HOW TO SUCCESSFULLY ADMINISTRATIVELY APPEAL YOUR NATURALIZATION DENIAL

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I. Introduction

While the best-case scenario would be for United States Citizenship and Immigration Services (USCIS) to approve a person's naturalization application, receiving a denial after a naturalization interview is not the end of the road. If USCIS denies the naturalization application, persons can seek a USCIS hearing to appeal the denial by submitting form N-336 (informally known as an administrative appeal). Although the process is simple, many do not take advantage of this process.

Since USCIS' 2018 policy to issue Notices to Appear (NTA) when certain naturalization applications are denied, seeking an administrative appeal can be especially important now in order to have another bite out of the naturalization apple, and possibly avoid receiving an NTA.[1] At the same time, if clients are at risk of receiving an NTA under USCIS' new policy, and they have not received one by the time the application is denied, clients must assess whether appealing would increase their chances of receiving an NTA by shedding more light on their case. For more information on USCIS' policy on issuing NTAs for certain naturalization applications, see our practice advisory titled, *Representing Naturalization Clients in the Wake of USCIS's New NTA Memo*.[2]

In this practice advisory, we will go over recent trends in naturalization applications and administrative appeals, common reasons why naturalization applications are denied, and provide an overview of the administrative appeal process with tips on how to succeed.

II. Naturalization Application and Hearing Approval and Denials

As shown in the tables below, between fiscal years 2014 and 2018, USCIS received between 594,173 and 986,412 applications for naturalization. Out of the total number of applications received, each year USCIS denied anywhere between 50,070 and 92,631.

What's troubling is that although USCIS allows persons to administratively appeal a denial, most applicants do not take advantage of this process because they believe that appealing is difficult. As you can see, only about 6% of naturalization denials are administratively appealed, even though more than half of N-336 applications are generally approved annually. Thus, at times, it can be very beneficial for an applicant to submit an administrative appeal.

N-400 Applications Received and Denied By USCIS

Year	N-400 Applications Received	N-400 Applications Denied
2014[3]	594,173	50,070
2015[4]	782,975	75,760
2016[5]	972,153	86,021
2017[6]	986,412	83,176
2018[7]	837,423	92,631

N-336 Applications Received and Approved By USCIS

Year	N-336 Applications Received	N-336 Applications Approved
2014[8]	3,307	1,846
2015[9]	4,300	2,367
2016[10]	4,851	2,706
2017[11]	D[12]	2,115
2018[13]	10,675	2,577

A. Common Reasons Why N-400s are Denied and How to Avoid Them

Many of the reasons why USCIS denies naturalization applications can be avoided by adequately preparing and screening clients ahead of time. In this section, we take some time to provide tips on how practitioners can avoid common reasons for denials.

This list is not exhaustive, but by properly screening and preparing ahead of time, practitioners can avoid a naturalization denial. If you want more information about naturalization application denials and eligibility, see the ILRC's Naturalization Manual, *Naturalization and U.S. Citizenship, The Essential Legal Guide*.[14]

1. Reason for Denial: Failure to Pass the English or Civics Tests

The most common reason for receiving a denial is that the applicant failed to pass either the English or Civics (History and Government) exams. Luckily, applicants are afforded a second chance to pass either or both tests if they fail the first time.[15] The USCIS website provides many materials covering the tests, such as flash cards and practice tests. Moreover, there are various community organizations that provide free or low-cost classes to help applicants prepare for these tests.

2. Reason for Denial: Failure to Properly Obtain Lawful Permanent Resident Status

Another common reason that naturalization applications are denied is that the applicant did not properly obtain lawful permanent resident status in the first place. At the naturalization stage, USCIS officers can assess whether applicants were initially eligible for permanent resident status. For this reason, it is important for practitioners to thoroughly screen applicants and ensure that applicants properly obtained their resident status and that they did not commit fraud when they obtained it. This is especially important because of USCIS' new policy to issue Notices to Appear for certain denied naturalization applications.[16]

