

Chapter 5 - Modifications and Exceptions to Continuous Residence and Physical Presence

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Certain classes of applicants may be eligible for a reduced period of continuous residence and physical presence. Certain applicants may also be eligible to count time residing abroad as residence and physical presence in the United States for naturalization purposes.

Other applicants may be exempt from the residence or physical presence requirement, or both. Although not required in all cases, applicants are generally required to have been “physically present and residing within the United States for an uninterrupted period of at least one year” at some time after becoming a lawful permanent resident (LPR) and before filing to qualify for an exemption.

A. Qualifying Employment Abroad

The table below serves as a quick reference guide on certain continuous residence and physical presence provisions for persons residing abroad under qualifying employment. The paragraphs that follow the table provide further guidance on each class of applicant.

Continuous Residence and Physical Presence for Qualifying Employment Abroad			
Employer or Vocation	Provision	Continuous Residence	Physical Presence
U.S. government or contractor	INA 316(b) INA 316(c)	Preserves residence through N-470 process	Exempt through N-470 process
American institution of research	INA 316(b) INA 316(c)	Preserves residence through N-470 process	Must meet regular statutory requirement
American firm	INA 316(b) INA 316(c)	Preserves residence through N-470 process	Must meet regular statutory requirement
Media organizations	INA 319(c)	Exempt	

Continuous Residence and Physical Presence for Qualifying Employment Abroad

Employer or Vocation	Provision	Continuous Residence	Physical Presence
Interpreter, translator, or security-related position (executive or manager)	Sec. 1059(e) of Pub. L. 109-163	Entire period abroad may count as continuous residence and physical presence in United States if engaged in qualifying employment for any portion of period abroad	
Religious duties	INA 317	Time residing abroad while performing religious duties may count as residence and physical presence in United States through N-470 process	

1. Employee of U.S. Government or Specified Entities

LPRs who have been continuously physically present in the United States for at least one year before filing an application to preserve residence and who obtain approval of the application from USCIS for employment by or contract with the U.S. government abroad will not break the continuity of their residence during such time abroad.^[1] Such persons are exempt from the physical presence requirement.^[2] Persons employed by or under contract with the Central Intelligence Agency can accrue the required year of continuous physical presence at any time prior to applying for naturalization and not just before filing the application to preserve residence.^[3]

LPRs who have been continuously physically present in the United States for at least one year before filing an application to preserve residence and who obtain approval of the application from USCIS for employment abroad by an American institution of research recognized as such by the Attorney General (now DHS Secretary) or by an American firm^[4] engaged in development of U.S. foreign trade and commerce or its subsidiary, or a public international organization, will not break the continuity of their residence during such time abroad. Such applicants are subject to the physical presence requirement.^[5]

Only applicants who are employed by or under contract with the U.S. government may be exempt from the physical presence requirements. All other applicants who are eligible to preserve their residence remain subject to the physical presence requirement.

The applicant's spouse and dependent unmarried sons and daughters, included in the application, are entitled to the same benefits for the period during which they were residing abroad with the applicant.^[6]

2. Employee of Certain Media Organizations Abroad

An applicant for naturalization employed by a U.S. incorporated nonprofit communications media organization that disseminates information significantly promoting United States interests abroad, that is so recognized by the Secretary of Homeland Security, is exempt from the continuous residence and physical presence requirements if:

- The applicant files the application for naturalization while still employed, or within six months of termination of employment;
- The applicant has been continuously employed with the organization for at least five years after becoming an LPR;

- The applicant is within the United States at the time of naturalization; and
- The applicant declares a good faith intention to take up residence within the United States immediately upon termination of employment.^[7]

3. Employed as an Interpreter, Translator, or Security-Related Position (Executive or Manager)^[8]

Time Abroad as Continuous Residence and Physical Presence in the United States

An applicant's time employed abroad by, or under contract with, the Chief of Mission (Department of State) or by the U.S. armed forces as an interpreter, translator, or in a security-related position in an executive or managerial capacity^[9] does not break any period for which continuous residence or physical presence in the United States is required for naturalization. The period abroad under such employment is treated as a period of residence and physical presence in the United States for naturalization purposes.

