

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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| MAHLON KIRWA, et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Civil Action No. 1:17-cv-01793 |
| |) | The Honorable Ellen Segal Huvelle |
| UNITED STATES DEPARTMENT OF |) | |
| DEFENSE and MARK T. ESPER, in his |) | |
| official capacity as Secretary of Defense, |) | |
| |) | |
| Defendants. |) | |

NOTICE OF N-426 POLICY CHANGE

Defendants, the U.S. Department of Defense and the Secretary of the U.S. Department of Defense, in his official capacity, submit this filing to apprise the Court of a policy memorandum issued by the Office of the Under Secretary for Personnel and Readiness on April 24, 2020 regarding the certification of honorable service for purposes of naturalization. A copy of that memorandum is attached to the Declaration of Christopher Arendt, which is included with this filing. As stated in that Declaration, Defendants will continue to comply fully with the terms of the Court’s October 27, 2017 Amended Order, ECF No. 32. Furthermore, Defendants will issue clarifying guidance to that effect in the coming days.

Dated: April 30, 2020

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General, Civil Division

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Deputy Branch Director
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/s/ Nathan M. Swinton

NATHAN M. SWINTON

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Attorneys for Defendants

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MAHLON KIRWA, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
DEFENSE and JAMES MATTIS, in his
official capacity as Secretary of Defense,

Defendants.

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) Civil Action No. 1:17-cv-01793
) The Honorable Ellen Segal Huvelle
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DECLARATION OF CHRISTOPHER P. ARENDT

Pursuant to 28 U.S.C. § 1746, I, Christopher P. Arendt, do hereby declare and state as follows:

1. I am the Deputy Director, Accession Policy Directorate, in the Office of the Under Secretary of Defense for Personnel and Readiness (“OUSDP&R”), in Washington, D.C. In this capacity, I have oversight for developing, reviewing, and analyzing policies, resource levels, and budgets for enlisted recruiting and officer-commissioning programs. My duties include oversight of the Military Accessions Vital to the National Interest (“MAVNI”) Pilot Program.

2. Section 526 of the National Defense Authorization Act for 2020 requires the Department of Defense (“DoD”) to “publish regulations for submission and processing of a completed United States Citizenship and Immigration Services Form N-426, by a member of the Armed Forces.” These regulations must “designate the appropriate level for the certifying officer as well as establish time requirements for the form to be returned to the member of the Armed Forces. *Id.*

3. Pursuant to this statutory authority, on April 24, 2020, USD(P&R) issued a memorandum to the Secretaries of the Army, Air Force, and Navy regarding the Certification of Honorable Service for Purposes of Naturalization. A copy of this memorandum is attached to this declaration.

4. Notwithstanding the language of that memorandum, the Department of Defense will continue to comply fully with the terms of the October 27, 2017 Amended Order issued by this Court, including the requirement that the Department use its best efforts to certify or deny requests for honorable service certification within two business days of receiving such a request from the class members in that case. Furthermore, OUSD(P&R) will issue clarifying guidance to this effect in the coming days.

I declare that the foregoing is true to the best of my knowledge and belief. Executed this 29 day of April, 2020, in the County of Arlington, Commonwealth of Virginia.



CHRISTOPHER P. ARENDT



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

APR 24 2020

MEMORANDUM FOR SECRETARY OF THE ARMY
SECRETARY OF THE NAVY
SECRETARY OF THE AIR FORCE

SUBJECT: Certification of Honorable Service for Purposes of Naturalization

This updates the memorandum, "Certification of Honorable Service for Members of the Selected Reserve of the Ready Reserve and Members of the Active Components of the Military or Naval Forces for Purposes of Naturalization," dated October 13, 2017 (attached). Conforming changes to Department of Defense Instruction 5500.14 will incorporate this updated guidance.

Recently, section 526 of the National Defense Authorization Act for Fiscal Year 2020 directed the Department to establish processing time requirements for the review and return of requests by Service members for a certification of honorable service, in support of applications for naturalization under 8 U.S.C. § 1440. Upon receipt from a qualified applicant of United States Citizenship and Immigration Services Form N-426, "Request for Certification of Military or Naval Service," the certifying official will process it with priority and return it to the Service member concerned within 30-days of submission.

My point of contact is Ms. Stephanie Miller, Director of Accessions Policy, who can be reached at (703) 697-8444 or stephanie.p.miller.civ@mail.mil.

