

REFORMING THE NATURALIZATION PROCESS

EXECUTIVE SUMMARY

Citizenship is a cornerstone of American society, binding together individuals from diverse backgrounds under the law. The Obama Administration can take a variety of measures that will improve access to naturalization, according to organizations and attorneys. The research was made possible by a grant from the Carnegie Corporation of New York. The statements made and views expressed are solely the responsibility of the authors.

Among the recommendations in this report to improve the naturalization process and access to citizenship:

- Consider fee reform and streamlining that brings down the price of applying for naturalization, as proposed by the U.S. Conference of Catholic Bishops and the National Immigration Forum. Over the past decade, naturalization fees have risen from \$35 in 1983 to \$680 today.
- Revise and simplify the language in both the form and instructions, as recommended by several experts.
- Restore offsite naturalization interviews at local community centers. The Hebrew Immigrant Aid Society (HIAS) notes this is particularly important for people with disabilities in cities not served by U.S. Citizenship and Immigration Services field offices.
- Make citizenship part of the immigration integration process, as recommended by the Immigration Policy Center.
- Institute reforms so individuals do not lose their lawful permanent residence status due to time outside the country. Attorneys Cyrus Mehta and Gary Endelman provide salient recommendations to ensure our immigration service maintains rules that keep pace with the realities of 21st century travel, employment and business.

The Obama Administration receives generally good marks on naturalization. This report indicates it is possible that record can be improved further with additional reforms. As Elissa Mittman, Alla Shagalova and Aleksander Milch of HIAS write, "Naturalization epitomizes the unique history of America in which generations of foreigners have come to our shores and gradually assimilated to American life. It is so inherent in our collective identity that it is imperative to make the process of naturalization fully available to prospective candidates to ensure that individuals themselves and we as a nation fully reap the benefits of this process."

UNITED STATES CONFERENCE OF CATHOLIC BISHOPS

Although the vast majority of applicants encounter no difficulties in the naturalization process, others with unique circumstances or minor issue can experience a myriad of problems. The U.S. Citizenship and Immigration Service can improve access to citizenship for these persons by improving their processing and adjudication responsibilities for naturalization applicants.

First, application fees have risen significantly the past ten years, from \$310 to \$680 today. This can place citizenship outside of the reach of poorer applicants, who might have to save for months or years to afford the fee. Fee waivers are given only if the applicant provides a vast amount of documentation.

Second, the application for naturalization (N-400), although simplified in recent years, is still very complicated and is harmful for candidates with limited English proficiency. Some of the questions posed may have legal consequences, and thus an applicant should have access to legal advice in some cases, although many do not.

Third, electronic filing, required of applicants since 2006, has left those without computers or access to them without the ability to file an application. Sometimes these applicants are driven to *notarios* for assistance and are charged large fees. The electronic form also requires information that can and has been used for enforcement purposes.

Fourth, USCIS should do a better job of providing information on applying for citizenship. There is a dearth of instruction forms in the community, and some applicants require more hands-on instruction from both USCIS and local NGOs. Similarly, USCIS has traditionally had troubles with processing forms accurately, including change of address for applicants, thus delaying or even terminating the process.

Disability waivers, particularly for elderly and disabled applicants, are difficult to obtain. Many elderly have limited English proficiency and limited ability to prove their limitations to USCIS. Refugees from different countries are particularly affected by this process. In addition, USCIS is lacking in its ability to expedite naturalization applications for elderly refugees who face termination of their SSI benefits, as occurred early last year. Because of this, many who otherwise would continue to receive these benefits as citizens are unable to access this basic support, putting them at risk.

For applicants who are denied naturalization, the cost of an appeal can be prohibitive. Moreover, the short deadline for filing an appeal can chill applicants from trying, as they may have to obtain legal counsel.

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Finally, there is inconsistent application of due consideration, which is weight given to the background of an applicant in judging answers to naturalization test questions. More clear guidelines should be put forth to field offices.

Despite the barriers described, immigrants continue to desire and seek citizenship. A majority of applicants complete the process without delays, but for some the process can be daunting and frustrating. USCIS must review once again its processes to ensure that all have fair access to the benefits of citizenship.

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HEBREW IMMIGRANT AID SOCIETY

Naturalization occupies a special place within the immigration system of the United States. It is the final step in the long journey of an immigrant to achieve full status as an American citizen as well as complete integration into our society. Citizenship empowers immigrants by giving them the right to vote, to serve on a jury, and thereby participate in the decisions our country makes as a democracy. We as a country are stronger when our residents pledge their full allegiance to the United States and share responsibility for the future of our nation.

While in recent years there have been positive developments by the U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security, in terms of transparency and collaboration with immigrant advocates and other stakeholders to improve the naturalization process, more can and should be done. By implementing the following recommendations, it would ensure that the naturalization process is fully accessible to all qualified applicants:

- reduce the naturalization application fee;
- revise and simplify the language in the Form N-400 naturalization application and instructions;
- reinforce the concept of “due consideration” established in 8 CFR 312.2(c)(2);
- monitor the adjudication of N-648 waivers;
- restore regular off-site interview locations.

