

publishes or circulates, or that possesses for the purpose of publishing or circulating, any subversive written or printed matter, or any written or printed matter advocating communism.

§ 313.3 Statutory exemptions.

(a) *General.* An applicant shall bear the burden of establishing that classification in one of the categories listed under § 313.2 is not a bar to naturalization.

(b) *Exemptions.* Despite membership in or affiliation with an organization covered by § 313.2, an applicant may be naturalized if the applicant establishes that such membership or affiliation is or was:

(1) Involuntary;

(2) Without awareness of the nature or the aims of the organization, and was discontinued if the applicant became aware of the nature or aims of the organization;

(3) Terminated prior to the attainment of age sixteen by the applicant, or more than ten years prior to the filing of the application for naturalization;

(4) By operation of law; or

(5) Necessary for purposes of obtaining employment, food rations, or other essentials of living.

(c) *Awareness and participation—(1) Exemption applicable.* The exemption under paragraph (b)(2) of this section may be found to apply only to an applicant whose participation in the activities of an organization covered under § 313.2 was minimal in nature, and who establishes that he or she was unaware of the nature of the organization while a member of the organization.

(2) *Exemptions inapplicable.* The exemptions under paragraphs (b)(4) and (b)(5) of this section will not apply to any applicant who served as a functionary of an organization covered under § 313.2, or who was aware of and believed in the organization's doctrines.

(d) *Essentials of living—(1) Exemption applicable.* The exemption under paragraph (b)(5) of this section may be found to apply only to an applicant who can demonstrate:

(i) That membership in the covered organization was necessary to obtain

the essentials of living like food, shelter, clothing, employment, and an education, which were routinely available to the rest of the population—for purposes of this exemption, higher education will qualify as an essential of living only if the applicant can establish the existence of special circumstances which convert the need for higher education into a need as basic as the need for food or employment; and,

(ii) That he or she participated only to the minimal extent necessary to receive the essential of living.

(2) *Exemption inapplicable.* The exemption under paragraph (b)(5) of this section will not be applicable to an applicant who became a member of an organization covered under 313.2 to receive certain benefits:

(i) Without compulsion from the governing body of the relevant country; or

(ii) Which did not qualify as essentials of living.

§ 313.4 Procedure.

In all cases in which the applicant claims membership or affiliation in any of the organizations covered by § 313.2, the applicant shall attach to the application a detailed written statement describing such membership or affiliation, including the periods of membership or affiliation, whether the applicant held any office in the organization, and whether membership or affiliation was voluntary or involuntary. If the applicant alleges that membership or affiliation was involuntary, or that one of the other exemptions in § 313.3 applies, the applicant's statement shall set forth the basis of that allegation.

PART 315—PERSONS INELIGIBLE TO CITIZENSHIP: EXEMPTION FROM MILITARY SERVICE

Sec.

315.1 Definitions.

315.2 Ineligibility and exceptions.

315.3 Evidence.

315.4 Exemption treaties.

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

SOURCE: 56 FR 50483, Oct. 7, 1991, unless otherwise noted.

§ 315.1

8 CFR Ch. I (1-1-04 Edition)

§ 315.1 Definitions.

As used in this part:

Exemption from military service means either:

(1) A permanent exemption from induction into the Armed Forces or the National Security Training Corps of the United States for military training or military service; or

(2) The release or discharge from military training or military service in the Armed Forces or in the National Security Training Corps of the United States.

Induction means compulsory entrance into military service of the United States whether by conscription or, after being notified of a pending conscription, by enlistment.

Treaty national means an alien who is a national of a country with which the United States has a treaty relating to the reciprocal exemption of aliens from military training or military service.

§ 315.2 Ineligibility and exceptions.

(a) *Ineligibility.* Except as provided in paragraph (b) of this section, any alien who has requested, applied for, and obtained an exemption from military service on the ground that he or she is an alien shall be ineligible for approval of his or her application for naturalization as a citizen of the United States.

(b) *Exceptions.* The prohibition in paragraph (a) of this section does not apply to an alien who establishes by clear and convincing evidence that:

(1) At the time that he or she requested an exemption from military service, the applicant had no liability for such service even in the absence of an exemption;

(2) The applicant did not request or apply for the exemption from military service, but such exemption was automatically granted by the United States government;

(3) The exemption from military service was based upon a ground other than the applicant's alienage;

(4) In claiming an exemption from military service, the applicant did not knowingly and intentionally waive his or her eligibility for naturalization because he or she was misled by advice from a competent United States government authority, or from a competent authority of the government of

his or her country of nationality, of the consequences of applying for an exemption from military service and was, therefore, unable to make an intelligent choice between exemption and citizenship;

(5) The applicant applied for and received an exemption from military service on the basis of alienage, but was subsequently inducted into the Armed Forces, or the National Security Training Corps, of the United States; however, an applicant who voluntarily enlists in and serves in the Armed Forces of the United States, after applying for and receiving an exemption from military service on the basis of alienage, does not satisfy this exception to paragraph (a) of this section;

