

§ 335.11

8 CFR Ch. I (1-1-11 Edition)

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

examiner, upon his or her own volition or upon written application of the petitioner or his or her attorney or representative, the examining officer, or the Service. Such written application shall specify, as nearly as may be, the relevance, materiality, and scope of the testimony or documentary evidence sought and show affirmatively that the testimony or documentary evidence cannot otherwise be produced. Subpoenas shall be issued on Form I-138 and due record shall be made of their service. The subpoena may be served by any person over 18 years of age, not a party to the case, designated to make such service by the district director. Mileage and fees for witnesses subpoenaed under this section shall be paid by the party at whose instance the subpoena is issued at rates allowed and under conditions prescribed by the naturalization court in which the petition is pending. Before issuing a subpoena the designated examiner may require a deposit of an amount adequate to cover the fees and mileage involved. If the witness subpoenaed neglects or refuses to testify or produce documentary evidence as directed by the subpoena, the district director shall request the United States Attorney for the proper district to report such neglect or refusal to any court exercising naturalization jurisdiction and to file a motion in such court for an order directing the witness to appear and testify and to produce the documentary evidence described in the subpoena.

(f) *Briefs.* At the conclusion of the preliminary examination the petitioner or his or her attorney or representative, and the examining officer if one was assigned, may submit briefs in support of arguments made or issues raised at the examination.

(g) *Representation by attorney or representative; absence of representative; advice to petitioner.* The petitioner may be represented by an attorney or representative who has filed an appearance in accordance with part 292 of this chapter. If at any stage of the preliminary examination it appears to the designated examiner that he or she may recommend denial of the petition, or granting thereof with the facts to be presented to the court, he or she shall advise the petitioner of his or her right

to be represented by an attorney or representative. A continuance of the examination shall be granted upon the petitioner's motion for the purpose of obtaining an attorney or representative. The petitioner's attorney or representative shall be permitted to be present at all times during the preliminary examination or at any subsequent examinations and the petitioner shall not in any such examination or subsequent examinations be interrogated in the absence of his or her attorney or representative, unless the petitioner waives such appearance. The attorney or a representative shall be permitted to offer evidence to meet any evidence presented or adduced by the Government or the designated examiner. A petitioner who is not represented by an attorney or a representative shall be entitled to all the benefits and the privileges provided for in this section.

[22 FR 9821, Dec. 6, 1957, as amended at 23 FR 2673, Apr. 23, 1958; 45 FR 83195, Dec. 18, 1980; 46 FR 5861, Jan. 21, 1981; 47 FR 10778, Mar. 12, 1982; 56 FR 50498, Oct. 7, 1991]

§ 335.12 Recommendations on petitions for naturalization of the designated examiner and regional administrator; notice.

As soon as practicable after conclusion of the preliminary examination on a petition for naturalization filed prior to October 1, 1991, the designated examiner shall prepare an appropriate recommendation to the court. If the recommendation is for denial, or for granting with the facts to be presented to the court, the designated examiner shall prepare a memorandum summarizing the evidence, and setting forth findings of fact and conclusions of law, and his or her recommendation. No evidence dehors the record or evidence not admissible in judicial proceedings under recognized rules of evidence shall be considered in the preparation of the memorandum. The memorandum shall be submitted before final hearing to the regional operations liaison officer, in those cases or classes of cases designated by him or her, for review and recommendation. If the regional operations liaison officer does not agree with the recommendation of the designated examiner, he or she shall prepare an appropriate memorandum,