Chapter 22: Denaturalization Investigations

(Superseded by ICE OI HB 08-01 (Jan. 15, 2008))

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References:

INA: 340

Regulations: 8 CFR 340

Other: Public Law 101-649

22.1 General.

Denaturalization investigations are among the more difficult assignments for a special agent. Successful conduct of this type of investigation requires a thorough knowledge of Naturalization Law, the regulations and procedures in effect at the time citizenship was granted, current Service policies and procedures, and precedent court decisions in similar cases. With this knowledge and background information, an investigator can plot the direction of the investigation required to support the administrative proceeding that results in the revocation of citizenship.

In a typical scenario, the Service, through a variety of channels, receives information indicating that a naturalized citizen has been involved in activity that raises issues pertaining to the person's eligibility for citizenship at the time it was conferred.

Prior to being placed in progress, potential denaturalization cases must be reviewed by a supervisor to determine if relevant, mitigating humanitarian factors are present. However, if the allegations are of a serious nature, and the citizenry as a whole will benefit from such a revocation to a degree that exceeds any possible mitigation, then the case falls within the purview of Department of Justice Circular Letter Number 107, dated September 20, 1909 (See Interpretations 340.1(f).), and should be opened.

Each situation must be assessed. Complications that could affect the outcome of the revocation process should be carefully considered. (b)(7)(E)

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Under certain circumstances, despite the veracity of the allegations, it becomes evident that no action should be taken. If this appears to be the situation, then discuss the matter with a supervisor to determine whether further investigative resources should be expended.

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22.2 Authority for Naturalization and Revocation.

(a) Authority to Naturalize. The Constitution of the United States (Article 1, Section 8) empowers Congress to establish a uniform rule of naturalization. Under this authority, Congress has enacted laws prescribing the process of naturalization. In the Act of March 25, 1790, the procedure by which an alien became a naturalized citizen was first prescribed to be a judicial proceeding. Subsequent acts have carried similar provisions. The most recent major amendment to the INA affecting naturalization occurred with the passage of Pub. L. 101-649, the Immigration and Nationality Act of 1990. Effective October 1, 1991, this law transferred the sole authority to naturalize to the Attorney General. The courts are relegated to the ceremonial role of administering oaths, and the courts' authority is limited to 45 days after the Attorney General has certified an applicant's eligibility. After 45 days, the authority to administer oaths is transferred to the Attorney General. In some jurisdictions, the courts have relinquished the right to exclusive jurisdiction to administer oaths for the 45-day period. Regardless of who administers the oath, all persons naturalized on or after October 1, 1991 are granted such naturalization pursuant to the authority of the Attorney General.

(b) Authority to Revoke Naturalization. Prior to 1906, in the absence of specific statutory authority, it was questionable whether citizenship status could be judicially revoked [*Johannesson v. U.S.*, 225 U.S. 227, (1912)]. Section 15 of the Act of June 29, 1906 contained provisions authorizing the revocation of citizenship status and cancellation of a naturalization certificate through the institution of civil action in equity. Subsequent acts have carried similar provisions. Current law provides two separate procedures for revocation of naturalization and citizenship decisions:

- Section 340(a) of the Act provides that it is the duty of the United States Attorney for the respective districts, upon affidavits showing good cause, to institute proceedings for the purpose of setting aside citizenship and canceling the certificate of naturalization on the grounds such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation. Revocation on this basis is discussed in 8 CFR 340.2.

- Section 340(h) of the Act provides for the reopening and reconsideration by the Attorney General of any naturalization case. Limitations and conditions for this latter provision are contained in 8 CFR 340.1.

(c) Statute of Limitations and Other Considerations. Action under section 340 is a civil proceeding and has no statute of limitations. The naturalized person, as a defendant, is not entitled to a trial by jury.

Title 18 U.S.C. 1425, procurement of citizenship or naturalization unlawfully, is a criminal statute with a ten-year statute of limitations. The accused has the right to a trial by jury.

Revocation proceedings instituted under section 340(a) of the Act apply equally to naturalization under the current Act and to all naturalization previously granted by any court or by the Commissioner. Such proceedings are civil actions in equity and the "Federal Rules of Civil Procedure" apply.

22.3 Grounds for Revocation.

(a) General. Action may be instituted under section 340 to revoke naturalization because such naturalization was:

- illegally procured;
- procured through concealment of a material fact;
- procured through misrepresentation.

Additional grounds for revocation are becoming a member, within five years after naturalization, of any organization in which membership at the time would have precluded such naturalization -- or refusing, within ten years after naturalization, to testify as a witness before a congressional committee concerning terrorist activities, if such action results in a conviction for contempt.

A conviction for a violation of 18 U.S.C. 1425, for knowingly procuring U.S. citizenship in violation of law, will result in a cancellation of the certificate of citizenship by the court.

Naturalization is illegally procured if a statutory requirement, which is a condition precedent to naturalization, is absent at the time the petition is granted. In other words, naturalization has been illegally procured if jurisdictional factors are not present at the time the citizenship is granted [*U.S. v. Ginsburg*, 243 U.S. 472].

