

Selective Service Registration: Consequences of Failure to Register in Applying for Naturalization By Steve Piraka

Among the many requirements for naturalization, the requirement to register for selective service is among the most misunderstood. Although every male applicant (except those in lawful, nonimmigrant status) living in the U.S. between the ages of 18 and 26 is required to register for the Selective Service, failure to register does not automatically disqualify such applicant from naturalization.

One of the reasons why this issue is considered relevant at all is because, under Section 316(a) of the Immigration and Nationality Act (“INA”), an applicant is required to prove that he or she is, and has been for the requisite period (usually 5 years from the date of filing), a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed toward the good order and happiness of the United States.

Additionally, Section 337(a)(5)(A) of the INA requires applicants to declare under oath their willingness to bear arms on behalf of the United States when required by law. Therefore, refusing to register or knowingly and willfully failing to register for Selective Service during the requisite period may result in denial of the naturalization application due to the applicant’s failure to establish a willingness to bear arms when required.

However, as mentioned above, failing to register does not automatically disqualify an applicant for naturalization. The key words to take from the INA are “refusing” to register and a “knowing” and “willful” failure to register.

If the male applicant is still under the age of 26 when applying for naturalization, he may register by the time of the naturalization interview. If he has not registered by that time and he is still under the age of 26, his case will be continued and he will be given a reasonable period of time to register. After registering, he will then need to provide evidence of the registration to the naturalization officer. If, however, after having had a reasonable opportunity to do so, he still fails to register, the application will be denied for refusing to register. The denial will basically state this fact and state that the applicant is not eligible for naturalization because he is not well disposed to the good order and happiness of the United States.

On the other hand, if the applicant is now between the ages of 26 and 31, he will have to provide evidence that his failure to register was not knowing and willful. This is due to the fact that he is now over the age of registration and cannot correct his prior failure, while the statutory period of 5 years extends back to an age where the applicant could still register for Selective Service. As an example,

if an applicant for naturalization files at age 29, the five year period prior to the application goes back to when he was age 24 (29-5) and the applicant could still have registered at that age. Because he could have registered, but did not register during the statutory period, the applicant must prove that his failure to register was not knowing and willful.

Since this can be a difficult thing to prove, most officers will accept a signed statement (either filed with the application, presented at the interview, or taken at the interview) from the applicant under oath. This document will usually state the reasons for failure to register or that the applicant did not know about the requirement (therefore, the failure to register was not knowing or willful) and that had he known he would have registered. In addition, it will state that the applicant is and always has been willing to fight on behalf of the United States and is willing to help in any other way he can if called upon.

Lastly, if the applicant is over the age of 31 at the time of filing, the failure to register for Selective Service is outside the statutory period. As a practical matter, such applicants will be found ineligible for naturalization only if there is additional evidence in the record demonstrating that the applicant is not well disposed to the good order and happiness of the United States. Although such an applicant is not required to prove that his failure to register was not knowing and willful, he may still be requested to make the same type of statement as was made for those applicants aged 26-31, evidencing his willingness to defend and bear arms on behalf of the United States. Failure to make such a statement could result in a denial on these or other grounds, including a discretionary decision by the interviewing officer relating to the applicant's commitment to the United States.

If you need assistance with this issue and/or in preparing and filing your naturalization application, please contact our office.