

Subsec. (f). Pub. L. 108-136, §1701(c)(1)(A), added subsec. (f).

1991—Subsecs. (b), (c). Pub. L. 102-232 amended directory language of Pub. L. 101-649, §407(d)(8). See 1990 Amendment notes below.

1990—Subsec. (a). Pub. L. 101-649, §407(b)(4)(A), (c)(10), substituted “State or district of the Service in the United States” for “State”, “for at least three months” for “for at least six months”, and references to applicant and application for references to petitioner and petition wherever appearing.

Subsec. (b). Pub. L. 101-649, §407(b)(4)(B), (c)(10), (d)(8), as amended by Pub. L. 102-232, substituted “within a State or district of the Service in the United States” for “within the jurisdiction of the court” in par. (1), “any hearing” for “the final hearing” in par. (3), and references to applicant and application for references to petitioner and petition wherever appearing.

Subsec. (c). Pub. L. 101-649, §407(b)(4)(C), (c)(10), (d)(8), as amended by Pub. L. 102-232, substituted “State or district of the Service in the United States” for “State”, “any hearing” for “the final hearing”, and references to applicant’s and application for references to petitioner’s and petition wherever appearing.

Subsec. (d). Pub. L. 101-649, §407(c)(10), substituted references to applicant and application for references to petitioner and petition wherever appearing.

1981—Subsec. (b)(2). Pub. L. 97-116 struck out “and section 1447(c) of this title” after “relates to deportability” and “and the witnesses” after “petition, the petitioner”.

1968—Subsec. (b)(2). Pub. L. 90-633 inserted reference to section 1429 of this title as it relates to deportability.

CHANGE OF NAME

Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law of Committee on the Judiciary of the House of Representatives changed to Subcommittee on Immigration Policy and Enforcement of Committee on the Judiciary of the House of Representatives under Rule V(b) of the Committee’s rules of procedure adopted Jan. 19, 2011.

TERMINATION DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-382 repealed 5 years after Oct. 9, 2008, see section 4 of Pub. L. 110-382, set out as a note under section 271 of Title 6, Domestic Security.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-136, div. A, title XVII, §1701(c)(2), Nov. 24, 2003, 117 Stat. 1692, provided that: “The amendments made by paragraph (1) [amending this section and section 1440 of this title] shall apply to citizenship granted on or after the date of the enactment of this Act [Nov. 24, 2003].”

Pub. L. 108-136, div. A, title XVII, §1705, Nov. 24, 2003, 117 Stat. 1696, provided that:

“(a) IN GENERAL.—Except as provided in subsection (b), this title [enacting section 1443a of this title, amending this section and sections 1430, 1440 and 1440-1 of this title, and enacting provisions set out as notes under this section and sections 1151, 1430, and 1443a of this title] and the amendments made by this title shall take effect as if enacted on September 11, 2001.

“(b) EXCEPTION.—The amendments made by sections 1701(b) (relating to naturalization fees) [amending this section and section 1440 of this title] and 1701(d) (relating to naturalization proceedings overseas) [enacting section 1443a of this title] shall take effect on October 1, 2004.”

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101-649, see section 310(1) of Pub. L. 102-232, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-116 effective Dec. 29, 1981, see section 21(a) of Pub. L. 97-116, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1440. Naturalization through active-duty service in the Armed Forces during World War I, World War II, Korean hostilities, Vietnam hostilities, or other periods of military hostilities

(a) Requirements

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 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 of 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, or induction such person shall have been in the United States, the Canal Zone, American Samoa, or Swains Island, or on board a public vessel owned or operated by the United States for noncommercial service, 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) Exceptions

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

(1) he may be naturalized regardless of age, and notwithstanding the provisions of section 1429 of this title as they relate to deportability and the provisions of section 1442 of this title;

(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;

(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

(4) 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) Revocation

Citizenship granted pursuant to this section may be revoked in accordance with section 1451 of this title 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 1451 of this title. 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.

