Immigration Issues

Immigration Benefits and Policy Developments for Servicemembers and their Families

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Immigration Benefits for Military Families

Melissa Halsey
Chief, Legal Assistance Policy Division
Office of the Judge Advocate General

Army Legal Assistance Policy Division

- Immigration issues have become increasingly complex:
  - Closure of many/most USCIS overseas offices
  - Announced end of certain categories of parole in place
  - MAVNI litigation
Army Legal Assistance Policy Division

- Solutions:
  - Establishment of USCIS quarterly ‘hub’ visits to military bases around the world
  - State Department processing of I-130 overseas, USCIS domestic processing at lockbox
  - NDAA section 526 timeline for certifying military service to be established by DoD
  - USCIS updated Form N-426
  - NDAA section 1758 (sense of Congress parole in place)

Army Legal Assistance Policy Division

- Policy trends in our Army immigration practice
  - Assistance with immigration cases will be a required case type in updated AR 27-3

Immigration Benefits for Military Families

Zaira D. Solano
Founder, Solano Law Firm
Immigration Benefits for Military Families

The Basics…
Getting a Green Card

Lawful Permanent Resident Status

- Parole in Place
- Adjustment of Status
- Consular Process

How does an immigrant obtain a green card?

- Immigrant Visa (Outside the US)
  - Granted visa at US Embassy or Consulate
  - Allowed to enter the US as Lawful Permanent Resident (LPR)
  - Must have approved petition establishing a relationship to USC or LPR

- Adjustment of Status (Inside the US)
  - Obtaining LPR status while in the US
Immigration Benefits for Military Families

In the US or abroad, the case has the same foundation

Immigration Benefits for Military Families

Family Petition (Form I-130)

Petition filed by U.S. Citizen (USC) or Lawful Permanent Resident (LPR) of the United States to establish the relationship to certain alien relatives who wish to immigrate to the United States.

• Spouse
• Parent
Immigration Benefits for Military Families

Family Petition - Relationships

- Child
  - Unmarried, under 21
  - Married or over 21
- Sibling

- Spouse
- Parent
- Child
  - Unmarried, under 21
  - Married or over 21
- Sibling

Family Petition – Child (Under 21)

- Biological in wedlock
- Stepchild
  - Child under 18 when parent marries step-parent
Immigration Benefits for Military Families

Family Petition – Child (Under 21)
• Out of Wedlock, must be:
  • Acknowledged;
  • Legitimated; and
  • Caring parent-child relationship
• Adopted under age 16
  • Also, under age 18 with sibling who is under age 16 adopted
• Orphan

Family Petition – Sibling
• Petitioner must be USC and 21 or older
  • Both must be “children of the same parent”

Family Petition – Spouse
• The Marriage must:
  • Have been valid at the time it was performed;
    • Each party legally able to marry
    • Prior divorces must have been valid
    • Marriage ceremony must be recognized as legal where it was performed
  • Exist at time of filing;
  • Not have been entered into for the purpose of conferring permanent resident status on the alien.
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Family Petition – Spouse

• Common Law Marriage
  • Not recognized for immigration purposes, unless they are legal in the jurisdiction of residence
• "Customary" Marriages
  • Performed according to local custom and not under a license from civil authority.
  • If recognized by the country = valid marriage
• Same Sex Marriage

Family Petition – Proving Good Faith Marriage

• Affidavit from each, Petitioner and Beneficiary
• Affidavits from family/friends
• Birth certificates of children born to both;
• Joint Income Returns for every year of the marriage.
• Joint Bank statements for checking/savings
• Home mortgage documents and/or Leases in both names;
  • Bills and utility statements;
  • Proof of joint insurance coverage such as health, life, and/or auto;
  • Personal mail to the same address;
  • Family Pictures;
  • Letters, Emails, Facebook messages between Petitioner and Beneficiary;
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Family Petition – Proving Good Faith Marriage

• Greeting Cards (Birthday, Valentine’s Day, Christmas, Anniversary, etc…);
• Wedding plan documents (invitation, vendor invoices, vendor contracts…etc.)

Family Petition – Who Can File?