The Cost of the Naturalization Application Should Be Reduced

The current cost of filing the N-400 Application for Naturalization is \$680.00. Lowering the cost will enable more lawful permanent residents to apply for naturalization. The current fee is costly and out of reach to many working immigrants who do not qualify for a fee waiver. As citizenship is a gateway to many constitutionally guaranteed rights such as the right to vote and the right to serve on a jury, access to citizenship and these corresponding rights should not be curtailed through a fee that is burdensome to many applicants.

*Reforming the Naturalization Process****Revise and Simplify the Language in the Form N-400 Application and Instructions***

The language in the Form N-400 Application and Instructions is quite complex and contains obscure terms which are not fully explained and may not be clear to the average speaker of English. A prospective naturalization applicant who is proficient in English and eminently capable of passing the citizenship examination may have difficulty with some of the language in the application and the instructions whereby deterring him or her from applying for citizenship.

By rewriting and simplifying the language in the N-400 Application and Instructions will enable greater access and understanding by all applicants, whereby allowing the process to be more open to all. The instructions for the Form N-400 should include (1) specification that each eligible applicant in a family unit must file a separate naturalization application; (2) clarification of the time frame in which an applicant becomes eligible to file a naturalization application; (3) inclusion of a link to the M-476 manual (“A Guide to Naturalization”); (4) explanation of legal terminology used in the Form N-400; and (5) clarification of the reporting requirements regarding name, mailing address, and time spent outside of the U.S. Additionally, the Form N-400 naturalization application would be vastly improved by (1) cross referencing between the page number of the Form N-400 and the sections of the N-400 Instructions; (2) a reference to all waivers for which an applicant may apply; (3) improved collection of biographical data; and (4) clarification and streamlining of the travel abroad section. Finally, clarification should be provided for some of the rather complex, unfamiliar, and obscure terminology used in the Form N-400 including but not limited to: “title of nobility”; “affiliation”; “indirectly”; “nonresident”; “habitual drunkard”; and “bear arms.”

Reinforce the Concept of “Due Consideration”

The concept of “due consideration” as established in 8 CFR § 312.2(c)(2)¹ should be reinforced in the relevant sections of the Adjudicator’s Field Manual (“AFM”) and reiterated in the N-400 Instructions. In addition, the Form N-400 should be designed to elicit more information about the applicant’s educational and vocational background (both in the United States and the applicant’s native country) so that USCIS adjudicating officers have the necessary information to administer the interview and citizenship test with “due consideration” for the applicant’s education, background, age, length of residence in the United States, opportunities available, and efforts made to acquire the requisite knowledge, and any other factors.

¹ “Scope and substance.” The scope of the examination shall be limited to subject matters covered in the Service authorized Federal Textbooks on Citizenship except for the identity of current officeholders. In choosing the subject matters, in phrasing questions and in evaluating responses, *due consideration* shall be given to the applicant’s education, background, age, length of residence in the United States, opportunities available and efforts made to acquire the requisite knowledge, and any other elements or factors relevant to an appraisal of the of the adequacy of the applicant’s knowledge and understanding.” [Emphasis Added]

*Reforming the Naturalization Process***Monitor the Adjudication of N-648 Waivers**

The revisions to the Form N-648 as well as the guidance given to USCIS adjudicating officers in the most recent guidance memorandum² represent a significant improvement and go a long way toward ensuring the proper adjudication of N-648 waiver applications. The most recent guidance memorandum correctly emphasizes that the USCIS adjudicating officer should *not* second-guess the doctor's diagnosis and should not draw negative inferences from the applicant's failure to file the Form N-648 with the Form N-400 or failure to previously cite a particular medical condition in previous immigration forms. Nonetheless, there is a need for close monitoring of the implementation of the new Form N-648.

The memorandum still allows USCIS adjudicating officers to deny a waiver if, in the mind of the adjudicator, "factual questions" are raised.³ As no examples of what the phrase "factual questions" means or are provided, this vagueness could potentially lead to various interpretations and/or improper judgment calls by USCIS adjudicating officers. The memorandum should also make it clear to the USCIS adjudicating officer that the medical professional may only have examined the applicant once for the purpose of completing the Form N-648 and this should not, in and of itself, cause the USCIS officer to draw any negative inference. Finally, the extensive redactions in the memorandum, which serve the legitimate purposes of fraud detection, make it difficult to use the document as a legal authority to demonstrate deviations from correct naturalization adjudication procedures. A compromise should be reached so that more of the memorandum and the AFM sections cited therein are made publicly available. This would improve both the submission and adjudication of Form N-648 applications to the benefit of both USCIS and immigrants.

Restore Regular Off-Site Naturalization Interviews

In terms of the venue of naturalization interviews, the restoration of regular off-site naturalization interviews at local community services centers, especially when the local USCIS field office is located in another city or state, would make the naturalization process more accessible to all immigrants. This is especially important for disabled applicants in states in which certain cities are not served by a USCIS field office.