A handwritten signature in cursive script, appearing to read "Matthew P. Donovan".

Matthew P. Donovan

Attachment:
As stated

cc:
Chairman of the Joint Chiefs of Staff
Under Secretary of Defense for Intelligence and Security
Chief of the National Guard Bureau
Commandant of the Coast Guard
Assistant Secretary of the Army
for Manpower and Reserve Affairs
Assistant Secretary of the Navy
for Manpower and Reserve Affairs
Assistant Secretary of the Air Force
for Manpower and Reserve Affairs



PERSONNEL AND
READINESS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

OCT 13 2017

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
COMMANDANT OF THE COAST GUARD

SUBJECT: Certification of Honorable Service for Members of the Selected Reserve of the Ready Reserve and Members of the Active Components of the Military or Naval Forces for Purposes of Naturalization

This memorandum provides formal guidance regarding the certification of honorable service of members of the Selected Reserve of the Ready Reserve and members of the active components of the military or naval forces of the United States for the purpose of supporting Service Member applications for naturalization under section 1440 of Title 8, U.S. Code.

This guidance is effective immediately.

Background:

Federal law affords certain Service Members a statutory exception to certain naturalization requirements otherwise applicable to them, providing a much-expedited path to U.S. citizenship. To qualify for this exception, a Service Member must serve honorably during a period that the President designates, by Executive Order, as one in which the Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force. By Executive Order 13269, dated July 3, 2002, the President designated the period of the war against terrorists of global reach, beginning September 11, 2001, as such a period. Accordingly, military service during this period may permit certain Service Members to avail themselves of a statutory exception. Once the Department of Defense certifies a member's service as honorable, the U.S. Citizenship and Immigration Services (USCIS) completes the citizenship process.

USCIS Form N-400, *Application for Naturalization*, initiates the naturalization process. USCIS Form N-426, Request for Certification of Military or Naval Service, is a necessary and indispensable part of the military naturalization application process. The USCIS Form N-426 records the determination of the Military Department as to whether a Service Member has served honorably. An individual seeking citizenship based on military service must submit a completed *original* USCIS Form N-426. Subject to, and in accordance with, the provisions in this memorandum, the Military Department concerned will determine whether a Service Member is serving or has served honorably, and as applicable, whether separation from such service was under honorable conditions. The Secretary of the Military Department concerned will make the certification. The Secretary may delegate this certification authority, in writing or by regulation, to a commissioned officer serving in the pay grade of O-6 or higher. None of the standards set forth herein as applicable to certifications of honorable service create or imply the creation of a residency or physical presence requirement for the purpose of naturalization pursuant to 8 U.S. Code § 1440.

SECTION I

Standards and Procedures Applicable to Cases in which the Date of the Member's Enlistment or Accession was On or After the Date of this Memorandum.

Upon receipt of a Service Member's "request for certification of honorable service" (N-426), the Secretary of the Military Department concerned may certify such service as honorable only if all of the following criteria are met:

1. **Legal and Disciplinary Matters**: The Service Member is not the subject of pending disciplinary action or pending adverse administrative action or proceeding, and is not the subject of a law enforcement or command investigation; **AND**
2. **Background Investigation and Suitability Vetting**: The Service Member has completed applicable screening and suitability requirements, as follows:
 - a. Persons enlisted or accessed under the Military Accessions Vital to the National Interest (MAVNI) Pilot Program are the subject of a completed National Intelligence Agency Check (NIAC); Tier 3 or Tier 5 Background Investigation, as applicable; counterintelligence-focused security review; counterintelligence interview; and a Military Service Suitability Determination (MSSD), favorably adjudicated in accordance with Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)) memorandum of September 30, 2016, *Military Accessions Vital to the National Interest Pilot Program Extension*, and OUSD(P&R) memorandum of October 13, 2017, *Military Accessions Vital to the National Interest Pilot Program*; **OR**
 - b. Persons accessed under 10 U.S. Code §§ 504(b)(1)(B)¹ and (b)(1)(C)² who have met prescribed screening requirements set forth in Department of Defense Instruction 1304.26, "Qualification Standards for Enlistment, Appointment and Induction," and other applicable DoD or Military Department policy, and are the subject of a favorably adjudicated MSSD; **AND**
3. **Military Training and Required Service**: The Service Member has served in a capacity, for a period of time, and in a manner that permits an informed determination as to whether the member served honorably, as set forth below.
 - a. ***For Service Members in an Active Component***:
 - Successfully completed the basic training requirements of the armed force of which he/she is a member; **AND**
 - Completed at least 180 consecutive days of active duty service, inclusive of the successful completion of basic training; **AND**
 - The characterization of the member's service is honorable, as determined by the Secretary of the Military Department concerned.

