

INA: ACT 328 - NATURALIZATION THROUGH SERVICE IN THE ARMED FORCES OF THE UNITED STATES

Sec. 328. [8 U.S.C. 1439]

(a) A person who has served honorably at any time in the Armed Forces of the United States for a period or periods aggregating 1/one year, and who, if separated from such service, was never separated except under honorable conditions, may be naturalized without having resided, continuously immediately preceding the date of filing such person's application, in the United States for at least five years, and in the State or district of the Service in the United States in which the application for naturalization is filed for at least three months, and without having been physically present in the United States for any specified period, if such application is filed while the applicant is still in the service or within six months after the termination of such service.

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

(1) No residence within a State or district of the Service in the United States shall be required;

(2) Notwithstanding section 318 insofar as it relates to deportability, such applicant may be naturalized immediately if the applicant be then actually in the Armed Forces of the United States, and if prior to the filing of the application, the applicant shall have appeared before and been examined by a representative of the Service;

(3) The applicant shall furnish to the 2/Secretary of Homeland Security, prior to any final hearing upon his application, a certified statement from the proper executive department for each period of his service upon which he relies for the benefits of this section, clearly showing that such service was honorable and that no discharges from service, including periods of service not relied upon by him for the benefits of this section, were other than 2/honorable (the certificate or certificates herein provided for shall be conclusive evidence of such service and discharge); and

2/(4) notwithstanding any other provision of law, no fee shall be charged or collected from the applicant for filing the application, or for the issuance of a certificate of naturalization upon being granted citizenship, 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) In the case such applicant's service was not continuous, the applicant's residence in the United States and State or district of the Service in the United States, good moral character, attachment to the principles of the Constitution of the United States, and

favorable disposition toward the good order and happiness of the United States, during any period within five years immediately preceding the date of filing such application between the periods of applicant's service in the Armed Forces, shall be alleged in the application filed under the provisions of subsection (a) of this section, and proved at any hearing thereon. Such allegation and proof shall also be made as to any period between the termination of applicant's service and the filing of the application for naturalization.

(d) The applicant shall comply with the requirements of section 316(a) of this title, if the termination of such service has been more than six months preceding the date of filing the application for naturalization, except that such service within five years immediately preceding the date of filing such application shall be considered as residence and physical presence within the United States.

(e) Any such period or periods of service under honorable conditions, and good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during such service, shall be proved by duly authenticated copies of the records of the executive departments having custody of the records of such service, and such authenticated copies of records shall be accepted in lieu of compliance with the provisions of section [316\(a\)](#).

(f) [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.

(g) [4/](#) Not later than 6 months after receiving an application for naturalization filed by a current member of the Armed Forces under subsection (a), section 329(a), or section 329A, by the spouse of such member under section 319(b), or by a surviving spouse or child under section 319(d), United States Citizenship and Immigration Services shall-

- (1) process and adjudicate the application, including completing all required background checks to the satisfaction of the Secretary of Homeland Security; or
- (2) provide the applicant with-
 - (A) an explanation for its inability to meet the processing and adjudication deadline under this subsection; and
 - (B) an estimate of the date by which the application will be processed and adjudicated.

(h) [4/](#) The Director of United States Citizenship and Immigration Services shall submit an annual report to the Subcommittee on Immigration, Border Security, and Refugees and the Subcommittee on Homeland Security of the Senate and the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law and the Subcommittee on Homeland Security of the House of Representatives that identifies

every application filed under subsection (a), subsection (b) or (d) of [section 319](#), section [329\(a\)](#), or section [329A](#) that is not processed and adjudicated within 1 year after it was filed due to delays in conducting required background checks.

FOOTNOTES FOR SECTION 328

INA: ACT 328 FN 1

FN 1 Section [1701\(a\)](#) of the National Defense Authorization Act for Fiscal Year 2004, Public Law [108-136](#), dated November 24, 2003, amended paragraph (a) by striking "three years" and inserting "one year".

INA: ACT 328 FN 2

FN 2 Section [1701\(b\)\(1\)](#) of the National Defense Authorization Act for Fiscal Year 2004, Public Law [108-136](#), dated November 24, 2003, amended paragraph (b)(3) and added a new paragraph (b)(4).