This benefit commonly referred to as the "section 1059(e)" provision only applies to the continuous residence and physical presence naturalization requirements. Applicants must still meet all other requirements for naturalization. The applicant has the responsibility of providing all documentation to establish eligibility.^[10]

Qualifying Employment Abroad

In order to count time abroad as continuous residence and physical presence in the United States for purposes of naturalization under the "section 1059(e)" provision, the applicant must meet all of the following requirements during such time abroad:

- The applicant must be:
 - Employed by the Chief of Mission or the U.S. armed forces;
 - Under contract with the Chief of Mission or the U.S. armed forces; or
 - Employed by a firm or corporation under contract with the Chief of Mission or the U.S. armed forces;
- The applicant must be employed as:
 - An interpreter;
 - Translator; or
 - In a security-related position in an executive or managerial capacity; and
- The applicant must have spent at least a portion of the time abroad working directly with the Chief of Mission or the U.S. armed forces.

Security-Related Position Must be in an Executive or Managerial Capacity^[11]

An applicant who was in a security-related position must have been in an executive or managerial capacity under such employment to qualify for the section 1059(e) benefits. USCIS uses the same definitions and general considerations that apply to other employment-based scenarios in the immigration context when determining whether an applicant worked in an executive or managerial capacity.

In general, an executive or managerial capacity requires a high level of authority and a broad range of job responsibilities. Managers and executives plan, organize, direct, and control an organization's major functions and work through other employees to achieve the organization's goals. The duties of the security-related position must primarily be of an executive or managerial nature, and a majority of the executive's or manager's time must be spent on duties relating to policy or operational management. This does not preclude the executive or manager from regularly applying his or her professional expertise to functions that are not executive or managerial in nature.

To be employed in an "executive capacity" means an assignment within an organization in which the employee primarily:

- Directs the management of the organization or a major component or function of the organization;
- Establishes the goals and policies of the organization, component, or function;
- Exercises wide latitude in discretionary decision-making; and
- Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.^{[121](#)}

To be employed in a "managerial capacity" means an assignment within an organization in which the employee primarily:

- Manages the organization, or a department, subdivision, function, or component of the organization;

- Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- If another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.^[13]

USCIS does not deem an applicant to be an executive or manager simply because he or she has such a title in an organization or because the applicant periodically directs the organization as the owner or sole managerial employee. The focus is on the applicant's primary duties. In this regard, there must be sufficient staff, such as contract employees or others, to perform the day-to-day operations of the organization in order to enable the applicant to be primarily employed in an executive or managerial function.^[14]

USCIS does not consider a person to be acting in a managerial or executive capacity merely on the basis of the number of employees that the person supervises. USCIS takes into account the reasonable needs of the organization with regard to the overall purpose and stage of development of the organization in cases where staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity.^[15]

Applicable Period of Absence

Section 1059(e) benefits are available for an absence from the United States when an applicant is employed in a qualifying position and has worked directly with the Chief of Mission or the U.S. armed forces for any period of time during that absence. However, if the applicant spent part of that time abroad in employment other than the specified qualifying employment, then the applicant does not receive credit for that part of the time.

Other employment abroad, or employment as an interpreter, translator, or in a security-related position (as described above) by an entity other than the Chief of Mission or the U.S. armed forces, or under contract with them, does not provide a benefit to the applicant. Such an applicant would still be required to meet the continuous residence and physical presence requirements unless the applicant qualified for the preservation of his or her residence (through the [N-470](#) process).^[16]

4. Person Performing Religious Duties

Qualifying Religious Duties

An LPR who travels outside of the United States temporarily may treat such time outside of the United States as continuous residence and physical presence in the United States for naturalization purposes in cases where the LPR was outside of the United States for the sole purpose of:

- Performing the ministerial or priestly functions of a religious denomination with a bona fide organization within the United States; or
- Serving as a missionary,^[17] brother, nun, or sister who was engaged solely by a religious denomination or interdenominational mission having a bona fide organization within the United States.

Applicants must have been physically present and residing within the United States for an uninterrupted period of at least 1 year before filing the naturalization application in order to qualify for naturalization.^[18] While the applicant must establish 1 year of uninterrupted physical presence, he or she may comply with this requirement at any time before filing the naturalization application, after becoming an LPR.^[19]

Application to Preserve Residence

The LPR must file an Application to Preserve Residence for Naturalization Purposes ([Form N-470](#)) in order for USCIS to consider whether the LPR qualifies to preserve continuous residence and physical presence while outside of the United States.