Conclusion

Improving the naturalization process is essential to our vitality as a nation of immigrants. Naturalization epitomizes the unique history of America in which generations of foreigners have come to our shores and gradually assimilated to American life. It is so inherent in our collective identity that it is imperative to make the

² USCIS, Office of the Director, *Revised Guidance for Determining the Sufficiency of Form N-648, Medical Certification for Disability Exceptions; Revisions to Adjudicator's Field Manual Chapter 72 and 74 (AFM Update AD10-14)*(December 14, 2010)

³ *Id.* at 2, ¶ 4.

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process of naturalization fully available to prospective candidates to ensure that individuals themselves and we as a nation fully reap the benefits of this process.

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NATIONAL IMMIGRATION FORUM

During the past couple of decades, immigrants have struggled with the immigration bureaucracy as they've tried to navigate the citizenship process. Periodically, they've been forced to wait in extraordinarily long backlogs. It has not been uncommon for the immigration service to just catch up with one wave of applications before being overwhelmed by the next wave. All the while, applicants are asked to pay higher and higher fees, with each fee hike coming with the promise of a more efficient process.

In the past three years, U.S. Citizenship and Immigration Service (USCIS) has made great strides in stabilizing the citizenship experience. Backlogs that peaked in 2007/2008 in the aftermath of a steep 2007 fee increase have been resolved, and the agency is largely meeting its target processing times for naturalization. The latest application fee increases (one in 2007 and another in 2010) enabled the agency to hire hundreds of additional adjudicators to process applications for citizenship and other immigration benefits. The agency continues to move away from a reliance on paper files and toward greater operations in an electronic environment, with resulting increases in efficiency.

Still, more can be done to make the process of acquiring citizenship less daunting. Near the top of the list would be to restructure the way USCIS is funded.

In the last 20 years, the cost of naturalization has gone up more than 650% (in nominal dollars). Annualized, that is more than 32% per year—compared to an annual rate of inflation of about 5.5% over the same period. Immigrant service providers say the fees have become a barrier for some, especially for low-income immigrants. There is still a high demand for citizenship, but some eligible immigrants put off applying until they figure out how to pay for it.

It is important to understand that when an immigrant submits an application for citizenship or some other immigration benefit, he or she is paying not just for the cost of processing that application, but also for a range of other activities performed by USCIS that have little or nothing to do with that application.

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For example, our government offers refuge each year to roughly 80,000 persons who are fleeing political or religious persecution in their home countries. USCIS process applications for these refugees and asylees at no charge. Refugee and asylum status are provided as a humanitarian benefit by our government. While the government doesn't charge refugees and asylees, application processing costs are not paid for by the federal government. Instead, USCIS tacks these costs on to the processing fees of fee-paying applicants for other immigration benefits. In 2007, USCIS estimated that to pay for its work processing refugee and asylum applications, fee-paying applicants for naturalization and other benefits paid an additional \$40 per applications.

Costs associated with refugee and asylum application processing are not the only costs passed on to fee-paying applicants. Some indigent immigrants can obtain a fee waiver for certain applications, and those applications are processed at no charge. The costs of operations of non-adjudicative offices within USCIS, such as the Fraud Detection and National Security Directorate and even the Office of Citizenship itself (which promotes citizenship, but does not handle applications), are also included in fees.

In addition to the cost of these agency functions unrelated to the processing of the applications of fee-paying applicants, security checks have also driven increases in cost that have led to fee increases. Since the terrorist attacks of September 11, 2001, new layers of security screening have been added to the application process of a range of immigration benefits, including naturalization.

Section 286(m) of the Immigration and Nationality Act governs fee collection:

“...fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.”

So, USCIS *may* set fees to recover costs of providing services to those who don't or can't pay, but there are other ways to approach setting fees. The Government Accountability Office, for example, in its “Federal User Fees: A Design Guide,” discusses a model where fees are divided between beneficiaries. According to a beneficiary-pays principle, “the extent to which a program provides benefits to the general public verses users and the cost of providing those benefits” should guide how costs are divided.

In other words, who are the stakeholders and how should costs be divided among stakeholder groups?

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There are many activities carried out by USCIS that benefit a broader set of stakeholders than the immediate applicants for immigration benefits. For example providing refuge to persons fleeing persecution is a humanitarian benefit provided by the U.S. government. The stakeholder group here is the public at large, so it makes sense to distribute the costs of processing applications more broadly than just among fee-paying applicants for citizenship or other immigration benefits. Arguably, some of the security-related functions of USCIS should also be shared among the public and users of USCIS services. For example, the Fraud Detection and National Security Directorate of USCIS includes in its mission statement, “identifying threats to national security and public safety”—clearly activities that benefit the public at large. Dividing security costs between what users should expect to pay for getting a background check and what the public should expect to pay for a bureaucracy set up to identify threats to national security may not be straightforward, but certainly it is worth exploring options.

In recent years, the agency sought to recover all costs from user fees, and the assignment of costs unrelated to the adjudication of the applications of fee-paying applicants fell entirely on those applicants. Another way to look at it is that the agency has been taxing a small sub-population of taxpayers to pay for its activities. As the GAO puts it when speaking about this cost recovery model: “To the extent that user fees are a substitute for funding through general tax revenues, they may be less progressive than taxes and therefore shift additional burden on those less able to pay.”

