

### § 342.3

served shall be permitted to appear on behalf of the respondent.

[29 FR 5511, Apr. 24, 1964]

#### **§ 342.3 Allegations admitted; no answer filed; no personal appearance requested.**

If the answer admits all material allegations in the notice, or if no answer is filed within the 60-day period or any extension thereof and no personal appearance is requested within such period or periods, it shall be deemed to authorize the district director, without further notice to respondent, to find the facts to be as alleged in the notice and to cancel the certificate, document, or record. No appeal shall lie from such decision. Written notice of the decision shall be served upon the respondent with demand for surrender of the certificate, document, or record forthwith.

#### **§ 342.4 Answer asserting defense; personal appearance requested.**

If the respondent files an answer within the prescribed period asserting a defense to the allegations in the notice, or requests a personal appearance, with or without an answer, the district director shall designate a naturalization examiner to consider the case. The respondent shall be notified that he may appear in person or through counsel with any witnesses and evidence in defense of the allegations, and shall be informed of the date, time, and place for such appearance.

#### **§ 342.5 Conduct of examination.**

(a) *Authority of naturalization examiner.* The naturalization examiner assigned to consider the case shall have authority to administer oaths or affirmations to respondent and witnesses, issue subpoenas, present and receive evidence, rule upon offers of proof, take or cause depositions or interrogatories to be taken, regulate the course of the examination, take testimony of respondent and witnesses, grant continuances, consider and rule upon objections to the introduction of evidence, make recommendations to the district director as to whether cancellation shall be ordered or the proceedings terminated, and to take any

### 8 CFR Ch. I (1-1-10 Edition)

other action as may be appropriate to the conduct and disposition of the case.

(b) *Assignment of additional officer.* The district director may, in his discretion, assign an officer of the Service to examine and cross-examine the respondent and witnesses and to present evidence pertinent to the case. The naturalization examiner designated under § 342.4 may take such part in the proceedings as he may deem necessary.

(c) *Examination.* The naturalization examiner designated under § 342.4 shall, prior to commencement of the examination, make known to the respondent his official capacity and that of any officer assigned pursuant to paragraph (b) of this section, the nature of the proceedings, his right to representation by counsel, to examine or object to evidence against him, to present evidence in his own behalf, to cross-examine witnesses presented by the Government, and shall read the allegations in the notice to respondent and, if necessary, explain them to him. The respondent shall be asked whether he admits or denies the material allegations in the notice, or any of them, and whether he concedes illegality or fraud. If respondent admits all the material allegations and that the certificate, document, or record was procured by fraud or illegality, and no issue of law or fact remains, the naturalization examiner may determine that fraud or illegality has been established on the basis of the respondent's admissions. The allegations in the notice shall be taken as admitted if respondent, without reasonable cause, fails or refuses to attend or remain in attendance at the examination. The examination shall be recorded verbatim except for statements made off the record with the permission of the naturalization examiner.

(d) *Prior statements.* The naturalization examiner assigned to consider the case may receive in evidence any oral or written statement which is material and relevant to any issue in the case previously made by the respondent or by any other person during any investigation, examination, hearing, trial, proceeding, or interrogation.

[28 FR 209, Jan. 9, 1963, as amended at 32 FR 3340, Feb. 28, 1967]