U.S. Citizenship and Immigration Services

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Memorandum

TO: Field Leadership

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SUBJECT: Conditional Permanent Residents and Naturalization under Section 319(b) of the Act

Revision to *Adjudicator's Field Manual* Chapter 25 (AFM Update AD09-28)

1. Purpose

This memorandum provides field guidance and updates the Adjudicator's Field Manual (AFM) to address circumstances under which an alien who was admitted as a lawful permanent resident on a conditional basis ("conditional permanent resident" or "CPR") pursuant to section 216 of the Immigration and Nationality Act (the Act) may be naturalized under section 319(b) of the Act prior to the removal of the conditions.

This memorandum supplements the guidance provided by the memorandum entitled "Removal of Conditional Resident Status Prior to, or Concurrently with, Adjudication of Form N-400" issued on February 4, 2004.

This memorandum does not apply to CPRs admitted pursuant to section 216 of the Act who are naturalizing under any provision of law other than section 319(b), and does not apply to CPRs admitted pursuant to section 216A of the Act (EB-5 alien entrepreneurs). Although such CPRs may *apply* for naturalization, their applications may not be approved until the conditions on their residence have been removed.

2. Background

Generally, applicants for naturalization are required to establish a certain period of residence and physical presence in the United States.[1] However, Congress recognized that spouses of certain U.S. citizens who are regularly employed abroad, to include spouses of U.S. Armed Forces personnel or other U.S. Government employees stationed abroad, could be precluded from naturalization based on their residence abroad.

Accordingly, as part of the Immigration and Nationality Act of 1952, Congress enacted section 319(b) to protect the interests of such spouses in becoming U.S. citizens. Section 319(b) of the Act permits the spouses of certain U.S. citizens who are regularly stationed abroad to naturalize without having to demonstrate any specific period of residence or physical presence in the United States. Therefore, section 319(b) permits aliens admitted for lawful permanent residence to naturalize immediately after obtaining lawful permanent resident (LPR) status in the United States.

In 1986, Congress enacted the Immigration Marriage Fraud Amendments (IMFA) to combat marriage fraud for purposes of obtaining immigration benefits. Section 216 of the Act, added by IMFA, combats marriage fraud by placing conditions on the permanent residence of any alien spouse or child who obtains (LPR) status by virtue of a marriage to a U.S. citizen or LPR that is less than two years old at the time of admission or adjustment of status.[2]

In order to remove the conditions on their LPR status, CPRs must jointly file with their petitioning spouse a Form I-751, Petition to Remove Conditions on Residence, during the 90-day period immediately preceding the second anniversary of their admission as CPRs, or as otherwise provided in section 216, to establish that the marriage was not entered into for purposes of evading U.S. immigration laws.[3] Failure to establish the bona fides of the marriage, or failure to timely file the petition or otherwise comply with section 216, results in the termination of the alien's LPR status.[4]

Although section 319(b) ensures that eligible spouses of qualifying U.S. citizen employees are not precluded from eligibility for naturalization because of their residence abroad, section 319(b) otherwise requires "compliance with all the requirements of the naturalization laws." This includes the requirement that naturalization applicants demonstrate they have been lawfully admitted for permanent residence "in accordance with all applicable provisions" of the Act as stipulated in section 318 of the Act.

CPRs admitted pursuant to section 216 of the Act who apply for naturalization under section 319(b) must, therefore, comply with the requirements of section 216. Section 216(e) of the Act, which provides that for purposes of naturalization an alien in conditional status "shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence," does not relieve a conditional permanent resident applying for naturalization from the requirements of section 216.

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[1] For example, see sections 316(a) and 319(a) of the Act.
[2] See section 216(g)(1) of the Act.
[3] See section 216(c) and 216(d) of the Act. Also see 8 CFR 216.4.
[4] See section 216(c)(2) and 216(c)(3)(C) of the Act.

Section 216(e) merely ensures that the time spent in the United States as a conditional resident may, after the conditions have been removed, be considered for purposes of establishing the residence and physical presence requirements of the naturalization laws, such as those required by sections 316(a) and 319(a) of the Act.