The Obama Administration has begun to address the problem. In its last three budgets, the Administration has asked Congress for appropriations to pay for certain costs of the agency that are unrelated to the processing of applications of fee-paying applicants. In its budget request for Fiscal Year 2010, the Administration asked for appropriations to pay for asylum and refugee applications and for the cost of processing naturalization applications for certain immigrants who are in the armed forces and who are exempt from the usual fee for naturalization. The Administration’s latest budget request includes a request for appropriations for these activities plus the cost of the Office of Citizenship (which does not process applications) and for the Systematic Alien Verification for Entitlements (SAVE) program, a program states used to screen non-citizens for eligibility for federal means-tested benefits. (This program is also paid for out of user fees.) In its last fee schedule, implemented in 2010, the Administration removed surcharges to pay for these activities.

Unfortunately, Congress has not been as concerned about the burden of high fees as the agency itself has. In the current fiscal year, the Administration received only \$25 million for refugee and asylum processing. (An additional \$25 million was re-programmed from elsewhere in the agency’s budget.) In the budget that is now being considered, the government’s Fiscal Year 2012 beginning October 1, the House-passed budget proposes to deny the Administration’s request for funding refugee and asylum applications, and for the Office of Citizenship. The Committee Report accompanying the bill gives the House reasoning:

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“Given the current fiscal crisis and the operational costs borne by taxpayers across the Department, the Committee expects USCIS to include the cost of processing refugee applications and asylum claims into the new fee rule, as has traditionally been the practice.”

Of course, the fee-paying customers of USCIS are also taxpayers who support the “costs borne by taxpayers across the Department.” In effect, the House proposes to levy a higher tax on this particular population of taxpayers.

If the House approach is adopted by the Senate, USCIS will have to again raise fees. That would be unfortunate, as many fee-paying applicants do not earn high incomes and are not in a good position to shoulder additional burdens to pay for government costs that do not bear a direct relationship to the operational costs of processing their applications.

USCIS has been right to move away from a model in which it charges its customers for all activities carried out by the agency—regardless of whether those costs relate to the processing of the applications of its paying customers. Advocates who are concerned that fees for naturalization are causing eligible immigrants to put off becoming citizens will continue to press the Administration and Congress to reform the way USCIS is funded. We believe the Administration could go further by, for example, asking for Congressional appropriations to pay for some of the activities of the agency related to national security. An incremental approach, however, makes sense, given that more thinking must be done on how to fairly allocate costs, and given the uphill battle in gaining Congressional support.

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IMMIGRATION POLICY CENTER

Anyone who has ever attended a naturalization ceremony cannot help but be moved by the power of the moment. The participants enter as men, women, and children of diverse countries, but leave the room as citizens of one – the United States. For many the path to that naturalization ceremony has been long and arduous, irrespective of whether they entered the United States as wealthy entrepreneurs or as refugees with nothing but the clothes on their backs. The process of obtaining lawful permanent resident (LPR) status, and ultimately citizenship, is often daunting. A new country, new rules, high costs, and little targeted support for new immigrants makes what should be a journey of exploration and opportunity one that may be, instead, frustrating and lonely. Consequently, in order to focus on ways to improve the naturalization process itself we must take a step back and consider the

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nature of immigrant integration in the United States. The better our integration policies – and the sooner in the process they begin – the more likely we are to improve the rate of naturalization.

Integration is an often overlooked but key component of U.S. immigration policy. Successful integration of immigrants fuels their success, strengthens communities, and builds bridges between newcomers and other community members. Time and again, the influx of immigrants into a community has been shown to reverse economic decline and breathe new life into urban areas, small towns, and rural communities. Moreover, integration can be a key to entrepreneurship and future economic growth. For example, research by Richard Florida and Charlotta Mellander⁴ found that nations which focus more on immigrant integration have higher levels of economic competitiveness, are more innovative, and have higher rates of entrepreneurship. Solid integration policies offer benefits to both the immigrant and the receiving community. The investment in immigrants, therefore, is an investment in the country's own well-being.

Last year, the Immigration Policy Center (IPC) was invited to become the U.S. partner for a major international comparative study of integration laws across Europe, Canada, and the United States. Now in its third edition, the Migrant Integration Policy Index, or MIPEX, is a reference guide and tool which measures and compares the immigration and integration policies of 31 countries.⁵ After a year of collaboration and analysis, the MIPEX researchers found that the U.S. ranked 9th overall, receiving 62 of a total possible 100 points derived from averaging scores in seven categories: access to labor, access to education, family unification, anti-discrimination, acquiring legal status, political participation, and access to citizenship. This overall ranking is not bad, especially when the lack of a national integration policy is taken into account. Canada, for example, which ranked third, engages in extremely detailed integration planning, in which the federal and provincial governments work together to determine both the necessary level of immigration and the types of support needed to attract new immigrants to the country.

