

### §316.6

of approval, Form N-472, shall identify the family members so covered.

(iii) An applicant whose Form N-470 application under section 316(b) of the Act has been approved, but who voluntarily claims nonresident alien status to qualify for special exemptions from income tax liability, raises a rebuttable presumption that the applicant has relinquished a claim of having retained lawful permanent resident status while abroad. The applicant's family members who were covered under section 316(b) of the Act and who were listed on the applicant's Form N-472 will also be subject to the rebuttable presumption that they have relinquished their claims to lawful permanent resident status.

(2) *Preservation of residence under section 317 of the Act.* An application for the residence and physical presence benefits of section 317 of the Act to cover any absences from the United States, whether before or after December 24, 1952, shall be submitted to the Service on Form N-470 with the required fee, in accordance with the form's instructions. The application may be filed either before or after the applicant's absence from the United States or the performance of the functions or services described in section 317 of the Act.

(3) *Approval, denial, and appeal.* The applicant under paragraphs (d)(1) or (d)(2) of this section shall be notified of the Service's disposition of the application on Form N-472. If the application is denied, the Service shall specify the reasons for the denial, and shall inform the applicant of the right to appeal in accordance with the provisions of part 103 of this chapter.

[56 FR 50484, Oct. 7, 1991, as amended at 56 FR 50487, Oct. 7, 1991; 58 FR 49913, Sept. 24, 1993; 60 FR 6651, Feb. 3, 1995; 62 FR 10394, Mar. 6, 1997; 76 FR 53798, Aug. 29, 2011]

### §316.6 Physical presence for certain spouses of military personnel.

Pursuant to section 319(e) of the Act, any period of time the spouse of a United States citizen resides abroad will be treated as physical presence in any State or district of the United States for purposes of naturalization under section 316(a) or 319(a) of the Act if, during the period of time abroad,

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the applicant establishes that he or she was:

(a) The spouse of a member of the Armed Forces;

(b) Authorized to accompany and reside abroad with that member of the Armed Forces pursuant to the member's official orders; and

(c) Accompanying and residing abroad with that member of the Armed Forces in marital union in accordance with 8 CFR 319.1(b).

[76 FR 53798, Aug. 29, 2011]

### §§ 316.7-316.9 [Reserved]

### §316.10 Good moral character.

(a) *Requirement of good moral character during the statutory period.* (1) An applicant for naturalization bears the burden of demonstrating that, during the statutorily prescribed period, he or she has been and continues to be a person of good moral character. This includes the period between the examination and the administration of the oath of allegiance.

(2) In accordance with section 101(f) of the Act, the Service shall evaluate claims of good moral character on a case-by-case basis taking into account the elements enumerated in this section and the standards of the average citizen in the community of residence. The Service is not limited to reviewing the applicant's conduct during the five years immediately preceding the filing of the application, but may take into consideration, as a basis for its determination, the applicant's conduct and acts at any time prior to that period, if the conduct of the applicant during the statutory period does not reflect that there has been reform of character from an earlier period or if the earlier conduct and acts appear relevant to a determination of the applicant's present moral character.

(b) *Finding of a lack of good moral character.* (1) An applicant shall be found to lack good moral character, if the applicant has been:

(i) Convicted of murder at any time; or

(ii) Convicted of an aggravated felony as defined in section 101(a)(43) of the Act on or after November 29, 1990.