

IMMIGRATION SERVICES DIVISION,
FIELD OPERATIONS



POLICY MEMORANDUM NO. 86

SUBJECT: Procedures for Handling Naturalization
Applications of Aliens Who Voted
Unlawfully or Falsely Represented
Themselves as U.S. Citizens by Voting or
Registering to Vote



U.S. Department of Justice
Immigration and Naturalization Service

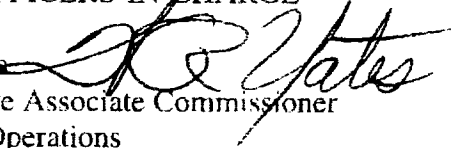
HQ 70/33

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MEMORANDUM FOR ALL REGIONAL DIRECTORS
DISTRICT DIRECTORS
SERVICE CENTER DIRECTORS
OFFICERS-IN-CHARGE

FROM: William R. Yates 
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Office of Field Operations
Immigration Services Division

SUBJECT: Procedures for Handling Naturalization Applications of Aliens Who Voted
Unlawfully or Falsely Represented Themselves as U.S. Citizens by Voting or
Registering to Vote

This memorandum provides guidance on handling naturalization applications of aliens who have unlawfully voted or falsely represented themselves as U.S. citizens in association with registering to vote or by voting. This guidance supplements the May 13, 1997, Office of Naturalization Operations Policy Memorandum titled, "Voter Registration and Standardized Citizenship Testing," which instructs adjudicators to ask all naturalization applicants if they have ever registered to vote or voted in a U.S. election. This memorandum should be read in conjunction with the Commissioner's November 17, 2000 memorandum titled, "Exercising Prosecutorial Discretion," which provides more general guidance on determining when or if removal proceedings should be initiated for certain naturalization applicants. This memorandum can be found on the INS Power Port under the section entitled "INS Policy and Procedural Memoranda".

What sections of the Immigration and Nationality Act (INA) address illegal voting?

The 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) added sections 212(a)(10)(D)(i) and 237(a)(6)(A) to the INA to address illegal voting.ⁱ Title II of the Child Citizenship Act of 2000 (CCA), Pub. L. 106-395, added sections 212(a)(10)(D)(ii) and 237(a)(6)(B) to provide exceptions to the removal grounds for lawful permanent residents who resided in the United States prior to age 16 and who have U.S. citizen parents.ⁱⁱ The CCA also

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added a clause to section 101(f)ⁱⁱⁱ to address good moral character (GMC) determinations for individuals who voted unlawfully.

Are there any criminal penalties for illegal voting?

Non-citizens who violate or who have violated these provisions may face criminal prosecution in addition to administrative removal. IIRIRA created a new section 18 U.S.C. 611,^v establishing criminal penalties for aliens who have voted in any federal election. An alien convicted of violating this provision of the law may be fined, imprisoned for up to one year, or both.

The CCA also added an exception to the criminal provision, 18 U.S.C. 611(c), for lawful permanent residents who resided in the United States prior to age 16, have U.S. citizen parents, and who reasonably believed at the time of voting in violation of the law that he or she was a citizen of the United States. The criminal provision exception only applies to convictions that became final on or after the date of enactment of the CCA – October 30, 2000.^v In such cases, because the district court has made the determination that the applicant did not fall within the terms of the exception, the Service need not re-adjudicate this issue.

Even if there is no conviction for illegal voting, officers should continue to analyze the case as provided on page 4 of this memorandum.

Is a criminal conviction for illegal voting required to support a removal charge?

No. An alien who votes illegally but who has not been convicted under 18 U.S.C. 611 is still potentially removable. Removal charges can be sustained simply by proving that the alien voted in violation of the relevant law.

What sections of the INA address false claims to U.S. citizenship?

IIRIRA added sections 212(a)(6)(C)(ii)(I) and 237(a)(3)(D)(i) to the INA to address false claims to U.S. citizenship.^{vi} The CCA added sections 212(a)(6)(C)(ii)(II) and 237(a)(3)(D)(ii) to provide exceptions to the removal grounds.^{vii} The CCA also added a clause to section 101(f)^{viii} to address GMC determinations for individuals who made a false claim to U.S. citizenship.

Are there any criminal penalties for making a false claim to U.S. citizenship?

IIRIRA added section 1015(f)^{ix} to Title 18 to establish criminal penalties for any alien who makes a false claim to U.S. citizenship in order to vote or register to vote in an election. An alien convicted of violating this provision of the law may be fined or imprisoned for not more than five years, or both.

The CCA also added an exception to the criminal provision, the last clause of 18 U.S.C. 1015(f), for lawful permanent residents who resided in the United States prior to age 16, have U.S. citizen parents, and who reasonably believed that he or she was a citizen of the United States at the time of making the false claim. Like 18 U.S.C. 611(c), this criminal provision

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exception only applies to convictions that became final on or after October 30, 2000.^x In such cases, because the district court has made the determination that the applicant did not fall within the terms of the exception, the Service need not re-adjudicate this issue.

Even if there is no conviction for making a false claim to U.S. citizenship, officers should continue to analyze the case as provided on page 4 of this memorandum.

Is a criminal conviction for making a false claim to U.S. citizen required to support a removal charge?

No. An alien who knowingly makes a false claim to U.S. citizenship for the purpose of voting or registering to vote, but who has not been convicted under 18 U.S.C. 1015(f) is still potentially removable. Removal charges can be sustained simply by proving that the alien knowingly made the false claim for purposes of voting or registering to vote.

How is making a false claim different from illegal voting?