The Form N-470 may be filed before, during, or after an absence from the United States for qualifying religious duties, even if the absence lasted for more than 1 year. The applicant need not comply with the 1-year physical presence requirement mentioned above before filing Form N-470. However, the N-470 must be approved before USCIS can approve the naturalization application.^[20]

B. Qualifying Military Service

Applicants with certain types of military service may be eligible for a modification or exception to the continuous residence and physical presence requirements for naturalization.

See Part I, Military Members and their Families,^[21] for modifications and exceptions for applicants with certain types of military service, to include:

- One Year of Military Service – [INA 328](#);

- Service during Hostilities – [INA 329](#);
- Service in WWII Certain Natives of Philippines – Section 405 of IMMACT90; and
- Members who Enlisted under Lodge Act – Act of June 30, 1950, 64 Stat. 316.

C. Spouse, Child, or Parent of Certain U.S. Citizens

The spouse, child, or parent of certain U.S. citizens may be eligible for a modification or exception to the continuous residence and physical presence requirements for naturalization.

See Part G, Spouses of U.S. Citizens,^[22] for modifications and exceptions for spouses of certain U.S. citizens, to include:

- Spouse of U.S. Citizen for 3 Years – [INA 319\(a\)](#);
- Spouse of Military Member Serving Abroad – [INA 319\(e\)](#);
- Surviving Spouse of U.S. Citizen – [INA 319\(d\)](#); and
- Surviving Spouse Person Conducting U.S. Intelligence.^[23]

See Part H, Children of U.S. Citizens,^[24] for modifications and exceptions to the continuous residence and physical presence requirements for children of certain U.S. citizens.

- Child of U.S. Government Employee (Abroad) – [INA 320](#);
- Surviving Child of U.S. Citizen – [INA 319\(d\)](#); and

- Surviving Child of Person Conducting U.S. Intelligence. [\[25\]](#)

These parts will also include information on modifications and exceptions to the continuous residence and physical presence requirements for surviving parents of certain U.S. citizens.

D. Other Special Classes of Applicants

The table below serves as a quick reference guide to certain continuous residence and physical presence provisions for special classes of applicants. The paragraphs that follow the table provide further guidance on each class of applicant.

Continuous Residence and Physical Presence for Special Classes of Applicants			
Applicant	Provision	Continuous Residence	Physical Presence
Citizens who lost citizenship through foreign military service	INA 327	Exempt	
Noncitizen nationals	INA 325	Time residing in outlying possession may count as residence and physical presence in the United States	

Continuous Residence and Physical Presence for Special Classes of Applicants

Applicant	Provision	Continuous Residence	Physical Presence
Service on certain U.S. vessels	INA 330	Time in service on certain U.S. vessels may count as residence and physical presence in the United States	
Service contributing to national security	INA 316(f)	Exempt	

1. Citizens who Lost U.S. Citizenship through Foreign Military Service ^[26]

Former citizens who lost citizenship through service during the Second World War in foreign armed forces not then at war with the United States can regain citizenship. The applicant must be admitted as an LPR. However, the applicant is exempt from the continuous residence and physical requirements for naturalization. ^[27]

2. Noncitizen Nationals of the United States

The time a noncitizen national of the United States spends within any of the outlying possessions of the United States counts as continuous residence and physical presence in the United States. ^[28]

3. Service on Certain U.S. Vessels

Any time an LPR has spent in qualifying honorable service on board a vessel operated by the United States or on board a vessel whose home port is in the United States will be considered residence and physical presence within the United States.^[29] The qualifying service must take place within five years immediately preceding the date the applicant files for naturalization.

