



**A. Military Naturalization**

1. Section 329 of the Immigration and Nationality Act (“INA”), which is codified at 8 U.S.C. § 1440, enables soldiers who have served honorably as a member of the Selected Reserve of the Ready Reserve or in active-duty status during periods of military hostilities to become naturalized U.S. citizens:

(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 in an active-duty status in the military, air, or naval forces of the United States . . . 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 . . . whether or not he has 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 . . .

(b) 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 . . .

(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 . . . and was separated from such service under honorable conditions . . .

8 U.S.C. § 1440.

2. Section 1440 states that the military service criteria for naturalization (honorable service and/or “separation . . . under honorable conditions”) “shall be proved by a duly authenticated certification from the executive department” under which the applicant is serving or served. 8 U.S.C. § 1440(b)(3).

3. The USCIS Policy Manual on “Application and Filing for Service Members” instructs that an applicant under § 1440 should submit an N-400 Application for Naturalization and an N-426 Request for Certification of Military or Naval Service. USCIS Policy Manual, Vol. 12, Part I, Ch. 5(A) (“USCIS Policy Manual”), *available at* <https://www.uscis.gov/policy-manual/volume-12-part-i-chapter-5> (last visited Nov. 18, 2019).

4. Form N-426 includes a section that enables the certifying military official to “[s]tate whether the requestor served honorably or is currently serving honorably” and, if answered “No,” to provide details in Part 7. Part 7 asks for the certifying military official to provide any remarks on “any derogatory information” or “other than honorable discharges.” USCIS Form N-426, Request for Certification of Military or Naval Service, *available at* <https://www.uscis.gov/n-426> (last visited Nov. 18, 2019).

5. Per the USCIS Policy Manual:

The military must complete and certify (sign) the [N-426] Request for Certification of Military or Naval Service before it is submitted to USCIS. USCIS, however, will accept a completed but uncertified form submitted by an applicant who has separated from the U.S. armed forces if:

- The applicant submitted a photocopy of his or her Certificate or Release from Active Duty (DD Form 214) or National Guard Report of Separation and Record of Service (NGB Form 22) for applicable periods of service listed on Form N-426; and
- The DD Form 214 or NGB Form 22 lists information on the type of separation and character of service.

USCIS Policy Manual, Vol. 12, Part I, Ch. 5(A), *available at* <https://www.uscis.gov/policy-manual/volume-12-part-i-chapter-5> (last visited Nov. 18, 2019).

6. Form DD-214 has sections for “Type of Separation” and “Character of Service.” *See, e.g.,* Miriyeva DD-214 (Dkt. 2-5), at 1.

7. USCIS accepts discharge orders, such as U.S. Army Reserve Command discharge orders on a Form 500, “as the functional equivalent of a DD Form 214” for purposes of naturalization under § 1440. Defendants’ Notice (Dkt. 171), at 2, *Nio v. United States Dep’t of Homeland Security*, No. 1:17-cv-00998 (D.D.C. July 23, 2018).

8. Form 500 has a section for “Type of Discharge.” *See, e.g.,* Kadel Form 500 (Dkt. 2-21), at 1.

9. Department of Defense Instruction (“DoDI”) 1332.14, in effect since January 2014, governs “Enlisted Administrative Separations” for both active-duty soldiers and reservists. DoDI 1332.14 (Dkt. 2-1), at 1.

10. Under this DoDI, the Department of Defense authorizes “separation with characterization of service as honorable, general (under honorable conditions), or under other than honorable conditions,” but also separately authorizes an “entry-level separation,” which can be uncharacterized. DoDI 1332.14, Enclosure 4, Section 3, at 29, *available at* <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/133214p.pdf?ver=2019-03-14-132901-200> (last visited Nov. 18, 2019).

11. Army Regulation 135-178, which applies to U.S. Army reservists, likewise provides for: (1) a “separation with characterization of service as honorable, general (under honorable conditions), or under other than honorable conditions,” or (2) a separation “with an uncharacterized description of service,” which generally is used for entry-level separations. Army

Regulation 135-178, “Army National Guard and Reserve: Enlisted Administrative Separations,” Chapter 2, Sections 2-7(a), 2-11, *available at* [https://armypubs.army.mil/epubs/DR\\_pubs/DR\\_a/pdf/web/ARN3941\\_AR135-178\\_WEB\\_Final.pdf](https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/ARN3941_AR135-178_WEB_Final.pdf) (last visited Nov. 18, 2019).