From a practical and political perspective, there is little doubt that the kind of labor-intensive immigration planning that goes on in many countries, as reflected in the MIPEX survey, would be difficult to replicate in the United States. Despite the overwhelming evidence that immigration is a net positive for the country, there is no national agreement that immigration is a good thing. It is hardly surprising, then, that we have trouble scraping together the support for integration initiatives, including much needed grants to organizations that provide Basic English and civics training to prepare applicants for the naturalization exam. Such initiatives, run through the Office of

⁴ Richard Florida, "Immigrants and the Wealth of Nations," available at http://www.creativeclass.com/creative_class/2011/04/20/immigrants-and-the-wealth-of-nations/, April 20, 2011.

⁵ MIPEX is a project of the European Union, administered by the Migration Policy Group of Brussels, Belgium and the British Council. See <http://www.mipex.eu/> for the complete survey, individual country analyses, past rankings, and additional tools for researchers, government officials, the public and the media.

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Citizenship at USCIS, began under the Bush administration and have received continued support from the Obama administration, but risk being curtailed by Congress. For some, any kind of pro-active effort to provide educational tools and develop programs is viewed as a hand out to immigrants who, according to many restrictionists, are simply uninterested in integrating or assimilating into American life.

Recent reports by Dowell Myers⁶ and Tomas Jimenez⁷ disprove that assumption, demonstrating that today's immigrants are actually integrating at least as quickly as prior waves of immigrants, and in some cases, much faster. For instance, the percentage of immigrants who become homeowners or naturalize increases the longer they are here. Jimenez notes that such increases are particularly striking, given the "laissez faire" approach to integration in the United States, which has generally relied on immigrant initiative, access to public education, and a strong economy to encourage integration. Historically, many of the states with a long tradition of immigration—New York, California, Illinois, Massachusetts—have also been important players in integration, providing training and assistance to newcomers.

While immigrant initiative may remain a constant, the economic downturn and stretched state budgets have reduced states' ability to fill in the gaps. At the same time, Myers notes that the rise of immigration to "new destination" states—such as Georgia or South Carolina—has led to a whole new crop of problems, in part because local residents have little experience with immigrant integration, leading them to false assumptions about immigrants. The absence of an immigration tradition, the suspicion that immigrants don't want to integrate, and the host of anti-immigrant laws introduced or passed in these new immigrant states have created even more urgency for national integration strategies.

Institutional barriers to LPR status and naturalization also play a role. MIPEX catalogs some of the legal and policy problems that plague the naturalization process. The study notes that U.S. naturalization fees "are now higher than in 25 of the 30 other MIPEX countries. Half ask for just normal administrative fees similar to obtaining passports." The process also runs the risk of being uncertain, lacking "legal time limits (unlike in 13 MIPEX countries). Many long and discretionary background checks also leave applicants slightly insecure about their status."⁸

Not surprisingly, problems such as these continue to be a major obstacle to naturalization. Jimenez notes that despite the steady rise in naturalization rates over the decades, a shocking number of people do not naturalize

⁶ Dowell Myers and John Pitkin, "Assimilation Today: New Evidence Shows the Latest Immigrants to America are Following in Our History's Footsteps," Center for American Progress, Washington, D.C., September 2010.

⁷ Tomas R. Jimenez, "Immigrants to the United States: How Well are they Integrating into Society?" Migration Policy Institute, Washington, D.C., May 2011.

⁸ MIPEX III at 210.

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who are eligible to do so—in 2008, for example, while more than one million LPRs naturalized, more than eight million were eligible to do so. Recognizing this gap, USCIS has begun a major public education initiative to invite LPRs to learn about the rights, responsibilities, and importance of U.S. citizenship. And state and local groups continue to work creatively with ever shrinking resources to give immigrants the tools they need to succeed.

The good news is that unlike many aspects of immigration reform, the challenge for improving integration and naturalization efforts is less about reforming existing law and more about generating support for sufficient planning and resources to create a more robust integration program. Efforts to prioritize integration and naturalization, to streamline current application processes, and to revise existing policies and procedures can be accomplished through administrative action. The most urgent legislative changes needed, as discussed in Maurice Belanger's essay, relate primarily to increasing the appropriations given to the Department of Homeland Security (DHS) to promote integration, improve services, and reduce the high fees applicants currently pay for immigration benefits.

Because successful integration is measured through a range of criteria—from educational attainment to employment to naturalization—a national integration policy necessarily involves coordination across a wide range of government agencies and must include the states. Many groups have called for the establishment of an Office of Immigrant Integration within the White House, while others see an expansion of the work of the Office of Citizenship as a logical base for promoting integration. Regardless of where the work is housed, however, taking the time to map out the steps government can take to facilitate integration would have a dramatic pay-off for the country.

The most obvious pay-off would come from better coordination, allowing existing programs to leverage resources and strategies to encourage greater integration of immigrants. Promoting naturalization as a key step towards full civic participation, for instance, can be effectively done not only through immigration outlets, but through other government programs and agencies. For instance, few people think of the Department of Agriculture when we talk about immigrant integration, but it has long funded studies of immigrants in rural America. As the percentage of immigrants settling in rural areas increases, the opportunity for extension programs and other agricultural support programs to promote integration grows.⁹

⁹ For a wide-ranging survey of the impact of immigrants in rural America, see the conference proceedings of *Cambio de Colores*, an annual conference hosted by the Cambio Center at the University of Missouri Columbia which examines the range of immigrant integration issues in the Midwest. This year's conference included an expanded examination of the impact on new immigration to the South, marking an important collaboration between land grant universities throughout the Midwest and the southern United States.

