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# U.S. Citizenship Through Military Service and Options for Military Relatives

## Overview

Obtaining U.S. citizenship provides certain benefits to immigrants, including the right to vote, security from deportation, and eligibility for a U.S. passport. Congress has provided opportunities for citizenship through qualifying military service since the Civil War. The Immigration and Nationality Act (INA) specifies provisions for expedited naturalization through military service during peacetime and periods of military hostilities. It also provides certain considerations for servicemembers' spouses, children, and parents.

In recent years, some Members of Congress have expressed concern regarding the deportation of noncitizen U.S. veterans who were honorably discharged from the U.S. military, did not apply for naturalization, were charged with deportable offenses, and were removed to their countries of origin. Recently, the Department of Homeland Security (DHS) has announced certain initiatives addressing such concerns.

Some Members have also raised concerns regarding the potential deportation of servicemembers' relatives as a "threat to military readiness." The executive branch offers *discretionary* immigration options for relief from removal for certain relatives of servicemembers on a case-by-case basis under authorities designated by Congress.

## 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 lawful permanent residents (LPRs) are eligible to enlist in the U.S. Armed Forces and be appointed as officers. Persons from Micronesia, the Marshall Islands, and Palau are also eligible to enlist. There is also legal authority for those who do not fall into these categories to enlist in certain circumstances.

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

While federal law generally limits enlistment in the U.S. Armed Forces as described above, it allows the appropriate Service Secretary to authorize enlistment of those who do not meet such requirements in certain circumstances (10 U.S.C. §504(b)(2); prior to August 13, 2018, the Secretary had to determine the enlistment was vital to the national interest; the language was then amended to be somewhat more restrictive). This provision was the statutory basis for the MAVNI program that was authorized by the Department of Defense (DOD) in 2008. As implemented, the MAVNI program allowed the military services to recruit certain lawfully present aliens whose medical skills and language expertise were deemed vital to the national interest. Applicants at the time of enlistment had to be asylees, refugees, holders of Temporary Protected Status (TPS), beneficiaries of the Deferred Action for Childhood Arrivals (DACA) policy, or in certain nonimmigrant categories. The MAVNI program, as implemented, did not allow for the enlistment of aliens who were unlawfully present in the United States.

MAVNI enlistees who then met the conditions for expedited naturalization through military service 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.

## Naturalization and Military Service

Typically, foreign nationals seeking to naturalize must have resided continuously as LPRs in the United States for five years; provide evidence of "good moral character" (GMC); demonstrate English proficiency, knowledge of U.S. history and civics, and an attachment to the principles of the U.S. Constitution; and take an oath of allegiance to the United States. Ordinarily, if an individual is in removal proceedings, U.S. Citizenship and Immigration Services (USCIS) cannot adjudicate the naturalization application. USCIS processes naturalization applications for a $725 fee (including a biometric fee).

The INA exempts members of the military and former servicemembers from some of these requirements. Noncitizen current or former servicemembers may be exempt from the requirement for five years of continuous U.S. residence (see "Military Service During Peacetime" and "Military Service During Hostilities" below for more details) and are not required to pay naturalization fees.

The INA also waives the provision prohibiting the naturalization of a person in removal proceedings for certain current and former servicemembers. Naturalization may be revoked if the servicemember is discharged under other than honorable conditions before having served honorably for a total of five years.

Under the INA, naturalization requirements, including for continuous residence, differ depending on whether service occurred during *peacetime* or during *periods of military hostilities* as designated by executive order.

### Military Service During Peacetime

To naturalize during peacetime under INA Section 328, servicemembers must have served honorably for at least one year, be at least 18 years old, and be an LPR at the time of examination of the naturalization application. The applicant must demonstrate GMC for at least five years prior to filing their application. Those who apply while in service or within six months of a discharge under honorable conditions are exempt from residence and physical presence

requirements. The service branch determines whether the service and discharge were under honorable conditions.

### Military Service During Hostilities

Under INA Section 329, during periods of hostilities designated by executive order (e.g., the War on Terrorism starting on September 11, 2001, and Persian Gulf Conflict from August 2, 1990 to April 11, 1991), servicemembers may apply for naturalization immediately upon establishing honorable service. They may be any age (individuals may enlist at age 17 with parental consent) and are not required to be LPRs if they were physically present in the United States, the Canal Zone, American Samoa, or Swains Island, or on board a public U.S. vessel at the time of their enlistment or reenlistment. The applicant must demonstrate GMC for at least one year prior to filing their application. Applicants who file based on service during hostilities are exempt from continuous residence and physical presence requirements. Those separated from service must have been discharged under honorable conditions.

