

Immigration and Naturalization Issues in the Deployed Environment

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Naturalization is an important issue for many U.S. Army Soldiers, especially for those Soldiers deployed overseas, and, more specifically, those Soldiers deployed in the combat zone in support of Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF). The privilege of U.S. citizenship brings not only significant benefits to the Soldier, such as the opportunity to reenlist beyond eight years of service² and the ability to obtain a security clearance,³ but also provides collateral opportunities and benefits to the Soldier's dependents and other family members.⁴ Although historically the process of immigrating to the United States and eventually becoming a citizen has been known to be slow and cumbersome, even for Soldiers, recent changes to United States law and policy have created extraordinary opportunities for Soldiers to naturalize more quickly and inexpensively than ever before. For example, for the first time in U.S. military history, non-U.S. citizen servicemembers may utilize expedited procedures and are entitled to preferential considerations in order to become U.S. citizens on foreign soil if they are serving in support of the Global War on Terror.⁵ This article addresses naturalization issues of recent relevance to servicemembers, with emphasis on procedures and advice for Legal Assistance office personnel in the deployed environment.

On 4 October 2004, forty-eight Soldiers, Airmen, and Marines participated in a naturalization ceremony in Baghdad, Iraq, as the first servicemembers ever to be sworn in on Iraqi soil as U.S. citizens.⁶ Just three days prior, on 1 October 2004, a similar naturalization ceremony was held in Afghanistan, marking the first ever naturalization ceremony for U.S. servicemembers on foreign soil. Legislation passed on 24 November 2003 now allows a military applicant for U.S. citizenship to take the exam, the interview, and the oath at certain overseas locations.⁷ The law authorizes and encourages commanders to provide military leave and transportation to qualifying servicemembers for naturalization purposes.⁸ The legislation also reduced from three years to one the years of military service required for non-citizens servicemembers to be eligible for citizenship,⁹ and waived all citizenship application fees for servicemembers.¹⁰ Additionally, in perhaps the most significant action with regard to military naturalization to date, President George W. Bush signed an executive order granting an exception to the service requirement for any active duty servicemember serving during the Global War on Terrorism.¹¹

The sheer size of the federal bureaucracy responsible for immigration and naturalization issues is impressive and can prove daunting for Soldiers unfamiliar with navigating the naturalization waters. The U.S. Citizenship and Immigration and Service (USCIS), formerly known as the Immigration and Naturalization Service, now falls within the Department of

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² U.S. DEP'T OF ARMY, REG. 601-280, ARMY RETENTION PROGRAM para. 3-8b (31 Mar. 1999) [hereinafter AR 601-280]. If the Soldier's citizenship application is pending at the eight-year-mark, the active Army component may extend the enlistment for a period not to exceed twelve months. *Id.* para 4-9k. The U.S. Army Reserve specifically prohibits any such extensions for noncitizens. *Id.* para 7-4a(2). Additionally, a military personnel (MILPO) message dated 12 May 2005 rescinded the prohibition on non-citizens reenlisting past eight years of service. It is unclear, however, whether the change will be permanent.

³ U.S. DEP'T OF ARMY, REG. 380-67, PERSONNEL SECURITY PROGRAM para. 3-400(c)(2) (9 Sept.1988) [hereinafter AR 380-67]. A security clearance is a necessity for many jobs in the U.S. Army.

⁴ U.S. Citizenship and Immigration Services, *About Us*, at <http://uscis.gov/graphics/services/visas.htm> (last visited Oct. 17, 2005) (describing the U.S. Citizenship and Immigration Application Process for dependents).

⁵ National Defense Authorization Act for Fiscal Year 2004, Pub. L. No. 108-136, 1701, 117 Stat. 1392, 1403 (2003) (codified at 8 U.S.C.S. § 1440 (LEXIS 2005)).

⁶ During the week of 27 July 2005, 144 servicemembers were interviewed, tested, and sworn in as United States Citizens in Baghdad.