3. Reason for Denial: Failure to Properly Maintain Lawful Permanent Resident Status

Relatedly, USCIS can deny the application if the applicant is unable to prove that they have maintained lawful permanent resident status. In other words, USCIS can find that the applicant abandoned their status. Although there is no formula to conclude that applicants have abandoned their permanent resident status, USCIS looks at various factors and can ask

about any trips taken abroad since becoming a permanent resident, addresses where the applicant or family members have lived, employers and schools attended, and other information to make an individualized assessment about whether applicants have abandoned their status. Importantly, although the current N-400 form only asks the applicant to list some of this information in relation to the past five years, some USCIS officers ask about information beyond five years during the naturalization interview. For this reason, it is important to look closely at any factors that can raise red flags for abandonment of lawful permanent resident status.[17]

4. Reason for Denial: Failure to Establish Continuous Residence or Physical Presence

Applicants must generally establish five years of continuous residence in the U.S. and thirty months of physical presence preceding the filing of the naturalization application (or three-year continuous residence and eighteen months of physical presence if applying as the spouse of a U.S. citizen). Generally, any trips that are more than a year will disrupt continuous residence. If applicants take a trip for more than six months and less than one year, USCIS will presume that the applicant broke continuous residence. This means that the applicant can overcome the presumption by providing evidence such as showing that the applicant did not terminate employment in the United States nor obtained employment while abroad, that the applicant's immediate family remained in the United States, or that the applicant retained full access to their United States abode.[18] If, however, the applicant was abroad for more than a year, USCIS will generally treat the absence as an automatic disruption of continuous residence.[19]

5. Reason for Denial: Failure to Establish Good Moral Character

In general, applicants for naturalization must show that they have been, and continue to be, persons of good moral character during the five-year period (or three-year period if applying as the spouse of a U.S. citizen) immediately preceding their application for naturalization and up to the time of the Oath of Allegiance. Importantly, conduct prior to the five-year (or three-year) period may also impact whether the applicant meets the requirement. USCIS officers should take a totality of the circumstances approach to weigh both favorable and unfavorable factors and assess whether a person is of good moral character. For this reason, practitioners should evaluate the severity of any unfavorable factors, such as any contact that the person has had with the criminal legal system and highlight as many positive factors as possible. Practitioners should also assess whether post-conviction relief is available to applicants who were convicted of crimes in order to clear such criminal records. Additionally, practitioners should determine if the applicant is deportable.

B. Typical Denial Process

If USCIS denies the naturalization application, they must do so within 120 days after the initial interview.[20] Moreover, USCIS' regulations state that the applicant must be served with a written notice that outlines the reasons why USCIS denied the naturalization application.[21] If an applicant fails the English and or Civics tests for the first time, USCIS will inform the applicant of their ability to retake either or both tests.

This written notice must clearly state why the application was denied, the law that applies to this finding of ineligibility, and the legal conclusions reached by the USCIS adjudicator in making the decision to deny the application.[22]

Importantly, the written notice must also inform the applicant that they have a right to either accept the decision or to request a hearing before an immigration officer (administrative appeal).[23]

III. The Appeal Process

Naturalization applicants are afforded the right to request an administrative appeal hearing under the Immigration and Nationality Act.[24] Many practitioners, however, believe that the administrative appeal process is difficult when that is not the case, or they simply do not have any experience filing appeals. In fact, unlike seeking judicial review, you do not need to be an attorney to help prepare an administrative appeal for naturalization.[25] Generally, applicants can be represented

by many qualified individuals, including attorneys, accredited representatives, law students and law graduates not yet admitted to the bar, and any reputable person of good moral character.[26]

If the applicant receives a notice of denial, the practitioner has 30 days from the date of the denial to request the hearing (or 33 days if USCIS mailed the notice).[27] Untimely filed requests for administrative appeals will be rejected by USCIS and treated as motions to reopen or reconsider if the applicant meets the requirements for these motions.[28] USCIS will also reject improperly filed request, such as a request filed by an attorney or representative without submitting a G-28.[29] Both an improperly or untimely filed request will result in the filing fee being forfeited without any refund.[30]

