

PART L – REVOCATION OF NATURALIZATION

Chapter 1: Purpose and Background

A. Purpose

Revocation of naturalization is sometimes referred to as “denaturalization.” Unlike most other immigration proceedings that USCIS handles in an administrative setting, revocation of naturalization can only occur in federal court.

A person’s naturalization can be revoked either by civil proceeding or pursuant to a criminal conviction. For civil revocation of naturalization, the United States Attorney’s Office must file the revocation of naturalization actions in Federal District Court.¹ For criminal revocation of naturalization, the U.S. Attorney’s Office files criminal charges in Federal District Court.²

The government holds a high burden of proof when attempting to revoke a person’s naturalization. For civil revocation of naturalization, the burden of proof is clear, convincing, and unequivocal evidence which does not leave the issue in doubt.³ For criminal revocation of naturalization the burden of proof is the same as for every other criminal case, proof beyond a reasonable doubt.

USCIS refers cases for civil revocation of naturalization when there is sufficient evidence to establish that the person is subject to one of the grounds of revocation.

The general grounds for civil revocation of naturalization are:

- Illegal procurement of naturalization; or
- Concealment of a material fact or willful misrepresentation.

Another ground for revocation of naturalization exists in cases where the person naturalized under the military provisions. In those cases, the person may also be subject to revocation of naturalization if he or she is discharged under other than honorable conditions before serving honorably for five years.

B. Background

On February 14, 2001, a District Court issued a nationwide injunction based on a finding that USCIS has no statutory authority to administratively revoke naturalization.⁴ A person’s naturalization can only be revoked after a final order in a judicial proceeding to revoke his or her naturalization.⁵ During a revocation of naturalization proceeding, all related documentation from the A-file is subject to discovery.

¹ See [INA 340\(a\)](#).

² A criminal conviction under [18 U.S.C. 1425](#) results in automatic revocation of naturalization under [INA 340\(e\)](#).

³ See *Kungys v. United States*, 485 U.S. 759, 767 (1988).

⁴ See Order Granting Order for Permanent Injunction, *Gorbach v. Reno*, 2001 WL 34145464 (February 14, 2001) (Entering order pursuant to *Gorbach v. Reno*, 219 F.3d 1087 (9th Cir. 2000)).

⁵ See [INA 340\(a\)](#).

C. Difference between Revocation and Cancellation of Certificate

USCIS is authorized to cancel any Certificate of Citizenship or Certificate of Naturalization in cases where USCIS considers that the certificate itself was obtained or created illegally or fraudulently.⁶ Cancellation of a certificate under this provision only cancels the certificate and does not affect the citizenship status of the person in whose name the certificate was issued.

If someone was unlawfully naturalized or misrepresented or concealed facts during the naturalization process, civil or criminal proceedings must be instituted to revoke the naturalization and the status of the person as a citizen. Once the naturalization is revoked, the court also cancels the person's Certificate of Naturalization.

The main difference between cancellation and revocation proceedings is that cancellation only affects the document, not the person's underlying status. For this reason, cancellation is only effective against persons who are not citizens, either because they have not complied with the entire naturalization process or because they did not acquire citizenship under law, but who nonetheless have evidence of citizenship which was fraudulently or illegally obtained.

Where USCIS has affirmatively granted naturalization to a person, that person is a citizen unless and until that person's citizenship is revoked.⁷ Revocation, therefore, is appropriate when:

- The person filed an Application for Naturalization ([Form N-400](#));
- The person appeared at the naturalization interview;
- The naturalization application was approved; and
- The person took the Oath of Allegiance for naturalization.

By contrast, a person who illegally obtained a Certificate of Naturalization without going through the naturalization process, and was therefore never naturalized by USCIS, is not a citizen of the United States. While the person has a certificate as evidence of U.S. citizenship, the certificate in and of itself, does not confer the status of citizenship.

In such cases, USCIS can initiate proceedings to cancel the Certificate of Naturalization.⁸ Because the person holding this certificate did not obtain citizenship based on a USCIS process, the person maintains whatever immigration status he or she had.

D. Legal Authorities

- [INA 340](#); [8 CFR 340](#) – Revocation of naturalization
- [INA 342](#); [8 CFR 342](#) – Administrative cancellation of certificates, documents, or records

⁶ See [INA 342](#). See [Part K, Certificates of Citizenship and Naturalization, Chapter 5, Cancellation of Certificate of Citizenship or Naturalization](#).

⁷ The revocation must have been pursuant to [INA 340\(e\)](#) or [18 U.S.C. 1425](#).

⁸ See [INA 342](#).

