



## **Practice Pointer: Preparing Your Client for Naturalization When the I-751 Petition Remains Pending**

*By AILA's Vermont Service Center (VSC) Committee<sup>1</sup>*

As delays associated with USCIS processing times continue to impact multiple form types, clients are understandably eager to have their cases finalized and adjudicated. Of the many form types affected, delays by USCIS in the adjudication of Form I-751, Petitions to Remove Conditions on Residence, are especially lengthy, with adjudication trends currently longer than 12 months.<sup>2</sup> Thanks to a recent update by USCIS to Form I-797 receipt notices, I-751 applicants will now have their travel and work authorization extended 18 months after the expiration of their conditional residence cards (I-551), as opposed to the previously extended 12 months.<sup>3</sup> In conjunction with the expired conditional resident card, this receipt notice should serve to provide evidence of continued status while the I-751 petition is pending with USCIS and help to avoid the inconvenience of getting an I-551 stamp from a local USCIS office. However, if you have a client who has been waiting for more than one year for the adjudication of a jointly filed I-751 petition, you may still wish to advise that your client consider filing an N-400, Application for Naturalization.

Immigration and Nationality Act (INA) section 319(a) provides that if the permanent resident spouse of a United States citizen has “resided continuously, after being lawfully admitted for permanent residence... for the last three years” and ... “during the three years immediately preceding the date of filing his application has been living in marital union with the citizen spouse” the permanent resident can file for naturalization and the fact that the I-751 petition remains pending is not a bar to eligibility.

Of course, an attorney must first ensure that the client is eligible for naturalization under INA section 319(a), which provides the following essential requirements:

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<sup>1</sup> Special thanks to AILA Member Maggie Castillo and VSC Liaison Committee Chair Nicole Simon for their contributions to this practice pointer.

<sup>2</sup> The California Service Center (CSC) is currently reporting processing times of 17.5 to 19 months for Form I-751. The VSC is reporting processing times of 12 to 15.5 months for Form I-751. *See* <https://egov.uscis.gov/processing-times/> for up-to-date USCIS processing times.

<sup>3</sup> USCIS Update to Form I-797 Receipt Notices for Form I-751 and Form I-829, AILA Doc. No. 18061234, [https://www.aila.org/infonet/uscis-update-to-form-i-797-receipt-notices?utm\\_source=aila.org&utm\\_medium=InfoNet%20Search](https://www.aila.org/infonet/uscis-update-to-form-i-797-receipt-notices?utm_source=aila.org&utm_medium=InfoNet%20Search).

- Is the spouse of a United States citizen (a lawful permanent resident (LPR) who obtained residency as a battered spouse of USC is also eligible);
- Has continuously lived in the United States for at least three years<sup>4</sup>;
- Has immediately preceding the filing of the application for naturalization been living in marital union with the U.S. citizen spouse (battered spouses are exempt from this requirement);
- Has been physically present in the United States for a period totaling at least half of the time; and
- Has lived in the state or the USCIS district with jurisdiction over the applicant's place of residence for at least 3 months prior to the date of filing the application.

In addition, an attorney will want to confirm that the client has the requisite “good moral character”<sup>5</sup> for the prior three-year period and, beyond that, that the client has not been convicted of any crime that will result in the denial of the application or, worse yet, subject them to removal proceedings. An attorney may wish to consider advising the permanent resident client to have FBI fingerprints taken at the initial filing of the I-751. If the client decides to file for naturalization after filing the I-751, the FBI fingerprint results would allow the client to proceed with more confidence knowing that they meet all necessary requirements.

If, after considering these requirements, the client still wishes to seek naturalization under INA section 319(a), the next step is for the attorney to prepare the application and file it with the appropriate lockbox or online via the USCIS website. When filing the N-400 application, attorneys should include a copy of the I-751 receipt notice, along with a cover letter explaining that the client is seeking to naturalize under INA section 319(a). The text of this document should also explicitly mention that the applicant is requesting the adjudication of both the I-751 petition and N-400 application at the N-400 interview taking place at the local USCIS field office. In addition to an explanation of the legal basis for the filing, attorneys will also need to provide supporting documentation showing that the permanent resident applicant and the U.S. citizen spouse continue to live together. Examples of this evidence may include: rental agreements, mortgage documents, bills in joint names, bank statements, joint insurance, travel documents, and family photos. The bona fide supporting documents should cover at least three years preceding the filing of the N-400. Be sure that the documentation included covers the period in between the filing of the I-751 and the N-400 as well.

Unless covered under the aforementioned 18-month extension of travel and work authorization newly updated by USCIS on the I-797 receipt notice, clients wishing to travel abroad or requiring evidence of continued work authorization while the N-400 application is pending will need to obtain an I-551 stamp at the local USCIS office. In order to obtain a stamp, the client will need to schedule an InfoPass appointment. Note that some local USCIS offices will issue the I-551 stamp on an emergency walk-in basis if no InfoPass appointments are available. For more information about the policy of a

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<sup>4</sup> A permanent resident may file the N-400 application up to 90 days prior to the completion of the required period of residence. *See* 8 CFR §334.2(b).

<sup>5</sup> *See* INA §316(a)(3).

local USCIS office, AILA members should contact the AILA USCIS liaison for the relevant AILA Chapter under the local USCIS office's jurisdiction.<sup>6</sup> Members may also reference the Tips and Tricks for Local Field Office document produced by the USCIS Field Operations Liaison Committee.<sup>7</sup>

Once USCIS receives and processes the case and captures the applicant's biometrics, the client will be placed in a queue and eventually scheduled for an interview at the local USCIS office. The District Adjudications Officer (DAO) will first adjudicate the I-751 application. If approved, the officer will adjudicate the N-400 application. The applicant's U.S. citizen spouse should accompany them to the interview for the adjudication of the jointly filed I-751 petition. If the officer has any questions for the spouse, they may be brought into the interview. Additionally, the officer may also bring the U.S. citizen spouse into the N-400 interview to address any additional questions he or she may have regarding eligibility under INA section 319(a).

AILA's Vermont Service Center Liaison Committee recommends advising your clients about the possibility of USCIS not properly transferring the I-751 petition case file to the local USCIS office. If this occurs, the DAO will likely be unable to approve the N-400 application until the I-751 petition is properly forwarded to the local USCIS office and adjudicated. In this situation, members should confirm with the local USCIS office that the case file has not been transferred. Once confirmed, members may follow up with USCIS through the public inquiry process, which is currently outlined on AILA's website.<sup>8</sup> If, after completing the steps included in this process, the I-751 has still not been forwarded to the local USCIS office, AILA members may submit an inquiry for AILA case liaison assistance and the relevant AILA Service Center Liaison Committee will determine if escalation of the case is possible.

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<sup>6</sup> Members may locate contact information for AILA USCIS liaisons utilizing the [Group Directory](#) and [Resources by State](#) pages on the AILA website, [www.aila.org](http://www.aila.org).

<sup>7</sup> See USCIS Field Operations Liaison Committee: Tips and Tricks For Local Field Offices <https://www.aila.org/infonet/uscis-field-operations-liaison-committee-tips>

<sup>8</sup> See AILA's Case Liaison Assistance page, <https://www.aila.org/advo-media/agency-liaison/case-liaison>.