Therefore, CPRs admitted pursuant to section 216 who seek naturalization under section 319(b) must comply with the requirements of section 216, though such CPRs who naturalize under section 319(b) prior to the 90-day Form I-751 filing period are not required to file Form I-751 for those purposes because they would not be within the designated filing period. However, such applicants must nevertheless establish that the qualifying marriage (1) was entered into in accordance with the laws of the place where the marriage occurred, (2) has not been judicially annulled or terminated, (3) was not entered into for the purpose of procuring an alien's admission as an immigrant, and (4) that no fee or other consideration was given (other than attorney's fees) for filing the immigrant or fiancé(e) visa petition that forms the basis for their admission to the United States.[5]

3. Field Guidance and Adjudicator's Field Manual Update

All USCIS offices are directed to comply with the following guidance. The Adjudicator's Field Manual (AFM) Chapter 25.1 entitled "Immigration Marriage Fraud Amendments of 1986" is amended by revising the subchapter 25.1(k) in its entirety. The revisions read as follows:

25.1 Immigration Marriage Fraud Amendments of 1986

(k) Naturalization Issues Relating to Conditional Residence.

Generally, before approving a naturalization application filed by a conditional permanent resident, the adjudicator should ensure that the applicant has met all of the applicable requirements of section 216 of the Act as evidenced by an approved Form I-751.

Note: There are special circumstances to consider in cases involving conditional permanent residents applying for naturalization under section 319(b) of the Act. See guidance provided in paragraph (2) of subchapter 25.1(k) of this manual.

Additionally, any conditional permanent resident who is otherwise eligible for naturalization under section 329 of the Act (based on military service), **and** who is not required to be lawfully admitted to the United States for permanent residence as provided for in section 329 of the Act, is exempt from all of the requirements of section 216. This is because section 329 does not require certain otherwise eligible applicants to have a lawful admission for permanent residence in order to qualify. See section 329 of the Act. Therefore, these applicants are not required to have an approved Form I-751 before their N-400s are approved.

(1) Treatment of Period under Conditional Status for Purposes of Naturalization.

[5] See sections 216(b)(1) and 216(d)(1)(A) of the Act.

Section 216(e) of the Act provides that for purposes of naturalization an alien in conditional status "shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence."

While this provision ensures that the time spent in the United States as a conditional permanent resident may, after the conditions have been removed, be considered for purposes of establishing the residence and physical presence requirements for naturalization (such as those in section 316(a) and 319(a) of the Act), it does not relieve a conditional permanent resident applying for naturalization from the requirements of section 216. See sections 216(c), 216(d), and 216(e) of the Act. Also see H.R. REP. 99-906, 1986 U.S.C.C.A.N. 5978.

Note: There are special circumstances to consider in cases involving conditional permanent residents applying for naturalization under section 319(b) of the Act. See guidance provided below in paragraph (2) of subchapter 25.1(k) of this manual.

(2) Form I-751 and Form N-400 Issues.

(A) Concurrent Adjudication of Pending Form I-751 and Form N-400.

Because of differences in the adjudication processing times for Form I-751 and Form N-400 and because conditional permanent residents are eligible to *apply* for naturalization (if otherwise eligible) pursuant to 8 CFR 216.1, there may be instances when a conditional permanent resident admitted pursuant to section 216 will apply for naturalization while their Form I-751 is pending.

Unless otherwise provided by the Act, the adjudicator should ensure that the Form I-751 filed by the conditional permanent resident applying for naturalization is adjudicated in accordance with section 216 prior to, or concurrently with, the adjudication of Form N-400. In all cases where a final decision on Form I-751 has been reached, the adjudicator should update MFAS accordingly.

Note: There are special circumstances to consider in cases involving conditional permanent residents who have both a pending Form I-751 and Form N-400 filed under section 329 of the Act. See guidance provided in the introductory paragraphs of subchapter 25.1(k) of this manual.

(i) Form N-400 with Pending Form I-751 at Different USCIS Office.

Generally, a Form N-400 should not be continued to await the final adjudication of a Form I-751 that is pending at a different USCIS office. The adjudicator should conduct the Form N-400 examination as scheduled and should request the pending Form I-751 from the other USCIS office. Once the adjudicator

receives the Form I-751, the adjudicator may adjudicate to completion both the Form N-400 and Form I-751 in accordance with all applicable provisions.

