

# Giuseppe Scagliarini

Attorney at Law

37 Harrison Avenue  
Newport, RI 02840  
Tel: +(401) 849-1220  
Fax: +(401) 633-7055

[www.scagliarinilaw.com](http://www.scagliarinilaw.com)

E-Mail : [gs@scagliarinilaw.com](mailto:gs@scagliarinilaw.com)

8 Faneuil Hall, 3<sup>rd</sup> Fl.  
Boston, MA 02109  
Tel: +(617) 973-5050  
Fax: +(617) 973-5097

## The Long Path to U.S. Citizenship

### 1. Nonimmigrant visas

### 2. Permanent Resident Status (“Green Card”): How to get it

- a. Employment Based
- b. Family Based
- c. Asylum
- d. Can alien adjust status from within the US?
  - i. No status violations
    1. Overstays: IIRIRA and the 3/10 yr ban to reentry
  - ii. Immediate relatives
    1. Arrival w/ inspection
    2. Arrival w/o inspection
      - a. Waivers of 3/10 yr ban: extreme hardship
  - iii. Preconceived intent

### 3. Permanent Resident Status (“Green Card”): How to keep it

- a. Residence Requirements
  - i. Absences of 6 months to 1 yr
  - ii. Absences of more than 1 yr
- b. Immigration Consequences of Criminal Convictions
  - i. Definition of Conviction<sup>1</sup>
    1. Formal judgment of guilt entered by a court; or
    2. A judge or jury has found the alien guilty; or
    3. A plea of guilty or nolo contendere; or
    4. Alien has admitted sufficient facts to warrant a finding of guilt, and
    5. The judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty.
    6. Examples of convictions for immigration purposes:
      - a. Expungements and Record Sealings<sup>2</sup>
      - b. Foreign convictions<sup>3</sup>
      - c. Suspended sentences<sup>4</sup>
  - ii. What crimes can make you lose your Green Card?
    1. Crimes of Moral Turpitude<sup>5</sup>

- a. Larceny (“Theft”) – Stealing of Cash or Shoplifting;
  - b. Bad Check Writing;
  - c. Making False Statements – Using another person SSN on Passport Application;
  - d. DUI while on a Suspended License.
2. Aggravated Felonies<sup>6</sup>
- a. Includes misdemeanors
  - b. Applies retroactively
3. Grounds of removal/inadmissibility<sup>7</sup>
- a. Controlled Substances
  - b. Firearms Offenses<sup>8</sup>
  - c. Crimes of Domestic Violence or Violation of Protection Order
  - d. Unlawful Voting

#### 4. Naturalization (U.S. Citizenship)

- a. Reasons to become a U.S. Citizen
  - i. Right to Vote
  - ii. Right to sponsor close relatives
  - iii. Cannot be lost because of criminal convictions
  - iv. Cannot be lost for lengthy absences from the U.S.
  - v. Some Jobs reserved for U.S. Citizens
- b. Requirements
  - i. Continuous Residence in the U.S.
    - 1. Permanent Resident for 3/5 yrs.
    - 2. No single absence of more than 1 yr
    - 3. Absences of more than 6 months but less than 1 yr create rebuttable presumption of abandonment of residence
  - ii. Physical Presence
    - 1. At least 30 months in last 5 years;
  - iii. Residence in the USCIS District for 3 months;
  - iv. Attachment to the principles of the U.S. Constitution and Favorable Disposition towards the U.S.
    - 1. The Oath of Allegiance<sup>9</sup>
      - a. support the Constitution and obey the laws of the U.S.;
      - b. renounce any foreign allegiance and/or foreign title; and
      - c. bear arms for the Armed Forces of the U.S. or perform services for the government of the U.S. when required.
        - i. In certain instances, where the applicant establishes that he or she is opposed to any type of service in armed forces based on religious teaching or belief, USCIS will permit these applicants to take a modified oath.
  - v. Understanding of the English Language
  - vi. Knowledge and understanding of the history<sup>10</sup> and government<sup>11</sup> of the United States<sup>12</sup>
  - vii. Good Moral Character<sup>13</sup>
  - viii. No Failure to Register for Selective Service

1. Males between 18 and 26
  2. “Knowingly and willfully”
- c. Filing procedures:
- i. N-400<sup>14</sup>
  - ii. Biometrics
  - iii. Fees: \$330 + \$70 Biometrics
  - iv. When to apply: 3 months before the 3/5 yrs INA §334(a)
  - v. Where to apply: Regional Service Center
  - vi. The interview
  - vii. The swearing-in ceremony.
  - viii. Certificate of Naturalization

#### **5. Immigration Reform Legislation**

- a. House Bill – Enforcement only
- b. Senate Bill – A multi-tiered approach

**The information presented in this seminar is for information purposes only and is NOT TO BE CONSIDERED AS LEGAL ADVICE.**

## ENDNOTES

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<sup>1</sup> Immigration and Nationality Act (INA or the Act) §101(a)(48) [8 USC §1101(a)(48)]:

(A) The term “conviction” means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.