⁷ National Defense Authorization Act for Fiscal Year 2004 § 1701 (codified at 8 U.S.C.S. § 1443a); *see also* E-mail from Don Moody, Supervisory Adjudications Officer N-400 Team, to 1LT Darrell Baughn, (18 Feb. 2005) (on file with authors) [hereinafter Moody E-mail] (listing Baghdad, Iraq; Frankfurt, Germany; Seoul, Korea; Tokyo, Japan; and certain locations in Afghanistan).

⁸ In late 2004, approximately 7,000 non-citizen service member applications were pending with the federal government; approximately 2,000 of those applications belong to servicemembers serving in OIF and OEF. *See* SPC Leah R. Burton, *Soldiers Take Oath of Citizenship in Iraq*, DEFENDAMERICA NEWS, Oct. 13, 2004, <http://www.defendamerica.mil/articles/oct2004/a101304a.html>

⁹ *See* 8 U.S.C.S. § 1439(a) (LEXIS 2005).

¹⁰ *See id.* § 1401.

¹¹ Exec. Order No. 13,269, 67 C.F.R. § 45287 (2002). The order made active duty non-citizen Soldiers immediately eligible to apply for citizenship.

Homeland Security and employs over 14,000 individuals in over 250 offices.¹² Like any large government agency, the USCIS manages a tremendous workload. In FY 2004 alone, the USCIS received over 662,188 naturalization applications, approved approximately 536,174 applications, denied at least 103,203 applications, and had over 653,190 applications pending.¹³ Fortunately for personnel of all military services, the Department of Defense and USCIS have partnered to streamline the application process for Soldiers.¹⁴ In the Army, overall responsibility with regard to the Soldier naturalization process lies with the unit personnel section.¹⁵ Instead of creating centralized help desks as the other three military services chose to do, the Army designated personnel services offices in the battalion (BN) or Brigade Combat Team (BCT), Personnel Services Battalion (PSB), Personnel Service Center (PSC), Military Personnel Division (MPD), or Military Personnel Office (MILPO) to assist Soldiers in the citizenship application process and to coordinate directly with the Army Human Resources Command. These personnel offices provide assistance at virtually every stage of the process, to include issuing initial eligibility worksheets and citizenship application documents, scheduling fingerprint appointments, reviewing completed documents, verifying Soldier service data, coordinating background checks with the Army Central Clearance Facility, and mailing the citizenship application packet to USCIS. In addition, although individual Soldiers are not authorized to contact USCIS directly, the Army has authorized these designated personnel representatives to contact USCIS on behalf of Soldiers.¹⁶

It is imperative to reiterate that the designated unit personnel services offices have primary responsibility for assisting the Soldier in the citizenship application process. As a client service, however, many legal assistance offices will review, upon request, the servicemember's application.¹⁷ Although each servicemember is ultimately responsible for ensuring that his naturalization application packet is complete and accurate, legal assistance personnel can play a vital role in verifying that application packets are complete and accurate upon first submission.¹⁸ To this end, when workload and resources permit, Client Services offices may want to conduct regular "citizen workshops" to assist large numbers of applicants at one time. This has proved to be extremely successful in Iraq. During these workshops, the attorney or paralegal should review each participant's application forms in detail to ensure that the Soldier has completed everything correctly. By conducting a pre-submission review with the Soldier and by noting common mistakes, the Client Services office emphasizes to the Soldier the importance of taking individual responsibility for his application and seeing the process through to completion. Client Services offices must emphasize that although judge advocate personnel provide advice and assistance, the onus remains with the Soldier to complete the packet properly. Diligence is important because a mistake in filling out the required application documents normally results in the USCIS sending a query letter to the Soldier's home address indicated on the application, which is often a stateside address. If USCIS fails to receive a response, the mistake could cause the application to be shelved and to be potentially abandoned by the USCIS.¹⁹

To begin the application process, the Soldier needs the following documentation:

1. Form N-400 Application, completed and signed.²⁰
2. Two standard passport photos.
3. Form N-426, certified by the appropriate military personnel.²¹

¹² U.S. Citizenship and Immigration Services, About Us, <http://uscis.gov/graphics/aboutus/index.htm> (last visited Oct. 17, 2005) (describing the U.S. Citizenship and Immigration Service).

