



PRACTICE ADVISORY

No. 10-20

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COMPLIANCE WITH COURT ORDER VACATING DOD-IMPOSED TIME IN SERVICE REQUIREMENTS FOR HONORABLE SERVICE DETERMINATIONS FOR PURPOSES OF EXPEDITED NATURALIZATION

Purpose. This Practice Advisory explains a recent Federal court order that vacates DoD-imposed time in service requirements for honorable service determinations for purposes of naturalization: *Samma v. Department of Defense, et al.*, No. 1-20-cv-01104-ESH (D.D.C., Aug. 25, 2020). It is not yet known whether the Department of Justice will appeal.

Background. Reference (a), Section 1440 of title 8, U.S. Code, allows expedited naturalization processing for certain service members who serve honorably during Presidentially declared periods of armed conflict with a hostile foreign force (e.g., War on Terrorism). Just one day of honorable service qualifies. Reference (b) established standards and procedures applicable to certifying honorable service for non-U.S. citizen military members for purposes of naturalization. A minimum time in service requirement of 180 days for active component service members and one year for Reservists was included in those standards. Reference (c) delegates authority to certify honorable service on United States Citizenship and Immigration Services (USCIS) Form N-426, Request for Certification of Military or Naval Service, to commanding officers serving in paygrade O-6 or higher in a service member's chain of command. References (d) and (e) require the certifying official must process and return USCIS Form N-426 to the service member concerned within 30 days of submission. Reference (f) vacates the DoD-imposed minimum time in service requirement for certification of honorable service on USCIS Form N-426 and directs a 30 day turnaround time for certifying officials to process the Form. Reference (g) suspends the time in service requirement and directs the Military Departments to immediately comply with the Court Order. Reference (h) further directs the Navy and Marine Corps to immediately comply with the Court Order.

Discussion.

1. The Court in *Samma* specifically vacated paragraphs 1.3.a and 1.3.b of ref. (b), which provided the following:
 - a. A service member in an Active Component can only obtain a certified USCIS Form N-426 if that service member has successfully completed basic training requirements of the Armed Forces for which he/she is a member; AND completed at least 180 days consecutive days of active duty service, inclusive of the successful completion of basic training....
 - b. A service member in the Selected Reserve of the Ready Reserve can only obtain a certified USCIS Form N-426 if that service member has successfully completed the basic training requirements of the Armed Forces of which he/she is a member; AND completed at least one year of satisfactory service toward non-regular retirement in accordance with (DoDI) 1215.07, "Service Credit for Non-Regular Retirement," as a member of the Selected Reserve, inclusive of the member's successful completion of basic training....
2. A MARADMIN pending release will implement refs. (f), (g), and (h) and suspend the current minimum time in service requirements, as detailed in paragraph 1 above, for purposes of expedited naturalization processing. Certifying officials must certify or deny requests for certification of honorable service on USCIS Form N-426 expeditiously but no longer than 30 days from receipt.

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- References:** (a) Section 1440, title 8, U.S. Code
(b) OUSD (P&R) Memo dtd 13 Oct 17
(c) MARADMIN 385/18
(d) OUSD (P&R) Memo dtd 24 Apr 20
(e) MARADMIN 329/20
(f) Court Order and Judgment *Samma v. Dept. of Defense, et al.*
(g) OUSD (P&R) Memo dtd 31 Aug 20
(h) OASN (M&RA) Memo dtd 3 Sep 20

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