

### § 1425. Ineligibility to naturalization of deserters from the Armed Forces

A person who, at any time during which the United States has been or shall be at war, deserted or shall desert the military, air, or naval forces of the United States, or who, having been duly enrolled, departed, or shall depart from the jurisdiction of the district in which enrolled, or who, whether or not having been duly enrolled, went or shall go beyond the limits of the United States, with intent to avoid any draft into the military, air, or naval service, lawfully ordered, shall, upon conviction thereof by a court martial or a court of competent jurisdiction, be permanently ineligible to become a citizen of the United States; and such deserters and evaders shall be forever incapable of holding any office of trust or of profit under the United States, or of exercising any rights of citizens thereof.

(June 27, 1952, ch. 477, title III, ch. 2, §314, 66 Stat. 241.)

### § 1426. Citizenship denied alien relieved of service in Armed Forces because of alienage

#### (a) Permanent ineligibility

Notwithstanding the provisions of section 405(b)<sup>1</sup> but subject to subsection (c), any alien who applies or has applied for exemption or discharge from training or service in the Armed Forces or in the National Security Training Corps of the United States on the ground that he is an alien, and is or was relieved or discharged from such training or service on such ground, shall be permanently ineligible to become a citizen of the United States.

#### (b) Conclusiveness of records

The records of the Selective Service System or of the Department of Defense shall be conclusive as to whether an alien was relieved or discharged from such liability for training or service because he was an alien.

#### (c) Service in armed forces of foreign country

An alien shall not be ineligible for citizenship under this section or otherwise because of an exemption from training or service in the Armed Forces of the United States pursuant to the exercise of rights under a treaty, if before the time of the exercise of such rights the alien served in the Armed Forces of a foreign country of which the alien was a national.

(June 27, 1952, ch. 477, title III, ch. 2, §315, 66 Stat. 242; Pub. L. 100-525, §9(v), Oct. 24, 1988, 102 Stat. 2621; Pub. L. 101-649, title IV, §404, Nov. 29, 1990, 104 Stat. 5039.)

### Editorial Notes

#### REFERENCES IN TEXT

Section 405(b), referred to in subsec. (a), is section 405(b) of act June 27, 1952, ch. 477, title IV, 66 Stat. 280, which is set out as a Savings Clause note under section 1101 of this title.

#### AMENDMENTS

1990—Subsec. (a). Pub. L. 101-649, §404(1), inserted “but subject to subsection (c)” after “section 405(b)”.

Subsec. (c). Pub. L. 101-649, §404(2), added subsec. (c). 1988—Subsec. (b). Pub. L. 100-525 substituted “Department of Defense” for “National Military Establishment”.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-649 applicable to exemptions from training or service obtained before, on, or after Nov. 29, 1990, see section 408(e) of Pub. L. 101-649, set out as a note under section 1421 of this title.

### § 1427. Requirements of naturalization

#### (a) Residence

No person, except as otherwise provided in this subchapter, shall be naturalized unless such applicant, (1) immediately preceding the date of filing his application for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his application has been physically present therein for periods totaling at least half of that time, and who has resided within the State or within the district of the Service in the United States in which the applicant filed the application for at least three months, (2) has resided continuously within the United States from the date of the application up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

#### (b) Absences

Absence from the United States of more than six months but less than one year during the period for which continuous residence is required for admission to citizenship, immediately preceding the date of filing the application for naturalization, or during the period between the date of filing the application and the date of any hearing under section 1447(a) of this title, shall break the continuity of such residence, unless the applicant shall establish to the satisfaction of the Attorney General that he did not in fact abandon his residence in the United States during such period.

Absence from the United States for a continuous period of one year or more during the period for which continuous residence is required for admission to citizenship (whether preceding or subsequent to the filing of the application for naturalization) shall break the continuity of such residence, except that in the case of a person who has been physically present and residing in the United States, after being lawfully admitted for permanent residence, for an uninterrupted period of at least one year, and who thereafter is employed by or under contract with the Government of the United States or an American institution of research recognized as such by the Attorney General, or is employed by an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof more than 50 per centum of whose stock is owned by an American firm or

<sup>1</sup> See References in Text note below.

corporation, or is employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence, no period of absence from the United States shall break the continuity of residence if—

(1) prior to the beginning of such period of employment (whether such period begins before or after his departure from the United States), but prior to the expiration of one year of continuous absence from the United States, the person has established to the satisfaction of the Attorney General that his absence from the United States for such period is to be on behalf of such Government, or for the purpose of carrying on scientific research on behalf of such institution, or to be engaged in the development of such foreign trade and commerce or whose residence abroad is necessary to the protection of the property rights in such countries in such firm or corporation, or to be employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence; and

(2) such person proves to the satisfaction of the Attorney General that his absence from the United States for such period has been for such purpose.