**B. The Challenged USCIS Policy**

12. USCIS has a policy of denying naturalization to an applicant for citizenship under 8 U.S.C. § 1440 if the applicant has received an “uncharacterized” discharge from the military on a Form DD-214 or other discharge order (the “Policy”).

13. USCIS has articulated and applied this Policy, including in written decisions. *See, e.g.*, Letter from USCIS to Gunay Miriyeva, “Agency Motion to Reopen,” June 6, 2019 (Dkt. 2-2), at 3 (“Longstanding USCIS policy provides that only a discharge specifically characterized as either ‘honorable’ or ‘general (under honorable conditions)’ qualifies as a separation ‘under honorable conditions.’ *See* USCIS Policy Manual Vol. 12, Part I, Chap. 3.”); Letter from USCIS to Counsel, “Notice of Decision,” Oct. 17, 2019 (Dkt. 2-19), at 2 (same, without internal citation). *See also* Letter from USCIS to Ann Tum, “Decision,” May 28, 2019 (Dkt. 2-12), at 1-2 (“[Y]ou received an uncharacterized discharge from the U.S. Arm[ed Forces]. . . . You have not demonstrated that you were discharged from the U.S. Armed Forces under honorable conditions; therefore, you are not eligible for naturalization under INA 329.”); Letter from USCIS to Siddhi Kulkarni, “Notice of Decision,” June 5, 2019 (Dkt. 2-17), at 2 (same); Letter from USCIS to Counsel, “Notice of Decision,” July 10, 2019 (Dkt. 2-22), at 2 (same).

14. In judicial proceedings, USCIS has confirmed the existence of the Policy, including through the following representations:

- Applicants “were denied naturalization because the evidence before USCIS is that they have a discharge order, an uncharacterized discharge order.” *Nio*, 9/23/19 Status Hearing, Tr. at 61:12-14.
- “[U]ncharacterized doesn’t count as meeting the honorable service requirement.” *Nio*, 3/20/19 Status Hearing, Tr. at 106:12-14.
- “Sure, yes [an uncharacterized discharge is sufficient to deny a naturalization application].” *Id.* at 108:24-109:3.
- “[T]his person would be ineligible to be naturalized because he has an uncharacterized discharge. . . . With an uncharacterized discharge, one is not eligible to naturalize under section 1440 which is the military naturalization program. You have to have an honorable discharge if you are discharged.” *Nio*, 8/23/17 Status Hearing, Tr. at 25:12-24.
- “THE COURT: Do you deny naturalization to people who had medical problems so they didn’t finish the Army? [USCIS Counsel]: The denial is based solely on the fact that her discharge is uncharacterized. We don’t look beyond the uncharacterized nature of the discharge. . . . If the condition is uncharacterized, the USCIS interpretation is that does not meet the definition for naturalization under 1440. THE COURT: . . . You mean to tell me, if somebody is in there and they get sick and they can’t continue to serve, that means they can’t be naturalized? [USCIS Counsel]: Yes, Your Honor, that is the USCIS position.” *Nio*, 9/23/19 Status Hearing, Tr. at 74:16-75:5.

**C. The Challenged Policy Is Contrary to Statutes and DoD Instructions and Is Not Even in Accordance with the USCIS Policy Manual**

15. Section 1440 specifies that military naturalization is dependent upon a soldier’s honorable service *as designated by the military*. 8 U.S.C. § 1440(b)(3).

16. If an applicant for naturalization under 8 U.S.C. § 1440 has been discharged from the military, eligibility is established through a *determination by the military* that the applicant “was separated under honorable conditions.” 8 U.S.C. § 1440(a).

17. The Department of Defense, in its instructions for “Enlisted Administrative Separations,” specifies under its sub-heading for “Uncharacterized Separation” that “[w]ith respect to administrative matters outside this instruction that require a characterization as honorable or

general, *an entry-level separation will be treated as the required characterization.*” DoDI 1322.14, Enclosure 4, Section 3 (Dkt. 2-1), at 32 (emphasis added).

18. 10 U.S.C. § 12685, enacted in 1994, provides:

A member of a reserve component who is separated for cause, except under section 12684 of this title, is entitled to a discharge under honorable conditions unless—

(1) the member is discharged under conditions other than honorable under an approved sentence of a court-martial or under the approved findings of a board of officers convened by an authority designated by the Secretary concerned; or

(2) the member consents to a discharge under conditions other than honorable with a waiver of proceedings of a court-martial or a board.