Chapter 2: Grounds for Revocation of Naturalization

In general, a person is subject to revocation of naturalization on the following grounds:

A. Person Procures Naturalization Illegally

A person is subject to revocation of naturalization if he or she procured naturalization illegally. Procuring naturalization illegally simply means that the person was not eligible for naturalization in the first place. Accordingly, any eligibility requirement for naturalization that was not met can form the basis for an action to revoke the naturalization of a person. This includes the requirements of residence, physical presence, lawful admission for permanent residence, good moral character, and attachment to the U.S. Constitution.⁹

Discovery that a person failed to comply with any of the requirements for naturalization at the time the person became a U.S. citizen renders his or her naturalization illegally procured. This applies even if the person is innocent of any willful deception or misrepresentation.¹⁰

B. Concealment of Material Fact or Willful Misrepresentation¹¹

1. Concealment of Material Fact or Willful Misrepresentation

A person is subject to revocation of naturalization if there is deliberate deceit on the part of the person in misrepresenting or failing to disclose a material fact or facts on his or her naturalization application and subsequent examination.

In general, a person is subject to revocation of naturalization on this basis if:

- The naturalized U.S. citizen misrepresented or concealed some fact;
- The misrepresentation or concealment was willful;
- The misrepresented or concealed fact or facts were material; and
- The naturalized U.S. citizen procured citizenship as a result of the misrepresentation or concealment.¹²

This ground of revocation includes omissions as well as affirmative misrepresentations. The misrepresentations can be oral testimony provided during the naturalization interview or can include information contained on the application submitted by the applicant. The courts determine whether the misrepresented or concealed fact or facts were material. The test for materiality is whether the misrepresentations or concealment had a tendency to affect the decision. It is not necessary that the information, if disclosed, would have precluded naturalization.¹³

⁹ See [INA 316](#).

¹⁰ See [INA 340\(a\)](#).

¹¹ See [INA 340\(a\)](#). See *Kungys v. United States*, 485 U.S. 759, 767 (1988). See *United States v. Nunez-Garcia*, 262 F. Supp.2d 1073 (C.D. Cal. 2003) *United States v. Reve*, 241 F. Supp.2d 470 (D. N.J. 2003). See *United States v. Ekpin*, 214 F. Supp.2d 707 (S.D. Tex. 2002). See *United States v. Tarango-Pena*, 173 F. Supp.2d 588 (E.D. Tex. 2001).

¹² See *Kungys v. United States*, 485 U.S. 759, 767 (1988).

¹³ See *Kungys v. United States*, 485 U.S. 759, 767 (1988).

2. Membership or Affiliation with Certain Organizations

A person is subject to revocation of naturalization if the person becomes a member of, or affiliated with, the Communist party, other totalitarian party, or terrorist organization within five years of his or her naturalization.¹⁴ In general, a person who is involved with such organizations cannot establish the naturalization requirements of having an attachment to the Constitution and of being well-disposed to the good order and happiness of the United States.¹⁵

The fact that a person becomes involved with such an organization within five years after the date of naturalization is prima facie evidence that he or she concealed or willfully misrepresented material evidence that would have prevented the person's naturalization.

C. Other than Honorable Discharge before Five Years of Honorable Service after Naturalization

A person is subject to revocation of naturalization if:

- The person became a United States citizen through naturalization on the basis of honorable service in the U.S. armed forces;¹⁶
- The person subsequently separates from the U.S. armed forces under other than honorable conditions; and
- The other than honorable discharge occurs before the person has served honorably for a period or periods aggregating at least five years.¹⁷

Chapter 3: Effects of Revocation of Naturalization

A. Effective Date of Revocation of Naturalization

The revocation of a person's U.S. citizenship obtained through naturalization is effective as of the original date of naturalization.¹⁸ The person returns to his or her immigration status before becoming a U.S. citizen as of the date of naturalization shown on the person's Certificate of Naturalization.

B. Cancellation of Certificate of Naturalization

If a court revokes a person's U.S. citizenship obtained through naturalization, the court enters an order revoking the person's naturalization and cancelling the person's Certificate of Naturalization. In such cases, the person must surrender his or her Certificate of Naturalization. Once USCIS obtains the court's order revoking

¹⁴ See [INA 313](#) and [INA 340\(c\)](#).

¹⁵ See [INA 316\(a\)\(3\)](#). See [Part D, General Naturalization Requirements](#).

¹⁶ See [INA 328\(a\)](#). See [INA 329\(a\)](#). See [Part I, Military Members and their Families](#).

¹⁷ See [INA 328\(f\)](#) and [INA 329\(c\)](#).

