

§ 336.2

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mail to the applicant's last known address, or upon the attorney or representative of record as provided in part 292 of this chapter.

§ 336.2 Hearing before an immigration officer.

(a) The applicant, or his or her authorized representative, may request a hearing on the denial of the applicant's application for naturalization by filing a request with the Service within thirty days after the applicant receives the notice of denial under § 336.1.

(b) Upon receipt of a timely request for a hearing, the Service shall schedule a review hearing before an immigration officer, within a reasonable period of time not to exceed 180 days from the date upon which the appeal is filed. The review shall be with an officer other than the officer who conducted the original examination under section 335 of the Act or who rendered the Service determination upon which the hearing is based, and who is classified at a grade level equal to or higher than the grade of the examining officer. The reviewing officer shall have the authority and discretion to review the application for naturalization, to examine the applicant, and either to affirm the findings and determination of the original examining officer or to redetermine the original decision of the Service in whole or in part. The reviewing officer shall also have the discretion to review any administrative record which was created as part of the examination procedures as well as Service files and reports. He or she may receive new evidence or take such additional testimony as may be deemed relevant to the applicant's eligibility for naturalization or which the applicant seeks to provide. Based upon the complexity of the issues to be reviewed or determined, and upon the necessity of conducting further examinations with respect to essential naturalization requirements, such as literacy or civics knowledge, the reviewing immigration officer may, in his or her discretion, conduct a full *de novo* hearing or may utilize a less formal review procedure, as he or she deems reasonable and in the interest of justice.

(c) *Improperly filed request for hearing*—(1) *Request for hearing filed by a person or entity not entitled to file.*

(i) *Rejection without refund of filing fee.* A request for hearing filed by a person or entity who is not entitled to file such a request must be rejected as improperly filed. In such a case, any filing fee that the Service has accepted will not be refunded.

(ii) *Request for hearing by attorney or representative without proper Form G-28.* If a request for hearing is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitling that person to file the request for hearing, the appeal will be considered as improperly filed. In such a case, any filing fee that the Service has accepted will not be refunded regardless of the action taken. The reviewing official shall ask the attorney or representative to submit Form G-28 to the official's office within 15 days of the request. If Form G-28 is not submitted within the time allowed, the official may, on his or her own motion, under § 103.5(a)(5)(i) of this chapter, make a new decision favorable to the affected party without notifying the attorney or representative. The request for hearing may be considered properly filed as of its original filing date if the attorney or representative submits a properly executed Form G-28 entitling that person to file the request for hearing.

(2) *Untimely request for hearing*—(i) *Rejection without refund of filing fee.* A request for hearing which is not filed within the time period allowed must be rejected as improperly filed. In such a case, any filing fee that the Service has accepted will not be refunded.

(ii) *Untimely request for hearing treated as motion.* If an untimely request for hearing meets the requirements of a motion to reopen as described in § 103.5(a)(2) of this chapter or a motion to reconsider as described in § 103.5(a)(3) of this chapter, the request for hearing must be treated as a motion, and a decision must be made on the merits of the case.

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