<sup>2</sup> A conviction that has been expunged, dismissed, canceled, vacated, discharged, sealed, or otherwise removed pursuant to a post-conviction rehabilitative state procedure remains a conviction for immigration purposes pursuant to *Matter of Roldan* 22 I&N Dec. 512 (BIA 1999).

<sup>3</sup> A foreign conviction is a “conviction” for immigration purposes. However, the conviction must be for conduct that is deemed criminal by U.S. standards. In other words, the underlying criminal activity must be forbidden by U.S. law.

<sup>4</sup> A sentence that has been suspended in whole or in part is still considered to be a sentence imposed. INA §101(a)(48)(B)

<sup>5</sup> The phrase “moral turpitude” is not defined by statute. This conveniently leaves open a variety of interpretations. The Board of Immigration Appeals (BIA) has held that moral turpitude refers generally to conduct that is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons, or to society in general. Crimes of theft, fraud, and crimes of violence are normally viewed as acts involving moral turpitude. Example of crimes held to be CMT:

- Larceny (“Theft”) – Ex. Stealing of Cash or Shoplifting;
- Bad Check Writing;
- Making False Statements – Ex. Using another person SSN on Passport Application;
- DUI while on a Suspended License.

<sup>6</sup> For a statutory definition of aggravated felony, see INA §101(a)(43). Of note is the fact that certain misdemeanors can be considered “aggravated felonies: for immigration purposes. Notably, this provision applies retroactively to acts that were committed prior to their inclusion in the aggravated felony list.

Examples of Agg Felonies:

- Certain Crimes of Violence where sentence > 1 yr;
- Any crime of theft or burglary, including receipt of stolen property, where sentence > 1yr;
- Certain Crimes of Fraud and Deceit;
- Re-entry after deportation;
- Altering, Forging or Mutilating a U.S. Passport;
- Some offenses relating to obstruction of justice, perjury, subornation of perjury, or bribery of a witness.

<sup>7</sup> See INA §212(a) and 237 (a).

<sup>8</sup> Deportability for a “firearms offense” encompasses selling, exchanging, using, possessing, or purchasing a firearm or destructive device in violation of state or federal law. An individual is deportable for a firearms violation regardless of when the offense occurred or the conviction was entered. INA §237(a)(2)(C)

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<sup>9</sup> The oath of allegiance is:

"I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely without any mental reservation or purpose of evasion; so help me God."

In some cases, allows the oath to be taken without the clauses:

". . .that I will bear arms on behalf of the United States when required by law; that I will perform noncombatant service in the Armed Forces of the United States when required by law. . ."

<sup>10</sup> A United States History Study Guide for Civics Exam can be downloaded at <http://www.uscis.gov/graphics/services/natz/ushist.pdf>

<sup>11</sup> A United States Government Structure Study Guide for Civics Exam can be downloaded at <http://www.uscis.gov/graphics/services/natz/usstruct.pdf>

<sup>12</sup> The following are sample U.S. History and Government Questions that may be asked during the Naturalization Exam.

## QUESTIONS

1. What are the colors of our flag?
2. What do the stars on the flag mean?
3. How many stars are there on our flag?
4. What color are the stars on our flag?
5. How many stripes are there on our flag?
6. What do the stripes on the flag represent?
7. What colors are the stripes on the flag?
8. How many states are there in the Union (the United States)?
9. What do we celebrate on the 4th of July?
10. Independence Day celebrates independence from whom?
11. What country did we fight during the Revolutionary War?
12. Who was the first president of the United States?
13. Who is the President of the United States today?
14. Who is the Vice President of the United States today?
15. Who elects the President of the United States?
16. Who becomes President if the President dies?
17. What is the Constitution?
18. What do we call changes to the Constitution?
19. How many changes, or amendments, are there to the Constitution?
20. What are the three branches of our government?
21. What is the legislative branch of our Government?
22. What makes up Congress?
23. Who makes the Federal laws in the United States?
24. Who elects Congress?
24. Who elects Congress?
25. How many Senators are there in Congress?
26. For how long do we elect each Senator?

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27. Name two Senators from your state.
  28. How many voting members are in the House of Representatives?

