

§ 329.2

8 CFR Ch. I (1-1-01 Edition)

Honorable service and separation means service and separation from service which the executive department under which the applicant served determines to be honorable, including:

(1) That such applicant had not been separated from service on account of alienage;

(2) That such applicant was not a conscientious objector who performed no military, air or naval duty; and

(3) That such applicant did not refuse to wear a military uniform.

Service in an active duty status in the Armed Forces of the United States means active service in the following organizations:

(1) United States Army, United States Navy, United States Marines, United States Air Force, United States Coast Guard; or

(2) A National Guard unit during such time as the unit is Federally recognized as a reserve component of the Armed Forces of the United States and that unit is called for active duty.

World War I means the period beginning on April 6, 1917, and ending on November 11, 1918.

[56 FR 50493, Oct. 7, 1991]

§ 329.2 Eligibility.

To be eligible for naturalization under section 329(a) of the Act, an applicant must establish that he or she:

(a) Has served honorably in an active duty status in the Armed Forces of the United States during:

(1) World War I;

(2) The period beginning on September 1, 1939 and ending on December 31, 1946;

(3) The period beginning on June 25, 1950 and ending on July 1, 1955;

(4) The period beginning on February 28, 1961 and ending on October 15, 1978; or

(5) Any other period as may be designated by the President in an Executive Order pursuant to section 329(a) of the Act;

(b) If separated, has been separated honorably from service in the Armed Forces of the United States under paragraph (a) of this section;

(c) Satisfies the permanent residence requirement in one of the following ways:

(1) Any time after enlistment or induction into the Armed Forces of the United States, the applicant was lawfully admitted to the United States as a permanent resident; or

(2) At the time of enlistment or induction, the applicant was physically present in the geographical territory of the United States, the Canal Zone, American Samoa, Midway Island (prior to August 21, 1959), or Swain's Island, or in the ports, harbors, bays, enclosed sea areas, or the three-mile territorial sea along the coasts of these land areas, whether or not the applicant has been lawfully admitted to the United States as a permanent resident;

(d) Has been, for at least one year prior to filing the application for naturalization, and continues to be, of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States; and

(e) Has complied with all other requirements for naturalization as provided in part 316 of this chapter, except that:

(1) The applicant may be of any age;

(2) The applicant is not required to satisfy the residence requirements under §316.2 (a)(3) through (a)(6) of this chapter; and

(3) The applicant may be naturalized even if an outstanding notice to appear pursuant to 8 CFR part 239 (including a charging document issued to commence proceedings under sections 236 or 242 of the Act prior to April 1, 1997) exists.

[56 FR 50493, Oct. 7, 1991, as amended at 58 FR 49913, Sept. 24, 1993; 62 FR 10395, Mar. 6, 1997]

§ 329.3 Jurisdiction.

Except as noted in §329.5, an application under this part may be filed in any office of the Service within the United States regardless of the place of residence of the applicant.

[56 FR 50493, Oct. 7, 1991]

§ 329.4 Application and evidence.

(a) *Application.* An applicant for naturalization under section 329 of the Act must submit an Application for Naturalization, Form N-400, as provided in §316.4 of this chapter. The application

must be accompanied by Form N-426, Certificate of Military or Naval Service, in triplicate, and Form G-325B, Biographic Form.

(b) *Evidence.* The applicant's eligibility for naturalization under § 329.2(a), (b), or (c)(2) shall be established only by the certification of the executive department under which the applicant served or is serving.

[56 FR 50493, Oct. 7, 1991, as amended at 60 FR 6651, Feb. 3, 1995]

§ 329.5 Natives of the Philippines with active duty service during World War II.

(a) A person desiring to naturalize in accordance with section 405 of the Immigration Act of 1990 shall establish that he/she:

(1) Was born in the Philippines;

(2) Served honorably at any time during the period beginning September 1, 1939, and ending December 31, 1946—

(i) In an active-duty status under the command of the United States Armed Forces in the Far East, or

(ii) Within the Commonwealth Army of the Philippines, the Philippine Scouts, or recognized guerrilla units; and

(3) Resided in the Philippines prior to the service described in paragraph (a)(2) of this section.

(b) An application under this section shall be submitted in compliance with § 329.2. In addition to the forms and documentation required in § 329.2 and the appropriate fee as required in § 103.7 of this chapter, an applicant shall submit:

(1) Proof of birth in the Philippines;

(2) Police clearance for any place of residence for more than six months in the previous 5 years if such residence was not in the United States; and

(3) Proof of identity.

(c) If the applicant is residing in the United States, the application shall be submitted to the district or sub-office of the Service having jurisdiction over the place of residence in accordance with §§ 100.4 (b) and (c) of this chapter. A person residing outside the United States shall submit the application to the Northern Service Center, 100 Centennial Mall North, room B26, Lincoln, Nebraska 68508.

(d)(1) A person residing in the Philippines shall be examined on his or her application at Manila, Philippines, unless he or she indicates in the application a preference to be interviewed in the United States. Those persons wishing to be interviewed in the United States shall submit with the application a statement listing the desired location and the reasons therefor. The Service may interview the applicant at a different site other than the one requested if it would, in fact, be in the best interest of the applicant to do so.

(2) A person residing outside the United States and outside the Philippines may request to be interviewed in the Philippines or in the United States. If such a person elects to be interviewed in the Philippines, he or she will be solely responsible for obtaining the necessary documents for entry into the Philippines.

(e) To be considered an application for naturalization under section 405, the application must be received by the Service no earlier than November 29, 1990, and no later than February 3, 1995.

(f) No decision to approve or deny an application for naturalization under section 405 of the Immigration Act of 1990 may be made prior to May 1, 1991.

(g) The service described in § 329.5(a)(2) shall be provided solely by the duly authenticated records of the United States Army Reserve Personnel Records, St. Louis, Missouri, or the National Personnel Records Center, St. Louis, Missouri.

(h) Irrespective of the requirement in § 337.2(a) of this chapter that an administrative oath ceremony be conducted in the United States and within the jurisdiction in which the application was filed or was transferred pursuant to § 335.9 of this chapter, the administrative oath ceremony for an applicant under this section may be held within the geographical limits of the Philippines, provided the examination on the application was conducted in the Philippines.

(i) If it should be necessary to institute revocation proceedings pursuant to section 340 of the Act in the case of a person naturalized outside the United States pursuant to § 329.5 and he or she has never resided in the United States, the report of facts required in § 340.11 of