¹³ U.S. Citizenship and Immigration Services, N-400 Naturalization Benefits, <http://uscis.gov/graphics/shared/aboutus/statistics/msrsep04/NATZ.HTM> (last visited Oct. 3, 2005) (providing the U.S. Citizenship and Immigration Statistics).

¹⁴ U.S. ARMY HUMAN RESOURCES COMMAND, THE SOLDIER'S GUIDE TO CITIZENSHIP APPLICATION (2000), available at <http://www.riley.army.mil/view/document.asp?ID=701-2003-04-15-57289-91> (providing the framework for citizenship packets and customer assistance).

¹⁵ U.S. DEP'T OF ARMY, PAM. 600-8-101, PERSONNEL PROCESSING (IN-,OUT-, SOLDIER READINESS, MOBILIZATION, AND DEPLOYMENT PROCESSING) para. 2-5b(4) (28 May 2003) [hereinafter DA PAM. 600-8-101].

¹⁶ E-mail from Leslie Lord, USAHRC Action Officer, to 1LT Darrell Baughn (24 Feb. 2005) [hereinafter Lord e-mail] (on file with authors).

¹⁷ U.S. DEP'T OF ARMY, REG. 27-3, THE ARMY LEGAL ASSISTANCE PROGRAM para. 3-5(f) (21 Feb.1996) [hereinafter AR 27-3]. All service member applications are processed through the USCIS Nebraska field office, where a staff of thirteen processes the entire caseload. See U.S. CITIZENSHIP AND IMMIGRATION SERVICES, NATURALIZATION INFORMATION FOR MILITARY PERSONNEL (2004), <http://uscis.gov/graphics/services/natz/MilitaryBrochurev7.pdf> (providing the basics of the naturalization process); Moody E-mail, *supra* note 7. While this is mainly a PSB function, client services at LSA Anaconda has undertaken this responsibility in order to ensure servicemembers who are serving their country overseas can obtain their citizenship more easily.

¹⁸ Legal Assistance Offices typically receive a large number of requests for assistance with citizenship applications. See SPC Leah Burton, *Legal Assistance Helps Soldiers Become Naturalized Citizens*, ANACONDA TIMES (Iraq), Jan. 16, 2005, at 2.

¹⁹ U.S. Citizenship and Immigration Services, How Do I Report a Change of Address to the UCIS?, <http://uscis.gov/graphics/howdoi/address.htm> (last visited Oct. 17, 2005) (providing answers to problems with changes of address).

²⁰ See U.S. Dep't of Justice, Form N-400, Application for Naturalization (July 2002), available at <http://uscis.gov/graphics/formsfee/forms/files/N-400.pdf> (the form can also be obtained by calling call 1-800-870-3676).

4. Form G-325B, Biographical Information.²²
5. Two Sets of fingerprints on FD-258, signed by the appropriate personnel, sealed in an envelope, and signed along the seal.
6. A letter indicating all the enclosures and including more information.²³

In order to complete the forms correctly without delay, the Soldier should obtain, at a minimum, his Alien Registration Number, which is on his permanent resident card,²⁴ and know a five-year history of previous employment and residence data.²⁵ Each male Soldier must have a selective service number and the date of his registration with the selective service.²⁶ Lastly, the Soldier should obtain evidence of military service, such as the Form 4-1 or 4-2 enlistment contract, DD 214, mobilization orders, or a recent leave and earnings statement. The typical client services workshop will take approximately three hours, including fingerprinting, photographing, and verification of the Soldier's service record.