### Spouses and Children of Military Members

Spouses must be LPRs to be eligible for naturalization. In general, LPR spouses of U.S. citizens may qualify for naturalization after three years of marriage under INA Section 319(a). Those spouses who are authorized to accompany a servicemember deployed or stationed abroad may be exempt from U.S. residence and physical presence requirements under INA Section 319(b) or (e). Children generally automatically acquire citizenship through their naturalized parent under INA Section 320 (residing in the United States) or may apply for naturalization under INA Section 322 (residing outside the United States). Children residing with a U.S. citizen servicemember parent stationed outside of the United States may automatically acquire citizenship under INA Section 320(c) under certain circumstances.

### Posthumous Naturalization

The INA also provides for posthumous naturalization when the servicemember's death resulted from serving while on active duty during any designated period of hostilities. Surviving LPR spouses, children, and parents of a deceased servicemember may be eligible for naturalization and are exempt from residence and physical presence requirements if they meet the requirements of INA Section 319(d).

## Deportation of U.S. Military Veterans

DOD has taken steps within its service branches to identify noncitizen recruits and ensure that they are aware of eligibility for naturalization through military service upon enlistment and at separation, and have access to the proper forms and instructions to apply for naturalization.

LPRs who do not naturalize may be deported from the United States for a variety of reasons. INA Section 237 specifies broad grounds of deportability, including for those who were inadmissible at the time of their U.S. entry, pose security risks, or are convicted of certain criminal offenses.

Immigration and Customs Enforcement (ICE), the DHS agency responsible for arresting and removing deportable noncitizens, has policies regarding the treatment of potentially removable former servicemembers, including requiring additional documentation and management approvals prior to initiating removal proceedings. The U.S. Government Accountability Office found in 2019 (GAO-19-416) that ICE did not "consistently adhere" to these policies before placing former servicemembers in formal removal proceedings.

In July 2021, DHS and the Department of Veterans Affairs released a statement announcing a review of policies and practices "to ensure that all eligible current and former noncitizen service members and the immediate families of military members are able to remain in or return to the United States, remove barriers to naturalization for those eligible, and improve access to immigration services." In November 2021, DHS issued related policy guidance regarding naturalization for servicemembers, including deported former servicemembers. The guidance provides,

- an applicant who was separated under honorable conditions after a qualifying period of service may be eligible for naturalization under INA Section 329 even if they received a different type of discharge from a separate period of service;
- former servicemembers residing abroad may file an Application for Naturalization together with an Application for Travel Document without a fee to obtain an *advance parole* document allowing them to enter the United States to attend a naturalization interview;
- USCIS may interview a former servicemember seeking naturalization under INA Section 329 at a land port of entry (POE); and
- if an application for naturalization under INA Section 329 is approved after an interview, the applicant may be administered the Oath of Allegiance and become a U.S. citizen at the POE.

## Discretionary Immigration Relief Available to Certain Military Family Members

The executive branch offers certain discretionary options for immigration relief on a case-by-case basis to certain military family members who may be removable from the United States.

The DHS Secretary may parole noncitizens into the United States under INA Section 212(d)(5)(A) for urgent humanitarian reasons or significant public benefit. Under that authority, parole in place (PIP) may be granted in one-year increments to parents, spouses, widow(er)s, sons, and daughters of individuals serving in active duty or in the Selected Reserve of the Ready Reserve, or such relatives of individuals who formerly served in active duty or in the Selected Reserve (provided that the former servicemember was not dishonorably discharged). PIP is only available to noncitizens who are present in the United States without having been admitted and thus are applicants for admission.

Parents, spouses, widow(er)s, sons, and daughters of such current and former military members who were admitted to the United States but are present beyond their period of authorized stay are not eligible for PIP because they are not applicants for admission. However, they may request *deferred action*, a form of prosecutorial discretion that defers removal.

**Holly Straut-Eppsteiner**, Analyst in Immigration Policy
**Lawrence Kapp**, Specialist in Military Personnel Policy

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