The spouse and dependent unmarried sons and daughters who are members of the household of a person who qualifies for the benefits of this subsection shall also be entitled to such benefits during the period for which they were residing abroad as dependent members of the household of the person.

**(c) Physical presence**

The granting of the benefits of subsection (b) of this section shall not relieve the applicant from the requirement of physical presence within the United States for the period specified in subsection (a) of this section, except in the case of those persons who are employed by, or under contract with, the Government of the United States. In the case of a person employed by or under contract with Central Intelligence Agency, the requirement in subsection (b) of an uninterrupted period of at least one year of physical presence in the United States may be complied with by such person at any time prior to filing an application for naturalization.

**(d) Moral character**

No finding by the Attorney General that the applicant is not deportable shall be accepted as conclusive evidence of good moral character.

**(e) Determination**

In determining whether the applicant has sustained the burden of establishing good moral character and the other qualifications for citizenship specified in subsection (a) of this section, the Attorney General shall not be limited to the applicant's conduct during the five years preceding the filing of the application, but may take into consideration as a basis for such determination the applicant's conduct and acts at any time prior to that period.

**(f) Persons making extraordinary contributions to national security**

(1) Whenever the Director of Central Intelligence, the Attorney General and the Commissioner of Immigration determine that an applicant otherwise eligible for naturalization has made an extraordinary contribution to the national security of the United States or to the conduct of United States intelligence activities, the applicant may be naturalized without regard to the residence and physical presence requirements of this section, or to the prohibitions of section 1424 of this title, and no residence within a particular State or district of the Service in the United States shall be required: *Provided*, That the applicant has continuously resided in the United States for at least one year prior to naturalization: *Provided further*, That the provisions of this subsection shall not apply to any alien described in clauses (i) through (v) of section 1158(b)(2)(A) of this title.

(2) An applicant for naturalization under this subsection may be administered the oath of allegiance under section 1448(a) of this title by any district court of the United States, without regard to the residence of the applicant. Proceedings under this subsection shall be conducted in a manner consistent with the protection of intelligence sources, methods and activities.

(3) The number of aliens naturalized pursuant to this subsection in any fiscal year shall not exceed five. The Director of Central Intelligence shall inform the Select Committee on Intelligence and the Committee on the Judiciary of the Senate and the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives within a reasonable time prior to the filing of each application under the provisions of this subsection.

(June 27, 1952, ch. 477, title III, ch. 2, §316, 66 Stat. 242; Pub. L. 97-116, §14, Dec. 29, 1981, 95 Stat. 1619; Pub. L. 99-169, title VI, §601, Dec. 4, 1985, 99 Stat. 1007; Pub. L. 101-649, title IV, §§402, 407(c)(2), (d)(1), (e)(1), Nov. 29, 1990, 104 Stat. 5038, 5041, 5046; Pub. L. 104-208, div. C, title III, §308(g)(7)(F), Sept. 30, 1996, 110 Stat. 3009-624; Pub. L. 109-149, title V, §518, Dec. 30, 2005, 119 Stat. 2882.)

**Editorial Notes**

**AMENDMENTS**

2005—Subsec. (g). Pub. L. 109-149, §518, temporarily added subsec. (g) reading as follows:

“(1) The continuous residency requirement under subsection (a) of this section may be reduced to 3 years for an applicant for naturalization if—

“(A) the applicant is the beneficiary of an approved petition for classification under section 1154(a)(1)(E) of this title;

“(B) the applicant has been approved for adjustment of status under section 1255(a) of this title; and

“(C) such reduction is necessary for the applicant to represent the United States at an international event.

“(2) The Secretary of Homeland Security shall adjudicate an application for naturalization under this section not later than 30 days after the submission of such application if the applicant—

“(A) requests such expedited adjudication in order to represent the United States at an international event; and

“(B) demonstrates that such expedited adjudication is related to such representation.

“(3) An applicant is ineligible for expedited adjudication under paragraph (2) if the Secretary of Homeland Security determines that such expedited adjudication poses a risk to national security. Such a determination by the Secretary shall not be subject to review.

“(4)(A) In addition to any other fee authorized by law, the Secretary of Homeland Security shall charge and collect a \$1,000 premium processing fee from each applicant described in this subsection to offset the additional costs incurred to expedite the processing of applications under this subsection.

“(B) The fee collected under subparagraph (A) shall be deposited as offsetting collections in the Immigration Examinations Fee Account.” See Termination Date of 2005 Amendment note below.