10 U.S.C. § 12685.

19. In a separate sub-provision from the one identified in Paragraph 17 above, the Department of Defense in its instructions for “Enlisted Administrative Separations” specifies under its sub-heading for “Uncharacterized Separation” that, “[i]n accordance with section 12685 [10 U.S.C. § 12685], an entry-level separation of a Service member of a Reserve Component for cause, except under [10 U.S.C. § 12684], *will be ‘under honorable conditions.’*” DoDI 1322.14, Enclosure 4, Section 3 (Dkt. 2-1), at 33 (emphasis added).

20. Thus, the challenged Policy, which refuses to recognize an “uncharacterized” discharge as an “under honorable conditions” discharge, is contrary to both provisions of DoDI 1322.14, as well as 10 U.S.C. § 12685.

21. The USCIS Policy Manual section on “Honorable Service” under § 1440 does not use the term “uncharacterized.” USCIS Policy Manual, Vol. 12, Part I, Ch. 3(B), *available at* <https://www.uscis.gov/policy-manual/volume-12-part-i-chapter-3> (last visited Nov. 18, 2019).

22. Instead, the USCIS Policy Manual states:

Honorable service means only service in the U.S. armed forces that *is designated as honorable service by the executive department under which the applicant performed that military service.*

Both “Honorable” and “**General-Under Honorable Conditions**” *discharge types qualify as honorable service for immigration purposes.* Other discharge types, such as “Other Than Honorable,” do not qualify as honorable service.

*Id.* (emphases added).

23. In accordance with 10 U.S.C. § 12685 and the above-described DoDI 1322.14 provisions, the U.S. Army treats an “uncharacterized” discharge as demonstrating “honorable service” and/or a discharge “under honorable conditions” for naturalization purposes. *See, e.g.*, U.S. Army Human Resources Command, “The Soldier’s Guide to Citizenship Application,” at 4 (quoted in *Kirwa v. United States Dep’t of Defense*, 285 F. Supp. 3d 21, 28 (D.D.C. 2017) (“[A] Soldier is considered to be serving honorably unless a decision has been made, either by the Soldier’s commander or a court martial, to discharge him/her under less than honorable conditions. In the rare cases where the character of a Soldier’s service is questionable, ONLY the Soldier’s commander can decide this issue, and the sole criterion for the decision is: If the Soldier were being discharged today, based on his/her record, what type of discharge would the Soldier receive? If Honorable or General [ ] Under Honorable Conditions, the character of service on the N-426 will read ‘Honorable’. If Under Less Than Honorable Conditions, the N-426 character of service item will NOT read ‘honorable.’”); *Miriyeva N-426* (Dkt. 2-6), at 2 (post-discharge N-426 certifying “Honorable Period of Military Service”); *Miriyeva N-426* (Dkt. 2-8), at 2 (post-discharge N-426 certifying “Honorable Period of Military Service”); *Tum N-426* (Dkt. 2-11), at 2 (post-discharge N-426 certifying “Honorable Period of Military Service”); *Kulkarni N-426* (Dkt. 2-18), at 2 (post-discharge N-426 certifying “Honorable Period of Military Service”); *Kadel N-426* (Dkt. 2-20), at

2-3 (N-426, certifying “Honorable Period of Military Service,” dated twelve days before effective date of discharge).

24. Each of Plaintiff’s DD-214 or Form 500 listing an “uncharacterized” discharge is a further designation by the U.S. Army of an “under honorable conditions” discharge. *See* Statement of Facts ¶¶ 5-8, 17-19, *supra*.

25. Thus, the challenged Policy, which refuses to recognize an “uncharacterized” discharge as an “under honorable conditions” discharge, even though that is the relevant military department’s position, is not in accordance with 8 U.S.C. § 1440 (or even with the USCIS Policy Manual as written).

**D. USCIS Has Applied the Policy to Plaintiffs**

26. USCIS applied the challenged Policy to Ms. Miriyeva, Ms. Tum, Ms. Kulkarni, and Mr. Kadel.

**Gunay Miriyeva**

27. Gunay Miriyeva applied for naturalization in March 2018 on the basis of her military service in the U.S. Army Selected Reserve of the Ready Reserve. Miriyeva Decl. (Dkt. 2-23), ¶ 4.

28. On October 4, 2018, USCIS approved Ms. Miriyeva’s naturalization application. Miriyeva Decl. (Dkt. 2-23), ¶¶ 5-6; Miriyeva Annotated N-400 and Adjudication Decision History (Dkt. 2-4), at 1-2.

