

Sec. 8—Powers of Congress

Cl. 4—Naturalization and Bankruptcies

Other limitations on eligibility are also imposed. Eligibility may turn upon the decision of the responsible officials whether the petitioner is of “good moral character.”¹²¹⁷ The immigration and nationality laws themselves include a number of specific congressional determinations that certain persons do not possess “good moral character,” including persons who are “habitual drunkards,”¹²¹⁸ adulterers,¹²¹⁹ polygamists or advocates of polygamy,¹²²⁰ gamblers,¹²²¹ convicted felons,¹²²² and homosexuals.¹²²³ In order to petition for naturalization, an alien must have been resident for at least five years and to have possessed “good moral character” for all of that period.

The process of naturalization culminates in the taking in open court of an oath “(1) to support the Constitution of the United States; (2) to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the petitioner was before a subject or citizen; (3) to support and defend the Constitution and the laws of the United States against all enemies, foreign and domestic; (4) to bear true faith and allegiance to the same; and (5) (A) to bear arms on behalf of the United States when required by the law, or (B) to perform noncombatant service in the Armed Forces of the United States when required by the law, or (C) to perform work of national importance under civilian direction when required by law.”¹²²⁴

Any naturalized person who takes this oath with mental reservations or conceals or misrepresents beliefs, affiliations, and conduct, which under the law disqualify one for naturalization, is subject, upon these facts being shown in a proceeding brought for the

¹²¹⁷ § 316(a)(3), 66 Stat. 242, 8 U.S.C. § 1427(a)(3).

¹²¹⁸ § 101(f)(1), 66 Stat. 172, 8 U.S.C. § 1101(f)(1).

¹²¹⁹ § 101(f)(2), 66 Stat. 172, 8 U.S.C. § 1101(f)(2).

¹²²⁰ § 212(a)(11), 66 Stat. 182, 8 U.S.C. § 1182(a)(11).

¹²²¹ § 101(f)(4) and (5), 66 Stat. 172, 8 U.S.C. § 1101(f)(4) and (5).

¹²²² § 101(f)(7) and (8), 66 Stat. 172, 8 U.S.C. § 1101(f)(7) and (8).

¹²²³ § 212(a)(4), 66 Stat. 182, 8 U.S.C. § 1182(a)(4), barring aliens afflicted with “psychopathic personality,” “a term of art intended to exclude homosexuals from entry into the United States.” *Boutilier v. Immigration and Naturalization Service*, 387 U.S. 118, 119 (1967).

¹²²⁴ § 337(a), 66 Stat. 258 (1952), 8 U.S.C. § 1448(a). In *United States v. Schwimmer*, 279 U.S. 644 (1929), and *United States v. MacIntosh*, 283 U.S. 605 (1931), a divided Court held that clauses (3) and (4) of the oath, as then prescribed, required the candidate for naturalization to be willing to bear arms for the United States, thus disqualifying conscientious objectors. These cases were overturned, purely as a matter of statutory interpretation by *Girouard v. United States*, 328 U.S. 61 (1946), and Congress codified the result, 64 Stat. 1017 (1950), as it now appears in the cited statute.