



ARMY STRONGSM

MAVNI

Military Accessions Vital to the National Interest Legal Issues

Margaret D. Stock

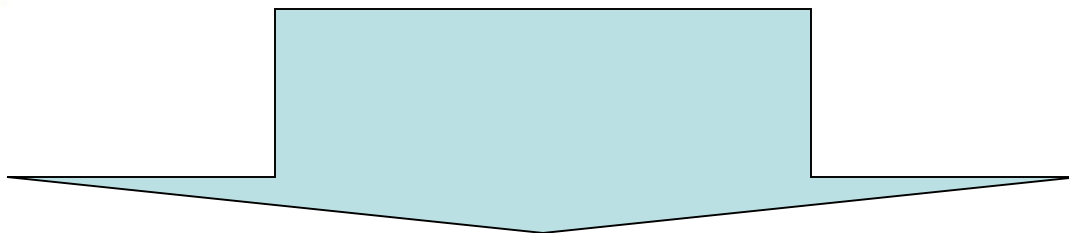
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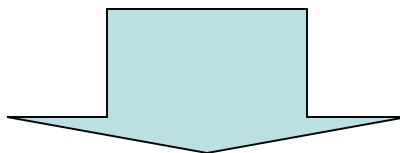
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From “Alien” to “Citizen”

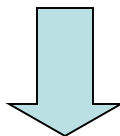
“Alien”



Non-immigrant (F-1, H-1B, etc.)



Immigrant (Lawful Permanent Resident)



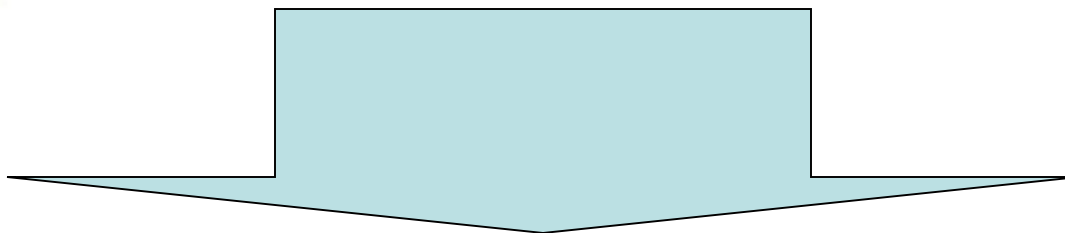
Citizen



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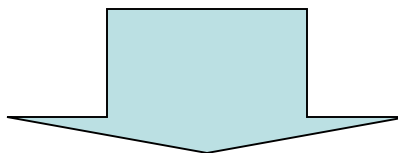
From “Alien” to “Citizen”

“Alien”

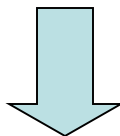


5-15 years

Non-immigrant



Immigrant (Lawful Permanent Resident)



Citizen

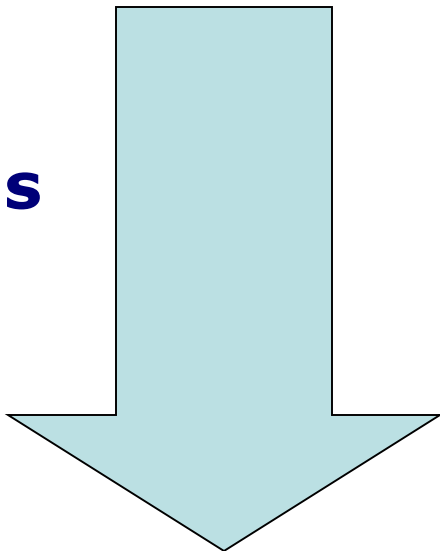


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From “Alien” to “Citizen”: The Wartime Military Exception

“Alien”
(Legal or Illegal)

< 6 months



Citizen





8 U.S.C. § 1440

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“*Any person* who, *while an alien* or a noncitizen national of the United States, has *served honorably in an active-duty status or in the Selected Reserve of the Ready Reserve* . . . during any [] 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 . . . whether or not he has been lawfully admitted to the United States for permanent residence.*”



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Ex. Or. No. 13,269 of July 3, 2002, 67 Fed.Reg. 45, 287 (July 8, 2002)

- By the authority vested in me as President . . . it is hereby ordered as follows:
- . . . I designate as a period in which the Armed Forces of the United States were engaged in armed conflict with a hostile foreign force *the period beginning on September 11, 2001*. Such period will be deemed to terminate on a date designated by future Executive Order. Those persons serving honorably in active-duty status in the Armed Forces of the United States, during the period beginning on September 11, 2001, and terminating on the date to be so designated, *are eligible for naturalization* . . .



10 USC §504 (2006)

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- (1) A person may be enlisted in any armed force only if the person is one of the following:
 - (A) A national of the United States . . .
 - (B) An alien who is lawfully admitted for permanent residence . . .
 - (C) A person described in . . . one of the following compacts:
 - (i) The Compact of Free Association between the Federated States of Micronesia and the United States . . .
 - (ii) The Compact of Free Association between the Republic of the Marshall Islands and the United States . . .
 - (iii) The Compact of Free Association between Palau and the United States . . .
- (2) **Notwithstanding paragraph (1), the Secretary concerned may authorize the enlistment of a person not described in paragraph (1) if the Secretary determines that such enlistment is vital to the national interest.**



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Discharge Issues

“ . . . 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

Citizenship granted pursuant to this section may be revoked

. 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. . . .”



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ICE DSO Guidance

- Found at http://studyinthestates.dhs.gov/sites/default/files/MAVNI_Fact_Sheet_for_DSOs_0.pdf
- Outdated information
 - Written before MAVNI Reserve option was offered
 - Conflicting agency info on naturalization
 - Does not provide correct guidance to family members
- Family members should talk to a lawyer before leaving the United States



SEVIS Reporting of MAVNIs

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- Encourage recruits to maintain status as long as possible
- Terminate SEVIS record (if the student has not completed program) within 30 days of the session start date in which the student cannot enroll, or within 21 days of the date in the middle of a term upon which he/she can no longer maintain student status
- If a dependent, terminate in SEVIS for reason of "Other"
- If the student has notified a DSO of his/her enlistment & departure, the termination reason should be "Authorized Early Withdrawal." If not, the termination reason should be "Otherwise Failing to Maintain Status."
- In the Remarks section of the Form I-20, state: Student/dependent has maintained status up to the present time; is being terminated because of MAVNI enlistment in the US Army; date on which he/she must report, if known
- There is a period of lapsed status between the termination of the SEVIS record and the filing of the Form N-400, Application for Naturalization



Applying for Naturalization

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- ICE guidance says “urge the student to apply for naturalization as soon as possible”
- BUT . . .
 - Applying before BCT will cause confusion at USCIS
 - Two naturalization packets may be created at USCIS
 - Case will not be approved before graduation from BCT
 - Naturalization may be delayed
- Correct guidance: Prepare N400 packet to submit at Basic Combat Training



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Fort Sill, OK on 23 Oct 09



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Presubmitted Questions

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- **Term of Service**
- **Types of Discharges**
 - Entry-level, uncharacterized
 - No military naturalization allowed
 - Other than Honorable, Bad Conduct, Dishonorable
 - No military naturalization allowed
 - Honorable, General under Honorable Conditions
 - Military naturalization allowed
- **J-1 Exchange Visitor 212(e) issue**
 - Section 212(e) does not apply to military naturalization applicants or their dependents



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