(June 27, 1952, ch. 477, title III, ch. 2, §329, 66 Stat. 250; Pub. L. 87-301, §8, Sept. 26, 1961, 75 Stat. 654; Pub. L. 90-633, §§1, 2, 6, Oct. 24, 1968, 82 Stat. 1343, 1344; Pub. L. 97-116, §15(a), Dec. 29, 1981, 95 Stat. 1619; Pub. L. 100-525, §9(y), Oct. 24, 1988, 102 Stat. 2621; Pub. L. 101-649, title IV, §407(b)(5), (c)(11), Nov. 29, 1990, 104 Stat. 5040, 5041; Pub. L. 102-232, title III, §305(b), Dec. 12, 1991, 105 Stat. 1749; Pub. L. 105-85, div. A, title X, §1080(a), Nov. 18, 1997, 111 Stat. 1916; Pub. L. 108-136, div. A, title XVII, §§1701(b)(2), (c)(1)(B), 1702, Nov. 24, 2003, 117 Stat. 1691-1693.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (a), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108-136, §1702, inserted “as a member of the Selected Reserve of the Ready Reserve or” after “has served honorably” in first sentence.

Subsec. (b). Pub. L. 108-136, §1701(b)(2), added par. (4).

Subsec. (c). Pub. L. 108-136, §1701(c)(1)(B), amended text generally. Prior to amendment, text read as follows: “Citizenship granted pursuant to this section may be revoked in accordance with section 1451 of this title if at any time subsequent to naturalization the person is separated from the military, air, or naval forces under other than honorable conditions, and such ground for revocation shall be in addition to any other provided by law. 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.”

1997—Subsec. (a)(1). Pub. L. 105-85 inserted “, reenlistment, extension of enlistment,” after “at the time of enlistment” and “or on board a public vessel owned or operated by the United States for non-commercial service,” after “Swains Island.”

1991—Subsecs. (a), (b). Pub. L. 102-232 made technical correction to directory language of Pub. L. 101-649, §407(c)(11). See 1990 Amendment note below.

1990—Subsec. (a). Pub. L. 101-649, §407(c)(11), as amended by Pub. L. 102-232, substituted “an application” for “a petition”.

Subsec. (b). Pub. L. 101-649, §407(c)(11), as amended by Pub. L. 102-232, substituted references to applicant and application for references to petitioner and petition wherever appearing.

Subsec. (b)(2). Pub. L. 101-649, §407(b)(5)(A), substituted “State or district of the Service in the United States” for “State” and inserted “and” at end.

Subsec. (b)(3), (4). Pub. L. 101-649, §407(b)(5)(B), (C), redesignated par. (4) as (3) and struck out former par. (3) which authorized filing of petition in any court having naturalization jurisdiction.

1988—Subsec. (d). Pub. L. 100-525 struck out subsec. (d) which read as follows: “The eligibility for naturalization of any person who filed a petition for naturalization prior to January 1, 1947, under section 701 of the Nationality Act of 1940, as amended (56 Stat. 182, 58 Stat. 886, 59 Stat. 658), and which is still pending on the effective date of this chapter, shall be determined in accordance with the provisions of this section.”

1981—Subsec. (b)(5). Pub. L. 97-116 struck out par. (5) which provided that, notwithstanding section 1447(c) of this title, the petitioner may be naturalized immediately if prior to the filing of the petition the petitioner and the witnesses have appeared before and been examined by a representative of the Service.

1968—Subsec. (a). Pub. L. 90-633, §1, added the Vietnam hostilities and any subsequent period of military operations involving armed conflict with a hostile foreign force as periods during which a person may be naturalized through service in active duty status.

Subsec. (b)(1). Pub. L. 90-633, §6, inserted reference to provisions of section 1429 of this title as they relate to deportability.

Subsec. (b)(4). Pub. L. 90-633, §2, inserted reference to the period of the Vietnam hostilities and to any other subsequent period which the President by Executive order designates as a period in which the Armed Forces of the United States were engaged in military operations involving armed conflict with a hostile foreign force.