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Moreover, promoting and publicizing immigrant integration, especially in states where the new wave of immigration is taking place, offers an opportunity to overcome hateful stereotypes. Working with receiving communities to create a more welcoming environment and to educate these communities about the importance of immigrants to America's future is also critical to a successful integration strategy. In the long run, building support for more appropriations to integration programs will be easier when the public recognizes that such support translates into a better economic and social future for our communities.

In the meantime, however, if Congress insists on requiring naturalization and other immigration benefits to be self-supporting, it should at least sanction creative ways to assist immigrants who find the fees a major obstacle. Micro-loans, installment plans, and other creative payment options should be made available to applicants. Authorizing a citizenship foundation, much like the private foundation that supports the national parks service, is a mechanism for creating a private-public partnership which would cost the taxpayer little, but reap great rewards. Proposals to give tax breaks to businesses that provide access to English classes or otherwise support the integration process are also promising. Without the benefit of a national integration initiative, however, many of these ideas will languish because their importance is overlooked or minimized by Congress and the public.

If we want to improve the naturalization process, we must urge the government to use its executive authority to improve the quality of the application and adjudication process, but we must also encourage the executive branch to think far more broadly. A national immigrant integration strategy—coordinated across the federal and state governments—is critical to changing the way we talk about immigration today. The success of such a plan would benefit individuals, strengthen our democracy, and help us break the stalemate that keeps us from addressing the broader immigration reform that we need. In a classic case of “which came first, the chicken or the egg,” promoting immigrant integration will actually make it easier to justify better, smarter immigration laws that increase the flow of new immigrants to our shores through a working legal system.

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CYRUS D. MEHTA

As we enter the second decade of the 21st century, the world seems to be getting far more flat than what Tom Friedman originally envisaged with people being able to deliver services and products to the U.S. and other countries from anywhere via the internet. Also, coinciding with this flat world has been the most severe U.S. recession in living memory, which compels people, including immigrants, to find jobs in other parts of the world and yet remain firmly rooted with the U.S.

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Gone are the days when immigrants came to the U.S. in sailboats and steamships, destined never to return home. In today's globalized flat world, with access to cheap direct flights across continents, broadband internet, Blackberries, Twitter, Facebook, LinkedIn and Skype, an immigrant can continue to maintain deep ties and bonds even if absent from the country. It is quite typical for a U.S. company to assign its key employee, a freshly minted green card holder, working in the U.S. to set up operations in Mumbai or Shanghai for a few years, with the intention of ultimately returning to the U.S. Yet, this person's ability to become a U.S. citizen can get jeopardized as a result of this overseas assignment.

An applicant must meet certain threshold eligibility criteria in order to become a U.S. citizen. Pursuant to § 316(a) of the Immigration & Naturalization Act (INA), the applicant must establish that immediately preceding the filing of the application, he or she has resided continuously within the U.S. for at least five years after being lawfully admitted for permanent residence. If the applicant has been in marital union with a U.S. citizen spouse for three years, the continuous residence requirement is three years instead of five years. Moreover, under INA § 316(a), the applicant must also establish that he or she has been physically present in the U.S. for periods totaling at least half of that time and has resided within the State or district of the Service where the applicant filed the application for at least three months.

Furthermore, INA § 316(a)(2) also requires the applicant to establish that he or she has resided continuously within the U.S. from the date of the application up to the time of citizenship. INA § 316(a)(3) requires the applicant to establish, inter alia, that he or she is still a person of good moral character during the relevant 5 or 3-year period.

INA § 316(b) states that an absence from the U.S. of more than six months but less than one year during the 5-year period immediately preceding the filing of the application may break the continuity of such residence. INA § 316(b) notes that should such a presumption arise, it may be rebutted if the applicant can establish that he or she in fact did not abandon his or her residence during such period.

This is the killer provision, and which creates problems when a permanent resident is based overseas and wishes to naturalize after completing 3 or 5 years, but is not able to continuously reside in the U.S. even though he or she still returns to the country frequently and maintains extensive ties. Naturalization is a most desired goal, since paradoxically, once the person successfully naturalizes, he or she is no longer required to maintain a residence in the U.S. However, in order to naturalize, the applicant must maintain continuity of residence, and this is often thwarted by the fact that he or she is working overseas. The spouse who is overseas because he or she is accompanying the other spouse and who is often caring for the children, also suffers as a result.

