

which the court is located, of the court's intent to exercise such exclusive jurisdiction.

(2) At least 60 days prior to the holding of any oath administration ceremony referred to in § 337.8 of this chapter, the clerk of court shall give written notice to the appropriate district director of the time, date, and place of such ceremony and of the number of persons who may be accommodated.

(d) A court that has notified the Service pursuant to paragraph (c)(1) of this section shall have exclusive authority to administer the oath of allegiance to persons residing within its jurisdiction for a period of 45 days beginning on the date that the Service notifies the clerk of court of the applicant's eligibility for naturalization. Such exclusive authority shall be effective only if on the date the Service notifies the clerk of court of the applicant's eligibility, the court has notified the Service of the day or days during such 45-day period on which the court has scheduled oath administration ceremonies available to the applicant. The Service must submit the notification of the applicant's eligibility to the clerk of court within 10 days of the approval of the application pursuant to § 337.8 of this chapter.

(e) *Waiver of exclusive authority.* A court exercising exclusive authority to administer the oath of allegiance pursuant to paragraph (c) of this section may waive such exclusive authority when it is determined by the court that the Service failed to notify the court within a reasonable time prior to a scheduled oath ceremony of the applicant's eligibility such that it is impractical for the applicant to appear at that ceremony. The court shall notify the district director in writing of the waiver of exclusive authority as it relates to a specific applicant, and the Service shall promptly notify the applicant. The Service shall then arrange for the administration of the oath of allegiance pursuant to § 337.2 of this chapter.

[58 FR 49911, Sept. 24, 1993, as amended at 66 FR 32144, June 13, 2001]

§ 310.4 Judicial naturalization authority and withdrawal of petitions.

(a) *Jurisdiction.* No court shall have jurisdiction under section 310(a) of the Act, to naturalize a person unless a petition for naturalization with respect to that person was filed with the naturalization court before October 1, 1991.

(b) *Withdrawal of petitions.* (1) In the case of any petition for naturalization which was pending in any court as of November 29, 1990, the petitioner may elect to withdraw such petition, and have the application for naturalization considered under the administrative naturalization process. Such petition must be withdrawn after October 1, 1991, but not later than December 31, 1991.

(2) Except as provided in paragraph (b)(1) of this section, the petitioner shall not be permitted to withdraw his or her petition for naturalization, unless the Attorney General consents to the withdrawal.

(c) *Judicial proceedings.* (1) All pending petitions not withdrawn in the manner and terms described in paragraph (b) of this section, shall be decided, on the merits, by the naturalization court, in conformity with the applicable provisions of the judicial naturalization authority of the prior statute. The reviewing court shall enter a final order.

(2) In cases where the petitioner fails to prosecute his or her petition, the court shall decide the petition upon its merits unless the Attorney General moves that the petition be dismissed for lack of prosecution.

§ 310.5 Judicial review.

(a) *After 120 days following examination.* An applicant for naturalization may seek judicial review of a pending application for naturalization in those instances where the Service fails to make a determination under section 335 of the Act within 120 days after an examination is conducted under part 335 of this chapter. An applicant shall make a proper application for relief to the United States District Court having jurisdiction over the district in which the applicant resides. The court may either determine the issues

brought before it on their merits, or remand the matter to the Service with appropriate instructions.

(b) *After denial of an application.* After an application for naturalization is denied following a hearing before a Service officer pursuant to section 336(a) of the Act, the applicant may seek judicial review of the decision pursuant to section 310 of the Act.

PART 312—EDUCATIONAL REQUIREMENTS FOR NATURALIZATION

Sec.

- 312.1 Literacy requirements.
- 312.2 Knowledge of history and government of the United States.
- 312.3 Standardized citizenship testing.
- 312.4 Selection of interpreter.
- 312.5 Failure to meet educational and literacy requirements.

AUTHORITY: 8 U.S.C. 1103, 1423, 1443, 1447, 1448.

SOURCE: 56 FR 50481, Oct. 7, 1991, unless otherwise noted.

§312.1 Literacy requirements.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, no person shall be naturalized as a citizen of the United States upon his or her own application unless that person can demonstrate an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language.

(b) *Exceptions.* The following persons need not demonstrate an ability to read, write and speak words in ordinary usage in the English language:

(1) A person who, on the date of filing of his or her application for naturalization, is over 50 years of age and has been living in the United States for periods totalling at least 20 years subsequent to a lawful admission for permanent residence;

(2) A person who, on the date of filing his or her application for naturalization, is over 55 years of age and has been living in the United States for periods totalling at least 15 years subsequent to a lawful admission for permanent residence; or

(3) The requirements of paragraph(a) of this section shall not apply to any

person who is unable, because of a medically determinable physical or mental impairment or combination of impairments which has lasted or is expected to last at least 12 months, to demonstrate an understanding of the English language as noted in paragraph (a) of this section. The loss of any cognitive abilities based on the direct effects of the illegal use of drugs will not be considered in determining whether a person is unable to demonstrate an understanding of the English language. For purposes of this paragraph, the term *medically determinable* means an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical or laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual unable to demonstrate an understanding of the English language as required by this section, or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications to the methods of determining English proficiency, as outlined in paragraph(c) of this section.

(c) *Literacy examination*—(1) *Verbal skills.* The ability of an applicant to speak English shall be determined by a designated examiner from the applicant's answers to questions normally asked in the course of the examination.

(2) *Reading and writing skills.* Except as noted in §312.3, an applicant's ability to read and write English shall be tested using excerpts from one or more parts of the Service authorized Federal Textbooks on Citizenship written at the elementary literacy level, Service publications M-289 and M-291. These textbooks may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, and are available at certain public educational institutions. An applicant's writing sample shall be retained in the applicant's Service file.

[56 FR 50481, Oct. 7, 1991, as amended at 62 FR 12923, Mar. 19, 1997; 62 FR 15751, Apr. 2, 1997; 64 FR 7993, Feb. 18, 1999]