

properly filed a notice of entry of appearance as attorney or representative entitling that person to file the request for hearing, the appeal will be considered as improperly filed. In such a case, any filing fee will not be refunded regardless of the action taken. The reviewing official will ask the attorney or representative to submit a proper notice of entry within 15 days of the request. If such notice is not submitted within the time allowed, the official may, on his or her own motion, under 8 CFR 103.5(a)(5)(i), make a new decision favorable to the affected party without notifying the attorney or representative. The request for hearing may be considered properly filed as of its original filing date if the attorney or representative submits a properly executed notice entitling that person to file the request for hearing.

(2) *Untimely request for hearing.* (i) *Rejection without refund of filing fee.* A request for hearing which is not filed within the time period allowed must be rejected as improperly filed. In such a case, any filing fee will not be refunded.

(ii) *Untimely request for hearing treated as motion.* If an untimely request for hearing meets the requirements of a motion to reopen as described in 8 CFR 103.5(a)(2) or a motion to reconsider as described in 8 CFR 103.5(a)(3), the request for hearing must be treated as a motion and a decision must be made on the merits of the case.

[76 FR 53802, Aug. 29, 2011]

**§§ 336.3–336.8 [Reserved]**

**§ 336.9 Judicial review of denial determinations on applications for naturalization.**

(a) *General.* The provisions in part 310 of this chapter shall provide the sole and exclusive procedures for requesting judicial review of final determinations on applications for naturalization made pursuant to section 336(a) of the Act and the provisions of this chapter by USCIS on or after October 1, 1991.

(b) *Filing a petition.* Under these procedures, an applicant must file a petition for review in the United States District Court having jurisdiction over his or her place of residence, in accordance with Chapter 7 of Title 5, United

States Code, within a period of not more than 120 days after the USCIS final determination. The petition for review must be brought against USCIS, and service of the petition for review must be made upon DHS and upon the USCIS office where the hearing was held pursuant to 8 CFR 336.2.

(c) *Standard of review.* The review will be *de novo*, and the court will make its own findings of fact and conclusions of law. The court may also conduct, at the request of the petitioner, a hearing *de novo* on the application for naturalization.

(d) *Exhaustion of remedies.* A USCIS determination denying an application for naturalization under section 335(a) of the Act shall not be subject to judicial review until the applicant has exhausted those administrative remedies available to the applicant under section 336 of the Act. Every petition for judicial review shall state whether the validity of the final determination to deny an application for naturalization has been upheld in any prior administrative proceeding and, if so, the nature and date of such proceeding and the forum in which such proceeding took place.

[56 FR 50499, Oct. 7, 1991, as amended at 76 FR 53802, Aug. 29, 2011]

**PART 337—OATH OF ALLEGIANCE**

Sec.

337.1 Oath of allegiance.

337.2 Oath administered by USCIS or EOIR.

337.3 Expedited administration of oath of allegiance.

337.4 When requests for change of name granted.

337.5–337.6 [Reserved]

337.7 Information and assignment of individuals under exclusive jurisdiction.

337.8 Oath administered by the courts.

337.9 Effective date of naturalization.

337.10 Failure to appear for oath administration ceremony.

AUTHORITY: 8 U.S.C. 1103, 1443, 1448; 8 CFR part 2.

**§ 337.1 Oath of allegiance.**

(a) *Form of oath.* Except as otherwise provided in the Act and after receiving notice from the district director that such applicant is eligible for naturalization pursuant to § 335.3 of this