4. Service Contributing to National Security

The Director of Central Intelligence, the Attorney General, and the Director of USCIS may designate annually up to five persons who have “made an extraordinary contribution to the national security of the United States or to the conduct of United States intelligence activities.” Such persons are exempted from the continuous residence and physical presence requirements.^[30]

Footnotes

[^ 1] Any Peace Corps personal service contractor (PSC) who entered into a contract with the Peace Corps on or after November 21, 2011 is a U.S. government employee under the Immigration and Nationality Act (INA). See the Kate Puzey Peace Corps Volunteer Protection Act of 2011 (Puzey Act), [Pub. L. 112-57 \(PDF\)](#) (November 21, 2011), 22 U.S.C. 2509(a)(5), amending Section 10(a)(5) of the Peace Corps Act, [Pub. L. 87-293 \(PDF\)](#) (September 22, 1961), 22 U.S.C. 3901. Prior to enactment of the Puzey Act, PSCs were not considered U.S. government employees.

[^ 2] See [INA 316\(b\)](#) and [INA 316\(c\)](#).

[^ 3] See [INA 316\(c\)](#).

[^ 4] USCIS has adopted the AAO decision in [Matter of Chawathe \(PDF\)](#), 25 I&N Dec. 369 (AAO 2010). The decision states that under [INA 316\(b\)](#), a publicly held corporation may be deemed an “American firm or corporation” if the applicant establishes that the corporation is both incorporated and trades its stock exclusively on U.S. Stock Exchange markets. If the applicant is unable to meet this qualification, then he or she must meet the requirements under [Matter of Warrach \(PDF\)](#), 17 I&N Dec. 285, 286-287 (Reg. Comm. 1979). USCIS then determines the nationality of the corporation by reviewing whether more than 50 percent is owned by U.S. citizens. The applicant must establish this by a preponderance of the evidence.

[^ 5] See [INA 316\(b\)](#) and [INA 316\(c\)](#). See [8 CFR 316.20](#). See uscis.gov/AIR for a list of recognized organizations.

[^ 6] See [INA 316\(b\)\(2\)](#). See [8 CFR 316.5\(d\)\(1\)\(ii\)](#).

[^ 7] See [INA 319\(c\)](#). See [8 CFR 319.4](#).

[^ 8] See Section 1059(e) of the National Defense Authorization Act of 2006, [Pub. L. 109-163 \(PDF\)](#) [[8 U.S.C. 1101 Note](#)] (January 6, 2006), as amended. The subsection ‘(e)’ provision relating to naturalization was added to Section 1059 on June 15, 2007. The amendments state that certain persons do not break the continuity of their residence in the United States for naturalization purposes during time abroad if employed abroad by, or under contract with, the Chief of Mission (Department of State) or by the U.S. armed forces as an interpreter or translator in Iraq or Afghanistan. See [Pub. L. 110-36 \(PDF\)](#) (June 15, 2007). On December 28, 2012, Section 1059(e) was further amended by adding certain security-related positions (in an executive or managerial capacity), in addition to interpreters and translators, as types of qualifying employment. The amendments also removed the geographical

limitation of qualifying employment within Iraq or Afghanistan. See [Pub. L. 112-227 \(PDF\)](#) (December 28, 2012).

[^ 9] See [INA 101\(a\)\(44\)\(A\)](#) and [INA 101\(a\)\(44\)\(B\)](#) for statutory definitions of the terms “managerial capacity” and “executive capacity.” See [8 CFR 204.5\(j\)\(2\)](#), [8 CFR 214.2\(l\)\(1\)\(ii\)\(B\)](#), and [8 CFR 214.2\(l\)\(1\)\(ii\)\(C\)](#). See Part F, Employment-Based Classifications, Chapter 4, Multinational Executive or Manager [[6 USCIS-PM F.4](#)] for further guidance on managerial and executive capacity and the evaluation of such positions.

[^ 10] [Pub. L. 110-36 \(PDF\)](#) added Section 1059(e) to the National Defense Authorization Act for Fiscal Year 2006, which added the interpreter and translator provisions.

[^ 11] See [INA 101\(a\)\(44\)\(A\)](#) and [INA 101\(a\)\(44\)\(B\)](#) for statutory definitions of the terms “managerial capacity” and “executive capacity.” See [8 CFR 204.5\(j\)\(2\)](#), [8 CFR 214.2\(l\)\(1\)\(ii\)\(B\)](#), and [8 CFR 214.2\(l\)\(1\)\(ii\)\(C\)](#). See Part F, Employment-Based Classifications, Chapter 4, Multinational Executive or Manager [[6 USCIS-PM F.4](#)] for further guidance on managerial and executive capacity and the evaluation of such positions. See Foreign Affairs Manual (FAM), [9 FAM 402.12](#), Intracompany Transferees.