Completing the N-400 Application for Naturalization

The instructions for completing the Application for Naturalization N-400 may be accessed on the internet.²⁷ The USCIS requires exact compliance with the application process. Uniformity and completeness is essential for an expedited application process. All applicants must either write legibly on the application or type the form online. If the USCIS cannot read the application, it may treat it as incomplete, causing the application to be abandoned if not corrected.²⁸ The applicant must answer each question—no question may be left blank.²⁹ The Soldier must enter his USCIS Alien Number on the top right of each page of this form in the block provided. In question 1A, the "Family Name" is the Soldier's last name and the "Given Name" is the Soldier's first name. If the Soldier does not have a middle name, then "n/a" or "none" should be indicated. The Soldier should enter his name *exactly* as it appears on his permanent resident card for 1B. In 1C, the Soldier should only enter other names as listed on his birth certificate or a maiden name and not a nickname. Assuming that the Soldier does not desire a change of name, then "no" should be indicated in question 1D; otherwise, the applicant must complete the process CONUS. If the Soldier wants to take advantage of the expedited application process and fee waiver offered to the military, the Soldier must mark question 2C as indicating the applicant is in the military.³⁰ This military box, when checked, notifies USCIS not to charge an application fee to expedite the review process. If the applicant does not answer this question correctly, USCIS transfers the Soldier's file to Vermont with no expedited review process and will include a request for the filing fee.

In question 3C, the date should be entered in standard month/day/year format. The date should *not* be entered in military format. The date format must be consistent throughout the application. In question 3H, "no" will typically be marked because the Soldier will not want to waive the U.S. history and government requirements. In question 3I, no Soldier should have any of the disabilities so listed. The response to question 4 should list as "home address" the Soldier's correct APO AE address for Iraq or the foreign duty station, unless the Soldier is redeploying within thirty days. The Soldier should also enter a valid U.S. mailing address. The USCIS will send mail to this address in three to six months, so the Soldier needs to enter a reliable person in the space marked "in care of" who will check the mail and forward it to him/her.³¹ Question 4C requires a valid, professional e-mail address.

²¹ See U.S. Dep't of Homeland Security, Form N-426, Request for Certification of Military or Naval Service (May 2004), available at <http://uscis.gov/graphics/formsfee/forms/files/N-426.pdf>.

²² See U.S. Dep't of Justice, Form G-325B, Biographic Information (Oct. 1982), available at <http://uscis.gov/graphics/formsfee/forms/files/g-325b.pdf>.

²³ A sample transmittal letter is provided at Appendix A.

²⁴ U.S. CITIZENSHIP AND IMMIGRATION SERVICES, A GUIDE TO NATURALIZATION 7 (2004), available at <http://uscis.gov/graphics/services/natz/English.pdf> [hereinafter A GUIDE TO NATURALIZATION] (providing guidance to the entire naturalization process). A Soldier's Alien Registration Number may also be found in the "My Personnel" file of the Soldier's Army Knowledge Online account.

²⁵ E-mail from SGT Raffel, Client Services Paralegal at LSA Anaconda, to ILT Darrell Baugh, Chief of Client Services at LSA Ananconda (10 Feb. 2005) (on file with authors).

²⁶ Servicemembers can register for the selective service or verify their registration at the Selective Service System, www.sss.gov (last visited 17 Oct. 2005).

²⁷ See U.S. Dep't of Justice, Form N-400 Instructions, Application for Naturalization (July 2002), available at <http://uscis.gov/graphics/formsfee/forms/files/n-400ins.pdf>.

²⁸ U.S. Citizenship and Immigration Services, USCIS Service Centers: National Information, <http://uscis.gov/graphics/fieldoffices/scnational/index.htm#H> (last visited Oct. 17, 2005) (providing providing general tips on assembling applications for mailing). While the Soldier can go on-line and type the forms, these forms cannot be saved without the proper software.

²⁹ *Id.*

³⁰ Moody E-mail, *supra* note 7.

³¹ A GUIDE TO NATURALIZATION, *supra* note 25, at 11.

Any additional page should be styled “Addendum to [Name of the Form and Number]” and should then indicate the Soldier’s full name and USCIS Alien number and include “Question ___; page ___.” This page should follow the question to which it refers and should be stapled in order. If a question calls for a separate sheet, the Soldier *must* include a separate sheet. For question 7A, if the Soldier is in Iraq, ensure the deployment is listed but the Soldier need not include it as a trip or count the days. The total number of days listed in the table needs to be totaled along with all the number of trips and so entered. A deployment from Fort Bragg that refuels in Germany and stops in Kuwait for a day and then goes to Iraq is one trip, but if the stop in Kuwait is over twenty-four hours, the Soldier should indicate that on the chart.