However, while the adjudication of a conditional permanent resident's naturalization application should not be delayed solely because of USCIS processing delays of Form I-751, a pending Form N-400 should not be approved under any circumstances prior to the adjudication of a pending Form I-751, unless otherwise provided by the Act. In all cases where a final decision on Form I-751 has been reached, the adjudicator should update MFAS accordingly.

(ii) Form N-400 Filed under Section 319(a) or 319(b).

In almost all cases, a Form N-400 that is filed while a Form I-751 is pending will have been filed pursuant to section 319(a) or 319(b) of the Act. These provisions require a higher level of evidence of marital union and joint residence than is required for the approval of Form I-751 filed jointly.

If a Form I-751 is pending at the time of the conditional permanent resident's Form N-400 examination, the adjudicator should conduct the examination for naturalization. The adjudicator should ensure that the applicant has established that they are the spouse of the qualifying U.S. citizen and that they are in a bona fide marriage prior to the favorable adjudication of their Form N-400.

If the Form I-751 is in the applicant's A-file and the applicant establishes their eligibility for naturalization under section 319(a) or 319(b), and also established that they have met the requirements under sections 216(b)(1) and 216(d)(1)(A) of the Act (as evidenced by such documentation listed in 8 CFR 216.4(a)(5)), the adjudicator may approve the applicant's Form I-751 and Form N-400 concurrently. See paragraph (2)(A) of subchapter 25.1(k) and subchapter 25.1(e) of this manual.

If the Form I-751 is not in the applicant's A-file, the adjudicator should proceed with the naturalization examination and request the pending Form I-751 from the USCIS office with custody of the petition. However, the applicant's Form N-400 should not be approved until the pending Form I-751 is reviewed and approved based on a determination that the applicant meets the requirements of section 216 of the Act. See paragraph (2)(A)(i) of subchapter 25.1(k) of this manual.

(iii) Form N-400 Filed under Provision Not Requiring Marital Union.

Regardless of whether a Form N-400 is filed under a provision of law that does not require marital union (in contrast to section 319(a) or 319(b)) the adjudicator should request any applicable Form I-751 that is pending prior to the final adjudication of Form N-400. After receipt of the Form I-751, both the Form I-751

and Form N-400 may be concurrently adjudicated to completion as instructed in paragraph (2)(A)(i) of subchapter 25.1(k) of this manual.

(B) Reaching Form I-751 Filing Period while Form N-400 is Pending.

Unless otherwise provided by the Act, any conditional permanent resident admitted pursuant to section 216 who files for naturalization, to include those filing under section 319(b), who reaches the 90-day period for filing Form I-751 prior to the final adjudication of their naturalization application or prior to taking the Oath of Allegiance for naturalization should be instructed to file Form I-751 in accordance with section 216(d)(2) of the Act.

After the conditional permanent resident has properly filed Form I-751, the adjudicator should proceed with the adjudication of the naturalization application in accordance with the guidance provided in paragraph (2)(A) of subchapter 25.1(k) of this manual.

(C) Naturalization under Section 319(b) Prior to Form I-751 Filing Period.

Conditional permanent residents admitted pursuant to section 216 are permitted to naturalize under section 319(b) of the Act, if otherwise eligible for naturalization under section 319(b), prior to filing Form I-751 so long as they have been conditional permanent residents for less than one year and nine months, and have therefore not reached the Form I-751 filing period at the time of the final adjudication of their naturalization application **and** at the time of taking the Oath of Allegiance for naturalization.

Note that applicants for naturalization pursuant to section 319(b) of the Act are not required to establish any specific period of residence or physical presence in the United States. See 8 CFR 319.2 and Chapter 73 of this manual. Therefore, in many cases, a conditional permanent resident who applies for naturalization under section 319(b) of the Act may not yet have reached the Form I-751 filing period when they file their application for naturalization.