Regardless of the time of naturalization, if fraud or mental reservation on the part of the petitioner can be shown, the naturalization is subject to revocation [*U.S. v. Kramer*, 262 F. 395 (CCA 5, 1919); (*U.S. v. Knauer*, 149 F.2d 519 (CCA 7, 1945); (*Sweet v. U.S.* 211 F.2 118 (CCA6, 1954)].

Ordinarily, misstatements are not fraudulent unless made willfully and with knowledge of their falsity, although a false statement may also be fraudulent if made recklessly or without reasonable grounds for believing it to be true [*Schwinn v. U.S.* 12 F.2d 74 (CCA 9, 1940), affirmed 311 U.S. 616 (1940)].

(b) Requirements for Naturalization under Prior Laws. In seeking grounds on which to base the revocation action, only those naturalization requirements embodied in the law when the naturalization was conferred are germane. Therefore, when conducting the investigation, an agent must know what substantive and procedural provisions were in effect when the naturalization was procured. The following is an outline of the basis for revocation proceedings under the Act of June 29, 1906, and the Nationality Act of 1940.

(1) Naturalization Prior to January 13, 1941. Section 15 of the Act of June 29, 1906 applies and the provisions are retroactive. Stated grounds for revocation are fraud or illegality. To revoke naturalization procured prior to January 13, 1941, the Government must establish (that):

- concealment of a material fact;
- willful misrepresentation;

- at the time of, or immediately prior to, naturalization, the naturalized person believed in or advocated the overthrow of organized government;

- the person was an anarchist -- or

- the person was a member of an organization which believed in or advocated the overthrow of organized government and knew of the programs and aims of the organization and subscribed thereto.

  Section 7 of the Act of June 27, 1906 prohibited the naturalization of anarchists and disbelievers in organized government and members of organizations teaching or entertaining such belief.

(2) Section 338 of the Nationality Act of 1940 applies. Stated grounds for revocation are fraud or illegality. To revoke naturalization procured between January 13, 1941 and December 23, 1952, the Government must establish (that):

- concealment of a material fact;

- willful misrepresentation;

- within the ten years prior to filing the petition for naturalization, the naturalized person:

- advised, advocated, or taught, or was a member of, or affiliated with any organization that advised, advocated, or taught opposition to all organized government -- or

- believed in, advised, advocated, or taught the overthrow by force or violence of the Government of the United States, or was a member of, or affiliated with any organization that believed in, advised, advocated, or taught the overthrow by force or violence of the Government of the United States.

  To revoke naturalization procured between September 23, 1950 and December 23, 1952 under the Internal Security Act of 1950, the Government must establish (that):

- within a period of ten years prior to filing for naturalization, the naturalized person advocated world communism or any other form of totalitarianism or was a member of or affiliated with any organization that so advocated.

  To revoke naturalization procured between January 2, 1951 and December 23, 1952 under the Internal Security Act of 1950, the Government must establish (that):

- within five years after naturalization, the person became a member of or affiliated with any organization which at the time of naturalization would have precluded such naturalization -- or

- within five years after naturalization, the person became a member of any organization, membership in which at the time of naturalization would have raised the presumption that such person was not attached to the principles of the Constitution of the United States and not well disposed to the good order and happiness of the United States. If the complaint in a terrorist case alleges fraud, the naturalized person's knowledge of the objectives of the organization must be shown. If the complaint is based on illegality, no showing of such knowledge is required [*U.S. v. Polites*, 127 F. Supp. 768 (D.C. Mich. N.D. 1953)].

  The Supreme Court has stated that “if a claim of illegality really involves issues of belief or fraud, proof is treacherous and objective judgment precarious" [*Baumgartner v. U.S.* 322 U.S. 665; 675 (1944)]. The successfully completed terrorist revocation case must include evidence that the subject had knowledge of the aims of the organization of which he was a member, if fraud or willful misrepresentation is the ground on which revocation is sought.

22.4 Evidence in Revocation Proceedings.

In all revocation proceedings, the evidence must comply with the general rules of evidence as to admissibility [*U.S. v. Bukis*, 17 F. Supp. 77 (D.C. Pa., 1936)]. Review the discussion on evidence found in chapter 11 of this manual. Many decisions in revocation cases are based on documentary evidence. (b)(7)(E) (b)(7)(E) (b)(7)(E) While conducting the investigation and collecting and assembling evidence, an agent must bear in mind that the courts have held that the naturalized person’s status will not be disturbed by revocation proceedings unless the Government proves its case by evidence that is "clear, unequivocal, and convincing, and that does not leave the issue in doubt" [*Schneiderman v. U.S.*, 320 U.S. 118, 125 (1943)]; (*Baumgartner v. U.S.* 322 U.S. (1944)].

