

Department of Homeland Security

§ 335.10

§ 335.6 Failure to appear for examination.

(a) An applicant for naturalization shall be deemed to have abandoned his or her application if he or she fails to appear for the examination pursuant to § 335.3 and fails to notify the Service of the reason for non-appearance within 30 days of the scheduled examination. Such notification shall be in writing and contain a request for rescheduling of the examination. In the absence of a timely notification, the Service may administratively close the application without making a decision on the merits.

(b) An applicant may reopen an administratively closed application by submitting a written request to the Service within one (1) year from the date the application was closed. Such reopening shall be without additional fee. The date of the request for reopening shall be the date of filing of the application for purposes of determining eligibility for naturalization.

(c) If the applicant does not request reopening of an administratively closed application within one year from the date the application was closed, the Service will consider that application to have been abandoned, and shall dismiss the application without further notice to the applicant.

[58 FR 49914, Sept. 24, 1993, as amended at 60 FR 6651, Feb. 3, 1995]

§ 335.7 Failure to prosecute application after initial examination.

An applicant for naturalization who has appeared for the examination on his or her application as provided in § 335.2 shall be considered as failing to prosecute such application if he or she, without good cause being shown, either failed to excuse an absence from a subsequently required appearance, or fails to provide within a reasonable period of time such documents, information, or testimony deemed by the Service to be necessary to establish his or her eligibility for naturalization. The Service shall deliver notice of all such requests for appearance or supporting evidence, in writing, to the applicant either in person or to the applicant's last known address. In the event that the applicant fails to respond within 30 days of the date of notification, the Service shall

adjudicate the application on the merits pursuant to § 336.1 of this chapter.

[58 FR 49914, Sept. 24, 1993, as amended at 60 FR 6651, Feb. 3, 1995]

§ 335.8 [Reserved]

§ 335.9 Transfer of application.

(a) *Request for transfer of application.* An applicant who, after filing an application for naturalization, changes residence, or plans to change residence within three months, may request, in writing, that a pending application be transferred from the current Service office to the Service office having jurisdiction over the applicant's new place of residence. The request shall be submitted to the office where the application was originally filed. The request shall include the applicant's name, alien registration number, date of birth, complete current address including name of the county, complete address at the time of filing the application, reason for the request to transfer the application, and the date the applicant moved or intends to move to the new jurisdiction.

(b) *Discretion to authorize transfer.* The district director may authorize the transfer of an application for naturalization after such application has been filed. In the event that the district director does not consent to the transfer of the application, the application shall be adjudicated on its merits by the Service office retaining jurisdiction. If upon such adjudication the application is denied, the written decision pursuant to § 336.1 of this chapter shall also address the reason(s) for the Service's decision not to consent to the transfer request.

[56 FR 50498, Oct. 7, 1991, as amended at 58 FR 49914, Sept. 24, 1993]

§ 335.10 Withdrawal of application.

An applicant may request, in writing, that his or her application, filed with the Service, be withdrawn. If the district director consents to the withdrawal, the application will be denied without further notice to the applicant and without prejudice to any future application. The withdrawal by the applicant will constitute a waiver of any review pursuant to part 336 of this chapter. If the district director does not

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consent to the withdrawal, the application for naturalization shall be adjudicated on its merits.

[56 FR 50498, Oct. 7, 1991]

§ 335.11 Preliminary examinations on petitions for naturalization filed prior to October 1, 1991.

(a) *When held.* Continued preliminary examinations shall be held on petitions for naturalization filed prior to October 1, 1991 when it is determined that further testimony is needed for the designated examiner to prepare a recommendation to the court consistent with § 335.12. The examinations shall be open to the public.

(b) *Conduct of examination.* Preliminary examinations shall be held before an employee of the Service designated by the district director to conduct such proceedings and to make findings and recommendations thereon to the naturalization court, who shall be known as the “designated examiner.” The petitioner and his or her witnesses and the witnesses produced on behalf of the Government shall be present. The designated examiner shall, prior to the commencement of the examination, make known to the petitioner his or her official capacity and that of any other officer of the Service who may participate in the proceeding. The designated examiner shall have before him or her the entire record of the preliminary interrogation, including the petitioner’s application to file a petition for naturalization (Form N-400) and any other evidence or data that may be relevant or material to the inquiry. All testimony taken at the examination shall be under oath or affirmation administered by the designated examiner. The designated examiner may interrogate the petitioner and witnesses produced in behalf of the petitioner or the Government, and present evidence touching upon the petitioner’s admissibility to citizenship. He shall regulate the course of the examination, rule upon applications for the issuance of subpoenas and issue such subpoenas in proper cases, grant or deny continuances, and rule on all objections to the introduction of evidence, which rulings shall be entered on the record. Evidence held by the designated examiner to be inadmissible shall nevertheless be

received into the record subject to the ruling of the court. The petitioner and the Government shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. If the petitioner is not represented by an attorney or representative, the designated examiner shall assist the petitioner in the introduction of all evidence available in his or her behalf. All documentary or written evidence shall be properly identified and introduced into the record as exhibits by number, unless read into the record.

(c) *Assignment of examining officer at preliminary examination.* The district director may in his or her discretion assign an employee of the Service to act as examining officer at the preliminary examination. Such employee shall examine and cross-examine witnesses produced in behalf of the Government or the petitioner and present evidence pertinent to the petitioner’s admissibility to citizenship. The designated examiner may take such part in the interrogation of the petitioner and witnesses and the introduction of evidence as he or she may deem necessary.

(d) *Stenographic reporting of proceedings; mechanical recording equipment.* A stenographer shall be in attendance whenever, in the opinion of the designated examiner, such attendance is desirable, and in every case to which an examining officer is assigned. The stenographer shall record verbatim the entire proceedings, including the oaths administered and rulings on objections, but shall not record arguments in support of objections, or statements made off the record with the consent of the petitioner. The stenographer shall certify that the transcribed minutes constitute a complete and accurate record of the examination. Whenever, in the opinion of the designated examiner the use of mechanical recording equipment in lieu of a stenographer is deemed desirable, the proceedings may be recorded by such equipment.

(e) *Issuance of subpoenas; attendance and mileage fees.* Subpenas requiring the attendance of witnesses or the production of documentary evidence, or both, may be issued by the designated