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There appear to be two views of what constitutes residence. INA § 101(a)(33) states: “The term ‘residence’ means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.” Note that the concept of domicile, which considers the applicant’s intent rather than the place where he or she actually lives, is not relevant in determining whether the applicant for naturalization has resided continuously in the U.S. Under this provision, an applicant may be deemed to not being a resident regardless of the number of days he or she is away from the U.S. On the other hand, the statute requires not mere residence but continuous residence in the U.S., and 8 C.F.R. § 316.5(c)(1)(i) provides added interpretation on the term continuous residence, which provides that an absence of between six months and one year shall disrupt the continuity of residence unless the applicant can establish otherwise to the satisfaction of the Service. Thus, unless the applicant was outside the U.S. for six months or more but less than a year, he or she should argue that there was no disruption of continuous residence. This is the better way to interpret residence for purposes of naturalization purposes.

8 C.F.R. § 316.5(c)(1)(i) provides examples of the types of documentation which may establish that the applicant did not disrupt the continuity of his or her residence when the absence is over six months but less than a year. Specifically, the regulation states that the evidence may include “but [is] not limited to” evidence that during an extended absence:

- (A) The applicant did not terminate his or her employment in the U.S.;
- (B) The applicant’s immediate family remained in the U.S.;
- (C) The applicant retained full access to his or her U.S. abode; or
- (D) The applicant did not obtain employment while abroad.

Unfortunately, even 8 C.F.R. § 316.5(c)(1)(i) may not be able to save the aspiring citizen on an overseas assignment. He or she may not be able to show family members remaining in the U.S., full access to a U.S. abode in the U.S. while on the foreign assignment and not obtaining employment while abroad. Therefore, it is suggested that this regulation be amended to establish other ways for an applicant to demonstrate that there was no disruption of continuity of residence, such as the filing of tax returns, U.S. source income, the temporal nature of the assignment, the fact that it was on behalf of a U.S. corporation overseas and the existence of other ties to the U.S., including extended family members, investments and the like.

Finally, while INA § 316(b) provides exemptions for naturalization applicants from the continuous residence requirement if they are employed by an American firm overseas, or a subsidiary, engaged in the development of trade and commerce of the United States, it is virtually impossible to avail of this exemption because of it requires

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that the individual be physically present in the U.S. for an uninterrupted period of 1 year as a permanent resident. Even a brief trip to Canada during this one-year period will interrupt this “uninterrupted” requirement and thwart the ability to take advantage of the exception. There is enough room to advocate for a re-interpretation of what constitutes an uninterrupted period of one year. Why should an “uninterrupted period of one year” require the individual to stay put in the U.S. for an entire 365 day stretch? Why cannot “uninterrupted” allow for short trips that are not meaningfully interruptive of physical presence?

Simple re-interpretations of the meaning of continuous presence and uninterrupted presence will go a long way in allowing applicants who have substantial ties and attachments to the U.S., but are on overseas assignments, to naturalize and continue to contribute to the United States.¹⁰

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Let’s start at the beginning. Every civilian who applies for naturalization must first become a lawful permanent resident so that making the latter more secure against involuntary abandonment prepares the path towards citizenship. The presumption that now protects American citizens against loss of status against their will should be extended to their “green card “ brethren.¹¹ Not only would the importance of LPR status be enhanced through adoption of a presumption in favor of retention of status, but those among us who must function in the global economy would no longer have to choose between making a living and pursuing the dream of becoming an American citizen. Neither law nor logic suggests that naturalized Americans manifest a more enduring attachment to this country than lawful permanent residents; indeed, quite the opposite is often the case. Precisely as with expatriation, extended absence by itself should never provide a sufficient basis to strip away the green card. In a world where international assignments are increasingly necessary for career advancement and/or job retention, no lawful permanent resident should be divested off a green card absent a tangible manifestation of informed consent. Application of such a presumption would require clear evidence that loss of the green card was the desired and intended consequence. Only when LPR status is secure can the naturalization process be made truly accessible to all who wish to take advantage of it.

¹⁰ This article is derived from two blog posts on The Insightful Immigration Blog, “Naturalization In A Flat World by Gary Endelman and Cyrus D. Mehta,” <http://cyrusmehta.blogspot.com/2010/07/naturalizing-in-flat-world.html> and “Naturalization While Working Abroad For An American Firm” by Cyrus D. Mehta, <http://cyrusmehta.blogspot.com/2011/03/naturalization-while-working-abroad-for.html>.

¹¹ See Gary Endelman and Cyrus D. Mehta, “Home Is Where The Card Is: How To Preserve Lawful Permanent Status In A Global Economy,” 13 *Bender’s Immigration Bulletin* 849, 864-866 (July 1, 2008). A prior version of this article appeared in *Immigration and Nationality Law Handbook* (AILA 2008-09).