If the Soldier enters “yes” to any question in Part 10A, a separate sheet of paper *must* be attached to provide an explanation for the affirmative answer. While question 10A(6) asks about any title of nobility, the United States does not recognize titles of nobility. Question 10B(10) does not include Iraq when it asks if the Soldier has ever advocated the overthrow of any government. In question 10D, as will all parts of the application, each subquestion about moral character must be answered truthfully. Failure to list a conviction, even a petty conviction, may result in denial of the application because the Soldier lacks moral character.³² In question 10F, the Soldier should answer “yes” to subquestion number 29 because he has served in the U.S. Armed Forces. If the Soldier is a male, he must enter his selective service number in subquestion number 33 and the date he registered. If unknown, the Soldier can locate his selective service number and date at www.sss.gov.³³ If the answer to any question in H is “no,” the USCIS will probably deny this Soldier’s application.

Completing the N-426 Request for Certification of Military or Naval Service

The Soldier should fill out the page with the USCIS Alien number blank on the left and the date of the request on the right in triplicate but not the other pages. The Soldier should provide the name used during active duty service. The service number is the social security number. All Soldiers in Iraq are in active service for the purposes of this form. The Soldier should fill out the same information three times. Once complete, a representative from the PSB or any other authorized military official will verify the Soldier’s service record. This individual will fill out the next page in triplicate, and certify it by looking at the Soldier’s Form 4-1 or 4-2 Enlistment contract, any DD 214s, any mobilization orders, or even an LES which verifies the date the Soldier entered service.³⁴ The authorized military official should fill in all the blanks, especially the dates of service in question one, and if the Soldier served honorably in question five, and if the military discharged him due to alienage in question 11. Once verified, these three forms should be signed and stamped or sealed.

Completing the G-325B Biographic Information Form

The “Family Name” is the Soldier’s last name. “All other names” means official names and not nicknames. The address information and employment information should match the information provided on the Application for Naturalization form.

Fingerprint Cards

The Soldier should fill in the name, sign the card, list his residence, indicate the country of citizenship, fill in the sex, race, height, weight, eye color, hair, date of birth, place of birth, social security number, date the card, and fill in the employer and address. The person conducting the fingerprinting must also sign the card. The military is exempt from the fingerprint fee and the requirement that applicants be fingerprinted by USCIS. Thus, any certified individual may fingerprint the Soldier. At the Soldier’s Legal Center at LSA Anaconda in Iraq, the client services paralegals received fingerprint training and certification and obtained several fingerprint kits.³⁵ On the form, for the “reason fingerprinted,” the appropriate response is “N-400” and for the “miscellaneous number” the Soldier should use the alien number. The Soldier should complete two fingerprint cards and enclose them in a separate envelope. The person conducting the fingerprinting must sign across the seal of the envelope, tape over the signature, and enclose this envelope within the larger envelope containing the rest of the application.

³² *Id.* at 8.

³³ *See supra* note 27 and accompanying text.

³⁴ E-mail from N-400 Military Team, to 1LT Darrell Baughn, Chief of Client Services LSA Anaconda (Feb. 17, 2005) (on file with author).

³⁵ The U.S. Citizenship and Immigration Services provides fingerprint instructions for applications. *See* U.S. Citizenship and Immigration Services, Fingerprint instructions for all Immigrant Benefit Applications Naturalization Benefits Applicants, <http://uscis.gov/graphics/formsfee/finger/ALLAPPS1.htm> (last visited Oct. 17, 2005).

Photographs

The USCIS now accepts passport photographs; therefore, Soldiers can disregard all former rules regarding size of the person in the photograph.³⁶ While the USCIS may accept photographs printed on regular photographic paper by a color printer, the application will look more professional using a traditional passport photograph.