1961—Subsecs. (a), (b)(4). Pub. L. 87-301 inserted “or during a period beginning June 25, 1950, and ending July 1, 1955”.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 1701(c)(1)(B) of Pub. L. 108-136 applicable to citizenship granted on or after Nov. 24, 2003, see section 1701(c)(2) of Pub. L. 108-136, set out as a note under section 1439 of this title.

Amendment by section 1701(b)(2) of Pub. L. 108-136 effective Oct. 1, 2004, and amendments by sections 1701(c)(1)(B) and 1702 of Pub. L. 108-136 effective as if enacted Sept. 11, 2001, see section 1705 of Pub. L. 108-136, set out as a note under section 1439 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-85, div. A, title X, §1080(b), Nov. 18, 1997, 111 Stat. 1916, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to enlistments, reenlistments, extensions of enlistment, and inductions of persons occurring on or after the date of the enactment of this Act [Nov. 18, 1997]."

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101-649, see section 310(1) of Pub. L. 102-232, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-116 effective Dec. 29, 1981, see section 21(a) of Pub. L. 97-116, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

NATURALIZATION OF NATIVES OF PHILIPPINES THROUGH CERTAIN ACTIVE-DUTY SERVICE DURING WORLD WAR II

Pub. L. 102-395, title I, §113, Oct. 6, 1992, 106 Stat. 1844, which provided that, notwithstanding any other provision of law, effective 120 days after Oct. 6, 1992, and applicable to natives of the Philippines who applied for naturalization under section 405 of Pub. L. 101-649, set out below, and who applied within 2 years after such effective date, the naturalization of natives of the Philippines who apply for naturalization under section 405 of Pub. L. 101-649 was to be conducted in Philippines as well as in United States by employees of Immigration and Naturalization Service designated pursuant to section 1446(b) of this title, and required Attorney General to prescribe necessary implementing regulations and maintain permanent records of the oaths of allegiance taken in accordance with these provisions, was repealed by Pub. L. 105-119, title I, §112(c), Nov. 26, 1997, 111 Stat. 2460.

Pub. L. 101-649, title IV, §405, Nov. 29, 1990, 104 Stat. 5039, as amended by Pub. L. 103-416, title I, §104(d), Oct. 25, 1994, 108 Stat. 4308; Pub. L. 105-119, title I, §112(b), Nov. 26, 1997, 111 Stat. 2459, provided that section 1440(a)(1) and (2) of this title did not apply to the naturalization of certain persons born in the Philippines who served honorably in an active duty status during the World War II occupation and liberation of the Philippines within the Philippine Army or within a recognized guerilla unit or who served within the Philippine Scouts or within any other component of the United States Armed Forces in the Far East at any time during the period beginning September 1, 1939, and ending December 31, 1946, who were otherwise eligible for naturalization under section 1440, and who applied for naturalization during the 2-year period beginning on Nov. 29, 1990.

NATURALIZATION OF ALIENS ENLISTED IN REGULAR ARMY

Act June 30, 1950, ch. 443, §4, 64 Stat. 316, as amended June 27, 1952, ch. 477, title IV, §402(e), 66 Stat. 276, pro-

vided that: "Notwithstanding the dates or periods of service specified and designated in section 329 of the Immigration and Nationality Act [this section], the provisions of that section are applicable to aliens enlisted or reenlisted pursuant to the provisions of this Act and who have completed five or more years of military service, if honorably discharged therefrom. Any alien enlisted or reenlisted pursuant to the provisions of this Act who subsequently enters the United States, American Samoa, Swains Island, or the Canal Zone, pursuant to military orders shall, if otherwise qualified for citizenship, and after completion of five or more years of military service, if honorably discharged therefrom, be deemed to have been lawfully admitted to the United States for permanent residence within the meaning of such section 329(a) [subsection (a) of this section]."

