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## **DO YOU WANT TO BECOME A U.S. CITIZEN? THE BASIC REQUIREMENTS OF NATURALIZATION**

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Janica became a Lawful Permanent Resident through her marriage to a U.S. citizen approximately three years ago. After the birth of her daughter, Vesna, Janica has decided to become a U.S. citizen, but she is concerned her recent five month trip to Croatia will make her ineligible for naturalization.

Goran is 28 years old and obtained lawful permanent residency five years ago after being granted asylum. He is interested in an employment position that is only available to U.S. citizens. Therefore, Goran has decided to naturalize. Although Goran has not made any trips outside of the United States since becoming a Lawful Permanent Resident, he failed to register with Selective Service after he obtained his green card.

Vlado is 60 years old and has been a Lawful Permanent Resident for sixteen years. Concerned about eligibility to certain public benefits, Vlado has decided to naturalize, even though he does not understand English at all. His older brother, Jura, does not speak English either, but has only been a Lawful Permanent Resident for six years. Even worse, Jura has been diagnosed with Alzheimer's Disease, which has greatly diminished his ability to learn English or study U.S. history and government.

In general, most applicants must satisfy the following requirements in order to become naturalized U.S. citizens:

- (1) A Lawful Permanent Resident (LPR) and at least 18 years old;
- (2) **Continuous residence** in the United States for at least **five years** subsequent to LPR status without leaving the U.S. for trips of **six months** or longer;
- (3) **Physical presence** in the United States for at least half of the time (or thirty months) during the five year continuous residency period;
- (4) Residence for at least three months in the district or state where the naturalization application will be filed;
- (5) A person of **“good moral character”** during the requisite five year period;
- (6) Demonstrated basic knowledge of U.S. government and history (the U.S. civics test);
- (7) The ability to read, write, and speak basic English (the English test); and
- (8) The understanding and willingness to take an oath of allegiance to the United States.

But, as the cases of Janica, Goran, Vlado, and Jura illustrate, there are a number of important exceptions and rules concerning these basic requirements of naturalization.

## **Janica's Case: The Marriage Exception To The Five Year Residency Requirement**

Ordinarily, a person applying for naturalization must have been a LPR for at least five years. There is, however, an important exception for immigrants like Janica who obtained a green card through marriage to a U.S. citizen. In Janica's case, she can naturalize after **three years** of LPR status if: (1) she is currently married to and living with a U.S. citizen; (2) she has been married to and living with that same U.S. citizen for the past three years; and (3) her spouse has been a U.S. citizen for the past three years. This also means that Janica must be physically present in the U.S. for only half of the three year period, or approximately eighteen months. Since Janica was in Croatia for only five months, and assuming she did not take any other extended trips, she satisfies the physical presence requirement.

Likewise, the continuous residency requirement will also be met despite Janica's five month trip to Croatia. Under immigration law, absences from the United States that are longer than **six months but less than one year** raise a rebuttable presumption against compliance with the continuous residency requirement. Assuming for argument's sake that Janica's trip lasted over six months, but less than one year, she would have to overcome the presumption by showing she did not terminate her employment in the U.S., her immediate family remained in the U.S. during her absence, she retained full access to her U.S. residence, and she did not obtain employment while abroad. Importantly, any absence **for longer than one year** conclusively establishes a break in continuous residency and would require an immigrant to wait several years before filing for naturalization.

Assuming she does not have any issues regarding "good moral character," Janica can begin the naturalization process by filing Form N-400 along with the requisite filing fee. The application process will typically take between nine months and one year so Janica should have plenty of time to prepare for the English and U.S. civics tests.

Finally, will Janica's daughter, Vesna, have to naturalize as well? The answer is no. Under the Fourteenth Amendment of the U.S. Constitution, a person born inside the United States (with the exception of the children of diplomats) are automatically U.S. citizens. Even if Vesna was born outside the United States, she would still be considered a U.S. citizen if her father, who is a U.S. citizen, was physically present in the United States for at least five years prior to her birth.

## **Goran's Failure To Register: The Meaning Of "Good Moral Character"**

Although Goran attends church regularly and is genuinely a good person, his plans to naturalize may be delayed due to the "good moral character" requirement. Under immigration law, "good moral character" does not mean a person who exhibits good morals. Rather, it is defined by several criminal and non-criminal actions that may temporarily disallow, or in some cases permanently bar, an immigrant from naturalizing.

Typically, a person convicted of a crime involving "moral turpitude," such as theft and fraud, committed during the five year residency requirement (or three years for immigrants like Janica) will not satisfy the "good moral character" requirement. Similarly, a person cannot

establish “good moral character” if convicted of drug related offenses, two or more gambling offenses, and any crime resulting in confinement of six months or more. Additionally, a number of non-criminal offenses may also result in a naturalization denial, including failure to pay child support or income tax, adultery that destroys an existing marriage, and willful failure to register with Selective Service. There are a few categories of offenses that will permanently bar a person from becoming a U.S. citizen, including a murder conviction and other “aggravated felonies.” It is strongly recommended that anyone with a criminal history should consult with an immigration attorney first before seeking to naturalize, as certain convictions could result in deportation proceedings.

In Goran’s case, his failure to register for Selective Service could result in a denial of his naturalization application. U.S. law requires all men between the ages of 18 to 26 to register for the draft. Even though they are not yet U.S. citizens, male LPRs who fall under this age range must register as well. The U.S. Citizenship & Immigration Services (USCIS, formerly known as the INS) will deny Goran’s application if it believes he knowingly and willfully failed to register with the draft. If, on the other hand, Goran can demonstrate his failure to register was an honest mistake, then his naturalization application may be granted. He will need to submit a detailed affidavit explaining why he was unaware of his obligation to register with Selective Service. If USCIS still determines he knowingly and willfully failed to register, Goran will have to wait until he is 31 years old to naturalize under immigration law.

### **The Cases Of Vlado & Jura: Exceptions To The English & U.S. Civics Test Requirements**

Neither Vlado nor Jura understand English. Can they become U.S. citizens? Under the law, applicants who are over 50 and have been a LPR for at least twenty years are exempt from the English test. Similarly, the English test is waived for persons who are over the age of 55 and residing in the U.S. as a LPR for at least fifteen years. In Vlado’s case, he is 58 and has been a LPR for over fifteen years. Therefore, Vlado will not have to take the English test. Is Vlado also exempt from the U.S. history and government test? Unfortunately, Vlado’s age will not exempt him from that requirement. The good news for Vlado is that the U.S. civics test will be administered in Croatian and all of the possible questions and answers are available beforehand on the USCIS web site.

Although Jura has only been a LPR for six years, he will not have to take either the English test or the U.S. civics test. Persons who are suffering from Alzheimer’s and similar diseases are exempt from both exams if a medical doctor can certify the diagnosis and explain how the particular impairment prevents an applicant from taking the English and U.S. civics tests. This is accomplished by the physician completing Form N-648. Moreover, if Jura’s condition prevents him from understanding the required oath, or completing the naturalization application itself, a designated representative like his younger brother Vlado can complete the N-400 examination (including the oath) on Jura’s behalf.

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