

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

a prima facie case exists for revocation pursuant to section 340(a) of the Act, he or she shall report the facts in writing to the Regional Director, with a recommendation regarding the institution of revocation proceedings.

(b) *Recommendation for criminal prosecution.* If it appears to the district director that a case described in paragraph (a) of this section or one in which a final decision has been reached under §340.1(g) is amenable to criminal penalties under 18 U.S.C. 1425 for unlawful procurement of citizenship or naturalization, the district director may present such facts to the appropriate United States Attorney for possible criminal prosecution.

(c) *Reports.* It shall be the responsibility of the district director to advise the Service office that originated the information upon which the revocation inquiry is based about the progress of the investigation, and report the findings of the inquiry as soon as practicable.

[61 FR 55554, Oct. 28, 1996]

## PART 341—CERTIFICATES OF CITIZENSHIP

Sec.

- 341.1 Application.
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- 341.3 Depositions.
- 341.4 Surrender of immigration documents.
- 341.5 Report and recommendation.
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- 341.7 Issuance of certificate.

AUTHORITY: 66 Stat. 173, 238, 254, 264, as amended; 8 U.S.C. 1103, 1409(c), 1443, 1444, 1448, 1452, 1455; 8 CFR part 2.

SOURCE: 30 FR 5472, Apr. 16, 1965, unless otherwise noted.

### § 341.1 Application.

*Form N-600.* An application for a certificate of citizenship by or in behalf of a person who claims to have acquired United States citizenship under section 309(c) or to have acquired or derived United States citizenship as specified in section 341 of the Act shall be submitted on Form N-600 in accordance with the instructions thereon, accompanied by the fee specified in §103.7(b)(1) of this chapter. The application shall be supported by documentary and other evidence essential to es-

tablish the claimed citizenship, such as birth, adoption, marriage, death, and divorce certificates.

(Approved by the Office of Management and Budget under control number 1115-0018)

[52 FR 19719, May 27, 1987]

### § 341.2 Examination upon application.

(a) *Personal appearance of applicant and parent or guardian—(1) When testimony may be omitted.* An application received at a Service office having jurisdiction over the applicant's residence may be processed without interview if accompanied by one of the following:

(i) A Department of State Form FS-240 (Report of Birth Abroad of a Citizen of the United States);

(ii) An unexpired United States passport issued initially for a full five/ten-year period to the applicant as a citizen of the United States, or

(iii) The applicant's parent(s)' naturalization certificate(s).

(2) *Testimony required.* Each applicant, when notified to do so, shall appear in person before an officer for examination under oath or affirmation upon the application. A person under 18 years of age must have a parent or guardian apply, appear, and testify for the applicant, unless one is unavailable and the district director is satisfied that the applicant is old enough to provide reliable testimony. The same rule will apply for incompetent applicants. At the examination the applicant and the acting parent or guardian, if necessary, shall present testimony and evidence pertinent to the claim to citizenship and shall have the right to review and rebut any adverse evidence on file, and to cross-examine witnesses called by the Government.

(b) *Witness—(1) Personal appearance.* A witness shall be called to testify under oath or affirmation at the district director's option only if that person's testimony is needed to prove a particular point, and only if alternative proof is unavailable or more difficult to produce than is the witness.

(2) *Substitution and waiver.* When testimony is deemed necessary by the district director and the presentation of the person or persons through whom citizenship is claimed is precluded by