29. However, USCIS did not promptly schedule Ms. Miriyeva for an oath ceremony after October 4, 2018. Miriyeva Decl. (Dkt. 2-23), ¶ 6.

30. The Army discharged Ms. Miriyeva from the Army. On December 21, 2018, the U.S. Army issued Form DD-214, which lists Ms. Miriyeva’s discharge type as “uncharacterized.” Miriyeva Decl. (Dkt. 2-23), ¶ 12; Miriyeva DD-214 (Dkt. 2-5), at 1.

31. Following her discharge, in January 2019, Ms. Miriyeva submitted to USCIS a second Form N-426, signed on January 11, 2019, on which the U.S. Army again certified that she had served honorably during her entire period of military service, beginning on March 14, 2016. Miriyeva Decl. (Dkt. 2-23), ¶ 13; Miriyeva N-426 (Dkt. 2-6), at 2-3.

32. On April 23, 2019, the U.S. Army issued a third Form N-426, certifying again that Ms. Miriyeva had served “honorably” during her entire period of military service, including on the day of her purported discharge on December 21, 2018. Miriyeva Decl. (Dkt. 2-23), ¶ 16; Miriyeva N-426 (Dkt. 2-8), at 2.

33. On June 6, 2019, USCIS issued a written decision, entitled “Agency Motion to Reopen,” revoking USCIS’s prior approval of Ms. Miriyeva’s N-400. Letter from USCIS to Gunay Miriyeva, “Agency Motion to Reopen,” June 6, 2019 (Dkt. 2-2), at 3-4.

34. In that document, USCIS stated that Ms. Miriyeva was ineligible for naturalization on the sole basis that her “uncharacterized” discharge, as reflected on her DD-214, is not an “under honorable conditions” discharge for purposes of § 1440, and she failed to otherwise demonstrate that she was discharged “under honorable conditions” from the U.S. Army. *Id.*

35. The June 6, 2019 “Agency Motion to Reopen” indicated that Ms. Miriyeva would have “15 days to respond” and “overcome” the information, otherwise her naturalization “application will be denied.” *Id.* at 1.

36. On June 11, 2019, just five days after the date of the “Agency Motion to Reopen” and before Ms. Miriyeva’s time to respond had run, USCIS stamped Ms. Miriyeva’s N-400 application as “DENIED” as of that date. Miriyeva Annotated N-400 and Adjudication Decision History (Dkt. 2-4), at 1.

37. USCIS stated in the Decision Note to the Adjudication Decision History, dated July 11, 2019, that the denial was due to the fact that Ms. Miriyeva “Separated from military service without honorable discharge.” Miriyeva Annotated N-400 and Adjudication Decision History (Dkt. 2-4), at 2.

38. On August 13, 2019, USCIS approved Ms. Miriyeva’s naturalization application for a second time, stamping her N-400 as “APPROVED” as of that date. Miriyeva Annotated N-400 and Adjudication Decision History (Dkt. 2-4), at 1.

39. This approval occurred after USCIS was informed by the U.S. Army that Ms. Miriyeva had not been discharged. Miriyeva Decl. (Dkt. 2-23), ¶ 20.

40. However, USCIS subsequently represented in related litigation that it had reopened Ms. Miriyeva’s application because her DD-214 indicated a final discharge. Miriyeva Decl. (Dkt. 2-23), ¶¶ 21-22.

41. On September 27, 2019, in response to court direction in related litigation to provide information as to “whether [USCIS is] going to stick by [denial based solely on the fact that her discharge is uncharacterized]” and “whether [Ms. Miriyeva] will be scheduled for an oath,” USCIS represented that it would not be scheduling a naturalization oath ceremony for Ms. Miriyeva “at this time.” Miriyeva Decl. (Dkt. 2-23), ¶ 23; *Nio*, 9/23/19 Status Hearing, Tr. at 75:6-7, 77:6-8; Order (Dkt. 275) at 1, *Nio* (Sept. 24, 2019).

42. Given Ms. Miriyeva’s “uncharacterized” discharge, as reflected on her DD-214, there is no document or explanation that Ms. Miriyeva can provide that will change USCIS’s decision to deny her application under the current Policy. *See* Letter from USCIS to Gunay Miriyeva, “Agency Motion to Reopen,” June 6, 2019 (Dkt. 2-2), at 3-4 (“The third and final Form N-426 that USCIS later received . . . confirms that you were separated from service on December

21, 2018, but it does not indicate the characterization of your separation. Although it indicates that you served honorably, it does not indicate whether you were separated under honorable conditions.”); Statement of Facts ¶¶ 46-51, *infra* (denying an application where DD-214 listed “uncharacterized” discharge even though subsequent, post-discharge N-426 included Army certification that “Soldier received an honorable discharge”).

