

**RESPONSE TO USCIS’  
SUPPORTING STATEMENT (SS)  
Application to Preserve Residence for Naturalization  
Form N-470  
(OMB No. 1615-0056)**

*The USCIS SS of 12-19-2011, is only partially responsive to the comments offered. In addition, certain responses are off-base or worse-blattant mischaracterizations.*

*A portion of the SS is copied below with responses interspersed.*

A. Justification.

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8. On October 12, 2011, USCIS published a 60-day notice in the Federal Register at 76 FR 63321. USCIS received comments from two commenters on the 60-day notice. The following is a summary of each comment and USCIS’ response.

Comment 1

The commenter notes that USCIS’ reference to “continuous presence requirement” in the Supporting Statement is inaccurate. It should be “continuous residence requirement” instead.

USCIS Response

USCIS will make that edit on the Supporting Statement.

*Thank you, the above is appreciated.*

Comment 2

The commenter would like to know if “...including the U.S. Armed Forces” pertains to civilian employees but excluding military service members.

**USCIS has removed reference to “including the U.S. Armed Forces” from the form.**

USCIS Response

The comprehensive version includes reference excepting a member of the U.S. Armed Forces from filing Form N-470. This does not pertain to civilian employees.

*Thank you, the above is appreciated.*

Comment 3

The commenter would like to know if requesting information from an applicant about “all trips of 24 hours or more” is acceptable.

#### USCIS Response

Based upon INA section 317, the applicant must be physically present and residing in the United States for one uninterrupted period of at least one year. Therefore, USCIS requests that information from an applicant.

#### Comment 4

The commenter would like to know if the phrase “without any absences whatsoever” is in conflict with Part 2, item # 13 that excludes trips under 24 hours.

#### USCIS Response

Based upon further review, USCIS determined that the language is consistent with reference to “all trips of 24 or more”.

*The above is non-responsive to the thrust of the two related comments. The actual submitted comment brought up the demise of the Fleuti Doctrine that previously allowed for “brief, casual and innocent absences” under certain circumstances. For extended absence and certain other purposes, IIRIRA (1996), affirmatively ended the Fleuti Doctrine and overruled the associated INS interpretation. The comment cited to Matters of Graves and Collado but the USCIS response has danced around the actual issues in much of the submitted comment.*

#### Comment 5

The commenter would like to improve the instructions to state that an applicant “may also plan to accumulate the one uninterrupted year as an LPR prior to departure abroad and the N-470 will be invalidated (become null and void) if they don’t fulfill that requirement.

The information that the commenter provides pertains to applicants after USCIS has approved his/her Form N-470. USCIS provides information in the instructions about applicants eligibilities for specific applications. USCIS instructions do not reference information after USCIS has approved an application.

*The above USCIS response mischaracterizes the actual point of the submitted comment on that issue. This point at issue is further explained below under Comment 7. The above USCIS response is also contradicted by its inclusion in the N-470 Form Instructions of other information pertaining to N400 eligibility requirements and the need to obtain a re-entry permit. USCIS again fails to address the actual comment and legal argument.*

*USCIS has defended its formulaic ICRs as being written according to regulation. Well, the base regulation that forms the foundation for the ICR requests comments that seek to elicit comments according to this ubiquitous regulatory blurb:*

".....Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses."

*USCIS seems to routinely focus only on items (2) and (4) and dance around and/or blatantly ignore items (1) and (3). The "responses" in this SS are a prime example.*

#### Comment 6

The commenter states that the note referencing "Qualifying spouses" is confusing and needs to be clarified.

#### USCIS Response

USCIS will include reference to "Qualifying spouses of U.S. citizens" to address the confusion.

*Thank you, the above is appreciated.*

#### Comment 7

The commenter would like to remove reference to continuous residency requirements for Form N-400. Based upon stakeholders' comments stating that the information is useful and important, USCIS will maintain that portion of the instructions.