EFFECTIVE DATE: The amendments made by sections [1701\(b\)](#) (relating to naturalization fees) contained in paragraph (b)(4) shall take effect on October 1, 2004.

Section [1701\(f\)](#) further amended paragraph (b)(3) by striking "Attorney General" and inserting "Secretary of Homeland Security".

INA: ACT 328 FN 3

FN 3 Section [1701\(c\)\(1\)\(A\)](#) of the National Defense Authorization Act for Fiscal Year 2004, Public Law [108-136](#), dated November 24, 2003, added a new paragraph (f). This paragraph applies to citizenship granted on or after the date of enactment of Public Law 108-136, which is November 24, 2003.

INA: ACT 328 FN 4

FN 4 [Section 3\(a\)](#) of Public Law 110-382, dated October 9, 2008, amended section 328 of the Act by adding paragraphs (g) and (h).

Sunset Provision:

The amendments made by [Public Law 110-382](#) sunsets 5 years after the date of the enactment of this Public Law 110-382 [enacted October 9, 2008]. See section 4 of Public Law 110-382.

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 an 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.

8 CFR Part 329 - SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WITH ACTIVE DUTY OR CERTAIN READY RESERVE SERVICE IN THE UNITED STATES ARMED FORCES DURING SPECIFIED PERIODS OF HOSTILITIES

Sec. 329.1 Definitions.

Sec. 329.2 Eligibility.

Sec. 329.3 [Reserved]

Sec. 329.4 Application and evidence.

Sec. 329.1 Definitions.

As used in this part:

Honorable service and separation means service and separation from service which the executive department under which the applicant served determines to be honorable, including:

(1) That such applicant had not been separated from service on account of alienage;

(2) That such applicant was not a conscientious objector who performed no military, air or naval duty; and

(3) That such applicant did not refuse to wear a military uniform.

Service in an active duty status in the Armed Forces of the United States means active service in the following organizations:

(1) United States Army, United States Navy, United States Marines, United States Air Force, United States Coast Guard; or

(2) 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 and that unit is called for active duty.

World War I means the period beginning on April 6, 1917, and ending on November 11, 1918

§ 329.2 Eligibility.

To be eligible for naturalization under section 329(a) of the Act, an applicant must establish that he or she:

(a) Has served honorably in the Armed Forces of the United States as a member of the Selected Reserve of the Ready Reserve or in an active duty status in the Armed Forces of the United States during:

(1) World War I;

(2) The period beginning on September 1, 1939 and ending on December 31, 1946;

(3) The period beginning on June 25, 1950 and ending on July 1, 1955;

(4) The period beginning on February 28, 1961 and ending on October 15, 1978; or

(5) Any other period as may be designated by the President in an Executive Order pursuant to section 329(a) of the Act;

(b) If separated, has been separated honorably from service in the Armed Forces of the United States under paragraph (a) of this section;

(c) Satisfies the permanent residence requirement in one of the following ways:

(1) Any time after enlistment or induction into the Armed Forces of the United States, the applicant was lawfully admitted to the United States as a permanent resident; or

(2) At the time of enlistment or induction, the applicant was physically present in the geographical territory of the United States, the Canal Zone, American Samoa, Midway Island (prior to August 21, 1959), or Swain's Island, or in the ports, harbors, bays, enclosed sea areas, or the three-mile territorial sea along the coasts of these land areas, whether or not the applicant has been lawfully admitted to the United States as a permanent resident;

(d) Has been, for at least one year prior to filing the application for naturalization, 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; and

(e) Has complied with all other requirements for naturalization as provided in part 316 of this chapter, except that:

(1) The applicant may be of any age;

(2) The applicant is not required to satisfy the residence requirements under § 316.2 (a)

(3) through (a)(6) of this chapter; and

(3) The applicant may be naturalized even if an outstanding notice to appear pursuant to 8 CFR part 239 (including a charging document issued to commence proceedings under sections 236 or 242 of the Act prior to April 1, 1997) exists.

§ 329.4 Application and evidence.

(a)Application. An applicant for naturalization under section 329 of the Act must submit an application on the form prescribed by USCIS in accordance with the form instructions and as provided in 8 CFR 316.4.

(b)Evidence. The applicant's eligibility for naturalization under 8 CFR 329.2(a), (b), or (c)(2) will be established only by a certification of honorable service by the executive department under which the applicant served or is serving.