43. The Policy was the sole basis for the denial of Ms. Miriyeva’s naturalization application. Letter from USCIS to Gunay Miriyeva, “Agency Motion to Reopen,” June 6, 2019 (Dkt. 2-2), at 3-4; *Nio*, 9/23/19 Status Hearing, Tr. at 74:18-19 (“The denial is based solely on the fact that her discharge is uncharacterized.”); *see also Nio*, 3/20/19 Status Hearing, Tr. at 108:2-6, 108:17-19 (“[USCIS counsel:] USCIS wants to develop a record for assessing this person’s eligibility for all the criteria. Again, USCIS -- it is not USCIS’ view that, as soon as you get an uncharacterized discharge, the analysis stops there . . . . [T]he reason that the [denial] decision is written [to list one reason that we find that you don’t qualify] is because that was the only thing applicable.”).

44. Given the Policy, an administrative appeal by Ms. Miriyeva pursuant to § 336 of the INA, codified at 8 U.S.C. § 1447, would be futile. *See* Letter from USCIS to Counsel, “Notice of Decision,” Oct. 17, 2019 (Dkt. 2-19), at 1-3 (denying a § 336 appeal on the basis of the Policy).

#### **Ann Tum**

45. Ann Tum applied for naturalization in August 2018 on the basis of her military service with the U.S. Army Selected Reserve of the Ready Reserve. Tum Decl. (Dkt. 2-26), ¶¶ 2-3.

46. Ms. Tum was discharged from the Army, and on February 19, 2019, the U.S. Army issued a Form DD-214 listing Ms. Tum's discharge type as "uncharacterized." Tum Decl. (Dkt. 2-26), ¶ 9; Tum DD-214 (Dkt. 2-10), at 1.

47. On May 20, 2019, the U.S. Army issued Ms. Tum a second Form N-426, certifying that Ms. Tum had served honorably in the Selected Reserve, including through her day of discharge on February 19, 2019. Tum Decl. (Dkt. 2-26), ¶ 10; Tum N-426 (Dkt. 2-11), at 2.

48. The N-426 further states that Ms. Tum's "discharge type" was "Honorable." In the "Remarks" section of the Form, the U.S. Army confirmed: "No derogatory information found as Soldier received an honorable discharge." Tum Decl. (Dkt. 2-26), ¶ 10; Tum N-426 (Dkt. 2-11), at 3.

49. On May 23, 2019, USCIS interviewed Ms. Tum for naturalization. At that interview, Ms. Tum provided USCIS with the N-426 dated May 20, 2019. Tum Decl. (Dkt. 2-26), ¶ 11.

50. On May 28, 2019, USCIS issued a decision denying Ms. Tum's naturalization application on the sole grounds that her DD-214 reflects an "uncharacterized" discharge and that she did not prove that her discharge was under honorable conditions. Letter from USCIS to Ann Tum, "Decision," May 28, 2019 (Dkt. 2-12), at 1-2.

51. The denial decision does not mention the N-426 in which the Army certified, three days prior to her naturalization interview, that Ms. Tum had served honorably and that her discharge was under "honorable" conditions. *Id.*

52. The Policy was the sole basis for the denial of Ms. Tum's naturalization application. *Id.*; see also *Nio*, 3/20/19 Status Hearing, Tr. at 108:2-6, 108:17-19 ("[USCIS counsel:] USCIS wants to develop a record for assessing this person's eligibility for all the criteria. Again, USCIS

-- it is not USCIS' view that, as soon as you get an uncharacterized discharge, the analysis stops there . . . . [T]he reason that the [denial] decision is written [to list one reason that we find that you don't qualify] is because that was the only thing applicable.”).

53. Given the Policy, an administrative appeal by Ms. Tum pursuant to § 336 of the INA would be futile. *See* Letter from USCIS to Counsel, “Notice of Decision,” Oct. 17, 2019 (Dkt. 2-19), at 1-3 (denying a § 336 appeal on the basis of the Policy).

**Siddhi Kulkarni**

54. Siddhi Kulkarni applied for naturalization on December 21, 2018 on the basis of her active-duty military service in the U.S. Army. Kulkarni Decl. (Dkt. 2-25), ¶ 11.

