

THE UNIVERSITY OF TEXAS SCHOOL OF LAW
44TH ANNUAL CONFERENCE ON IMMIGRATION AND NATIONALITY
LAW
2020 FUNDAMENTALS OF IMMIGRATION AND NATIONALITY LAW
October 21, 2020
Austin, Texas

FUNDAMENTAL PRACTICE POINTERS IN CITIZENSHIP BY
NATURALIZATION and EMPLOYMENT BASED IMMIGRATION

By

Harry J. Joe
JMA Firm PLLC
Dallas, Texas
Harry@jmafirm.com

I. CITIZENSHIP BY NATURALIZATION

A. DENATURALIZATION PROSECUTION ALERT

1. New Denaturalization Section in USDOJ Office of Immigration Litigation created in February 2020.

2. Objective and Mission: Investigate, identify, and prosecute naturalized citizens and derivative citizens who are suspected of cheating or using fraud in securing their lawful permanent resident status or citizenship and seek to denaturalize them under “Operation Second Look”.

3. Denaturalization results in loss of United States Citizenship and leads to loss of lawful permanent resident status and removal as well as permanent exclusion from the United States.

4. Any eligibility ground for Naturalization that is not met or was met through use of fraud or material misrepresentation may be a ground for revocation of one’s Naturalization, loss of citizenship.

- A. Residence requirement, *See United States v. Biheiri*, 293 F. Supp.2d 656(E.D.Va. 2003)(defendant made false statements about number of absences from the United States during the statutory period);

- B. Physical presence, *See Chuh Yu Zhao v. United States*, Nos.1:14-cv-1787(GBL), 1:10-cr-317(GBL) 2015 LW 4523487(E.D.Va. July 23, 2015) applicant denaturalized for falsely listing her separated husband's address as her address and falsely certifying that she had lived with her estranged husband for the proceeding three years).
 - C. Lawful Admission for Permanent Resident Status, e.g. Marriage Fraud, *See e.g. United States v. Cordero*, 457 F. App'x 454 (5th Cir. 2012) and *United States v. Almallah*, 244 F. App'x 584 (5th Cir. 2007); or Labor Certification of Immigrant Visa Petition or Adjustment of Status fraud;
 - D. Possession of Good Moral Character;
 - E. Attachment to the United States Constitution.
5. Any other Fraud or Material Misrepresentation or Omission in the filing and prosecution of the N-400 Application for Naturalization .
- B. FILING AND PROSECUTING NATURALIZATION APPLICATIONS
- 1. Applicant's lawful permanent resident immigration file and history should be thoroughly reviewed with the applicant before filing,
 - A. Bona Fides of Marital Relationship;
 - B. Applicant control, ownership of Employer in Labor Certification process;
 - C. Applicant's eligibility for Adjustment of Status;
 - D. Inadmissibility issues;
 - E. Eligibility for the Immigrant Visa Classification.
 - 2. Abandonment of Residency
 - 3. Sufficiency of Physical Presence

II. PERM LABOR CERTIFICATIONS FOR EB-2/3 IMMIGRANT WORKERS

The substantive and procedural requirements for filing and receiving Labor Certification is are set forth in and governed by the regulations at 20 C.F.R. Part 656. Administrative rulings and precedence are found in decisions of the Board of Alien Labor Certification Appeals, *USDOL/OALJ Reporter: BALCA*

PERM Decisions;

<https://www.dol.gov/agencies/oalj/PUBLIC/INA/REFERENCES>

A. FILED ETA 9089 MUST BE FREE OF ANY ERRORS

1. Typographical and inadvertent errors on the ETA 9089 cannot be corrected and may well result in denial. *See Matter of Metropolitan Architectural Woodwork LLC*, 2012-PER-02581, (BALCA, June 20, 2017) (application showing alien to be a United States Citizen cannot be corrected); *Matter of Infomc*, 2016-PER-00747, (BALCA, December 9, 2019) (error of attorney on filed ETA 9089 cannot be corrected); *Matter of Zodiac Solutions*, 2013-PER-03003, (BALCA, January 21, 2020), and *Matter of Annette Guevarra Peig*, 2015-PER-00558, (BALCA, 02/27/2020), 20 C.F.R. 656.11(b).

B. AUDIT SUBMISSION MUST MEET ALL REQUIREMENTS

1. Failure to submit evidence requested in Audit cannot be cured by submission on Motion to Re-open or to Reconsider. *See Matter of Prelude Systems*, 2013-PER-02974, (BALCA, December 9, 2019) (illegible tearsheets submitted in response to Audit Request cannot be cured by later submission in Motion to Reconsider). See 20 C.F.R. 656.24(g). However, evidence that clarifies prior submitted evidence in audit response may be submitted by Motion to Reconsider, *See Matter of Mercury Payment Systems*, 2016-PER-00131, (BALCA, October 9, 2019).

C. ALIEN'S QUALIFICATIONS SHOULD BE ESTABLISHED FIRST

1. Alien's qualifications including education and work experience should be fully documented in Sections J. and K. in ETA 9089 and clearly meet Employer's stated requirements set forth in Section H before conducting any recruitment. 20 C.F.R. 656.17(i). *Matter of Tech Mahindra (Americas)*, 2016-PER-00847 (BALCA, January 30, 2020).
2. Where the ETA 9089 does not allow the employer to state or identify a requirement upon which was used by employer to reject an applicant, denial by the Certifying Officer is improper where the employer submits evidence on Motion to Reconsider showing that the alien possessed the requirement and that there was no place on the application to list such requirement. *See Matter of Guess ? Inc.*, 2015-PER-00504 (BALCA, June 28, 2017), and *Matter of Solar Turbines*, 2016-PER-00025 (BALCA, June 2, 2016). *See also Matter of Claudia A. Maitland D.D.S.*, 2016-PER-00824 (BALCA, December 18, 2019) (BALCA reversed denial by CO where Section K. did not show a driver's license requirement but Employer showed that alien had license when initially hired as shown in the 9089).

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Fundamental Practice Pointers in Citizenship by Naturalization and Employment Based Immigration

Also available as part of the eCourse

[Crumbling Foundation of Immigration Law: Effects of Restrictive Anti-Immigration Policies on Your Practice](#)

First appeared as part of the conference materials for the
2020 Fundamentals of Immigration and Nationality Law session
"Crumbling Foundation of Immigration Law - Effects of Restrictive Anti-Immigration
Policies On Your Practice"