



November 12, 2021

PA-2021-24

## Policy Alert

SUBJECT: Clarifying Guidance on Military Service Members and Naturalization

### Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the [USCIS Policy Manual](#) to provide clarifications regarding certain naturalization applications filed by current or former members of the U.S. armed forces under sections 328 and 329 of the Immigration and Nationality Act (INA).

### Background

Current or former members of the U.S. armed forces who serve honorably for any period of time during specifically designated periods of hostilities may be eligible to naturalize.<sup>1</sup> In accordance with the statutory provisions, some former members of the U.S. armed forces who served during designated periods of hostility and were honorably discharged but are not LPRs may be eligible to naturalize under [INA 329](#) even if currently residing outside of the United States.<sup>2</sup>

In some cases, such former service members may seek to be admitted or paroled into the United States for the purpose of attending a naturalization interview and oath ceremony. In addition, a person who has served honorably in the U.S. armed forces for 1 year (at any time) may be eligible to apply for naturalization under INA 328 (sometimes referred to as “peacetime naturalization”).<sup>3</sup>

This update is part of the U.S. Department of Homeland Security (DHS) initiative to conduct a review of policies and practices to ensure that all eligible current and former noncitizen service members and the families of service members are able to remain in or return to the United States, to remove barriers to naturalization for those eligible, and improve access to immigration services.<sup>4</sup>

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<sup>1</sup> See [INA 329\(a\)](#). See [8 CFR 329.2\(a\)\(1\)-\(5\)](#). See Volume 12, Citizenship and Naturalization, Part I, Military Members and their Families, Chapter 3, Military Service during Hostilities (INA 329), Section D, Designated Periods of Hostilities [[12 USCIS-PM I.3\(D\)](#)].

<sup>2</sup> LPR status is not required in cases where the current or former military member was physically present in the United States or certain other designated areas at the time of induction, enlistment, reenlistment, or extension of service in the U.S. armed forces. See [INA 329\(a\)](#). See [8 CFR 329.2\(c\)\(2\)](#).

<sup>3</sup> See [INA 328](#).

<sup>4</sup> See DHS Press Release, “[DHS, VA Announce Initiative to Support Noncitizen Service Members, Veterans, and Immediate Family Members,](#)” released July 2, 2021.

USCIS is now providing additional clarifying guidance based on public comments including those received in response to the April 19, 2021 Request for Public Input (RPI)<sup>5</sup> and the August 2, 2021, webinar hosted jointly by USCIS and the Office of Citizenship and Immigration Services Ombudsman titled Services for Noncitizen Veterans.

This update includes a change to USCIS' most recent interpretation of the qualifying service requirements under INA 329, specifying that the qualifying period of service is not required to be the most recent period of service.<sup>6</sup> Neither the statute nor the regulation explicitly states that only the most recent service (or separation as applicable) may be considered. USCIS believes that considering any qualifying period of service is more consistent with the statute and regulations.<sup>7</sup> Furthermore, as Congress did not specifically require all discharges to be under honorable conditions for purposes of INA 329, the omission of such a requirement suggests that Congress intended the focus to be on any qualifying period of service rather than the servicemember's current or most recent period of service.<sup>8</sup>

In response to the comments from the RPI, the webinar and other comments received by USCIS, this updated guidance further revises and clarifies policy regarding current and former service members and their families seeking to apply for naturalization. The guidance, contained in Volume 12 of the Policy Manual, is effective immediately. The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance.

### Policy Highlights

- Clarifies that INA 328 requires honorable service and that the applicant has never been separated except under honorable conditions.
- Provides that an applicant who was separated under honorable conditions after a qualifying period of service may be eligible for naturalization under INA 329 even if the applicant received a different type of discharge from a separate period of service.
- Provides that former service members residing overseas may concurrently file an Application for Naturalization ([Form N-400](#)) with an Application for Travel Document ([Form I-131](#))

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<sup>5</sup> See "Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services; Request for Public Input," [86 FR 20398](#) (May 19, 2021) (Federal Register Notice).

<sup>6</sup> See Policy Alert, "Veterans Residing Outside the United States and Naturalization," [PA-2021-09](#) (May 28, 2021), updating Volume 12, Citizenship and Naturalization, Part I, Military Members and their Families, Chapter 3, Military Service during Hostilities (INA 329) [[12 USCIS-PM I.3](#)] and Chapter 5, Application and Filing for Service Members (INA 328 and 329) [[12 USCIS-PM I.5](#)]. USCIS had provided that officers looked to the service member's "current or most recent service, and if applicable, the applicant's most recent separation" in order to determine whether the service member met the requirements of honorable service and, if separated, a separation under honorable conditions.

<sup>7</sup> See INA 329, which defines what is necessary for a period of service to qualify and then requires that an applicant, "if separated from such service, was separated under honorable conditions." The use of the word "such" suggests that only the separation from the qualifying period of service is required to be under honorable conditions. Additionally, see [8 CFR 329.2\(b\)](#), which requires that a servicemember's separation from service "under paragraph (a) of this section" must be honorable. Paragraph (a) refers solely to the qualifying period of service.

<sup>8</sup> Congress required an honorable discharge for every period of service for purposes of [INA 328](#), and could have done the same for [INA 329](#), but did not.

without a fee to seek an advance parole document for the purpose of attending a naturalization interview in the United States.

- Provides that USCIS may interview a former service member seeking naturalization under INA 329 at a land port of entry even if the applicant has not demonstrated preliminary eligibility for naturalization or sought a visa or parole.
- Provides that if an application for naturalization under INA 329 is approved after an interview at a land port of entry, the applicant may be administered the Oath of Allegiance at the port of entry unless a court has exclusive authority to administer the oath.
- Clarifies the location to file for military spouses who are outside the United States.
- Clarifies that if a current or former military member applies for naturalization under general provisions, but the applicant may be eligible based on military service, USCIS will review eligibility under military provisions and provide the applicant the opportunity to seek naturalization on that basis.

### **Citation**

Volume 12: Citizenship and Naturalization, Part I, Military Members and their Families  
[\[12 USCIS-PM I\]](#) (Chapters 2, 3, 5, and 9)