Interpretation 319.2 Naturalization based upon citizenship of spouse employed abroad.

(a) Statutory development. Provisions of current section 319(b) which authorize the almost immediate naturalization of an alien spouse whose United States citizen husband or wife is regularly engaged in specified employment abroad are substantially similar to those of section 312 of the Act of October 14, 1940, which was the first enactment permitting such expeditious action.

A measure of relief, somewhat similar to that above, had been afforded this class of alien spouse initially by the Act of June 29, 1938, but such enactment merely preserved the requisite continuity of residence during an extended absence, 25 / and did not accord the 1940 and present statutory exemption 26 / from the normal residence requirements for naturalization.

(b) Residence (physical presence) exemption. (1) United States and state. Since no particular period of United States or state residence (physical presence) prior to naturalization is required under current section 319(b), the alien can acquire citizenship before taking up extended residence abroad with a citizen spouse, and thus is not concerned with the quantum and continuity of residence, and aggregate physical presence, required under normal naturalization provisions.

Admittedly, subsection (c), added to section 319 by the Act of December 18, 1967, expressly declares that no prior residence in any state shall be required for naturalization thereunder, while section 319(b) contains no comparable specific exemption. However, these circumstances should not be regarded as having undermined the well-established Service position holding that 6 months' state residence immediately preceding the filing of the petition is not required for naturalization under section 319(b). Moreo ver, despite the similar omission of any specific exemption in subsection (d), which was added to section 319 by the Act of June 29, 1968, it shall be given the same construction as section 319(b).

There is substantial basis for the Service position set forth just above. One notes, for example, that section 319(b) specifically states that no prior residence in the United States shall be

required. To construe the section as requiring 6 months' state residence would, in effect, impose a requirement of prior residence in the United States directly contrary to the express statement in the section. It cannot be supposed that Congress intended any such inconsistent result. Aside from this aspect of the ma tter, it is observed that section 319(a), enacted at the same time as section 319(b), specifically requires 6 months' state residence. Certainly, it is reasonable to conclude that a similar affirmative provision would have been included in section 319(b), had Congress intended state residence to be a requirement for naturalization under that section. Finally, the remedial purpose which section 319(b) was meant to serve could be defeated by a construction requiring 6 months' state residence, and Congress c ould hardly have intended this to happen.

(2) Lawful admission for permanent residence required . While specified periods of continuous residence and aggregate physical presence cease to be factors under this expeditious naturalization procedure, an alien claiming the benefits thereof is required to be in the United States pursuant to a lawful admission for permanent residence, **27** / at the time the alien files the petition and is naturalized.

(c) Other eligibility requirements . (1) Good moral character, attachment, and favorable disposition requirements where there is no statutory period . See INTERP 316.1(f)(3), supra; also, INTERP 316.1(h), supra. (Added)

(2) Citizen spouse "regularly stationed abroad ." (i) Under Nationality Act of 1940 . The Service, in administering section 312, recognized that the words "whose spouse is regularly stationed abroad" could be construed as requiring the citizen spouse to be physically present at his foreign place of employment before he could be considered as being "regularly stationed abroad," and that absent such condition the alien spouse could be regarded as ineligible to file a petition under the section. However, noting that the section imposes no such express requirement as a preliminary to filing the petition, and that the said interpretation would overemphasize the word "regularly" and assign it the connotation of an accomplished fact, without any reason for attaching the added significance, the Service rejected the construction.

Having reached the above conclusion, the Service further decided that the words "whose spouse is regularly stationed abroad" were intended to distinguish between the spouse with a regular station in a foreign country and the spouse whose employment abroad is only of a short, temporary, or casual nature and that, therefore, the quoted words should be construed as if they read "whose spouse's regular station is abroad." **28** /

Applying the above viewpoint, alien spouses were naturalized even though the citizen spouses were in the United States at the time the petitions were filed and granted, either on temporary home (vacation) leave from regular foreign employment to which they were scheduled to return, or pending travel abroad to enter upon newly assigned foreign employment which would be regular and steady in character. **29** /

(ii) Under Immigration and Nationality Act . The Service has concluded that the words "whose spouse is regularly stationed abroad," within the context of both current section 319(b) and section 312 of the Nationality Act of 1940, must be assigned the same meaning, since both sections were legislatively designed to achieve the same remedial purpose, and the basic terms of each cannot be distinguished in a manner which would force a different conclusion.

Accordingly, the rule and reasoning discussed in subparagraph (i) above shall be applied in deter mining whether a citizen spouse is "regularly stationed abroad" for purposes of section 319(b).