To request the appeal, practitioners must submit form N-336 along with the current filing fee.[31] If the practitioner submits a timely request, USCIS will schedule a review hearing within a reasonable time, not to exceed 180 days from the date when the appeal is filed.[32] Moreover, the appeal will be with an immigration officer other than the officer who conducted the original examination or who rendered the determination upon which the hearing is based.[33] The new officer assigned must be classified at a grade level equal to or higher than the grade of the officer who made the initial examination of the naturalization application.[34]

During the appeal hearing, practitioners may bring forward any new evidence relevant to the application. Any briefs, written statements, or additional evidence may be submitted with the request for the administrative appeal or at the time the hearing is held.[35] This includes evidence that the practitioner did not originally include in the initial application. The reviewing officer will have broad discretion to assess how the denied application will be re-considered.[36] For instance, the officer may examine the applicant and affirm or re-determine the original decision in whole or in part.[37] The officer may also conduct a full *de novo* hearing or may use a less formal review as he or she “deems reasonable and in the interest of justice.”[38]

A. Filling Out the N-336

In Part 1 of the application, write out the name, address, contact information, and date of birth of the applicant whose citizenship application was denied, and the Alien Registration number, which can be found on the applicant’s green card. If the applicant has ever applied for an immigration benefit through USCIS’ online filing system, the applicant may have a USCIS Online Account Number. If so, include this number in Part 1 as well.

Part 2 deals with information connected to the naturalization application denial. In this section, write out the N-400 receipt number, which can be found in the I-797C Notice of Action document that USCIS sent out. In this section, you also need to state the date of the N-400 denial notice and the USCIS office that issued the N-400 denial notice.

In Part 3, the practitioner will fill out the applicant’s biographic information.

Part 4 deals with the reasons why you are requesting the administrative appeal hearing. If the practitioner thinks that they will need more space or wants to submit separate documents, such as briefs, written statements, or other additional evidence, they can write “See Attached” in Part 4. To increase your client’s odds of being approved, the ILRC suggests that practitioners submit written statements and additional evidence proving the applicant qualifies for naturalization.

IV. Filing a New Naturalization Application as an Alternative

In some cases, it might make more sense to file a new N-400 application instead of seeking an appeal. Here are some examples of when it might make sense to submit a new naturalization application:

- Finding the applicant to be lacking good moral character, USCIS denied the naturalization application because the applicant had an arrest for a minor crime four years and 10 months ago. In order to be eligible for naturalization, the applicant must show that they have been, and continues to be, a person of good moral

character during the five-year period immediately preceding their naturalization application and up to the time of the Oath of Allegiance.[39] Denials based on lack of good moral character are usually case-specific, and practitioners may want to assess whether it would make a difference to file a new N-400 application instead of requesting an appeal. In this case, if the applicant waits a few months, the minor crime will be outside of the five-year period for good moral character and it might be better to file a new N-400 application rather than appeal the denial. Each case is different, and practitioners must do a separate analysis for each person.

- USCIS denied the naturalization application because the applicant did not meet the physical presence or continuous residence requirements. In order to be eligible for naturalization, applicants must show that they were physically present for thirty months within the five-year period before applying (or eighteen months within the three-year period before applying in the case of one applying as the spouse of a U.S. citizen). Relatedly, applicants must also show that they resided continuously in the U.S. for five years before applying (three years for those applying as the spouse of a U.S. citizen). In such cases, it might make more sense for applicants to wait until they have met the physical presence or continuous residence requirement and then submit a new N-400 application rather than appeal.

V. Conclusion

In sum, applicants and practitioners should not give up when USCIS denies a naturalization application. As outlined in this practice advisory, the process to seek a hearing (administrative appeal) is available and is often a worthwhile process. Although applicants and practitioners should make every effort to prepare for their original naturalization examination in order to avoid a denial, practitioners should consider appealing whenever it does not make sense to submit a new naturalization application. By taking the steps outlined in this practice advisory, you can greatly increase your chances of getting an approved naturalization application.