1996—Subsec. (f)(1). Pub. L. 104-208 substituted “clauses (i) through (v) of section 1158(b)(2)(A) of this title” for “subparagraphs (A) through (D) of section 1253(h)(2) of this title”.

1990—Subsec. (a). Pub. L. 101-649, § 407(c)(2), substituted references to applicant and application for references to petitioner and petition wherever appearing.

Pub. L. 101-649, § 402, substituted “and who has resided within the State or within the district of the Service in the United States in which the applicant filed the application for at least three months” for “and who has resided within the State in which the petitioner filed the petition for at least six months” in cl. (1).

Subsec. (b). Pub. L. 101-649, § 407(d)(1)(A), (B), substituted “the Attorney General” for “the court” in first par. and subpar. (2) of second par., and “date of any hearing under section 1447(a) of this title” for “date of final hearing” in first par.

Pub. L. 101-649, § 407(c)(2), substituted references to applicant and application for references to petitioner and petition wherever appearing.

Subsec. (c). Pub. L. 101-649, § 407(c)(2), substituted references to applicant and application for references to petitioner and petition wherever appearing.

Subsec. (d). Pub. L. 101-649, § 407(c)(2), substituted reference to applicant for reference to petitioner.

Subsec. (e). Pub. L. 101-649, § 407(d)(1)(C), substituted “the Attorney General” for “the court”.

Pub. L. 101-649, § 407(c)(2), substituted references to applicant, applicant’s, and application for references to petitioner, petitioner’s, and petition wherever appearing.

Subsec. (f). Pub. L. 101-649, § 407(e)(1), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: “Naturalization shall not be granted to a petitioner by a naturalization court while registration proceedings or proceedings to require registration against an organization of which the petitioner is a member or affiliate are pending under section 792 or 793 of title 50.”

Subsec. (f)(1). Pub. L. 101-649, § 407(d)(1)(D), substituted “within a particular State or district of the Service in the United States” for “within the jurisdiction of the court”.

Pub. L. 101-649, § 407(c)(2), substituted references to applicant for references to petitioner wherever appearing.

Subsec. (f)(2). Pub. L. 101-649, § 407(d)(1)(E), amended first sentence generally. Prior to amendment, first sentence read as follows: “A petition for naturalization may be filed pursuant to this subsection in any district court of the United States, without regard to the residence of the petitioner.”

Subsec. (f)(3). Pub. L. 101-649, § 407(c)(2), substituted reference to application for reference to petition.

1985—Subsec. (g). Pub. L. 99-169 added subsec. (g).

1981—Subsec. (b). Pub. L. 97-116 inserted provision that the spouse and dependent unmarried sons and daughters who are members of the household of a person who qualifies for the benefits of this subsection also be entitled to such benefits during the period for which they were residing abroad as dependent members of the household of the person.

## Statutory Notes and Related Subsidiaries

### CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108-458, set out as a note under section 3001 of Title 50, War and National Defense.

### TERMINATION DATE OF 2005 AMENDMENT

Pub. L. 109-149, title V, § 518(b), Dec. 30, 2005, 119 Stat. 2882, provided that: “The amendment made by subsection (a) [amending this section] is repealed on January 1, 2006.”

### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, 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.

### EXPEDITED NATURALIZATION

Pub. L. 104-293, title III, § 305, Oct. 11, 1996, 110 Stat. 3465, as amended by Pub. L. 106-120, title III, § 307, Dec. 3, 1999, 113 Stat. 1612, provided that:

“(a) IN GENERAL.—With the approval of the Director of Central Intelligence, the Attorney General, and the Commissioner of Immigration and Naturalization, an applicant described in subsection (b) and otherwise eligible for naturalization may be naturalized without regard to the residence and physical presence requirements of section 316(a) of the Immigration and Nationality Act [8 U.S.C. 1427(a)], or to the prohibitions of section 313 of such Act [8 U.S.C. 1424], and no residence within a particular State or district of the Immigration and Naturalization Service in the United States shall be required.

“(b) ELIGIBLE APPLICANT.—An applicant eligible for naturalization under this section is the spouse or child of a deceased alien whose death resulted from the intentional and unauthorized disclosure of classified information regarding the alien’s participation in the conduct of United States intelligence activities and who—

“(1) has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least one year prior to naturalization; and

“(2) is not described in clauses (i) through (iv) of section 241(b)(3)(B) of such Act [8 U.S.C. 1231(b)(3)(B)].

“(c) ADMINISTRATION OF OATH.—An applicant for naturalization under this section may be administered the oath of allegiance under section 337(a) of the Immigration and Nationality Act [8 U.S.C. 1448(a)] by the Attorney General or any district court of the United States, without regard to the residence of the applicant. Proceedings under this subsection shall be conducted in a manner consistent with the protection of intelligence sources, methods, and activities.