## ANSWERS

1. Red, white, and blue
2. One for each state
3. There are 50 stars on our flag.
4. The stars on our flag are white.
5. There are 13 stripes on our flag.
6. The first 13 states
7. The stripes on the flag are red and white.
8. 50 states
9. Independence Day
10. Independence from Great Britain
11. We fought Great Britain in the Revolutionary War.
12. George Washington
13. George W. Bush
14. Dick Cheney
15. The Electoral College
16. The Vice President
17. The supreme law of the land
18. Amendments
19. Twenty-seven amendments
20. Executive, Judicial, and Legislative
21. Congress
22. The Senate and the House of Representatives
23. Congress
24. The citizens of the United States
25. There are 100 Senators in Congress, 2 from each state.
26. 6 years
27. The answer to this question depends on where you live.
28. There are 435 voting members in the House of Representatives.

Flash cards with sample questions and answers for the civics test can be downloaded at [http://www.uscis.gov/graphics/citizenship/flashcards/Flashcards\\_web\\_final.pdf](http://www.uscis.gov/graphics/citizenship/flashcards/Flashcards_web_final.pdf) A list of sample Q & A is also available at [http://www.uscis.gov/graphics/citizenship/flashcards/Flashcard\\_questions.pdf](http://www.uscis.gov/graphics/citizenship/flashcards/Flashcard_questions.pdf)

<sup>13</sup> INA Sec. 316.10 Good moral character.

(a) Requirement of good moral character during the statutory period.

(1) An applicant for naturalization bears the burden of demonstrating that, during the statutorily prescribed period, he or she has been and continues to be a person of good moral character. This includes the period between the examination and the administration of the oath of allegiance.

(2) In accordance with Section 101(f) of the Act, the Service shall evaluate claims of good moral character on a case-by-case basis taking into account the elements enumerated in this section and the standards of the average citizen in the community of residence. The Service is not limited to reviewing the applicant's conduct during the five years immediately preceding the filing of the application, but may take into consideration, as a basis for its determination, the applicant's conduct and acts at any time prior to that

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period, if the conduct of the applicant during the statutory period does not reflect that there has been reform of character from an earlier period or if the earlier conduct and acts appear relevant to a determination of the applicant's present moral character.

(b) Finding of a lack of good moral character.

(1) An applicant shall be found to lack good moral character, if the applicant has been:

(i) Convicted of murder at any time; or (Revised 9/24/93; 58 FR 49913)

(ii) Convicted of an aggravated felony as defined in Section 101(a)(43) of the Act on or after November 29, 1990. (Revised 9/24/93; 58 FR 49913)

(2) An applicant shall be found to lack good moral character if during the statutory period the applicant:

(i) Committed one or more crimes involving moral turpitude, other than a purely political offense, for which the applicant was convicted, except as specified in Section 212(a)(2)(A)(ii)(II) of the Act;

(ii) Committed two or more offenses for which the applicant was convicted and the aggregate sentence actually imposed was five years or more, provided that, if the offense was committed outside the United States, it was not a purely political offense;

(iii) Violated any law of the United States, any State, or any foreign country relating to a controlled substance, provided that the violation was not a single offense for simple possession of 30 grams or less of marijuana;

(iv) Admits committing any criminal act covered by paragraphs (b)(2)(i), (ii), or (iii) of this section for which there was never a formal charge, indictment, arrest, or conviction, whether committed in the United States or any other country;

(v) Is or was confined to a penal institution for an aggregate of 180 days pursuant to a conviction or convictions (provided that such confinement was not outside the United States due to a conviction outside the United States for a purely political offense);

(vi) Has given false testimony to obtain any benefit from the Act, if the testimony was made under oath or affirmation and with an intent to obtain an immigration benefit; this prohibition applies regardless of whether the information provided in the false testimony was material, in the sense that if given truthfully it would have rendered ineligible for benefits either the applicant or the person on whose behalf the applicant sought the benefit;

(vii) Is or was involved in prostitution or commercialized vice as described in Section 212(a)(2)(D) of the Act;

(viii) Is or was involved in the smuggling of a person or persons into the United States as described in Section 212(a)(6)(E) of the Act;

(ix) Has practiced or is practicing polygamy;

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(x) Committed two or more gambling offenses for which the applicant was convicted;

(xi) Earns his or her income principally from illegal gambling activities; or

(xii) Is or was a habitual drunkard.

(3) Unless the applicant establishes extenuating circumstances, the applicant shall be found to lack good moral character if, during the statutory period, the applicant:

(i) Willfully failed or refused to support dependents;

(ii) Had an extramarital affair which tended to destroy an existing marriage; or

(iii) Committed unlawful acts that adversely reflect upon the applicant's moral character, or was convicted or imprisoned for such acts, although the acts do not fall within the purview of Sec. 316.10(b)(1) or (2).

This last provision is known as the “catch-all-provision” of the GMC requirements and leaves wide discretion to USCIS to deny naturalization. It does not require a conviction.

<sup>14</sup> <http://www.uscis.gov/graphics/formsfee/forms/n-400.htm>