¹⁸ See [INA 340\(a\)](#).

citizenship and cancelling the certificate, USCIS updates its records, including electronic records, and notifies the Department of State of the person's revocation of naturalization. All cases relating to cancellation of certificates should be coordinated through the USCIS OCC office with jurisdiction.¹⁹

C. Effects of Revocation on Citizenship of Certain Spouses and Children²⁰

1. General Effects of Person's Revocation on Citizenship of Spouse or Child

In general, certain spouses and children of persons who naturalize may become U.S. citizens through their spouses or parents' citizenship. A spouse may become a U.S. citizen through the special spousal provisions for naturalization.²¹ A child residing in the United States or abroad may become a U.S. citizen through his or her parent's naturalization.²² In general, the spouse or child of a person whose citizenship has been revoked cannot become a U.S. citizen on the basis that he or she is the spouse or child of that person.²³

In addition, the citizen spouse or citizen child of a person whose citizenship has been revoked may lose his or her citizenship upon the parent or spouse's revocation of naturalization. This depends on the basis of the revocation, and in some cases, on whether the spouse or child resides in the United States at the time of the revocation.

For example, the citizenship of a spouse or child who became a United States citizen through the naturalization of his or her parent or spouse is not lost if the revocation was based on illegal procurement of naturalization. The spouse or child's citizenship may be lost, however, if the revocation was based on other grounds (see below).

In cases where the spouse or child loses his or her citizenship, the spouse or child loses any right or privilege of U.S. citizenship which he or she has, may have, or may acquire through the parent or spouse's naturalization. The spouse or child returns to the status that he or she had before becoming a U.S. citizen.²⁴

2. Citizenship of Spouse or Child is Lost if Revocation for Concealment or Misrepresentation

The spouse or child of a person whose U.S. citizenship is revoked loses his or her U.S. citizenship at the time of revocation in cases where:

- The spouse or child became a United States citizen through the naturalization of his or her parent or spouse whose citizenship has been revoked; and

¹⁹ See [Part K, Certificates of Citizenship and Naturalization, Chapter 5, Cancellation of Certificate of Citizenship or Naturalization](#).

²⁰ USCIS counsel should be contacted in all cases involving possible loss of citizenship by spouses or children of persons whose naturalization has been revoked.

²¹ See [INA 319\(a\)](#) and [INA 319\(b\)](#). See [Part G, Spouses of U.S. Citizens](#).

²² See [INA 320](#) and [INA 322](#). See [Part H, Children of U.S. Citizens](#).

²³ See *Rosenberg v. United States*, 60 F.2d 475 (3rd Cir. 1932).

²⁴ Officers should consult with local USCIS OCC counsel in any cases involving a spouse's or child's revocation of citizenship under this provision.

- The parent or spouse's citizenship was revoked on the ground that his or her naturalization was procured by concealment of a material fact or by willful misrepresentation.²⁵

This provision applies regardless of whether the spouse or child is residing in the United States or abroad at the time of the revocation of naturalization.²⁶

3. Citizenship of Spouse or Child Residing Abroad is Lost if Revocation on Certain Grounds

The spouse or child of a person whose U.S. citizenship is revoked may lose his or her U.S. citizenship if the spouse or child is residing outside of the United States at the time of revocation.²⁷ This applies if the revocation was based on becoming a member of certain organizations after naturalization or for separating from the military under less than honorable conditions before serving honorably for five years.

The spouse or child of a person whose U.S. citizenship is revoked under these sections may lose his or her U.S. citizenship at the time of revocation in cases where:

- The spouse or child became a United States citizen through the naturalization of his or her parent or spouse whose citizenship has been revoked;
- The spouse or child resided outside of the United States at the time of revocation; and
- The parent or spouse's citizenship was revoked on the basis that:
 - The person became involved with the Communist party, other totalitarian party, or terrorist organization within five years of his or her naturalization;²⁸ or
 - The person naturalized on the basis of service in the U.S. armed forces but separated from the military under other than honorable conditions before serving honorably for a period or periods totaling at least five years.²⁹

The spouse or child's loss of citizenship under this provision does not apply if the spouse or child was residing in the United States at the time of revocation.³⁰

²⁵ See [INA 340\(a\)](#) and [INA 340\(d\)](#).

²⁶ See [INA 340\(d\)](#).

²⁷ See [INA 340\(d\)](#).

²⁸ See [INA 313](#) and [INA 340\(c\)](#). See [Part D, General Naturalization Requirements](#).

²⁹ See [INA 328\(f\)](#) and [INA 329\(c\)](#). See [Part I, Military Members and their Families](#).

³⁰ See [INA 340\(d\)](#).