(iii) Requirement that petitioner's residence abroad be for an extended period . Statutes affording expeditious naturalization of alien spouses of United States citizens regularly stationed abroad are silent as to the length of anticipated foreign residence necessary to qualify for such benefits. 29a / However, as noted above, 29b / such legislation was enacted to facilitate the naturalization of alien spouses who otherwise could not hope to satisfy the residence requirements because of protracted periods of residence abroad with their citizen spouses. As a general rule, to qualify for expeditious naturalization, the petitioner must establish that the foreign residence following the date of naturalization will be for an extended period of time, rather than one that can be characterized as brief or of limited duration. It has been hel d that a four-month foreign residence constituted but a brief or limited sojourn and is of insufficient duration to warrant expeditious naturalization. 29c / (Subpar. redesignated; formerly subpar. (c)(1))

(3) Requirement that alien spouse intend to join citizen spouse abroad upon naturalization . (i) Legal basis for the requirement . While legislative history relating to current section 319(b) does not consider this matter, 30 / a Presidential report to the Congress explanatory of a proposed section 311 (ultimately section 312 of the Nationality Act of 1940) stated in relevant part that the proposed section would facilitate the naturalization of spouses of certain citizens regularly stationed abroad in specified employmentspouses who, by reason of enforced absence from this country, could not hope to meet the normal residence requirements for naturalization. 31 / Consequently, it is only reasonable to conclude that, in enacting section 312, and analogous section 319(b), the Congress sought to provide a remedy for this particular problem, and, therefore, intended to limit the section's benefits to a petitioner who planned to go abroad and reside with the citizen spouse during the period of the employment. Obviously, when the petitioner does not intend to reside abroad, there cannot be that "enforced absence" which created a need for the remedial sections, or the need for an exception to the special residence exemptions already granted spouses under other statutory provisions. 32 / Moreover, nowhere is there any indication, or even suggestion, that Congress intended to authorize naturalization with no period of United States residence because of the mere stationing of the citizen spouse abroad. 33 /

Again, a further indication of Congressional intent is found in the common provision of sections 312 and 319(b) which expressly require the alien spouse to declare before the naturalization court an intention to "take up residence" within the United States immediately "upon the termination" of the citizen spouse's employment abroad. It is apparent that, unless the Congress intended or contemplated that the naturalized spouse would proceed abroad and take up residence with the citizen spouse during the peri od of employment, this affirmative provision of the sections ceases to have meaning. If the naturalized spouse does not go abroad, there is nothing to "take up . . ." "upon the termination." 34 /

The foregoing requirement, confirmed by regulation, 35 / has been exacted for more than 25 years without serious challenge, 36 / and noncompliance therewith constitutes a basis for denying naturalization which has been recognized by the courts. 37 /

(ii) Compliance with requirement precluded by citizen spouse's delayed departure abroad . As

stated in paragraph (c)(2) above, a citizen spouse may be "regularly stationed abroad" even though he or she is temporarily physically present in the United States when the petition is filed, and will not return to the foreign place of employment until after the alien spouse is naturalized.

The above circumstances, however, do not relieve the alien spouse from meeting the further additional requirement of establishing an intention in good faith to join the citizen spouse at the place of employment abroad upon **38** / naturalization. Unless and until it is shown that such citizen spouse is under contract or orders to proceed abroad and assume the duties of the employment on a date in close proximity **38** / to the expected date of the alien spouse's naturalization, the alien spouse cannot be regarded as having satisfied this additional requirement, nor should any petition which may have been filed be calendared for final hearing with other than a denial recommendation. Obviously, a professed intention on the part of the petitioning spouse to join the citizen abroad upon naturalization has no substance until it is established when, in relationship to the anticipated date of the naturalization, the citizen spo use will be abroad so that he can be joined there by the petitioning spouse.

(iii) Compliance with requirement when parties cannot live together while abroad . As explained in (c)(3)(i), supra, the Congress intended that the alien spouse who seeks naturalization under section 319(b) should proceed abroad and take up residence with the citizen spouse during the period of the foreign employment. This legislative intent is reflected in 8 CFR 319.2 which expressly requires the petitioner to establish an intention in good faith to reside abroad with the citizen spouse upon naturalization.

The United States Government has recognized that existing world conditions create dangers to persons present or residing in areas where hostile activities are taking place, and has designated such areas as locations in which dependents of United States Government employees and servicemen cannot reside. A petitioner for naturalization whose citizen spouse is employed or stationed in an area so designated is therefore unable to comply with the requirement of 8 CFR 319.2. The failure to meet that requirement solely because of restrictions imposed by the United States Government itself cannot reasonably be regarded as the voluntary and willful act of the petitioner or as being in contravention of Congressional intent.

