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What Are Your Options When Your Citizenship Application is Denied

Citizenship applications can be denied for many different reasons, such as failure to prove good moral character or failure to maintain continuous physical presence in the United States for the required amount of time. If an application for citizenship is denied, the applicant can appeal the denial and file a request for a hearing or file a new naturalization application.

First, the applicant needs to ascertain the reason for the denial by carefully reading the denial notice from USCIS. What reasons did USCIS give for denying the application? Did they send any Requests for Evidence (RFEs)? Did the applicant respond and submit all the documentation USCIS asked for? Does the applicant currently meet all the eligibility requirements for naturalization? In order to be eligible for naturalization in the United States, the applicant must prove he or she meets the following criteria:

In order to qualify for citizenship, the applicant must

1. Be at least 18 years old at the time of filing;
2. Have been a permanent resident of the United States for at least 5 years (The requirement is only 3 years if the applicant has been married to a US citizen for the past 3 years);
3. Have lived within the state or USCIS district where they claimed residence for at least 3 months prior to filing;
4. Demonstrate physical presence within the United States for at least half of the required years of permanent residence. For example, the applicant should be able to show that he was physically present in the United States for 2.5 years out of 5 years;
5. Demonstrate continuous residence in the United States, meaning the applicant generally should not have spent long stretches of time (6 months or more) overseas;
6. Demonstrate good moral character;
7. Demonstrate an attachment to the principles and ideals of the Constitution;
8. Demonstrate a basic knowledge of United States history and government as well as an ability to read, write, speak and understand basic English; and
9. Be willing to take an oath of allegiance to the United States

Appealing a Citizenship Denial

If the applicant meets these eligibility criteria and believes that the naturalization application was denied in error, or that they can overcome the grounds for denial, they can file a request for a hearing with Form N-336, *Request for a Hearing on a Decision in Naturalization Proceedings*. The applicant must file this form within 30 days of receiving the denial notice or 33 days, if USCIS sent the notice through the mail and the filing fee is \$650.

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Form N-336 must state the reasons the applicant is requesting a hearing. The applicant is also allowed to file a legal brief that states the reasons they are eligible for naturalization, along with any new or additional evidence to support the application. This new evidence may be filed with Form N-336 or the applicant may bring it to the hearing.

Once USCIS has received Form N-336, they are required to schedule a review hearing before an immigration officer within 180 days. At the hearing, the reviewing officer has the authority to uphold the denial of the naturalization application or overturn the original decision and grant the application. The reviewing officer also has the discretion to conduct a full hearing, including asking the applicant to complete an English proficiency exam or civics exam, even if they already successfully completed the exams during the first interview.

Filing a New Citizenship Application After a Denial

Another option is to file a new application for naturalization, using Form N-400. This may be a good option if the applicant has missed the 30 day deadline to appeal the denial of the original application, or if the original application was denied because of missing documentation and it will take the applicant longer than 6 months to locate the appropriate documentation. A person who has had their N-400 denied may file a new N-400 immediately after they receive the denial if they are eligible for naturalization.

The cost to refile the N-400 is \$680, which includes the filing fee and the cost of the biometrics, which must be redone. The processing time for Form N-400 varies between states, but it can take about 5 to 7 months for USCIS to process. Approximate USCIS processing times for different forms, including for Form N-400, can be found at this website:

<https://egov.uscis.gov/cris/processTimesDisplayInit.do>.

There are some though that must wait to refile. People who should wait to refile Form N-400 are those who were denied because of timing issues, such as engaging in illegal gambling during the 5 year statutory period or failing to prove they were physically present in the United States for the required amount of time. If an application was denied because of a timing issue, such as failure to continuously reside in the United States for the required time, the applicant can file a new application once sufficient time has passed for them to prove they have been a continuous resident of the United States for 5 years. If the application was denied because of a bad act within the 5 year statutory period, the applicant can wait 5 years from the date of the bad act and then file a new application, as long as the bad act did not constitute a permanent bar to naturalization.

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Whenever you have a visa denial, you should consult a qualified lawyer.

For more practical or legal advice contact [Scott Legal Services, P.C.](#). We offer services in a number of business areas including, Immigration, New Business set up, Contract review and development and entrepreneurial support. Call 212-223-2964 or email Kelly Weiner at kweiner@legalservicesincorporated.com for a consultation. Ms. Weiner is an associate in our New York office that focuses on immigration law. Ms. Weiner can be reached by calling 212-223-2964.