniki, L.G. Oksow, Majdanek, Sobibor and Flossenburg Concentration Camps, but not Treblinka, as alleged in earlier denaturalization proceedings. Defendant was identified, in previous proceedings, as well as in the current one, by the Trawniki Camp's Identification Card which contained Defendant's

picture. The Trawniki Card, the Government's exhibit # 3, is a German Dienstausweis or Service Identity Card, identifying the holder as guard number 1393.
16

One of the main issues before this Court is whether Demjanjuk was Guard 1393. There are seven German-created wartime documents in evidence that Plaintiff alleges identify Defendant. Three forensic experts testified that forensic testing revealed no evidence to doubt the authenticity of the seven wartime documents found in archives in Russia, Ukraine, Lithuania and the former West Germany containing Demjanjuk's name and other identifying information. (J.A. at 1407, 1416, 1423, 1441, 1461, 1861, 1877.)
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Additionally, because Defendant failed to object to the Trawniki service pass at trial on the ground now asserted on appeal; namely, that the card is inadmissible hearsay; this Court reviews for plain error Defendant's contention that the service pass was erroneously admitted into evidence.*** Under the plain error standard:
19

before an appellate court can correct an error not raised at trial, there must be (1) error, (2) that is plain, and (3) that affect[s] substantial rights.... [I]f all three conditions are met, an appellate court may then exercise its discretion to notice a forfeited error, but only if (4) the error seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings.
20
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21

An individual seeking to enter the United States under the DPA first must qualify as a refugee or displaced person with the International Refugee Organization ("IRO"). Fedorenko v. United States, 449 U.S. 490, 496, 101 S.Ct. 737, 66 L.Ed.2d 686 (1981). The IRO's Constitution identified categories of people who were not eligible for refugee or displaced person status, including, "[a]ny ... persons who can be shown: (a) to have assisted the enemy in persecuting civil populations of countries." Id. at 496, n. 4, 101 S.Ct. 737. Citizenship may be deemed illegally procured if, during naturalization, an applicant failed to strictly comply with a statutory prerequisite, such as lawful admittance as a permanent resident. Id. at 514, n. 36, 101 S.Ct. 737 (citing 8 U.S.C. § 1427(a)(1)). In a denaturalization proceeding, the government must prove its case by evidence that is clear, convincing, and unequivocal, Kungys v. United States, 485 U.S. 759, 772, 108 S.Ct. 1537, 99 L.Ed.2d 839 (1988), because United States citizenship is revocable when found to be illegally procured. Fedorenko, 449 U.S. at 506, 101 S.Ct. 737 (citing 8 U.S.C. § 1451(a)).
22

The district court below issued findings of fact and conclusions of law determining that the Government sustained its burden of proving that the Trawniki service pass identifying Defendant's presence at the Nazi training camp was 1) authentic within the meaning of Fed.R.Evid. 901(a), (b)(1), (3), (4), (8); 2) admissible under Fed.R.Evid. 803(16), the ancient document exception to the hearsay rule; 3) admissible under Fed.R.Evid. 803(8), the public records and reports exception to the hearsay rule; and 4) self-authenticating as a foreign public document under Fed.R.Evid. 902(3). Under such proof, Defendant's service as a guard at a Nazi training camp, and subsequent concentration camps, would make him ineligible for a visa under the DPA §§ 10 and 13, and therefore, unlawfully admitted,

rendering his citizenship illegally procured and subject to revocation under 8 U.S.C. § 1451.
23

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54

Under a Section 10 violation of the DPA, the government must establish that an applicant's willful misrepresentation was material, i.e., that it had a natural tendency to influence the relevant decision-maker's decision. Kungys, 485 U.S. at 771, 108 S.Ct. 1537. Although the government must prove its case by evidence that is clear, convincing and unequivocal, it is not necessary for the government to prove that the defendant would not have received a visa if he had not made the misrepresentation. Id.
55

The district court correctly ruled that voluntariness is not an element of an assistance-in-persecution charge under the DPA. The Supreme Court has previously ruled that "an individual's service as a concentration camp armed guard whether voluntary or not made him ineligible for a visa." Fedorenko, 449 U.S. at 512, 101 S.Ct. 737. Additionally, a defendant need not engage in "personal acts" of persecution in order to be held ineligible for a visa, because an individual's service in a unit dedicated to exploiting and exterminating civilians on the basis of race or religion constitutes assistance in persecution within the meaning of the DPA. United States v. Dailide, 227 F.3d 385, 390-91 (6th Cir.2000).
56

Furthermore, the district court did not clearly err in concluding that Defendant misrepresented and concealed his wartime residence and activities, which included his service at Trawniki, Sobibor, Majdenek, with the Guard Forces of the SS and Police Leader in Lublin District, and with the SS Death's Head Battalion at Flossenburg Concentration Camp. This information was material because its disclosure would have precluded Defendant from being placed in the "of concern," category under the DPA, thus affecting the disposition of his visa application as a "displaced person." See Fedorenko, 449 U.S. at 514-15, 101 S.Ct. 737. If Defendant had disclosed the information regarding his service in the Austrian and German armies during his application process, the immigration officials would have naturally been influenced in their decision, because service in such armies leaves applicants ineligible under the DPA. Therefore, upon signing his Application for Immigration Visa, Defendant knowingly misrepresented material facts, leaving his entry to the United States unlawful and naturalization illegally procured.
57