Accordingly, the requirement of an intention in good faith to reside abroad with the citizen spouse upon naturalization is satisfied when the alien spouse establishes an intention to reside abroad promptly upon naturalization, and an inability to reside with the citizen spouse at the foreign place employment solely because restrictions imposed by the United States Government preclude dependents from residing there. Obviously, if the alien spouse does not intend to (and will not) depart from the United Stat es to take up residence in some foreign country promptly upon naturalization, such spouse is not eligible for naturalization under section 319(b), and this rule prevails even though such spouse may intend to take up residence abroad with the citizen spouse if and when the United States Government authorizes such action on some undetermined date in the future.

Pursuant to the above rule, the parties may reside in close proximity to each other, or in different locations or countries widely separated one from the other. Thus, in a recent case, **39** / naturalization was granted a petitioner who intended to reside in the Philippine Islands upon naturalization, because the United States Government would not permit her to reside in Vietnam with her husband, a civilian employee of the government regularly stationed in that area of

hostilities. Similarly, because of such restriction, citizenship was conferred upon four petitioners who planned to reside in Germany, **39a** / Italy, **40** / Thailand, **40a** / and South Korea, **40b** / respectively, while their citizen spouses were serving with the armed forces in Vietnam, and upon two other petitioners who planned a residence in Japan **40c** / and Spain, **40d** / respectively, while their citizen spouses served with the United States Air Force in Thailand. (Revised)

The court, in deciding the Burgett case cited just above, **39** / found that the petitioner intended to visit and reside with the citizen spouse in the Philippine Islands, as the latter's official duties in Vietnam might permit. Since the official duties in any given case might allow occasional visitation, **40a** / or none at all, it is clear that, in applying this rule, the extent to which the parties may be expected to actually live together in this manner during their separate stays abroad is immaterial to eligibility. **40b** /

A petitioner whose situation is not subject to the official residence restrictions described in the paragraphs above is ineligible for naturalization under section 319(b), unless a showing is made that she (he) intends to reside with the citizen spouse abroad upon naturalization, and that she (he) is in a position to effectuate such intent.

(iv) Showing of timely transportation arrangements required . Unless and until the petitioning spouse supports her (his) intention to proceed abroad by a showing that definite arrangements as to transportation and related matters have been made and are consistent with a departure upon **41** / naturalization, the expressed intention lacks substance and any filed petition should not be calendared for final hearing with a recommendation other than denial.

(v) Construction of "departure upon (on a date in close proximity to) the alien spouse's naturalization ." Common sense dictates that the intention-to-proceed-abroad-upon-naturalization requirement in 8 CFR 319.2 is not to be construed as necessarily requiring the petitioning spouse to intend a departure on the same day she or he is admitted to citizenship. By the same token, a departure date relatively remote from the date of naturalization would not be consonant with this requirement. At best, departure on a date "in close proximity" to the date of naturalization must be intended. While the elapsed time between the date of naturalization and the date of intended departure will vary, depending upon conditions of employment, availability of travel accommodations, and other relevant circumstances, it should ordinarily be limited to 30 days, and not more than 45 days, after the date of naturalization, in cases not involving military dependents. **42** / (Subpar. redisignated; formerly subpar. (c)(2))

(d) Military dependents . (1) Eligibility requirements . While, to the extent indicated in (2) below, special procedures have been devised and adopted to meet the unique needs of servicemen, their spouses, and the military authorities in this type of case, the basic requirements for naturalization pursuant to current section 319(b), as discussed in INTERP 319.2(b) and (c), must be met by the alien wife who seeks naturalization based upon her husband's employment **43** / abroad as a member of the armed forces, and her intention to take up residence with him upon naturalization.

(2) Special procedures (DD Form 1278) . When, in military cases, the transportation expenses of the alien spouse are to be paid by the military authorities, compliance with the eligibility

requirements discussed in INTERP 319.2(c) must be established by DD Form 1278 alone, executed in strict conformity with Department of Defense regulations. **44** /

DD Form 1278 issued more than 90 days in advance of the alien dependent's authorized departure date violates those regulations and is unacceptable. Moreover, Service officers should always be on the alert for any indication that the certifying official lacked the authority or was otherwise not in a position to furnish the certification.

When a serviceman's alien spouse is not authorized to travel at government expense, and therefore DD Form 1278 will not be issued, she must establish her eligibility for section 319(b) benefits in accordance with the rules set forth in INTERP 319.2(c).

To meet the burden of proof described just above, where the serviceman is not yet abroad, such spouse must present a copy of his travel orders showing the date and place of his overseas assignment or, as alternatives, either a letter from his commanding officer or a certification from the Defense Department containing such information. If the serviceman already is on duty at his foreign station, a similar letter or certification to such effect must be presented.

Finally, whether the serviceman is or is not abroad, the petitioning spouse must also establish her good-faith intention to go abroad to live with him upon naturalization, in the manner required by INTERP 319.2(c).