After the Soldier completes the application, and a legal assistance attorney or paralegal checks the packet, the Soldier or the servicing personnel office mails the packet to the Lincoln, Nebraska Service center. The Soldier should expect to wait up to six months before the USCIS contacts him. The USCIS does try to reduce the processing time for servicemembers to be no more than four months. The USCIS processes the applications of non-citizen servicemembers serving on active duty after 11 September 2001 on an “expedited” basis.³⁷

Once the application has been received and accepted, USCIS will assign a Lincoln, Nebraska tracking number (LIN) to the file and will then begin a thorough background investigation.³⁸ As the application is being processed, the Soldier should retrieve study material online and prepare to take the exam and interview.³⁹ At this point, the Soldier typically waits for another letter from USCIS informing him of the time for an interview. If the Soldier misses the interview and does not notify USCIS, the case will be closed by USCIS after one year.⁴⁰ After the interview, the Soldier is then set for a time to take the exam. Finally, after a successful interview and exam, the USCIS will contact the Soldier to schedule a date to be sworn in before a federal judge.

If a Soldier is overseas, he may qualify for an expedited application process. The Soldier may ask for permission to attend a special overseas ceremony and may qualify for leave for this event. The Soldier may coordinate with USCIS to be interviewed and tested by USCIS and sworn by a USCIS official in a 2-3 day period overseas.⁴¹ The designated personnel services office should contact USCIS by e-mail and request naturalization interviews at the next available opportunity for military personnel deployed in or assigned to CENTCOM.⁴²

After reviewing this note, judge advocates will be better able to assist Soldiers interested in going through the naturalization process and obtaining U.S. citizenship. Assistance by judge advocate personnel will increase the confidence of non-citizen Soldiers that their application packets are complete and accurate. Becoming a United States citizen is an extreme privilege for any person, but holds special significance to the brave non-citizen Soldiers who have volunteered to serve the nation during the Global War On Terrorism. Judge advocate personnel who participate in this effort perform a much-needed and professionally rewarding service to their fellow Soldiers.

³⁶ U.S. Citizenship and Immigration Services, USCIS is Making Photos Easier (July 2004), http://uscis.gov/graphics/publicaffairs/newsreels/04_08_02Photo_flyer.pdf.

³⁷ Memorandum, Immigration and Naturalization Service, The Department of Justice, to Directors, subject: Processing Expedited Naturalization Applications (23 Aug. 2000).

³⁸ E-mail from James S. Windle, CAO, USCIS, Dept. of Homeland Security, to 1LT Darrell Baughn, Chief of Client Services LSA Anaconda (7 Feb. 2005) (on file with author).

³⁹ U.S. Citizenship and Immigration Services, Eligibility and Testing, <http://uscis.gov/graphics/services/natz/require.htm> (last visited Oct. 17, 2005) (providing material to study for the exam).

⁴⁰ A GUIDE TO NATURALIZATION, *supra* note 25, at 10.

⁴¹ Lord e-mail, *supra* note 16.

⁴² *Id.*

Appendix

Many Soldiers who are deploying or redeploying encounter communication difficulties with USCIS. In order to reduce these problems, Soldiers may want to include the following transmittal letter with their application. This letter accompanies the USCIS application and has proven helpful in expediting Soldier's applications by adding information that might be useful to the USCIS:

USCIS NEBRASKA SERVICE CENTER
PO BOX 87426
LINCOLN NE 68501-7426

_____200_

RE: Application for Naturalization; Name _____
Alien# _____

1. This facilitated military application contains the following documentation and/or information:

___ Form N-400, completed and signed

___ Pictures

___ All fees waived after October 1, 2004.

___ Form N-426 which has been certified by the appropriate military personnel office as required by USCIS policy.
(It has been verified by the appropriate PSB)

___ Form G-325B, Biographical Information.

___ Fingerprints on Form FD-258 (\$50.00 waived if the service member is overseas)

2. Contact Information and Request for Interview:

a. I am currently deployed to Iraq in support of Operation Iraqi Freedom (OIF) and expected to return to the United States on or about _____.

b. Request interview at the following USCIS office: _____.

_____ I am currently stationed overseas and request consideration about finalizing the interview/oath at this overseas location: _____.

c. Request interview date after _____.

d. My current APO address is: _____

e. My stateside address is: _____

f. United States phone: _____

g. E-mail address: _____

3. Any correspondence regarding the status of this application please e-mail me at the above address.

Signature: _____