“(d) DEFINITIONS.—For purposes of this section—

“(1) the term ‘child’ means a child as defined in subparagraphs (A) through (E) of section 101(b)(1) of the Immigration and Nationality Act [8 U.S.C. 1101(b)(1)], without regard to age or marital status; and

“(2) the term ‘spouse’ means the wife or husband of a deceased alien referred to in subsection (b) who was married to such alien during the time the alien participated in the conduct of United States intelligence activities.”

#### § 1428. Temporary absence of persons performing religious duties

Any person who is authorized to perform the ministerial or priestly functions of a religious denomination having a bona fide organization within the United States, or any person who is engaged solely by a religious denomination or by an interdenominational mission organization having a bona fide organization within the United States as a missionary, brother, nun, or sister, who (1) has been lawfully admitted to the United States for permanent residence, (2) has at any time thereafter and before filing an application for naturalization been physically present and residing within the United States for an uninterrupted period of at least one year, and (3) has heretofore been or may hereafter be absent temporarily from the United States in connection with or for the purpose of performing the ministerial or priestly functions of such religious denomination, or serving as a missionary, brother, nun, or sister, shall be considered as being physically present and residing in the United States for the purpose of naturalization within the meaning of section 1427(a) of this title, notwithstanding any such absence from the United States, if he shall in all other respects comply with the requirements of the naturalization law. Such person shall prove to the satisfaction of the Attorney General that his absence from the United States has been solely for the purpose of performing the ministerial or priestly functions of such religious denomination, or of serving as a missionary, brother, nun, or sister.

(June 27, 1952, ch. 477, title III, ch. 2, § 317, 66 Stat. 243; Pub. L. 101-649, title IV, § 407(c)(3), (d)(2), Nov. 29, 1990, 104 Stat. 5041.)

#### Editorial Notes

##### AMENDMENTS

1990—Pub. L. 101-649, § 407(d)(2), struck out “and the naturalization court” after “Attorney General”.

Pub. L. 101-649, § 407(c)(3), substituted “application” for “petition”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, 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.

#### § 1429. Prerequisite to naturalization; burden of proof

Except as otherwise provided in this subchapter, no person shall be naturalized unless he has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of this chapter. The burden of proof shall be upon such person to show that he entered the United States lawfully, and the time, place, and manner of such entry into the United States, but in presenting such proof he shall be entitled to the production of his immigrant visa, if any, or of other entry document, if any, and of any other documents and records, not considered by the Attorney General to be confidential, pertaining to such entry, in the custody of the Service. Notwithstanding the provisions of section 405(b),<sup>1</sup> and except as provided in sections 1439 and 1440 of this title no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this chapter or any other Act; and no application for naturalization shall be considered by the Attorney General if there is pending against the applicant a removal proceeding pursuant to a warrant of arrest issued under the provisions of this chapter or any other Act: *Provided*, That the findings of the Attorney General in terminating removal proceedings or in canceling the removal of an alien pursuant to the provisions of this chapter, shall not be deemed binding in any way upon the Attorney General with respect to the question of whether such person has established his eligibility for naturalization as required by this subchapter.

(June 27, 1952, ch. 477, title III, ch. 2, § 318, 66 Stat. 244; Pub. L. 90-633, § 4, Oct. 24, 1968, 82 Stat. 1344; Pub. L. 101-649, title IV, § 407(c)(4), (d)(3), Nov. 29, 1990, 104 Stat. 5041; Pub. L. 104-208, div. C, title III, § 308(e)(1)(O), (15), Sept. 30, 1996, 110 Stat. 3009-620, 3009-621.)

#### Editorial Notes

##### REFERENCES IN TEXT

This chapter, referred to in text, was in the original, “this Act”, meaning act June 27, 1952, ch. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

Section 405(b), referred to in text, is section 405(b) of act June 27, 1952, ch. 477, title IV, 66 Stat. 280, which is set out as a Savings Clause note under section 1101 of this title.

##### AMENDMENTS

1996—Pub. L. 104-208 substituted “removal” for “deportation” wherever appearing and “canceling” for “suspending”.

1990—Pub. L. 101-649, § 407(d)(3), in last sentence substituted “considered by the Attorney General” for “finally heard by a naturalization court” and “upon the Attorney General” for “upon the naturalization court”.

Pub. L. 101-649, § 407(c)(4), substituted “application” for “petition” and “applicant” for “petitioner”.

1968—Pub. L. 90-633 substituted reference to exception provided in sections 1439 and 1440 of this title for

<sup>1</sup> See References in Text note below.