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Expedited Citizenship through Military Service

Overview

Current law allows certain noncitizens who serve in the U.S. military to acquire expedited U.S. citizenship. Recent media reports have described situations in which noncitizen U.S. veterans who served in and were honorably discharged from the U.S. military, failed to apply for their citizenship for a variety of reasons, subsequently committed crimes that made them removable, and were then deported to their countries of origin. Although advocacy groups claim that there may be thousands of deported U.S. veterans outside of the United States, no reliable estimates have been produced for this population. In the 115th Congress, several legislative proposals have been introduced to address this issue.

Current Naturalization Law

The Immigration and Nationality Act (INA) allows certain noncitizens to become U.S. citizens through naturalization. Often viewed as a cultural milestone, naturalization provides certain benefits to immigrants, including the right to vote, security from deportation, and access to a U.S. passport.

In general, lawful permanent residents (LPRs) who wish to naturalize must have resided continuously as LPRs in the United States for five years; provide evidence of "good moral character"; demonstrate knowledge of English, U.S. history, and attachment to the principles of the constitution; and take an oath of allegiance to the United States. Non-military naturalization applicants cannot be in removal (deportation) proceedings. U.S. Citizenship and Immigration Services (USCIS) in the Department of Homeland Security (DHS) processes naturalization applications for a $725 fee.

INA provisions also facilitate expedited naturalization for noncitizen members of the U.S. Armed Forces and recently honorably discharged noncitizen U.S. veterans.

Eligibility to Join the U.S. Armed Forces

In accordance with federal law, U.S. citizens, noncitizen nationals (individuals born in American Samoa and Swains Island), and LPRs are eligible to enlist in the U.S. Armed Forces and be appointed as officers. Persons from Micronesia, Marshall Islands, and Palau are also eligible to enlist. Persons lawfully present in the United States who do not fall into these categories may enlist if the Service (e.g., Army, Navy) Secretary determines their enlistment to be vital to the national interest (the basis of the MAVNI program, discussed below).

Military Service and Naturalization

For noncitizen military service members serving on *active duty* in the U.S. Armed Forces, the INA does not require certain naturalization requirements, including the five years of continuous U.S. residence and naturalization fees. The INA also waives the provision prohibiting the naturalization of a person in removal proceedings. Service members and veterans must satisfy all other naturalization requirements. Naturalization *may* be revoked if the service member is discharged under other than honorable conditions before having served honorably for a total of five years.

Active duty is defined by 10 U.S.C. 101 as "full-time duty in the active military service of the United States." According to this definition, active duty does not require serving in combat, but it excludes inactive duty training in National Guard or Reserve units, or full time National Guard duty under Title 32 of the U.S. Code. The service branch also determines whether the service and discharge were honorable.

Requirements for expedited naturalization through military service differ for noncitizen service members serving during peacetime and during periods of military hostilities as designated by executive order.

Military Service During Peacetime

For expedited naturalization during peacetime, military service members must serve honorably for a total of one year and apply while still in or within six months of leaving military service.

Military Service During Hostilities

For expedited naturalization during designated periods of hostilities (including the War on Terrorism starting on September 11, 2001), service members may apply immediately (although separately, the Department of Defense (DOD) requires at least six months to establish honorable service).

Posthumous Naturalization

The INA also provides for posthumous naturalization when death resulted from serving while on active duty during any designated period of hostilities. Conditions for posthumous naturalization include honorable service; death resulting from an injury or disease incurred in or aggravated by military service; and presence in the United States or a U.S. territory, or aboard a U.S. public vessel at the time of enlistment, whether or not the service member was a LPR or admitted as a LPR after enlistment. Requests for posthumous naturalization must be filed by the next-of-kin or by the DOD on behalf of the next-of-kin within two years of the service member's death, and no application fee is required.

Essentially, posthumous citizenship is a symbolic honor accorded noncitizens who give their lives in defense of the United States. However, in cases of such service members who die as a result of active duty service during a period of hostilities, the INA extends naturalization to the surviving spouse, children, and parents.