EX. ORD. NO. 12081. TERMINATION OF EXPEDITIOUS NATURALIZATION BASED ON MILITARY SERVICE

Ex. Ord. No. 12081, Sept. 18, 1978, 43 F.R. 42237, provided:

By the authority vested in me as President of the United States of America by Section 329 of the Immigration and Nationality Act, as amended by Sections 1 and 2 of the Act of October 24, 1968 (82 Stat. 1343; 8 U.S.C. 1440), and by the authority of Section 3 of that Act of October 24, 1968 (82 Stat. 1344; 8 U.S.C. 1440e), it is hereby ordered that the statutory period of Vietnam hostilities which began on February 28, 1961, shall be deemed to have terminated on October 15, 1978, for the purpose of ending the period in which active-duty service in the Armed Forces qualifies for certain exemptions from the usual requirements for naturalization, including length of residence and fees.

JIMMY CARTER.

EXECUTIVE ORDER NO. 12582

Ex. Ord. No. 12582, Feb. 2, 1987, 52 F.R. 3395, which provided for expedited naturalization for aliens and non-citizens who served in the Armed Forces in the Grenada campaign by making them eligible in accordance with statutory exceptions in section 1440(b) of this title, was revoked, effective Feb. 2, 1987, by Ex. Ord. No. 12913, May 2, 1994, 59 F.R. 23115, such revocation not intended to affect status of anyone who was naturalized pursuant to terms of that order prior to the date of publication of Ex. Ord. No. 12582 in the Federal Register (May 4, 1994).

EX. ORD. NO. 12939. EXPEDITED NATURALIZATION OF ALIENS AND NONCITIZEN NATIONALS WHO SERVED IN ACTIVE-DUTY STATUS DURING PERSIAN GULF CONFLICT

Ex. Ord. No. 12939, Nov. 22, 1994, 59 F.R. 61231, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 1440 of title 8, United States Code, and in order to provide expedited naturalization for aliens and noncitizen nationals who served in an active-duty status in the Armed Forces of the United States during the period of the Persian Gulf Conflict, it is hereby ordered as follows:

For the purpose of determining qualification for the exception from the usual requirements for naturalization, the period of Persian Gulf Conflict military operations in which the Armed Forces of the United States were engaged in armed conflict with a hostile force commenced on August 2, 1990, and terminated on April 11, 1991. Those persons serving honorably in active-duty status in the Armed Forces of the United States during this period are eligible for naturalization in accordance with the statutory exception to the naturalization requirements, as provided in section 1440(b) of title 8, United States Code.

WILLIAM J. CLINTON.

EX. ORD. NO. 13269. EXPEDITED NATURALIZATION OF ALIENS AND NONCITIZEN NATIONALS SERVING IN AN ACTIVE-DUTY STATUS DURING THE WAR ON TERRORISM

Ex. Ord. No. 13269, July 3, 2002, 67 F.R. 45287, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 329 of the Immigration and Nationality Act (8 U.S.C. 1440) (the “Act”), and solely in order to provide expedited naturalization for aliens and noncitizen nationals serving in an active-duty status in the Armed Forces of the United States during the period of the war against terrorists of global reach, it is hereby ordered as follows:

For the purpose of determining qualification for the exception from the usual requirements for naturalization, I designate as a period in which the Armed Forces of the United States were engaged in armed conflict with a hostile foreign force the period beginning on September 11, 2001. Such period will be deemed to terminate on a date designated by future Executive Order. Those persons serving honorably in active-duty status in the Armed Forces of the United States, during the period beginning on September 11, 2001, and terminating on the date to be so designated, are eligible for naturalization in accordance with the statutory exception to the naturalization requirements, as provided in section 329 of the Act. Nothing contained in this order is intended to affect, nor does it affect, any other power, right, or obligation of the United States, its agencies, officers, employees, or any other person under Federal law or the law of nations.

GEORGE W. BUSH.