End Notes

[1] Although USCIS can issue an NTA prior to denying the naturalization application, *Yith v.* Nielson, a recent Ninth Circuit case, clarified that USCIS may still be able to adjudicate a naturalization application if the person was not placed in removal proceedings "pursuant to a warrant of arrest." For more information on this case, see ILRC's Practice Advisory *Yith v. Nielson and Defense Strategies for Naturalization Applicants in Removal Proceedings*. https://www.ilrc.org/yith-v-nielson-and-defense-strategies-naturalization-applicants-removal-proceedings.

[2] ILRC's Practice Advisory *Representing Naturalization Clients in the Wake of USCIS's New NTA Memo*, at https://www.ilrc.org/representing-naturalization-clients-wake-usciss-new-nta-memo.

[3] U.S. Citizenship and Immigration Services, Number of N-400 Applications for Naturalization by category of Naturalization, Case Status, and USCIS Field Office Location January 1 – December 31 (2014).

[4] U.S. Citizenship and Immigration Services, Number of N-400 Applications for Naturalization by category of Naturalization, Case Status, and USCIS Field Office Location January 1 – December 31 (2015).

[5] U.S. Citizenship and Immigration Services, Number of N-400 Applications for Naturalization by category of Naturalization, Case Status, and USCIS Field Office Location January 1 – December 31 (2016).

[6] U.S. Citizenship and Immigration Services, Number of N-400 Applications for Naturalization by category of Naturalization, Case Status, and USCIS Field Office Location January 1 – December 31 (2017).

[7] U.S. Citizenship and Immigration Services, Number of N-400 Applications for Naturalization by category of Naturalization, Case Status, and USCIS Field Office Location January 1 – December 31 (2018).

[8] U.S. Citizenship and Immigration Services, Number of N-400 Applications for Naturalization by category of Naturalization, Case Status, and USCIS Field Office Location January 1 – December 31 (2014).

[9] U.S. Citizenship and Immigration Services, Number of N-400 Applications for Naturalization by category of Naturalization, Case Status, and USCIS Field Office Location January 1 – December 31 (2015).

[10] U.S. Citizenship and Immigration Services, Number of N-400 Applications for Naturalization by category of Naturalization, Case Status, and USCIS Field Office Location January 1 – December 31 (2016).

[11] U.S. Citizenship and Immigration Services, Number of N-400 Applications for Naturalization by category of Naturalization, Case Status, and USCIS Field Office Location January 1 – December 31 (2017).

[12] Data for 2017 was withheld.

[13] U.S. Citizenship and Immigration Services, Number of N-400 Applications for Naturalization by category of Naturalization, Case Status, and USCIS Field Office Location January 1 – December 31 (2018).
[14]Visit https://www.ilrc.org/naturalization-and-us-citizenship to purchase our manual.
[15] 8 CFR § 312.5(a).
[16] *See supra* note 2.
[17] *See* ILRC's Practice Advisory *Absences and Continuous Residence*, at https://www.ilrc.org/practice-advisory-absences-and-continuous-residence.
[18] 8 CFR 316.5(c)(1)(i).
[19] 8 CFR 316.5(c)(1)(ii).
[20] 8 CFR § 335.3(a).
[21] 8 CFR § 336.1(a).
[22] 8 CFR § 336.1(b).
[23] *Id*.
[24] INA § 336(a).
[25] *See* 8 CFR 292.1 (listing persons entitled to represent clients).
[26] *Id*.
[27] 8 CFR § 336.2(a); 8 CFR 103.8(b).
[28] 8 CFR § 336.2(c)(2)(ii).
[29] 8 CFR § 336.2(c)(1).
[30] 8 CFR § 336.2.
[31] Visit www.uscis.gov for the latest N-336 Form and filing fee.
[32] 8 CFR § 336.2(b).
[33] *Id*.
[34] *Id*.
[35] *See* Form N-336 Instructions.
[36] 8 CFR § 336.2(b).
[37] *Id*.
[38] *Id*.
[39] USCIC P-M 12.F https://www.uscis.gov/policy-manual/volume-12-part-f.

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