55. Previously, on December 7, 2018, the U.S. Army had discharged Ms. Kulkarni from active duty and issued a DD-214 listing the discharge type as “uncharacterized.” Kulkarni Decl. (Dkt. 2-25), ¶ 10; Kulkarni DD-214 (Dkt. 2-15), at 1.

56. On June 5, 2019, USCIS issued a decision denying Ms. Kulkarni's naturalization application on the sole ground that she failed to establish that she had received an “under honorable conditions” discharge from the U.S. Army because her separation was “uncharacterized.” Letter from USCIS to Siddhi Kulkarni, “Notice of Decision,” June 5, 2019 (Dkt. 2-17), at 1-2.

57. The Policy was the sole basis for the denial of Ms. Kulkarni's naturalization application. *Id.*; *see also* *Nio*, 3/20/19 Status Hearing, Tr. at 108:2-6, 108:17-19 (“[USCIS counsel:] USCIS wants to develop a record for assessing this person's eligibility for all the criteria. Again, USCIS -- it is not USCIS' view that, as soon as you get an uncharacterized discharge, the analysis stops there . . . . [T]he reason that the [denial] decision is written [to list one reason that we find that you don't qualify] is because that was the only thing applicable.”).

58. On June 19, 2019, the U.S. Army issued a second Form N-426, certifying Ms. Kulkarni's entire period of military service, including her day of discharge on December 7, 2018, as honorable. Kulkarni Decl. (Dkt. 2-25), ¶ 14; Kulkarni N-426 (Dkt. 2-18), at 2.

59. On or about July 3, 2019, pursuant to § 336 of the INA, Ms. Kulkarni filed an administrative appeal of the denial of her naturalization application. Kulkarni Decl. (Dkt. 2-25), ¶ 15.

60. On October 17, 2019, USCIS denied Ms. Kulkarni's § 336 appeal in a written decision, referencing the challenged Policy as the sole basis for the denial:

Because your character of service is listed as “uncharacterized” on your Certificate of Release or Discharge From Active Duty, and there is nothing on your Form DD-214 or Form N-426 to suggest that your separation was in fact characterized as “under honorable conditions,” you have not met your burden to demonstrate that the Department of the Army designated your separation as “under honorable conditions.”

Letter from USCIS to Counsel, “Notice of Decision,” Oct. 17, 2019 (Dkt. 2-19), at 1-2.

**Bipin Kadel**

61. Bipin Kadel applied for naturalization on July 24, 2017 on the basis of his military service with the U.S. Army Selected Reserve of the Ready Reserve. Kadel Decl. (Dkt. 2-24), ¶¶ 2, 4.

62. With his naturalization application, Mr. Kadel submitted a Form N-426, dated July 12, 2017, in which the U.S. Army certified his military service through that date as honorable. Kadel Decl. (Dkt. 2-24), ¶ 4; Kadel N-426 (Dkt. 2-20), at 2-3.

63. On August 4, 2017, the U.S. Army Reserve Command issued an order discharging Mr. Kadel from the Army Reserve, with an effective date of July 24, 2017 (less than two weeks after his honorable N-426 certification). Kadel Decl. (Dkt. 2-24), ¶ 5; Kadel Form 500 (Dkt. 2-21), at 1.

64. The discharge order listed Mr. Kadel's "Type of Discharge" as "UNCHARACTERIZED." *Id.*

65. On July 10, 2019, USCIS issued a decision denying Mr. Kadel's naturalization application on the sole ground that: "You have not demonstrated that you were discharged from the U.S. Armed Forces under honorable conditions." Letter from USCIS to Counsel, "Notice of Decision," July 10, 2019 (Dkt. 2-22), at 2.

66. The Policy was the sole basis for the denial of Mr. Kadel's naturalization application. *Id.*; *see also Nio*, 3/20/19 Status Hearing, Tr. at 108:2-6, 108:17-19 ("[USCIS counsel:] USCIS wants to develop a record for assessing this person's eligibility for all the criteria. Again, USCIS -- it is not USCIS' view that, as soon as you get an uncharacterized discharge, the analysis stops there . . . . [T]he reason that the [denial] decision is written [to list one reason that we find that you don't qualify] is because that was the only thing applicable.").

67. Given the Policy, an administrative appeal by Mr. Kadel pursuant to § 336 of the INA would be futile. *See* Letter from USCIS to Counsel, "Notice of Decision," Oct. 17, 2019 (Dkt. 2-19), at 1-3 (denying a § 336 appeal on the basis of the Policy).

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