(6) Prior to requesting the exemption from military service:

(i) The applicant was a treaty national who had served in the armed forces of the country of which he or she was a national; however, a treaty national who did not serve in the armed forces of the country of nationality prior to requesting the exemption from military service does not satisfy this exception to paragraph (a) of this section;

(ii) The applicant served a minimum of eighteen months in the armed forces of a nation that was a member of the North Atlantic Treaty Organization at the time of the applicant's service; or

(iii) The applicant served a minimum of twelve months in the armed forces of a nation that was a member of the North Atlantic Treaty Organization at the time of the applicant's service, provided that the applicant applied for registration with the Selective Service Administration after September 28, 1971; or

(7) The applicant is applying for naturalization pursuant to section 329 of the Act.

§ 315.3 Evidence.

(a) The records of the Selective Service System and the military department under which the alien served shall be conclusive evidence of whether the alien was relieved or discharged from liability for military service because he or she was an alien.

(b) The regulations of the Selective Service Administration and its predecessors will be controlling with respect to the requirement to register for, and liability for, service in the Armed Forces of the United States.

§ 315.4 Exemption treaties.

(a) The following countries currently have effective treaties providing reciprocal exemption of aliens from military service:

Argentina (Art. X, 10 Stat. 1005, 1009, effective 1853)
 Austria (Art. VI, 47 Stat. 1876, 1880, effective 1928)
 China (Art. XIV, 63 Stat. 1299, 1311, effective 1946)
 Costa Rica (Art. IX, 10 Stat. 916, 921, effective 1851)
 Estonia (Art. VI, 44 Stat. 2379, 2381, effective 1925)
 Honduras (Art. VI, 45 Stat. 2618, 2622, effective 1927)
 Ireland (Art. III, 1 US 785, 789, effective 1950)
 Italy (Art. XIII, 63 Stat. 2255, 2272, effective 1948)
 Latvia (Art. VI, 45 Stat. 2641, 2643, effective 1928)
 Liberia (Art. VI, 54 Stat. 1739, 1742, effective 1938)
 Norway (Art. VI, 47 Stat. 2135, 2139, effective 1928)
 Paraguay (Art. XI, 12 Stat. 1091, 1096, effective 1859)
 Spain (Art. V, 33 Stat. 2105, 2108, effective 1902)
 Switzerland (Art. II, 11 Stat. 587, 589, effective 1850)
 Yugoslavia (Serbia) (Art. IV, 22 Stat. 963, 964, effective 1881)

(b) The following countries previously had treaties providing for reciprocal exemption of aliens from military service:

El Salvador (Art. VI, 46 Stat. 2817, 2821, effective 1926 to February 8, 1958)
 Germany (Art. VI, 44 Stat. 2132, 2136, effective 1923 to June 2, 1954)
 Hungary (Art. VI, 44 Stat. 2441, 2445, effective 1925 to July 5, 1952)
 Thailand (Siam) (Art. 1, 53 Stat. 1731, 1732, effective 1937 to June 8, 1968)

PART 316—GENERAL REQUIREMENTS FOR NATURALIZATION

Sec.

316.1 Definitions.
 316.2 Eligibility.
 316.3 Jurisdiction.
 316.4 Application; documents.

316.5 Residence in the United States.

316.6–316.9 [Reserved]

316.10 Good moral character.

316.11 Attachment to the Constitution; favorable disposition towards the good order and happiness.

316.12 Applicant's legal incompetency during statutory period.

316.13 [Reserved]

316.14 Adjudication—examination, grant, denial.

316.15–316.19 [Reserved]

316.20 American institutions of research, public international organizations, and designations under the International Immunities Act.

AUTHORITY: 8 U.S.C. 1103, 1181, 1182, 1443, 1447; 8 CFR part 2.

SOURCE: 56 FR 50484, Oct. 7, 1991, unless otherwise noted.

§ 316.1 Definitions.

As used in this part:

Application means the form specified in § 499.1 of this chapter on which an applicant requests consideration for naturalization.

Service district means the geographical area over which an office of the Immigration and Naturalization Service has jurisdiction, as defined in § 100.4 of this chapter.

§ 316.2 Eligibility.

(a) *General.* Except as otherwise provided in this chapter, to be eligible for naturalization, an alien must establish that he or she:

- (1) Is at least 18 years of age;
- (2) Has been lawfully admitted as a permanent resident of the United States;
- (3) Has resided continuously within the United States, as defined under § 316.5, for a period of at least five years after having been lawfully admitted for permanent residence;
- (4) Has been physically present in the United States for at least 30 months of the five years preceding the date of filing the application;
- (5) Immediately preceding the filing of an application, or immediately preceding the examination on the application if the application was filed early pursuant to section 334(a) of the Act and the three month period falls within the required period of residence under section 316(a) or 319(a) of the Act, has resided, as defined under § 316.5, for at