**USC can file for:**
- Spouse
- Parent
- Child – unmarried less 21
- Son/daughter –
  - Over 21
  - Married
- Siblings – married/unmarried
- Orphan
- Fiancé

**LPR can file for:**
- Spouse
- Child – unmarried les 21
- Son/daughter –
  - Over 21
  - Married

Fiancé

Family Petition – Visa Preferences

**USC can file for:**
- F1: Son/daughter – over 21, unmarried
- F3: Son/daughter – over 21, married
- F4: Siblings – married/unmarried

**LPR can file for:**
- F2A: Spouse
- F2B: Child – unmarried under 21
- F2B: Son/daughter – over 21, married

**USC can file for:**
- Spouse
- Parent
- Child – unmarried and under 21
Immigration Benefits for Military Families

Family Petition – Visa Bulletin (March 2020)

Available at www.travel.state.gov

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Immigration Benefits for Military Families

Family Petition – Preparation
• G-28 Notice of Entry of Appearance as Attorney
• I-130 Petition for Alien Relative
• I-130A if Spousal relationship
• Identity documents
• Evidence of Relationship
  • Evidence of Good Faith Marriage if based on marriage
• Filing Fee $535.00; Filed with DHS
• Passport Photos

Immigration Benefits for Military Families

Location of Family Member matters
**Immigration Benefits for Military Families**

**Family Member in the United States**

- Beneficiary entered the US illegally = PIP + AOS
  - Two step process
  - Average time PIP 6 - 12 months
  - Average time AOS 6 - 12 months
  - Only for spouse, parent, or child of USC
- Spouse/Parent entered legally = AOS only
  - One Step Process
  - Average time AOS 6 - 12 months
  - Only for spouse, parent, or child of USC

**Family Member Abroad**

- Family member abroad
  - Two step process
  - Average time Family Petition 6 - 12 months
  - Average time Consular Process 6 - 12 months
Immigration Benefits for Military Families

Parole in Place

PIP

Parole in Place – Eligibility

• Spouse, Parent, Child of an:
  • Active Duty Military
  • Individual in Selected/Ready Reserve
  • Individual who previously served on Active Duty or Selected/Ready Reserve and was not dishonorably discharged
  • Entered the United States illegally

Parole in Place – Preparation

• G-28 Notice of Entry of Appearance as Attorney
• I-131 Application for Travel Document
• Identity Documents
• Evidence of relationship
• Evidence that your family member is a current or former member of the U.S. armed force
  • Military ID
  • DD Form 124
Immigration Benefits for Military Families

Parole in Place – Preparation

- Two identical, color passport-style photographs
- Filing Fee $0.00; File with US DHS
- Evidence of any additional favorable discretionary factors
- Statement from Service Member
- Letters of Good Moral Character
- Ties to the community and family in the US
- Employment records and taxes

Immigration Benefits for Military Families

Adjustment of Status – Eligibility

- Approved I-130 but this form can be concurrently filed.
- Lawful entry or approved PIP
- Not subject to grounds inadmissibility
  - If subject, then you need to file a waiver if the Beneficiary qualifies for one

Immigration Benefits for Military Families

Adjustment of Status

AOS
Immigration Benefits for Military Families

Adjustment of Status - Preparation

• G-28 Notice of Entry of Appearance as Attorney
• I-485 Application to Register Permanent Residence or Adjust Status
• I-130A if Spousal relationship
• I-864 Affidavit of Support

Adjustment of Status - Evidence

• Everything for the I-130 if filing concurrently
• Evidence of lawful entry or PIP approval notice
• I-864 Affidavit of Support and Proof of Income
  • W-2 or 1099
  • Income Tax Transcripts
  • Paystubs
  • Evidence of legal status
  • Certified Dispositions for criminal convictions

Filing Fees

• $1760 (I-130 and I-485)
• $1225 (I-485 only)

File with US DHS
### Immigration Benefits for Military Families

#### Adjustment of Status - Interview
- DHS interviews Petitioner and Beneficiary
- Originals must be presented to officer
- Must provide certified dispositions for all arrests
- Decision
  - At Interview
  - Officer states to wait for it in the mail

#### K-1 Fiancé
- Must marry within 90 days
- Can only adjust if Applicant marries the USC who filed for K-1 visa

#### Conditional Residence
- Granted LPR status for a period of 2 years, if based on marriage that is less than 2 years old at time of filing
CONSULAR PROCESS

Consular Process – Eligibility

- Almost the same as Adjustment of Status
- Approved I-130 (or I-129F if fiancé)
- Not subject to grounds inadmissibility
- If subject, then you need to file a waiver if the beneficiary qualifies for one

Consular Process – Preparation

- G-28 Notice of Entry of Appearance as Attorney
- Filed with Department of State - Consular Electronic Application Center
- DS-260 Immigrant Visa Electronic Application
- Payment of Immigration Visa Fee $325 and Affidavit of Support fee $120
Immigration Benefits for Military Families