In the voting context, an applicant can only be found to have violated the provision if his or her conduct would be deemed unlawful under the relevant Federal, state, or local election law.

For false claims to U.S. citizenship, there is no need to focus on the underlying election law that was violated. Officers need only establish that the applicant: (1) actually falsely represented himself or herself as a U.S. citizen on or after September 30, 1996^{xi}; and (2) that such representation was made for the purpose of registering to vote or voting.

What are the exceptions to the provisions related to illegal voting and false claims to U.S. citizenship?

The CCA establishes exceptions to removal under sections 212(a) and 237(a), to GMC under 101(f) of the INA, and to criminal prosecution under 18 U.S.C. 611 and 1015(f), for any alien:

- whose natural or adoptive parents (both parents) are or were U.S. citizens
- who permanently resided in the U.S. prior to his or her 16th birthday, and
- who “reasonably believed” at the time of the violation or false representation that he or she was a US citizen.

As a matter of policy, the Service has determined that the applicant’s parents had to be U.S. citizens at the time of the illegal voting or false claim to U.S. citizenship in order to meet the first prong of this exception.

How do I adjudicate these cases?

For every naturalization case where the applicant may have unlawfully voted or may have made a false claim to U.S. citizenship while voting or registering to vote, officers should analyze the case following the six steps outlined below (see also **Attachment A** for flowchart).

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Officers should note that in most instances there will not be a conviction under 18 U.S.C. 611 or 1015(f).

1. Determine if the applicant:
 - (a) actually voted in violation of the relevant election law; or
 - (b) made a false claim to U.S. citizenship when registering to vote or voting in any Federal, State, or local election any time on or after September 30, 1996;
2. If either "a" or "b" above happened, the applicant is removable. Now determine whether the applicant is eligible for the exceptions from removal as provided under sections 212(a) and 237(a) of the INA. If the applicant is eligible for the exceptions, the applicant is no longer removable. Proceed with adjudication of the N-400 (see Step 6).
3. If the applicant does not qualify for one of the exceptions, determine whether the applicant's case merits the exercise of prosecutorial discretion.
4. If the applicant's case does not merit the exercise of prosecutorial discretion, initiate removal proceedings and **continue** the naturalization application, pending the outcome of such proceedings.
5. If the applicant's case merits prosecutorial discretion, proceed with adjudication of the N-400 (see Step 6).
6. Assess the applicant's eligibility for naturalization. The assessment should focus on whether the applicant's conduct overall (including any other potential grounds of ineligibility) precludes a finding of good moral character. The assessment should also include a determination of whether the applicant is exempted from a finding that he or she does not have good moral character based on the exception contained in 101(f).

How do I determine if applicant voted in violation of relevant election law or made a false claim to U.S. citizenship?

(a) Voting in violation of election law

Whether the alien actually violated federal, state or local law depends upon whether he or she: (1) actually voted and (2) the act of voting violated a specific election law provision. The provisions governing voting and eligibility to vote will vary by location. In addition, the penalties for voting unlawfully will vary and may include a specific intent requirement.

Information about whether an applicant actually voted can come from his or her own admission under oath or from independent sources, such as voter records. Even if the applicant actually voted, however, the act of voting, by itself, is not sufficient to establish that the applicant voted unlawfully. Officers must also determine whether the applicant's act of voting would be deemed a violation under the relevant election law.

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To make the violation decision, officers must determine in what type of election the applicant voted – Federal, State, or local – and then review the appropriate jurisdiction’s election laws. Federal election laws provide that only U.S. citizens can vote. Clearly, if an applicant is convicted under 18 U.S.C. 611, which governs federal elections, the applicant has voted in violation of the law.

Some local municipalities permit lawful permanent residents and/or nonresident aliens to vote in municipal elections. Officers should review all code provisions that define who is eligible and/or qualified to vote in such elections.^{xii}

If the election law penalizes the actual act of voting, the fact that an applicant has actually voted is sufficient to establish that he or she has voted unlawfully. If, however, the election law penalizes the act of voting only upon an additional finding that the individual acted “knowingly” or “willfully,” adjudicating officers cannot conclude that an applicant voted unlawfully until they assess the circumstances surrounding the voting, the applicant’s credibility, and the documentary evidence. In these situations, officers should determine:

- (1) how, when, and where the applicant registered to vote and/or voted;
- (2) the extent of the applicant’s knowledge of the election laws;
- (3) whether the applicant received any instructions, or was questioned verbally about his or her eligibility to vote;
- (4) who provided the applicant with information about election laws or his or her eligibility to vote;
- (5) whether the election registration form and/or voting ballot:
 - (a) contains a specific question asking if the applicant is a U.S. citizen;
 - (b) requires the applicant to declare under penalty of perjury that he or she is a U.S. citizen; or
 - (c) requires the applicant to be qualified to vote and lists specifically the requirement of U.S. citizenship elsewhere on the form.

Officers should record the applicant’s testimony regarding his or her voting in a sworn statement, and obtain any relevant evidence to support the illegal voting charge. Such evidence, for example, can include a copy of the alien’s voter registration form with instructions and his or her voter registration card, establishing that U.S. citizenship was required in order to obtain the card.

If, after weighing all the favorable and unfavorable factors, the officer determines that the applicant voted with knowledge that such voting would be a violation, the officer can conclude that the applicant voted unlawfully.

If the applicant voted unlawfully, the applicant is removable. The officer must then proceed to the next steps of determining whether the applicant meets the exceptions to removal or merits an exercise of prosecutorial discretion.

(b) Making a false claim to U.S. citizenship to vote or register to vote