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While the list of potentially expatriating acts can plainly be seen in INA section 349, no comparable statutory provision informs or protects against involuntary green card loss. This must be changed. Loss of nationality and loss of green card must be judged by the same criteria set in the same legal context. We learn from *Vance v. Terrazas*, 444 US 252, 260(1980) and *Afroyim v. Rusk*, 387 US 253, 262(1967) that knowing and voluntary relinquishment is the necessary condition precedent to loss of citizenship. The same rule against involuntary deprivation should apply to the green card. It must become constitutionally insufficient for a permanent resident to act in a manner deemed by law to be an act of abandonment. Any such conduct must be accompanied by a companion intent to relinquish the green card itself. “Because of the precious nature of citizenship,” *Jolley v. INS*, 441 F.2d 1245, 1248(5th Cir. 1971) reminds us: “it can be relinquished only voluntarily, and not by legislative fiat.” Is the green card no less precious? Why is the LPR treated less favorably? There is a regulatory presumption¹² that certain expatriating acts are done with the intent to retain U.S. nationality. Yet, the benefits of such a presumption do not extend to the permanent resident who needs it every bit as much. Indeed, failure to file a tax return as an LPR, or filing as a nonresident, can not only invalidate the LPR’s present status but also severely jeopardize the ability to naturalize in the future.¹³ Why does the presumption of abandonment extend not only to the filing of the tax return but also to the intent of surrendering the green card itself? The nexus that is nowhere found in the case of the citizen is supplied by a suspicious federal agency for which the LPR’s attachment to the United States will always remain tentative. The nation is not made more secure, nor the liberties of its citizens better protected, when the law resolutely refuses to shield lawful permanent residents against forced or unanticipated loss of status. The law on abandonment of LPR status must not penalize the very patterns of commercial conduct that sustain the economy in which we work and on which we depend.

Much as loss of citizenship does not flow only from an affidavit of expatriation¹⁴, so giving away the green card can occur outside the context of an I-407 execution. Conduct can also manifest intent. Whether we speak of the citizen or the permanent resident, the decision to relinquish status can be “expressed in words or...found as a fair inference from proved conduct.”¹⁵ Yet, even here, the criteria used to evaluate the presence or absence of such intent can no longer be the exclusive prerogative of administrative fiat the expression of which knows no limitations or meaningful review. Indeed, the signs of voluntariness and intent have already been interpreted for

¹² 22 CFR 50.40

¹³ 8 CFR 316.5©(2). S. While this regulation creates only a rebuttable presumption of green card relinquishment, it may be impossible for the LPR to exercise such right of rebuttal with any degree of effectiveness unless he or she demonstrates that the claim to nonresident alien status was fraudulent. See Memorandum, Office of the General Counsel, The effect of filing nonresident income tax returns on an alien’s status as a lawful permanent resident alien, HQ 70/11-P, HQ 70/33-P, May 7, 1996, summarized and reprinted at 73 Interpreter Releases, 929, 948 (Jul. 15, 1996).

¹⁴ *Expatriation—Effect of Afroyim v. Rusk*, 387 U.S. 253, 42 Op.Att’y Gen.397, 400 (1969) (“‘Voluntary relinquishment’ of citizenship is not confined to a written renunciation...It can also be manifested by other actions declared expatriative under the act...”)

¹⁵ *Vance v. Terrazas*, 444 U.S. 252,260(1980).

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us in 7 FAM 1224- 5 to assess potential expatriation and can readily be applied more broadly. Moreover, the procedural safeguards that protect the citizen must also shield the green card holder. All agree that “statelessness is not to be imposed as a crime,”¹⁶ yet a far more relaxed response arises when a permanent resident suffers the same cruel fate with no less devastating consequences. If green card status is to survive in an increasingly interconnected global village, deprivation here must also be considered punishment to be inflicted when there is no alternative. Much as factual doubts in loss of citizenship “are to be resolved in favor of citizenship,”¹⁷ comparable uncertainty must be approached with the same high caution when forced surrender of the green card hangs in the balance. If the “rights of citizenship are not be destroyed by an ambiguity,”¹⁸ then the rights of a permanent resident demand no less certainty. If swearing a routine oath of allegiance to a foreign state will not trigger loss of citizenship, then taking up a routine job with a private employer abroad should without more not result in loss of LPR status. Loyalty to America and allegiance to its laws are compromised in neither instance.

Adoption of the presumption for which we contend will not always and forever require green card preservation. It would, however, preclude loss of status when the lawful permanent resident has done nothing more than participate in the global marketplace. Nothing would inhibit nor restrict immigration authorities from persuasively countering this presumption through the forceful presentation of probative evidence of abandonment. Such a presumption should not conclusively bar an investigation but rather reflect a bias in favor of green card retention as a matter of law and policy. “Such a presumption,” we would do well to realize, “derives its principal justification and sustaining rationale from the unremarkable but true realization that, absent contrary facts, permanent residency should mean precisely what it says.”¹⁹

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¹⁶ Trop v. Dulles, 356 US 86, 101-103 (1958)(plurality opinion)

¹⁷ Bruni v. Dulles, 235 F.2d 855,856 (D.C. Cir. 1956)

¹⁸ Nishikawa v. Dulles, 356 U.S. 129, 136 (1958)(quoting Perkins v. Elg, 305 U.S. 325, 337 (1939)

¹⁹ See Gary Endelman and Cyrus D. Mehta, “Home Is Where The Card Is: How To Preserve Lawful Permanent Status In A Global Economy,” 13 *Bender’s Immigration Bulletin* 849, 866 (July 1, 2008). A prior version of this article appeared in *Immigration and Nationality Law Handbook* (AILA 2008-09).

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