The Government moves to strike portions of Defendant's Reply brief, specifically parts IA, IB and documents in Addenda 2 and 3, because the claims asserted by Defendant were raised for the first time in the reply brief and the documents were not previously before the district court. The Government asserts that Defendant is prohibited from (1) objecting to the translation of a document not previously before the district court, which identifies Defendant as a Nazi; (2) requesting to admit the notes of Dr. Sydnor not previously before the district court; and (3) asserting a claim of perjury against one of the Government's witnesses. Defendant unsuccessfully argues that the claims were asserted in his initial brief and the documents attached are necessary to illustrate the Government's inconsistencies and insufficient evidentiary support. The Court grants the Government's motion to strike, and finds that we cannot consider the newly raised claims or additional documents for purposes of this appeal.
58

As a general rule, this Court does not entertain issues raised for the first time in an appellant's reply brief. United States v. Crozier, 259 F.3d 503, 517 (6th Cir.2001) (citing Bendix Autolite Corp. v. Midwesco Enters., Inc., 820 F.2d 186, 189 (6th Cir.1987)). In fact "`[c]ourt decisions have made it clear that the appellant cannot raise new issues in a reply brief; he can only respond to arguments raised for the first time in appellee's brief.'" Id. (quoting United States v. Jerkins, 871 F.2d 598, 602 n. 3 (6th Cir.1989)).
59

Defendant claims that Addendum 3 to his reply brief is necessary for the Court to adequately assess Defendant's contention that the pieces of evidence pointing to his identification are without merit, and are also in violation of the Federal Rules of Appellate Procedure.3 See Fed. R.App. P. 10(a) (record on appeal consists of "original papers and exhibits filed in the district court ..."); see also Fed. R.App. P. 10(e) (dictating the procedure for correcting or modifying the record on appeal). Defendant's Addendum 3 contains the notes of Dr. Sydnor upon his examination of the Government's exhibit # 6, which is the transfer roster of guards from the Trawniki training camp to the Flossenburg Concentration camp, bearing Defendant's name, birth date, and birth place. Defendant sets forth no evidentiary support establishing that these notes were before the district court, nor is there evidence that they are even admissible documents. This Court, therefore, is under no obligation to consider the notes. United States v. Johnson, 584 F.2d 148, 156 n. 18 (6th Cir.1978) ("It is the responsibility of appellants to insure inclusion in the record of all trial materials upon which they intend to rely on appeal.").
60

Moreover, Defendant's substantive claims questioning the accuracy of (1) the Government's exhibit # 6; and (2) the perjury allegation made upon the Government's witness Gideon Epstein, are asserted for the first time in Defendant's reply brief and are, therefore, beyond the scope of our review. Crozier, 259 F.3d at 517. Furthermore, Defendant cannot raise allegations in the eleventh hour, without evidentiary or legal support, as" `issues adverted to [on appeal] in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived....'" Id. (quoting United States v. Layne, 192 F.3d 556, 566 (6th Cir.1999)). Therefore, we will grant the Government's motion to strike the Defendant's Reply Brief.
61

For the reasons set forth above, we will AFFIRM the district court's order.

(Footnotes:)

1

The six cases are referred to as "Demjanjuk [number of case, as presented in the list]."
2

In first Tennessee, this Court grappled with a then unresolved issue surrounding the interpretation of Fed.R.Evid. 702 and its Daubert analysis as applied to non-scientific expert testimony. First Tennessee, 268 F.3d at 333-35 (emphasis added). This Court, in Jones, recognized that the specific factors utilized in Daubert may be of limited utility in the context of non-scientific expert testimony, and if Daubert's framework were to be extended outside of the scientific realm, many types of relevant and reliable expert testimony that derived substantially from practical experience would be excluded. 107 F.3d at 1158. In Jones, this Court suggested that some of a forensic document examiners' duties are more practical in character, rather than scientific, but left open the question as to whether other specific duties by forensic document examiners such as the analysis of ink, ribbon, dye or the determination of water soaked documents are based on scientific knowledge. Id. at

1157-58, n. 10. However, in Berry v. City of Detroit, this Court followed Daubert's analytical framework when assessing the reliability of proposed non-scientific expert testimony. 25 F.3d 1342, 1350 (6th Cir.1994). Subsequently, the Supreme Court answered in Kumho Tire Co., Ltd. v. Carmichael, 526 U.S. 137, 119 S.Ct. 1167, 143 L.Ed.2d 238 (1999), reaffirming Daubert's central holding that a trial judge's "gatekeeper" function applies to all expert testimony regardless of the category. Nevertheless, this issue is only raised for clarity as neither party has asserted that a different standard should be utilized based on a classification of the type of testimony Dr. Sydnor offers.
3

Defendant originally alleged that Addendum 2 to Defendant's reply brief on appeal should also be considered by this Court; however, in Defendant's reply to the Government's Motion to Strike, he abandoned that claim, and only requests that Addendum 3 be fully considered

(End footnotes)

Discussion and Questions

1. List any two ways that an individual may obtain United States citizenship.

2. List any two ways that a United States Citizen may lose his citizenship.

3. How many years does it take to naturalize if one is married to a U.S. Citizen?

4. How many years does it take to naturalize if one has not obtained permanent residency through marriage to a U.S. Citizen?