Consular Process – Evidence

- Police Certificate from all countries where Beneficiary lived after age 18
- I-864 Affidavit of Support and Proof of Income
  - W-2 or 1099
  - Income Tax Transcripts
  - Paystubs
  - Evidence of legal status
  - Certified Dispositions for criminal convictions

Consular Process - Interview

- Consulate interviews Beneficiary only
- Decision
  - At Interview
  - Beneficiary enters the US
  - Beneficiary pays $210 for green card processing
Immigration Benefits for Military Families

Complications

- Pending deportation proceedings
- Prior deportation orders
- Criminal convictions
- Inadmissibility bars
- Re-entry
- False Claim to USC
- Public Charge

Resources

- ILRC – Immigrant Legal Resource Center www.ilrc.org
- AILA – American Immigration Lawyers Association www.aila.org

15 MIN. BREAK
Pentagon Joint Legal Assistance Office

- Joint Legal Assistance
- Military Statistics
- Military Naturalization
- Spouse Naturalization

Pentagon Joint Legal Assistance Office

- Client Eligibility
- Subject Matter Areas
- Immigration Services Capabilities
- Where Members Turn For Immigration Help
Pentagon Joint Legal Assistance Office

- 226+ Legal Assistance Offices
- 10 USC §1044
- AR 27-3 (Army)
- AFI 51-304 (USAF)
- JAGINST 5801.2; JAGMAN CH VII (Navy)
- MCLAP Policy & Practice Manual (USMC)
- COMDTINST 5801.4F (USCG)

PJLAO: Immigrants in the Military

Rich History of Immigrants In The U.S. Military

- Marquis de Lafayette to General Shalikashvili
- 1840's: 50% of Recruits Were Foreign Born
- Civil War: > 20% Union Soldiers
- 1898: 25% of Military (15% of U.S. Population)
- WWI: 18% of U.S. Military Service Members
- WWII: 300K FB, 109K Were Non-Citizens

PJLAO: STATS

- 2,100,000+ in U.S. Armed Forces
- AD: 1,300,000; Reserves: 800,000
- There are approximately 115,000 foreign-born serving in the U.S. Armed Forces.
- 40,000 LPRs Serve in Our Armed Forces
- 8,415 LPRs Enlisted in 2019 (Active Duty)
- 13,099 LPRs Enlisted in 2019 (AD, Reserve, & Guard)
PJLAO: MILITARY NATURALIZATION

• Statistics
• Benefits to Naturalizing
• Barriers to Naturalization
• Paths to Naturalization

Roughly 81 percent of foreign-born service members are naturalized at some point while on Active Duty (M.P.I.)

- 109,321 Naturalized FY 2002- FY 2018
- 11,483 Naturalized Overseas in 30 Countries (2002-18)
- Basic Training Naturalization (2009-2016)
- 4,423 Naturalized at Basic Training in FY 2016

Declining Military Naturalizations

- 17 October 2017 DoD Memo
- End of Boot Camp Naturalizations
- Increasing Denials (17.6% vs 11% for civilians)
- Closure of Overseas Offices (23 to 4 “hubs”)

FY 2010: 11,230
FY 2016: 8,770
FY 2018: 4,135
**PJLAO: MILITARY NATURALIZATION**

- **Birth – Jus soli, not jus sanguinis**
  - Mere birth in U.S. (even to illegally present parents)
  - Birth outside U.S. to U.S. parents who have lived in U.S.

- **Naturalization – May apply after five years of PR with 2.5 year of “physical presence”: 3/1.5 for spouses of U.S. citizens. Exceptions: INA §328, INA §329, MAVNI (10 USC 504)**

- **Dual Citizenship Allowed (Caveat, Security Clearance)**

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**General Benefits of Naturalizing**

- Elected Office
- Voting
- Jury Service
- Full Constitutional Rights
- All Government Jobs
- Not Removable (Caveat: De-Naturalization)

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**Military Benefits of Naturalizing**

- Officer Commissioning
- Security Clearance
- Access to Greater Number of Assignments
- Higher Level Positions
- Eliminates LPR Legal Risks
**PJLAO: MILITARY NATURALIZATION**

**Military Benefits of Naturalizing**
- "Immediate Eligibility" (GWOT Waives 3/5 Year Wait, E.O. 13269)
- Expedited Processing Through National Benefits Center
- N-400 Fees Waived (1991- $90; 2010 - $675; 2020 - $725)
- BUT: Revocation if Separated with Other Than Honorable Discharge Prior to Having Served 5 Years (8 U.S.C. §1440(c))

