

§ 335.12

8 CFR Ch. I (1-1-03 Edition)

district to report such neglect or refusal to any court exercising naturalization jurisdiction and to file a motion in such court for an order directing the witness to appear and testify and to produce the documentary evidence described in the subpoena.

(f) *Briefs.* At the conclusion of the preliminary examination the petitioner or his or her attorney or representative, and the examining officer if one was assigned, may submit briefs in support of arguments made or issues raised at the examination.

(g) *Representation by attorney or representative; absence of representative; advice to petitioner.* The petitioner may be represented by an attorney or representative who has filed an appearance in accordance with part 292 of this chapter. If at any stage of the preliminary examination it appears to the designated examiner that he or she may recommend denial of the petition, or granting thereof with the facts to be presented to the court, he or she shall advise the petitioner of his or her right to be represented by an attorney or representative. A continuance of the examination shall be granted upon the petitioner's motion for the purpose of obtaining an attorney or representative. The petitioner's attorney or a representative shall be permitted to be present at all times during the preliminary examination or at any subsequent examinations and the petitioner shall not in any such examination or subsequent examinations be interrogated in the absence of his or her attorney or representative, unless the petitioner waives such appearance. The attorney or a representative shall be permitted to offer evidence to meet any evidence presented or adduced by the Government or the designated examiner. A petitioner who is not represented by an attorney or a representative shall be entitled to all the benefits and the privileges provided for in this section.

[22 FR 9821, Dec. 6, 1957, as amended at 23 FR 2673, Apr. 23, 1958; 45 FR 83195, Dec. 18, 1980; 46 FR 5861, Jan. 21, 1981; 47 FR 10778, Mar. 12, 1982; 56 FR 50498, Oct. 7, 1991]

§ 335.12 Recommendations on petitions for naturalization of the designated examiner and regional administrator; notice.

As soon as practicable after conclusion of the preliminary examination on a petition for naturalization filed prior to October 1, 1991, the designated examiner shall prepare an appropriate recommendation to the court. If the recommendation is for denial, or for granting with the facts to be presented to the court, the designated examiner shall prepare a memorandum summarizing the evidence, and setting forth findings of fact and conclusions of law, and his or her recommendation. No evidence dehors the record or evidence not admissible in judicial proceedings under recognized rules of evidence shall be considered in the preparation of the memorandum. The memorandum shall be submitted before final hearing to the regional operations liaison officer, in those cases or classes of cases designated by him or her, for review and recommendation. If the regional operations liaison officer does not agree with the recommendation of the designated examiner, he or she shall prepare an appropriate memorandum, with findings of fact, conclusions of law, and the recommendation of the Service, subject to review and approval by the Commissioner in those cases or classes of cases designated by him or her, for presentation to the court with the designated examiner's memorandum. In the preparation of memoranda, designated examiners and regional operations liaison officers shall be bound by the interpretations and rulings by the Attorney General or the Commissioner on Questions of law.

[38 FR 29878, Oct. 30, 1973, as amended at 56 FR 50498, Oct. 7, 1991]

§ 335.13 Notice of recommendation on petitions for naturalization of designated examiner.

(a) *Recommendation that petition be denied.* When the designated examiner proposes to recommend denial of the petition filed prior to October 1, 1991, the petitioner or his or her attorney or representative shall be notified thereof

and furnished a copy of the designated examiner's memorandum. The notice shall be given in conjunction with notification of the date, place, and time of holding the final hearing. The notice shall be sent by certified mail, with return receipt requested, after any review made by the regional administrator.

(b) *Recommendation that petition be granted.* When the designated examiner proposes to recommend granting of the petition filed prior to October 1, 1991 and to present the facts and issues to the court, the petitioner or his or her attorney or representative shall be notified of the recommendation and furnished a copy of the designated examiner's memorandum prior to the date of the hearing, and after any review made by the regional administrator.

(c) *Disagreement between recommendations of designated examiner and the regional administrator.* In those cases reviewed by the regional administrator in which his or her views and recommendations do not agree with those of the designated examiner, the notice required by paragraphs (a) and (b) of this section shall also advise the petitioner of the recommendation of the regional administrator and that both recommendations will be presented to the court. There shall also be enclosed with such notice a copy of the regional administrator's memorandum.

(d) *Briefs.* If the petitioner intends to file a brief or memorandum at the final hearing, he or she shall furnish a copy thereof to the Service office from which the notice on Form N-425 emanated at least 5 days prior to the date of the final hearing. Failure to do so will result in a motion for a continuance if deemed essential for the proper presentation of the Government's case.

[22 FR 9822, Dec. 6, 1957, as amended at 35 FR 17530, Nov. 14, 1970; 56 FR 50498, Oct. 7, 1991]

PART 336—HEARINGS ON DENIALS OF APPLICATIONS FOR NATURALIZATION

Sec.

336.1 Denial after section 335 examination.

336.2 Hearing before an immigration officer.

336.3-336.8 [Reserved]

336.9 Judicial review of denial determinations on applications for naturalization.

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

SOURCE: 56 FR 50499, Oct. 7, 1991, unless otherwise noted.

§ 336.1 Denial after section 335 examination.

(a) After completing all examination procedures contained in part 335 of this chapter and determining to deny an application for naturalization, the Service shall serve a written notice of denial upon an applicant for naturalization no later than 120 days after the date of the applicant's first examination on the application.

(b) A notice of denial shall be prepared in a written, narrative format, and shall recite, in clear concise language, the pertinent facts upon which the determination was based, the specific legal section or sections applicable to the finding of ineligibility, and the conclusions of law reached by the examining officer in rendering the decision. Such notice of denial shall also contain a specific statement of the applicant's right either to accept the determination of the examining officer, or request a hearing before an immigration officer.

(c) Service of the notice of denial may be made in person or by certified mail to the applicant's last known address, or upon the attorney or representative of record as provided in part 292 of this chapter.

§ 336.2 Hearing before an immigration officer.

(a) The applicant, or his or her authorized representative, may request a hearing on the denial of the applicant's application for naturalization by filing a request with the Service within thirty days after the applicant receives the notice of denial under § 336.1.

(b) Upon receipt of a timely request for a hearing, the Service shall schedule a review hearing before an immigration officer, within a reasonable period of time not to exceed 180 days from the date upon which the appeal is filed. The review shall be with an officer other than the officer who conducted the original examination under section 335 of the Act or who rendered the Service determination upon which the hearing is based, and who is classified at a grade level equal to or higher