*Thank you, the above is appreciated **because** it serves to reinforce and further illustrate the point made above as to USCIS' contradictions. On the one hand, USCIS feebly attempts to deflect this commenter's point about clarifying that the **ONE-YEAR PREREQUISITE is actually a prerequisite to departure rather than to filing or even approval**. Additionally, USCIS declines to include warnings about the post-approval consequences of disqualifying acts as improper, and simultaneously defends its inclusion of information about a separate application form. In opposite, USCIS defends retention of limited information about the N-400.*

Comment 8

The commenter states that the exception for members of the U.S. Armed Forces is incorrect; that “time spent in the military service is already officially considered to be continuous residence and physical presence in the U.S. and any state or USCIS office jurisdiction by statute.”

USCIS Response

Based upon further research with USCIS Subject Matter Experts, USCIS has concluded that the reference is correct and will be maintained.

*Comment 2, above and this response to Comment 8 are at odds. The “Exception” in the form instructions dated 8-22-2011, and posted 10-13-2011, tells the Military members to file an N-470. The “Exception” should tell them that they do **not** have to file an N-470. Perhaps USCIS may have intended to say it would clarify rather than remove the “Exception” blurb? I notice that USCIS did not state that the reference would be maintained “**as is**”.*

Comment 9

The commenter states that USCIS can request applicants to provide information where an applicant has not met the one-year requirement inside the United States as an LPR. The commenter would like USCIS to ask for the applicant’s “intended departure after accumulating the mandatory one-year continuous presence as an LPR required prior to departure if applying under INA section 316 section (b).

USCIS Response

This application pertains to more than one INA section of law. Therefore, to limit it by incorporating this verbiage would limit the capability of this application. So it will not be instituted.

*Thank you, the above is appreciated because it serves to reinforce and further illustrate the points made above as to USCIS’ many contradictions. USCIS again chooses to avoid conforming to its stated Customer Service role as the Benefits Granting arm of DHS. Instead USCIS chooses to perpetuate confusion by avoiding clarity.*

Comment 10

The commenter states that USCIS requirement that the interrupted year must be completed before an applicant can file.

*Comment 10 is an obvious typo or editing mistake as it makes no sense. The commenter challenges the USCIS interpretation that the “ONE-YEAR PREREQUISITE” is actually a filing prerequisite for the form N-470. Additionally, an N-400 applicant under INA § 317 is NOT absolutely mandated to even file an N-470, the commenter pointed out that that applicant merely needs to*

*fulfill the ONE-YEAR PREREQUISITE prior to filing the N400. I stand by my interpretation that it is a DEPARTURE PREREQUISITE only under INA 316(b) and I acknowledge that still other legal bases for naturalization have differing courses of action involved in them and some may also be covered by and included in the N-470. USCIS' obvious attempt to obfuscate is unpersuasive.*

#### USCIS Response

This specifically reference INA section 317. However, Form N-470 pertains to more than section 317 therefore the form has been formatted to meet other requirements as needed to adjudicate the form.

*Again USCIS mischaracterizes the actual comments and muddles the actual issues. This commenter knows full well that the N-470 has uses for LPRs under various sections of the INA for a variety of "extended absence" benefits. That was the whole crux of the comments submitted! USCIS is again failing to address the actual comments and arguments presented.*

Below is USCIS response to the second commenter's comment:

*The above is either another mischaracterization or merely sloppy editing. More than one comment was submitted by the same commenter. All comments addressed herein were from the same commenter .*

#### Comment

The public commenter provided extensive comments about revising the regulations supporting Form N-470. This includes referencing Advance Notice, CIA Exception, Religious Vocation, U.S. Government Civilian Employees.

#### USCIS Response

USCIS appreciates the public commenters due diligence in providing suggestions and comments to improve the regulations supporting Form N-470. USCIS has reviewed the comments and suggestions in depth. However, while USCIS is ~~in~~ currently undergoing a comprehensive review of the form, USCIS is not currently engaged in a comprehensive review of the regulations that support Form N-470. **In the future, when USCIS does undertake a comprehensive review of the regulations supporting Form N-470, USCIS will review the public commenter's comments and suggestions.**

*This commenter appreciates the last statement above but will not ignore the blatant posturing in some of the deliberate mischaracterizations above it.*