**PJLAO: MILITARY NATURALIZATION**

**Military Barriers To Naturalizing**
- PCS – Fall Out of Jurisdiction; Lost Mail
- TAD/TDY – Appointments Missed
- Deployments
- Lack of Command Involvement
- Command Interference/Bad Advice
- Barracks & Sea “Lawyers”
- Security Concerns

**PJLAO: MILITARY PATHS TO NATURALIZATION**

- Peacetime Military Naturalization Statute INA §328
- Wartime Military Naturalization Statute – INA §329
- Military Accessions Vital to the National Interest – (MAVNI, 10 USC §504(b)(2))
- Overseas Naturalization
- Expedited/Family Naturalization
- Posthumous Naturalization
**PJLAO: MILITARY NATURALIZATION**

***Peacetime Military Naturalization INA §328***

- Be age 18 or older & an LPR
- 1 Year Honorable Service; Honorable Discharge
- Basic English Literacy; U.S. History & Civics
- Attached to the principles of the U.S. Constitution
- Good Moral Character
- Have continuously resided in the United States for at least five years and have been physically present in the United States for at least 30 months out of the 5 years immediately preceding the date of filing the application, UNLESS the applicant has filed an application while still in the Service or within 6 months of separation.

**PJLAO: MILITARY NATURALIZATION**

***Wartime Military Naturalization INA §329***

- No Minimum Age, No LPR Requirement
- One Day of Honorable Service (DoD:180 Days)
- Qualifying Period of Hostility
- No i-751 Filing Required if CPR
- Basic English Literacy; U.S. History & Civics
- Attached to the Principles of the U.S. Constitution
- Good Moral Character 1 Year Prior to Filing
- Exempt from the Continuous Residence and Physical Presence Requirements for Naturalization

**PJLAO: MILITARY NATURALIZATION**

***Posthumous Naturalization INA §329A***

- Honorable Service
- Died as a result of injury or disease incurred while serving in an active duty status during specified periods of military hostilities
- File Form N-644 within 2 Years of Death
- Certificate of Citizenship Issued
- Also: Benefits for Surviving Family Members (Natz & LPR for spouse, children, parents)
PJLAO: MILITARY NATURALIZATION

13 October 2017 USD (P&R) Memos:

• No LPRs Can Ship to Basic Training Without a Completed National Security Determination and Military Service Suitability Determination (MSSD)
• No N-426 Certification Without Favorable MSSD, 180 Days AD Service (or 1 Yr Drills), and Completion of Basic Training
• Recall & Decert of All Pending N-426s

Naturalization Package

• N-400 (20 pages, 100 questions)
• N-426
• G-1145
• Orders
• Green Card
• No Money
• Mailed to USCIS Chicago’s Military Address
• (Fingerprints)

Post-Filing

• Fingerprints and photos (ASC CONUS, MPs OCONUS)
• Study for USCIS civics and English tests and wait to be called for Naturalization interview and tests:
  • https://www.uscis.gov/us-citizenship/naturalization-test
• Naturalization Ceremony (Oath of Allegiance, receipt of Certificate of Naturalization)
**PJLAO: SPOUSE NATURALIZATION**

**Expedited Spouse Naturalization §319(b)**

- Be age 18 or older;  
- Spouse of USC service member who is (or will be) stationed abroad  
- Be present in the U.S. as an LPR at the time of your naturalization application interview and your swearing-in  
- Declare in good faith an intent to reside abroad with your USC spouse and to reside in the U.S. immediately upon your spouse’s return CONUS  
- Basic English literacy; U.S. History & Civics  
- Good moral character; No Minimum Time As LPR  
- Attached to the principles of the U.S. Constitution

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**PJLAO: SPOUSE NATURALIZATION**

**Overseas Spouse Naturalization §319(e)(2)**

- Be age 18 or older;  
- Spouse of U.S. citizen service member stationed abroad  
- Authorized to accompany your spouse abroad (Orders)  
- Reside abroad in marital union with your spouse  
- §316(a): 5 years LPR, 30 months presence in U.S.  
- §319(a): 3 years LPR, 18/36 months in U.S.  
- Basic English literacy; U.S. History & Civics  
- Good moral character  
- Attached to the principles of the U.S. Constitution

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**Pentagon Joint Legal Assistance Office**

**USCIS Military Help Line:**
- 1-877-CIS-4MIL (1-877-247-4645)

**USCIS Military E-Mail:**
- militaryinfo@uscis.dhs.gov

**AILA MAP:**
- [https://www.aila.org/practice/pro-bono/find-your-opportunity/military-assistance-program/client-information](https://www.aila.org/practice/pro-bono/find-your-opportunity/military-assistance-program/client-information)