

## **8 HARDSHIPS PERMANENT RESIDENTS FACE DUE TO NATURALIZATION DELAYS**



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According to the United States Citizenship and Immigration Services, naturalization cases filed after June 1, 2007 may take between 16 and 18 months to be adjudicated. Cases filed before June 1, 2007 are typically being processed in 6-9 months from the date of filing.

The longer processing times are being caused by the significant increase in the number of applications and petitions filed with USCIS just prior to the fee increase on July 30, 2007. According to Emilio T. Gonzalez, Director of the United States Citizenship and Immigration Services, the USCIS received a total of 3 million immigration filings in June, July and August 2007 compared to 1.8 million filings for the same 3-month period of year 2006. In addition, during June and July 2007, the number of N-400 applications was up 350% from the same 2-month period in year 2006.

The resulting delays are being investigated by the U.S. House of Representatives where immigration officials, including the Director of USCIS, had to explain why these delays are occurring and how the USCIS plans to address the problem.

The naturalization delays will affect permanent residents who are trying to become U.S. citizens in a number of ways:

1. Permanent residents who filed for naturalization after June 1, 2007 but who have not become citizens by November 2008 may not be eligible to vote in the November 2008 Presidential election.
2. Permanent residents who would like to sponsor a fiancé on a K-1 Visa will be delayed. Permanent residents cannot file a K-1 (Fiancé) Visa Petition. They must first become U.S. citizens.
3. Permanent residents who are sponsoring a spouse (husband or wife) are subject to the backlogs in Family 2A Preference Category. Currently, there is a backlog of several years before an immigrant visa will become available. Permanent residents can file the I-130 Petition on behalf of a spouse but must wait for an immigrant visa to become available. In contrast, the spouse of a U.S. citizen is considered an "immediate relative" and thus can process the immigrant visa ("green card") much faster in most cases.

4. Permanent residents must become U.S. citizens before they can sponsor their siblings (brothers or sisters) under the Family 4<sup>th</sup> Preference Category.
5. Permanent residents must become U.S. citizens before they can sponsor their parents as “Immediate Relatives”.
6. Permanent residents with expired green cards might have to file to renew their Permanent Resident Cards. Current USCIS policy states that if you filed your Form N-400 (Application for Naturalization) more than 6 months prior to the expiration date of your Permanent Resident Card, then you are not required to renew the Permanent Resident Card by filing a Form I-90. However, if you filed your form N-400 (Application for Naturalization) less than 6 months before your Permanent Resident Card expired or after your Permanent Resident Card expired, then you are supposed to file a Form I-90 application to replace or renew your green card.
7. If a permanent resident becomes a naturalized U.S. citizen after his or her permanent resident child turns 18, then that child will not become a U.S. citizen automatically based on the Child Citizenship Act of 2000. Under the Child Citizenship Act of 2000, a naturalized citizen can confer automatic citizenship on his or her child if the child is a permanent resident who lives in the physical and legal custody of the naturalized parent so long as all of these criteria are met before the child turns 18 years of age.
8. Permanent residents who have filed for naturalization based on marriage to a U.S. citizen but who separate from their spouse while their N-400 application is pending might not be able to naturalize on that basis. A permanent resident who is married to a United States citizen may file for naturalization after being a permanent resident for a period of 3 years. All other permanent residents must wait a period five years. In filing a Form N-400 Application for Naturalization, the permanent resident must check a box indicating on what basis he or she is filing for naturalization (3 years or 5 years). The naturalization regulations further provide that, if a permanent resident files based on having been a permanent resident for 3 years and who has been married to and living with a U.S. citizen spouse during that 3-year period, then the permanent resident must remain married to and living with that same U.S. citizen spouse until at least the date the permanent resident becomes a naturalized U.S. citizen. Therefore, a permanent resident who files the Form N-400 application based on marriage to a U.S. citizen for a period of 3 years but who after filing either divorces or becomes legally separated from that U.S. citizen spouse may have his or her Form N-400 denied.

The foregoing are just some possible hardships or problems that permanent residents may face due to the significant delays in the processing of N-400 applications. It is imperative that USCIS act quickly to resolve this problem and to timely adjudicate the backlog of pending N-400 Applications.

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