Such conditional permanent residents (who seek naturalization under section 319(b) and who have not reached the Form I-751 filing period) must, however, comply with the applicable requirements of section 216 because section 319(b) otherwise requires “compliance with all the requirements of the naturalization laws.” This includes the requirement that naturalization applicants establish they have been lawfully admitted for permanent residence “in accordance with all applicable provisions” of the Act as stipulated in section 318 of the Act.

Accordingly, conditional permanent residents admitted pursuant to section 216 who apply for naturalization under section 319(b) must, therefore, comply with the requirements of section 216, though such applicants who have not reached the 90-day Form I-751 filing period described in section 216(d)(2) of the Act at the time of

their naturalization under section 319(b) should not file Form I-751 because they would not be within the designated filing period.

However, such conditional permanent residents admitted pursuant to section 216 who seek naturalization under section 319(b) prior to the Form I-751 filing period must nevertheless establish, before they may be naturalized under section 319(b), that the qualifying marriage (1) was entered into in accordance with the laws of the place where the marriage occurred; (2) has not been judicially annulled or terminated; (3) was not entered into for the purpose of procuring an alien's admission as an immigrant; and (4) that no fee or other consideration was given (other than attorney's fees) for filing the immigrant or fiancé(e) visa petition that forms the basis for their admission to the United States.

The adjudicator should pay particular attention to issues surrounding the bona fides of the qualifying relationship in such cases and should review the record for documentary evidence of the type required to support an I-751 petition, in addition to the eligibility criteria for naturalization, though the applicant is not required to file Form I-751. See sections 216(b)(1) and 216(d)(1)(A) of the Act. Also see 8 CFR 216.4(a)(5) and subchapter 25.1(e) of this manual.

Under no circumstances can an application for naturalization be approved under section 319(b) of the Act unless the applicant meets their burden of proof of demonstrating compliance with the requirements of section 216 of the Act or as otherwise provided by the guidance in subchapter 25.1(k) of this manual.

Note: If the documentary evidence suggests that there are legitimate concerns that can be properly articulated about the bona fides of the qualifying marital relationship, the adjudicator is reminded that they are authorized to request for further evidence or for the attendance of witnesses, to include the U.S. citizen spouse, as part of the naturalization examination. See section 335(b) of the Act and 8 CFR 335.2(d).

(D) Form I-751 Filed by a Naturalized Citizen.

The requirement to apply for the removal of conditions through the filing of Form I-751 does not apply to conditional permanent residents who were admitted pursuant to section 216 of the Act and who have already naturalized under section 319(b) of the Act (or under section 329 in accordance with the guidance provided in the introductory paragraphs of subchapter 25.1(k) of this manual, or as otherwise provided by the Act) prior to the Form I-751 filing period described in section 216(d)(2) of the Act.

If a naturalized U.S. citizen files Form I-751 either jointly with their petitioning spouse or individually as a waiver under section 216(c)(4) of the Act, the adjudicator should advise the naturalized U.S. citizen in writing that, as a citizen of the United States, the removal of conditions provisions do not apply.

Moreover, the Form I-751 filing fee should be refunded in cases where the U.S. citizen filed a Form I-751 because of USCIS error (for example, if the U.S. citizen received a computer-generated notice advising they should file). In such cases, the Form I-751 should be counted as a statistical denial.

Note: If the naturalized citizen is the parent of a child who was admitted as a conditional permanent resident based on the parent's marriage, and that child did not also become a citizen, the child is required to file Form I-751 for removal of conditions in accordance with section 216 of the Act and 8 CFR 216.4(a)(2).

AD09-28 August 4, 2009	**Chapter 25.1(k)**	This memorandum revises AFM 25.1(k) to provide guidance on conditional permanent residents and naturalization under section 319(b) of the Act.

4. Use

This memorandum is intended solely for the training and guidance of USCIS personnel in performing their duties relative to the adjudication of applications. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

5. Contact Information

Policy questions regarding this memorandum should be directed through appropriate supervisory channels to the Residence & Naturalization Division of the Office of Policy & Strategy or the Office of Policy & Regulations Mgmt (DOMO). Operational questions on processing should be directed to the Citizenship Branch of the Office of Field Operations; Adjustment and Naturalization Branch of Service Center Operations; or the Programs Branch of International Operations (RAIO).

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