

into between the Service and the Administrative Office of United States Courts.

[56 FR 50502, Oct. 7, 1991, as amended at 58 FR 49916, Sept. 24, 1993; 60 FR 6652, Feb. 3, 1995]

§ 339.3 Relinquishment of naturalization jurisdiction.

Whenever a court relinquishes naturalization jurisdiction, the clerk of court shall, within ten days following the date of relinquishment, furnish the district director having administrative jurisdiction over the place in which the court is located, a certified copy of the order of court relinquishing jurisdiction. A representative of the Service shall thereafter examine the naturalization records in the office of the clerk of court and shall bind and lock them. The clerk of court shall return all unused forms and blank certificates of naturalization to the district director with his monthly report on Form N-4.

[22 FR 9825, Dec. 6, 1957]

§ 339.4 Binding of naturalization records.

Whenever a volume of petitions for naturalization, applications to take the oath of allegiance, declarations of intention, orders of court, or other documents affecting or relating to the naturalization of persons is completed, it shall be bound and locked by the clerk of court.

[22 FR 9825, Dec. 6, 1957]

§ 339.5 Recordkeeping.

The maintenance of records and submission of reports under this chapter may be accomplished by either electronic or paper means.

[56 FR 50502, Oct. 7, 1991]

PART 340—REVOCATION OF NATURALIZATION

Sec

340.1 Reopening of a naturalization application by a district director pursuant to section 340(h) of the Act.

340.2 Revocation proceedings pursuant to section 340(a) of the Act.

AUTHORITY: 8 U.S.C. 1103, 1443.

§ 340.1 Reopening of a naturalization application by a district director pursuant to section 340(h) of the Act.

(a) *Reopening general.* On its own motion, the Service may reopen a naturalization proceeding and revoke naturalization in accordance with this section, if the Service obtains credible and probative evidence which:

(1) Shows that the Service granted the application by mistake; or

(2) Was not known to the Service Officer during the original naturalization proceeding; and—

(i) Would have had a material effect on the outcome of the original naturalization; and

(ii) Would have proven that:

(A) The applicant's application was based on fraud or misrepresentation or concealment of a material fact; or

(B) The applicant was not, in fact, eligible for naturalization.

(b) *Procedure for reopening of naturalization proceedings—(1) Jurisdiction.* The district director under whose jurisdiction the applicant currently resides has jurisdiction to reopen proceedings under this section, except that notice of intent to reopen naturalization proceedings and to revoke naturalization must be served no later than 2 years after the effective date of the order admitting a person to citizenship, as determined under § 337.9 of this chapter. This section applies to any order admitting a person to citizenship with an effective date before, on, or after October 24, 1996.

(2) *Notice of intent to reopen naturalization proceedings and to revoke naturalization.* (i) If the district director determines that reopening a naturalization proceeding is warranted under paragraph (a) of this section, the district director shall prepare a written notice of intent to reopen naturalization proceedings and to revoke naturalization. The notice shall describe in clear and detailed language the grounds on which the district director intends to reopen the proceeding. The notice shall include all evidence which the district director believes warrants reopening of the proceeding. The notice shall advise the applicant of his or her

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right to submit a response to the notice and to request a hearing, as provided in paragraph (b)(3) of this section.

(ii) The Service shall serve the notice of intent to reopen naturalization proceedings and to revoke naturalization upon the applicant by personal service, as described in §103.5a(a)(2) of this chapter. When personal service is accomplished by certified or registered mail, return receipt requested, but the notice is returned as undeliverable, the Service shall serve the notice again, using another one of the methods of personal service described in §103.5a(a)(2) of this chapter.

(3) *Applicant's opportunity to respond and to request hearing.* (i) Within sixty (60) days of service of the notice of intent to reopen naturalization proceedings and to revoke naturalization, the applicant may submit a response to the Service. The response may include any statements and/or additional evidence the applicant wishes to present in response to the proposed grounds for reopening.

(ii) The applicant may request a hearing on the notice of intent to reopen naturalization proceedings and to revoke naturalization before an immigration officer authorized to review naturalization applications under sections 310 and 335 of the Act. The applicant must submit a written request for a hearing together with any statements and/or additional evidence within sixty (60) days of service of this notice. The Service shall schedule a requested hearing as soon as practicable.

(4) *Withdrawal of application or failure to respond.* (i) Upon receipt of the notice of intent to reopen naturalization proceedings and to revoke naturalization, the applicant may submit a written statement admitting the facts which the district director alleges as grounds for reopening, and withdrawing the application for naturalization. The applicant shall sign the statement under oath or affirmation or shall certify the truth of the statement under penalty of perjury.

(ii) If the applicant fails to submit a response to the notice of intent to reopen naturalization proceedings and to revoke naturalization within the period specified in paragraph (b)(3) of this

section, that failure to respond will be deemed an admission of the stated grounds for reopening and revoking naturalization.