The Military Accessions Vital to the National Interest (MAVNI) Program

While federal law requires U.S. citizenship or lawful permanent residency for enlistment in the U.S. Armed Forces, it allows individuals who do not meet those requirements to enlist if the appropriate Service Secretary "determines that such enlistment is vital to the national interest" (10 U.S.C. 504(b)(2)). This is the statutory basis for the MAVNI program authorized by DOD in 2008. As implemented by DOD, the MAVNI program allowed the military services to recruit certain legally present aliens whose skills were deemed vital to the national interest. Those skills included medical specialties and expertise in certain languages. Applicants at the time of enlistment had to be either asylees, refugees, holders of Temporary Protected Status (TPS), beneficiaries of the Deferred Action for Childhood Arrivals (DACA) policy, or in any one of a range of nonimmigrant categories. (The MAVNI program, as implemented, did not admit unauthorized aliens who were not lawfully present in the United States.)

Applicants must have been in a valid status or a DACA recipient as described above for at least two years immediately prior to enlistment. Approved MAVNI applicants who then met the conditions for expedited naturalization through military service, as described above, could immediately apply for U.S. citizenship. Following DOD's establishment of new security screening requirements on September 30, 2016, the military services stopped accepting new applicants to the MAVNI program. It is not known if or when DOD will reactivate the program.

Deportation of U.S. Military Veterans

Applying for naturalization is voluntary, undertaken at the volition of eligible noncitizens wishing to become U.S. citizens. Despite clear benefits of U.S. citizenship status over LPR status, millions of LPRs who are eligible to naturalize do not do so. Common reasons that noncitizens cite for not naturalizing include allegiance or attachment to countries of origin, not meeting the requirements for good moral character, an inability to demonstrate the required basic understanding of English and U.S. history, and the expense of applying for naturalization.

Several media reports also have suggested that some deported U.S. veterans claimed that they were not made aware of the need to file the necessary paperwork with USCIS in order to obtain U.S. citizenship, mistakenly assuming in some cases that enlistment was sufficient to obtain citizenship.

LPRs who do not naturalize may reside lawfully in the United States indefinitely, but they enjoy neither the privileges, nor incur the civic responsibilities, of U.S. citizens. In particular, they may be deported from the United States. The INA specifies broad grounds of deportability for noncitizens who

- are inadmissible at time of their U.S. entry or violate their immigration status;
- commit certain criminal offenses, such as including crimes of moral turpitude, aggravated felonies, alien smuggling, and high-speed flight from an immigration checkpoint;
- commit crimes related to controlled substances or who become drug abusers or addicts;
- commit certain firearm offenses;
- commit crimes of domestic violence, stalking, violation of protective orders, and crimes against children;
- fail to register with DHS (if required under law) or commit document fraud;
- are security risks (including aliens who violate espionage-related laws, engage in criminal activity that endangers public safety, partake in terrorist activities, or assisted in Nazi persecution or genocide);
- become a public charge (i.e., dependent upon public benefits) within five years of entry; or
- vote unlawfully.

The INA crime category of aggravated felony for which one can be deported has expanded substantially since its initial definition in 1988 and now includes over 50 types of crimes, including some state-level misdemeanors. The broadest INA categories of aggravated felonies include

- any crime of violence (including crimes involving a substantial risk of the use of physical force) for which the imprisonment term is at least one year;
- any crime of theft (including the receipt of stolen property) or burglary for which the term of imprisonment is at least one year; and
- illegal trafficking in drugs, firearms, or destructive devices.

DOD has responded to this issue by taking steps within its service branches to identify noncitizen recruits and ensure that they are aware of expedited naturalization through military service, have access to the proper forms and instructions to apply for naturalization, and are afforded the opportunity to do so.

Legislation introduced in the 115th Congress would address this issue in a variety of ways. For example, H.R. 3563 would remove the failure to file a naturalization application (by a veteran who was previously eligible to do so) as a reason for deporting an honorably discharged U.S. veteran. H.R. 3429 and H.R. 1405/S. 1704 would allow deported U.S. veterans to re-enter the United States to adjust their legal status to legal permanent resident, thereby facilitating their naturalization. H.R. 2761/S. 1703 would authorize DHS to temporarily admit U.S. veterans residing abroad who seek health care from the U.S. Department of Veterans Affairs. None of these bills has seen legislative action.

More Information

For more information, see archived CRS Report R43366, *U.S. Naturalization Policy*, by William A. Kandel.

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