§ 1440-1. Posthumous citizenship through death while on active-duty service in armed forces during World War I, World War II, the Korean hostilities, the Vietnam hostilities, or in other periods of military hostilities

(a) Permitting granting of posthumous citizenship

Notwithstanding any other provision of this subchapter, the Secretary of Homeland Security shall provide, in accordance with this section, for the granting of posthumous citizenship at the time of death to a person described in subsection (b) if the Secretary of Homeland Security approves an application for that posthumous citizenship under subsection (c).

(b) Noncitizens eligible for posthumous citizenship

A person referred to in subsection (a) is a person who, while an alien or a noncitizen national of the United States—

- (1) served honorably in an active-duty status in the military, air, or naval forces of the United States during any period described in the first sentence of section 1440(a) of this title,
- (2) died as a result of injury or disease incurred in or aggravated by that service, and
- (3) satisfied the requirements of clause (1) or (2) of the first sentence of section 1440(a) of this title.

The executive department under which the person so served shall determine whether the person satisfied the requirements of paragraphs (1) and (2).

(c) Requests for posthumous citizenship

(1) In general

A request for the granting of posthumous citizenship to a person described in subsection (b) may be filed on behalf of that person—

- (A) upon locating the next-of-kin, and if so requested by the next-of-kin, by the Secretary of Defense or the Secretary’s designee

with the Bureau of Citizenship and Immigration Services in the Department of Homeland Security immediately upon the death of that person; or

- (B) by the next-of-kin.

(2) Approval

The Director of the Bureau of Citizenship and Immigration Services shall approve a request for posthumous citizenship filed by the next-of-kin in accordance with paragraph (1)(B) if—

- (A) the request is filed not later than 2 years after—

- (i) November 24, 2003; or
- (ii) the date of the person’s death;

whichever date is later;

- (B) the request is accompanied by a duly authenticated certificate from the executive department under which the person served which states that the person satisfied the requirements of paragraphs (1) and (2) of subsection (b); and

- (C) the Director finds that the person satisfied the requirement of subsection (b)(3).

(d) Documentation of posthumous citizenship

If the Director of the Bureau of Citizenship and Immigration Services approves the request referred to in subsection (c), the Director shall send to the next-of-kin of the person who is granted citizenship, a suitable document which states that the United States considers the person to have been a citizen of the United States at the time of the person’s death.

(June 27, 1952, ch. 477, title III, ch. 2, § 329A, as added Pub. L. 101-249, § 2(a), Mar. 6, 1990, 104 Stat. 94; Pub. L. 107-273, div. C, title I, § 11030(b), Nov. 2, 2002, 116 Stat. 1836; Pub. L. 108-136, div. A, title XVII, §§ 1703(g), 1704, Nov. 24, 2003, 117 Stat. 1695, 1696.)

CODIFICATION

November 24, 2003, referred to in subsec. (c)(2)(A)(i), was in the original “the date of enactment of this section”, which was translated as meaning the date of enactment of Pub. L. 108-136, which enacted subsec. (c) of this section, to reflect the probable intent of Congress.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108-136, § 1703(g)(2), substituted “Secretary of Homeland Security” for “Attorney General” in two places.

Subsec. (c). Pub. L. 108-136, § 1704(1), added heading and text of subsec. (c) and struck out former subsec. (c) which related to procedures for approval by the Attorney General of a request for the granting of posthumous citizenship.

Subsec. (d). Pub. L. 108-136, § 1704(2), added heading and text of subsec. (d) and struck out former subsec. (d) which read as follows: “If the Attorney General approves such a request to grant a person posthumous citizenship, the Attorney General shall send to the individual who filed the request a suitable document which states that the United States considers the person to have been a citizen of the United States at the time of the person’s death.”

Subsec. (e). Pub. L. 108-136, § 1703(g)(1), struck out heading and text of subsec. (e). Text read as follows: “Nothing in this section or section 1430(d) of this title shall be construed as providing for any benefits under this chapter for any spouse, son, daughter, or other relative of a person granted posthumous citizenship under this section.”