¹ An alien lawfully admitted for permanent residence.

² Persons described in the Compact of Free Association between the Federated States of Micronesia and the United States; the Compact of Free Association between the Republic of the Marshall Islands and the United States; and the Compact of Free Association between Palau and the United States.

b. For Service Members in the Selected Reserve of the Ready Reserve:

- Successfully completed the basic training requirements of the armed force of which he/she is a member; **AND**
- Completed at least one year of satisfactory service towards non-regular retirement in accordance with Department of Defense Instruction 1215.07, "Service Credit for Non-Regular Retirement," as a member of the Selected Reserve, inclusive of the member's successful completion of basic training; **AND**
- The characterization of the member's service is honorable, as determined by the Secretary of the Military Department concerned.

c. For Service Members in an Active Component, or in the Selected Reserve of the Ready Reserve, who have served in an active duty status in a hazardous duty area:

- Successfully completed the basic training requirements of the armed force of which he/she is a member; **AND**
- Satisfactorily served at least one day of active duty service in a location designated as a combat zone, a qualified hazardous duty area, or an area where service in the area has been designated to be in direct support of a combat zone, and which also qualifies the member for hostile fire or imminent danger pay under sections 310 or 351(a)(1) or (3) of Title 37, U.S. Code; **AND**
- The characterization of the member's service is honorable, as determined by the Secretary of the Military Department concerned.

SECTION II.

Standards and Procedures Applicable to Cases in which the Date of the Member's Enlistment or Accession in either the Active or Reserve Component was Prior to the Date of this Memorandum.

The Military Department concerned may certify such a Service Member's service as honorable for purposes of supporting the member's naturalization application only if all of the following criteria are met:

1. **Legal and Disciplinary Matters:** The Service Member is not the subject of pending disciplinary action or pending adverse administrative action or proceeding, and is not the subject of a law enforcement or command, investigation; **AND**
2. **Background Investigation and Suitability Vetting:** The Service Member has completed all applicable screening and suitability requirements as set forth in Section 1, paragraph 2 above; **AND**
3. **Military Training and Required Service:** The Service Member has served in a capacity, for a period of time, and in a manner that permits an informed determination that the member has served honorably as a member of the Selected Reserve of the Ready Reserve or member of an active component of a military or naval force of the United States, as determined by the Secretary of the Military Department concerned.

SECTION III.

Decertification and Recertification.

The Military Department concerned will recall and de-certify the Form N-426 for a Service Member described below:

1. The Service Member's accession was prior to the date of this memorandum; **AND**
2. The Service Member has submitted to the USCIS a complete application for naturalization that includes both a Form N-400 and a Form N-426, certifying the member's honorable service for purposes of naturalization, signed by a representative of the Military Department concerned, and USCIS has not adjudicated such application or, if USCIS has granted such application, the member has not yet naturalized; **AND**
3. The Service Member has *not* completed all applicable screening and suitability requirements as set forth in Section 1, paragraph 2 above.

The Military Department concerned will subsequently certify a new Form N-426 and advise the USCIS within five business days of the date on which the affected Service Member is determined to meet the criteria set forth in Section I, paragraph 2, above. The Service Member is responsible for submitting the new Form N-426 to USCIS in support of his/her application for naturalization.

SECTION IV.

Exceptions or Clarifications. Exceptions to, or clarifications of, the standards, policies, or procedures set forth in this memorandum, may be requested from the OUSD(P&R). A written response to a request for exception or clarification must be received in advance of any action by or for the requester that is not clearly in accord with the standards, policies, and procedures set forth herein.



A. M. Kurta

Performing the Duties of the Under Secretary of
Defense for Personnel and Readiness

cc:

Chairman of the Joint Chiefs of Staff
Under Secretary of Defense for Intelligence
Under Secretary of Defense for Personnel and Readiness
Chief of the National Guard Bureau
Assistant Secretary of the Army for
Manpower and Reserve Affairs
Assistant Secretary of the Navy for
Manpower and Reserve Affairs
Assistant Secretary of the Air Force for
Manpower and Reserve Affairs