[^ 12] See [INA 101\(a\)\(44\)\(B\)](#). See [8 CFR 204.5\(j\)\(2\)](#). See [8 CFR 214.2\(l\)\(1\)\(ii\)\(C\)](#).

[^ 13] See [INA 101\(a\)\(44\)\(A\)](#). See [8 CFR 204.5\(j\)\(2\)](#). See [8 CFR 214.2\(l\)\(1\)\(ii\)\(B\)](#).

[^ 14] See [INA 101\(a\)\(44\)\(A\)](#) and [INA 101\(a\)\(44\)\(B\)](#) for statutory definitions of the terms “managerial capacity” and “executive capacity.” See [8 CFR 204.5\(j\)\(2\)](#), [8 CFR 214.2\(l\)\(1\)\(ii\)\(B\)](#), and [8 CFR 214.2\(l\)\(1\)\(ii\)\(C\)](#). See Part F, Employment-Based Classifications, Chapter 4, Multinational Executive or

Manager [[6 USCIS-PM F.4](#)] for further guidance on managerial and executive capacity and the evaluation of such positions. See [9 FAM 402.12](#), Intracompany Transferees.

[[^ 15](#)] See [INA 101\(a\)\(44\)\(C\)](#).

[[^ 16](#)] See [INA 316\(b\)](#) and [INA 316\(c\)](#). Certain applicants who meet the requirements of [INA 316\(b\)](#) to preserve residence may also qualify for benefits under [INA 316\(c\)](#) dealing with physical presence. See Section A, Qualifying Employment Abroad [[12 USCIS-PM D.5\(A\)](#)].

[[^ 17](#)] See [INA 317](#).

[[^ 18](#)] See [INA 317](#).

[[^ 19](#)] Persons performing religious duties as described in INA 317 do not need to have met this 1-year physical presence requirement before starting their religious duties outside the United States, unlike other naturalization applicants filing Form N-470 who must meet this requirement before working outside the United States. For more information on the N-470, see Chapter 3, Continuous Residence, Section D, Preserving Residence for Naturalization (Form N-470) [[12 USCIS-PM D.3\(D\)](#)].

[[^ 20](#)] See [8 CFR 316.5\(d\)\(2\)](#). For more information about Form N-470, see Chapter 3, Continuous Residence, Section D, Preserving Residence for Naturalization (Form N-470) [[12 USCIS-PM D.3\(D\)](#)].

[[^ 21](#)] See [12 USCIS-PM I](#).

[[^ 22](#)] See [12 USCIS-PM G](#).

[[^ 23](#)] See Section 305 of the Intelligence Authorization Act of 1997, [Pub. L. 104-293 \(PDF\)](#), 110 Stat. 3461, 3465 (October 11, 1996).

[^ 24] See [12 USCIS-PM H](#).

[^ 25] See Section 305 of the Intelligence Authorization Act of 1997, [Pub. L. 104-293 \(PDF\)](#), 110 Stat. 3461, 3465 (October 11, 1996).

[^ 26] See [INA 327](#).

[^ 27] See [8 CFR 327.1\(f\)](#).

[^ 28] See [INA 325](#). See [8 CFR 325.2](#). Unless otherwise provided under [INA 301](#), the following persons are nationals, but not citizens of the United States at birth: (1) a person born in an outlying possession of the United States on or after the date of formal acquisition of such possession; (2) a person born outside the United States and its outlying possessions of parents both of whom are nationals, but not citizens, of the United States, and have had a residence in the United States, or one of its outlying possessions prior to the birth of such person; (3) a person of unknown parentage found in an outlying possession of the United States while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in such outlying possession; and (4) a person born outside the United States and its outlying possessions of parents one of whom is a [noncitizen](#), and the other a noncitizen national, of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than seven years in any continuous period of ten years: during which the national parent was not outside the United States or its outlying possessions for a continuous period of more than one year, and at least five years of which were after attaining the age of fourteen years. See [INA 101\(a\)\(22\)](#) and [INA 308](#).

[^ 29] See [INA 330](#). See [8 CFR 330.1](#).

[^ 30] See [INA 316\(f\)](#).

Current as of May 28, 2021