To successfully prosecute under 18 U.S.C. 1425, as in all other criminal cases, the Government has the burden of proving the commission of an offense, and that it was committed by the accused. This burden extends to all the elements necessary to constitute the crimes charged. The evidence in the criminal case must establish the guilt of the accused beyond a reasonable doubt. See chapter 15.

22.5 Conducting a Revocation Investigation.

The specific steps to follow while conducting an investigation that has revocation proceedings as its goal cannot be set forth as hard and fast rules as they differ from case to case. To successfully prepare a case, an agent must exercise ingenuity, resourcefulness, and sound judgment. (b)(7)(E) (b)(7)(E)

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At all times while conducting the investigation, an agent must be alert and look for grounds of illegality and/or secondary misrepresentation. (b)(7)(E)

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If it is evident that the court had full and complete knowledge of what is believed to have been concealed or misrepresented, and there is no evidence of illegality or secondary misrepresentation, then the investigation may be terminated after receiving the concurrence of a supervisor.

22.6 Preparing Revocation Reports.

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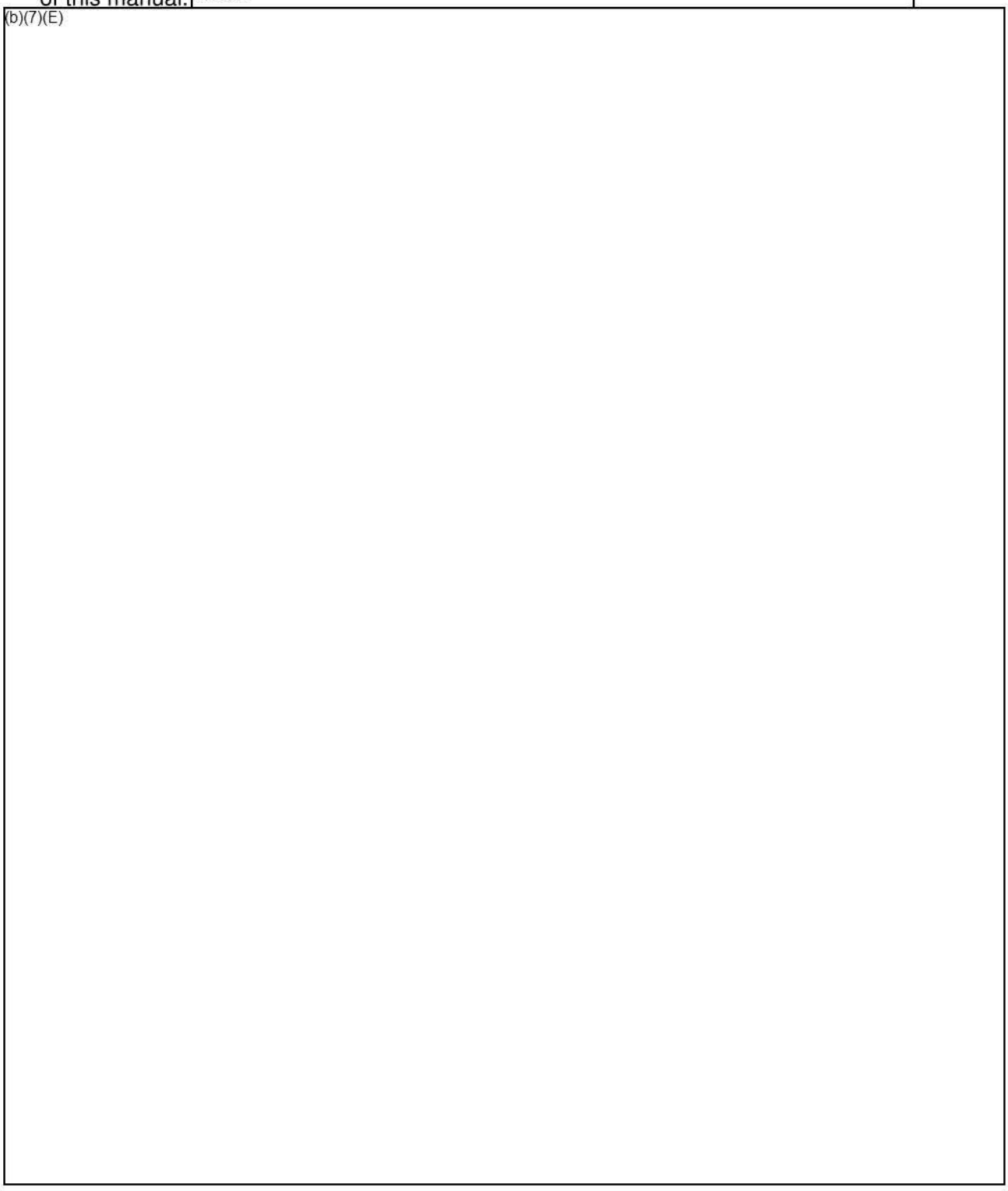
Prepare the formal report of the revocation investigation in accordance with chapter 12 of this manual. (b)(7)(E)

(b)(7)(E)