

**AMERICAN IMMIGRATION LAWYERS ASSOCIATION
USCIS CHICAGO FIELD OFFICE
QUESTIONS FOR JANUARY 25, 2017 MEETING
101 W. CONGRESS PARKWAY
CHICAGO, IL 60605**

1. Expedited Naturalization Interview/Oath Ceremony

If an N-400 Applicant has a child who is about to turn 18 is there a mechanism with which to request an expedited Naturalization interview or Oath Ceremony? What kind of turn around for the response can be expected? Are there any other situations which would warrant expedited processing?

You may submit a request for expedited processing in writing to the District Director with a copy to the Field Office Director. Efforts are made to review expedite requests within a 48 hour period following receipt, but the time required for processing may vary, depending on file availability and other factors. Any other requests for expedited processing, for example requests based on humanitarian reasons, are considered on a case by case basis. For additional information see the expedite criteria at <https://www.uscis.gov/forms/expedite-criteria>.

2. Submission of Income Tax Returns vs. Income Tax Transcripts

- a. Please explain which applications require submission of income tax returns.
- b. Are there instances where tax transcripts are preferred over a copy of income tax returns to support an application?
- c. What would justify an officer's request for actual income tax transcripts issued by Internal Revenue Service?
- d. How does the issue of overdue taxes and current payment plan compliance by a naturalization applicant affect a showing of good moral character?

It is not clear if this question concerns all possible types of applications filed with USCIS or if it is limited to naturalization applications.

Income tax returns may be requested in order to determine if an applicant is eligible for the benefit sought. Tax returns can be relevant to establish residency, good moral character, non-payment of taxes, marital status, and/or other relevant facts.

There may be situations where a tax return is not sufficient to adjudicate an application, and the officer may request tax transcripts. For example, a copy of a return may not establish that the return was timely filed and/or that all taxes were paid, while a transcript does establish those things.

A naturalization applicant who fails to file tax returns or pay his or her taxes may be precluded from establishing good moral character (GMC). However, an applicant who

did not timely file tax returns or did not pay the appropriate taxes may be able to establish GMC by submitting a letter from the tax authority indicating that: (1) The applicant has filed the appropriate forms and returns; and (2) The applicant has paid the required taxes, or has made arrangements for payment. These cases are considered on a case by case basis.

3. **Derogatory Information Disclosure**

Under 8 CFR 103.2(b)(16)(i), if a decision adverse to the individual is based on derogatory information, and the individual is unaware that the information is being considered, the officer must advise the individual of this information and offer him or her an opportunity to rebut it before the decision is rendered. Is it standard operating procedure to wait until a NOID is issued to bring up the derogatory information or are ISOs able to bring up the information during an interview?

An ISO may bring derogatory information to an applicant's attention during an interview, if the ISO is aware of the information at that time.

4. **Selective Service Registration**

N-400 instructions require Selective Service registration for males over 26 years, whereas the application indicates registration is only required for males between ages 26 and 31 years of age.

When does your office require a status information letter from Selective Service and an affidavit explaining why an applicant did not register?

The Form N-400 at p.16, question 44(C)(2) states that an applicant who is 26 to 31 years of age (29 years of age if the applicant is filing under INA §319(a)) who did not register with the Selective Service must attach a statement explaining why the applicant did not register, and provide a status information letter from the Selective Service. Further guidance can be found in the Policy Manual at Vol. 12, Part D, Ch.7(B).

5. **INA 204(I) Procedure**

Section 204(I), of the INA which was enacted on October 28, 2009 provides that certain beneficiaries remain eligible to have their petitions and related applications approved notwithstanding the death of the petitioner. Prior to the enactment of 204(I), the petition was automatically terminated at the time of the death of the petitioner. If the petition was terminated prior to the enactment of Section 204(I) on October 28, 2009 does your office require a 290b (Motion to reopen) filed to reopen and reinstate the terminated petition before filing the adjustment of status of application or can we request that the petition be reinstated at the time of the adjudication of the adjustment?

INA 204(I) does not require USCIS to reopen or reconsider any decision denying a petition or application, if the denial had already become final before October 28, 2009.

For a case denied before October 28, 2009, an applicant may file (with proper fee) an untimely motion to reopen the petition, adjustment application, or waiver application that was denied, if INA 204(1) allows approval of a still pending petition or application. (See Policy Manual, Vol.7, Part A, Ch.8, for more information.)

6. **I-601 Waiver Procedures**

When an I-601 waiver is approved by the District Office in conjunction with an I-485, is an approval notice for the I-601 issued along with the I-485 approval notice?

USCIS would generate and mail a Form I-797, Notice of Action specific to the application or petition approved.

7. **NSEERS Regulations Withdrawn**

Given that the NSEERS regulations have recently been withdrawn, will USCIS still consider a failure to register for NSEERS as a negative discretionary factor in adjudicating benefits?

A willful failure to comply with NSEERS registration provisions may be cited as a discretionary ground for denying an application in cases where an individual must establish that he or she merits the favorable exercise of USCIS's discretion in order to receive the benefit sought.

8. **Probation during statutory period and Good Moral Character for Naturalization applicants**

The regulations set forth in 8 CFR 316.10(c)(1) hold that probation during the statutory period does not prevent a finding of good moral character, but that it is a factor that can be considered.

Where an applicant for Naturalization was convicted prior to the statutory period, yet probation period ends during the statutory period, what is the district office's position regarding good moral character?

When determining good moral character officers review the regulations set forth in 8 CFR § 316.10(a)(2) which states the following:

In accordance with Section 101(f) of the Act, the Service shall evaluate claims of good moral character on a case-by-case basis taking into account the elements enumerated in this section and the standards of the average citizen in the community of residence. The Service is not limited to reviewing the applicant's conduct during the five years immediately preceding the filing of the application, but may take into consideration, as a basis for its determination, the applicant's conduct and acts at any time prior to that period, if the conduct of the applicant during the statutory period does not reflect that

there has been reform of character from an earlier period or if the earlier conduct and acts appear relevant to a determination of the applicant's present moral character.

9. I-751 Interviews

Please confirm that during an interview on Form I-751, an applicant is at liberty to amend the petition to add additional bases, rather than filing a new application with the Service Center.

While the applicant is required to state all applicable grounds on the Form I-751 filed with USCIS (with the exception of the spousal/parental abuse waiver), the failure to do so at the time of filing may be cured by amending the form at the time of interview.

10. FDNS

In the case of a FDNS matter that has been referred to the local office for investigation and interview:

- a. What is the process for the referral?

Interviewing officers send referrals to FDNS after consultation with their supervisor.

- b. Are the beneficiaries / petitioners advised of the investigation?

No.

- c. Is an interview conducted by a local FDNS officer(s)?

FDNS Officers may or may not carry out an investigation depending on the case.

- d. After the report from the local FDNS Officer is provided to the service center, what is the process?

Questions regarding Service Center processes should be directed to the Service Centers.

- e. If a notice of intent to revoke is issued and responded to, how long will the service center take to make a determination?

Questions regarding Service Center processes should be directed to the Service Centers.

- f. Do they notify the local FDNS Office of the decision?

FDNS generally does not receive notification of decisions.