

INA: ACT 329 - NATURALIZATION THROUGH ACTIVE-DUTY SERVICE IN THE ARMED FORCES DURING WORLD WAR I, WORLD WAR II, THE KOREAN HOSTILITIES, THE VIETNAM HOSTILITIES, OR IN OTHER PERIODS OF MILITARY HOSTILITIES

Sec. 329. [8 U.S.C. 1440]

(a) Any person who, while an alien or a noncitizen national of the United States, has served honorably as a member of the Selected Reserve of the Ready Reserve or 1/ in an active-duty status in the military, air, or naval forces of the United States during either World War I or during a period beginning September 1, 1939, and ending December 31, 1946, or during a period beginning June 25, 1950, and ending July 1, 1955, or during a period beginning February 28, 1961, and ending on a date designated by the President by Executive order as the date of termination of the Vietnam hostilities, or thereafter during any other period which the President by Executive order shall designate as a period in which Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force, and who, if separated from such service, was separated under honorable conditions, may be naturalized as provided in this section if (1) at the time of enlistment, reenlistment, extension of enlistment, 1/ or induction such person shall have been in the United States, the Canal Zone, America Samoa, or Swains Island, or on board a public vessel owned or operated by the United States for noncommercial service, 1/ whether or not he has been lawfully admitted to the United States for permanent residence, or (2) at any time subsequent to enlistment or induction such person shall have been lawfully admitted to the United States for permanent residence. The executive department under which such person served shall determine whether persons have served honorably in an active-duty status, and whether separation from such service was under honorable conditions: Provided, however, That no person who is or has been separated from such service on account of alienage, or who was a conscientious objector who performed no military, air, or naval duty whatever or refused to wear the uniform, shall be regarded as having served honorably or having been separated under honorable conditions for the purposes of this section. No period of service in the Armed Forces shall be made the basis of a application for naturalization under this section if the applicant has previously been naturalized on the basis of the same period of service.

(b) A person filing an application under subsection (a) of this section shall comply in all other respects with the requirements of this title, except that-

(1) he may be naturalized regardless of age, and notwithstanding the provisions of section 318 as they relate to deportability and the provisions of section 331;

(2) no period of residence or specified period of physical presence within the United States or any State or district of the Service in the United States shall be required; 2/

(3) service in the military, air, or naval forces of the United States shall be proved by a duly authenticated certification from the executive department under which the applicant

served or is serving, which shall state whether the applicant served honorably in an active-duty status during either World War I or during a period beginning September 1, 1939, and ending December 31, 1946, or during a period beginning June 25, 1950, and ending July 1, 1955, or during a period beginning February 28, 1961, and ending on a date designated by the President by Executive order as the date of termination of the Vietnam hostilities, or thereafter during any other period which the President by Executive order shall designate as a period in which Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force, and was separated from such service under honorable conditions; and 2/

(4) 2/ notwithstanding any other provision of law, no fee shall be charged or collected from the applicant for filing a petition for naturalization or for the issuance of a certificate of naturalization upon citizenship being granted to the applicant, and no clerk of any State court shall charge or collect any fee for such services unless the laws of the State require such charge to be made, in which case nothing more than the portion of the fee required to be paid to the State shall be charged or collected.

(c) 3/ Citizenship granted pursuant to this section may be revoked in accordance with section 340 if the person is separated from the Armed Forces under other than honorable conditions before the person has served honorably for a period or periods aggregating five years. Such ground for revocation shall be in addition to any other provided by law, including the grounds described in section 340. The fact that the naturalized person was separated from the service under other than honorable conditions shall be proved by a duly authenticated certification from the executive department under which the person was serving at the time of separation. Any period or periods of service shall be proved by duly authenticated copies of the records of the executive departments having custody of the records of such service.

8 CFR PART 328 -- SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WITH THREE YEARS SERVICE IN ARMED FORCES OF THE UNITED STATES

- Sec. 328.1 Definitions.
- Sec. 328.2 Eligibility.
- Sec. 328.3 Jurisdiction.
- Sec. 328.4 Application.

Authority: 8 U.S.C. 1103, 1439, 1443.

Sec. 328.1 Definitions.

As used in this part:

Honorable service means only that military service which is designated as honorable service by the executive department under which the applicant performed that military service. Any service that is designated to be other than honorable will not qualify under this section.

Service in the Armed Forces of the United States means:

- (1) Active or reserve service in the United States Army, United States Navy, United States Marines, United States Air Force, or United States Coast Guard; or
- (2) Service in a National Guard unit during such time as the unit is Federally recognized as a reserve component of the Armed Forces of the United States.

Sec. 328.2 Eligibility.

To be eligible for naturalization under Section 328(a) of the Act, an applicant must establish that the applicant:

- (a) Has served honorably in and, if separated, has been separated honorably from, the Armed Forces of the United States;
 - (b) Has served under paragraph (a) of this section for a period of three or more years, whether that service is continuous or discontinuous;
 - (c) Is a lawful permanent resident of the United States at the time of the examination on the application;
 - (d) Has been, during any period within five years preceding the filing of the application for naturalization, or the examination on the application if eligible for early filing under Section 334(a) of the Act, and continues to be, of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States.
- (1) An applicant is presumed to satisfy the requirements of this paragraph during periods of honorable service under paragraph (a) of this section.
 - (2) An applicant must establish that he or she satisfies the requirements of this paragraph from the date of discharge from military until the date of admission to citizenship.
 - (3) An applicant whose honorable service is discontinuous must also demonstrate that he or she satisfies the requirements of this paragraph for those periods of time when that applicant is not in honorable service.
- (e) Has complied with all other requirements for naturalization as provided in part 316 of this chapter, except that:

(1) An applicant who files an application for naturalization while still in honorable service, or within six months after termination of such service, is generally not required to satisfy the residence requirements under Sec. 316.2(a)(3) through (a)(6) of this chapter; however, if the applicant's military service is discontinuous, that applicant must establish, for periods between honorable service during the five years immediately preceding the date of filing the application, or the examination on the application if eligible for early filing under Section 334(a) of the Act, that he or she resided in the United States and in the State or Service district in the United States in which the application is filed.

(2) An applicant who files an application for naturalization more than six months after terminating honorable service must satisfy the residence requirements under Sec. 316.2(a)(3) through (a)(6) of this chapter. However, any honorable service by the applicant within the five years immediately preceding the date of filing of the application shall be considered as residence within the United States for purposes of Sec. 316.2(a)(3) of this chapter.

Sec. 328.3 Jurisdiction.

An application filed within 6 months after discharge may be filed with any office of the Service within the United States regardless of place of residence of the applicant. An application filed more than 6 months after discharge shall be filed with the Service office having jurisdiction over the State or Service district where the applicant has been residing for at least three months immediately preceding the filing of the application, or immediately preceding the examination on the application if the application was filed early pursuant to Section 334(a) of the Act and the three month period falls within the required period of residence under Section 316(a) or 319(a) of the Act.

Sec. 328.4 Application.

An applicant for naturalization under this part must submit an Application for Naturalization, Form N-400, as provided in Sec. 316.4 of this chapter. The application must be accompanied by Form N-426, Certificate of Military or Naval Service; and Form G-325B, Biographic Form.