(5) *Right to counsel.* The applicant may be represented at any time during reopening proceedings by an attorney or other representative qualified under part 292 of this chapter.

(6) *Burden of proof.* Upon service of a notice of intent to reopen naturalization proceedings and to revoke naturalization, the applicant bears the burden of persuading the district director that, notwithstanding the evidence described in the notice, the applicant was eligible for naturalization at the time of the order purporting to admit the applicant to citizenship.

(c) *Record of reopened proceedings.* The record shall include, but is not limited to:

(1) The applicant's application for naturalization;

(2) The Service's notice of intent to reopen naturalization proceedings and to revoke naturalization with proof of service to the applicant;

(3) All evidence forming the basis for reopening the naturalization application;

(4) The applicant's statement and/or evidence in response to the Service's notice and in support of the application; and

(5) The record of the hearing, if a hearing was held.

(d) *Decision.* (1) The district director shall render a written decision on the reopened naturalization application within 180 days of service of the notice of intent to reopen naturalization proceedings and to revoke naturalization. The decision shall consist of findings of fact, conclusions of law, and a final determination on the naturalization application. Notice of decision shall be served on the applicant or his or her attorney or representative, if applicable.

(2) *Referral for revocation suit.* Rather than reopening a naturalization decision and revoking naturalization, the district director shall refer a case for revocation proceedings under §340.2 if:

(i) The applicant's answer to the notice of intent to reopen a naturalization proceeding and to revoke naturalization and any additional evidence

that the applicant submits raises a genuine factual issue about the propriety of the applicant's naturalization, so that resolution of the factual issue will depend on the credibility of witnesses testifying under oath and subject to cross-examination; or

(ii) After rendering a decision on the merits, the district director determines that the applicant had adequately rebutted the allegations made in the notice of intent to reopen naturalization proceedings and to revoke naturalization, but the district director thereafter obtains additional evidence of at least one of the grounds set forth in paragraph (a) of this section.

(e) *Appeals.* (1) The applicant may appeal an adverse decision under paragraph (d) of this section to the Office of Examinations, Administrative Appeals Unit. Any appeal shall be filed initially with the district director within thirty (30) days after service of the notice of decision. Such appeal shall be filed in accordance with §103.1 and §103.7 of this chapter, by filing the appeal on Form I-290B with the fee. Appeals received after the 30-day period may be subject to dismissal for failure to timely file.

(2) If, within 45 days of the filing of a notice of appeal, the district director determines that the materials filed in support of the appeal adequately rebut the grounds for reopening, the district director may reconsider the decision to reopen the naturalization application and to revoke naturalization, and affirm the original decision naturalizing the applicant. In such a case, it is not necessary for the district director to forward the case to the Administrative Appeals Unit. If, after the district director affirms an original naturalization grant under this paragraph, the Service obtains additional evidence of the grounds set forth in paragraph (a) of this section, the Service may not bring a new motion to reopen the naturalization proceeding and to revoke naturalization, but may seek to revoke the applicant's naturalization only pursuant to section 340(a) of the Act.

(f) *Judicial review.* If a decision of the Office of Examinations, Administrative Appeals Unit, is adverse to the applicant, the applicant may seek judicial

review in accordance with section 310 of the Act.

(g) *Effect of final decision of denial upon applicant's status.* (1) A final decision to reopen a naturalization proceeding and to revoke naturalization shall be effective as of the date of the original order purporting to admit the applicant to citizenship. The order purporting to admit the applicant to citizenship shall then have no legal effect.

(2) A district director's decision to reopen naturalization proceedings and to revoke naturalization will be final, unless the applicant seeks administrative or judicial review within the period specified by law or regulation.

(3) When a decision to reopen naturalization proceedings and to revoke naturalization becomes final, the district director shall order the applicant to surrender his or her certificate of naturalization. The district director shall then cancel the certificate of naturalization, and shall also notify the Department of State of the revocation of naturalization.

(4) Notwithstanding the service of a notice of intent to reopen naturalization proceedings and to revoke naturalization, the applicant shall be considered to be a citizen of the United States until a decision to reopen proceedings and deny naturalization becomes final.

(h) *Applicant's request for reopening or modification of application.* After having been granted naturalization and administered the oath of allegiance and renunciation, an applicant may move that the Service reopen his or her naturalization application for the purpose of amending the application in accordance with §334.5 of this chapter.

[61 FR 55553, Oct. 28, 1996]

§ 340.2 Revocation proceedings pursuant to section 340(a) of the Act.

(a) *Recommendations for institution of revocation proceedings.* Whenever it appears that any grant of naturalization may have been illegally procured or procured by concealment of a material fact or by willful misrepresentation, the facts shall be reported to the district director having jurisdiction over the naturalized person's last known place of residence in the United States. If the district director is satisfied that