

naturalized in accordance with the provisions of section 323 of the Nationality Act of 1940, shall have, from and after such naturalization, the status of a native-born, or naturalized, citizen of the United States, whichever status existed in the case of such person prior to the loss of citizenship: *Provided*, That nothing contained herein, or in any other provision of law, shall be construed as conferring United States citizenship retroactively upon any such person during any period in which such person was not a citizen.

#### (d) Span of World War II

For the purposes of this section, World War II shall be deemed to have begun on September 1, 1939, and to have terminated on September 2, 1945.

#### (e) Inapplicability to certain persons

This section shall not apply to any person who during World War II served in the armed forces of a country while such country was at war with the United States.

(June 27, 1952, ch. 477, title III, ch. 2, § 327, 66 Stat. 248; Pub. L. 101-649, title IV, § 407(d)(7), Nov. 29, 1990, 104 Stat. 5042.)

### Editorial Notes

#### REFERENCES IN TEXT

Section 323 of the Nationality Act of 1940, referred to in subsec. (c), which was classified to section 723 of this title, was repealed by section 403(a)(42) of act June 27, 1952. See subsec. (a) of this section.

#### AMENDMENTS

1990—Subsec. (a). Pub. L. 101-649 substituted “the Attorney General or before a court described in section 1421(b) of this title” for “any naturalization court specified in section 1421(a) of this title” and inserted “and by the Attorney General to the Secretary of State” before period at end.

### Statutory Notes and Related Subsidiaries

#### 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.

### § 1439. Naturalization through service in the armed forces

#### (a) Requirements

A person who has served honorably at any time in the armed forces of the United States for a period or periods aggregating one year, and, who, if separated from such service, was never separated except under honorable conditions, may be naturalized without having resided, continuously immediately preceding the date of filing such person's application, in the United States for at least five years, and in the State or district of the Service in the United States in which the application for naturalization is filed for at least three months, and without having been physically present in the United States for any specified period, if such application is filed while the applicant is still in the service or within six months after the termination of such 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) no residence within a State or district of the Service in the United States shall be required;

(2) notwithstanding section 1429 of this title insofar as it relates to deportability, such applicant may be naturalized immediately if the applicant be then actually in the Armed Forces of the United States, and if prior to the filing of the application, the applicant shall have appeared before and been examined by a representative of the Service;

(3) the applicant shall furnish to the Secretary of Homeland Security, prior to any hearing upon his application, a certified statement from the proper executive department for each period of his service upon which he relies for the benefits of this section, clearly showing that such service was honorable and that no discharges from service, including periods of service not relied upon by him for the benefits of this section, were other than honorable (the certificate or certificates herein provided for shall be conclusive evidence of such service and discharge); and

(4) notwithstanding any other provision of law, no fee shall be charged or collected from the applicant for filing the application, or for the issuance of a certificate of naturalization upon being granted citizenship, 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) Periods when not in service

In the case such applicant's service was not continuous, the applicant's residence in the United States and State or district of the Service in the United States, good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during any period within five years immediately preceding the date of filing such application between the periods of applicant's service in the Armed Forces, shall be alleged in the application filed under the provisions of subsection (a) of this section, and proved at any hearing thereon. Such allegation and proof shall also be made as to any period between the termination of applicant's service and the filing of the application for naturalization.

#### (d) Residence requirements

The applicant shall comply with the requirements of section 1427(a) of this title, if the termination of such service has been more than six months preceding the date of filing the application for naturalization, except that such service within five years immediately preceding the date of filing such application shall be considered as residence and physical presence within the United States.

**(e) Moral character**

Any such period or periods of service under honorable conditions, and good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during such service, shall be proved by duly authenticated copies of the records of the executive departments having custody of the records of such service, and such authenticated copies of records shall be accepted in lieu of compliance with the provisions of section 1427(a) of this title.

**(f) 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, § 328, 66 Stat. 249; Pub. L. 90-633, § 5, Oct. 24, 1968, 82 Stat. 1344; Pub. L. 97-116, § 15(e), Dec. 29, 1981, 95 Stat. 1619; Pub. L. 101-649, title IV, § 407(b)(4), (c)(10), (d)(8), Nov. 29, 1990, 104 Stat. 5040-5042; Pub. L. 102-232, title III, § 305(c), Dec. 12, 1991, 105 Stat. 1750; Pub. L. 108-136, div. A, title XVII, § 1701(a), (b)(1), (c)(1)(A), (f), Nov. 24, 2003, 117 Stat. 1691, 1692; Pub. L. 110-382, § 3(a), Oct. 9, 2008, 122 Stat. 4088.)

**Editorial Notes****AMENDMENTS**

2008—Subsecs. (g), (h). Pub. L. 110-382, §§ 3(a), 4, temporarily added subsecs. (g) and (h) which related to processing and adjudication of applications for naturalization and required annual reports to Congress on failures to process and adjudicate certain applications within 1 year of filing due to delays in conducting required background checks. See Termination Date of 2008 Amendment note below.

2003—Subsec. (a). Pub. L. 108-136, § 1701(a), substituted “one year,” for “three years.”

Subsec. (b)(3). Pub. L. 108-136, § 1701(f), substituted “Secretary of Homeland Security” for “Attorney General”.

Pub. L. 108-136, § 1701(b)(1)(A), substituted “honorable (the)” for “honorable. The” and “discharge); and” for “discharge.”

Subsec. (b)(4). Pub. L. 108-136, § 1701(b)(1)(B), added par. (4).

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.

**Statutory Notes and Related Subsidiaries****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.)

**Editorial Notes**

**REFERENCES IN TEXT**

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