

PUBLIC LAW 108-136—NOV. 24, 2003

NATIONAL DEFENSE AUTHORIZATION ACT
FOR FISCAL YEAR 2004

EXHIBIT B

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TITLE XVII—NATURALIZATION AND OTHER IMMIGRATION BENEFITS FOR MILITARY PERSONNEL AND FAMILIES

- Sec. 1701. Requirements for naturalization through service in the Armed Forces of the United States.
- Sec. 1702. Naturalization benefits for members of the Selected Reserve of the Ready Reserve.
- Sec. 1703. Extension of posthumous benefits to surviving spouses, children, and parents.
- Sec. 1704. Expedited process for granting posthumous citizenship to members of the Armed Forces.
- Sec. 1705. Effective date.

SEC. 1701. REQUIREMENTS FOR NATURALIZATION THROUGH SERVICE IN THE ARMED FORCES OF THE UNITED STATES.

(a) **REDUCTION OF PERIOD FOR REQUIRED SERVICE.**—Section 328(a) of the Immigration and Nationality Act (8 U.S.C. 1439(a)) is amended by striking “three years,” and inserting “one year,”.

(b) **PROHIBITION ON IMPOSITION OF FEES RELATING TO NATURALIZATION.**—Title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.) is amended—

(1) in section 328(b)—

8 USC 1439.

(A) in paragraph (3)—

(i) by striking “honorable. The” and inserting “honorable (the”;

(ii) by striking “discharge.” and inserting “discharge); and”;

(B) by adding at the end the following:

“(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.”; and

(2) in section 329(b)—

8 USC 1440.

(A) in paragraph (2), by striking “and” at the end;

(B) in paragraph (3), by striking the period at the end and inserting “; and”;

(C) by adding at the end the following:

“(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) **REVOCAION OF CITIZENSHIP FOR SEPARATION FROM MILITARY SERVICE UNDER OTHER THAN HONORABLE CONDITIONS.**—

(1) **IN GENERAL.**—Title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.) is amended—

(A) by adding at the end of section 328 the following:

“(f) Citizenship granted pursuant to this section may be revoked in accordance with section 340 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 340. 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.”; and

8 USC 1440.

(B) by amending section 329(c) to read as follows:

“(c) Citizenship granted pursuant to this section may be revoked in accordance with section 340 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 340. 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.”

- 8 USC 1439 note.

(2) EFFECTIVE DATE.—The amendments made by paragraph

(1) shall apply to citizenship granted on or after the date of the enactment of this Act.

Availability.
8 USC 1443a.

(d) NATURALIZATION PROCEEDINGS OVERSEAS FOR MEMBERS OF THE ARMED FORCES.—Notwithstanding any other provision of law, the Secretary of Homeland Security, the Secretary of State, and the Secretary of Defense shall ensure that any applications, interviews, filings, oaths, ceremonies, or other proceedings under title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.) relating to naturalization of members of the Armed Forces are available through United States embassies, consulates, and as practicable, United States military installations overseas.

8 USC 1443a
note.

(e) FINALIZATION OF NATURALIZATION PROCEEDINGS FOR MEMBERS OF THE ARMED FORCES.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall prescribe a policy that facilitates the opportunity for a member of the Armed Forces to finalize naturalization for which the member has applied. The policy shall include, for such purpose, the following:

(1) A high priority for grant of emergency leave.

(2) A high priority for transportation on aircraft of, or chartered by, the Armed Forces.

(f) TECHNICAL AND CONFORMING AMENDMENT.—Section 328(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1439(b)(3)) is amended by striking “Attorney General” and inserting “Secretary of Homeland Security”.

SEC. 1702. NATURALIZATION BENEFITS FOR MEMBERS OF THE SELECTED RESERVE OF THE READY RESERVE.

Section 329(a) of the Immigration and Nationality Act (8 U.S.C. 1440(a)) is amended by inserting “as a member of the Selected Reserve of the Ready Reserve or” after “has served honorably”.

SEC. 1703. EXTENSION OF POSTHUMOUS BENEFITS TO SURVIVING SPOUSES, CHILDREN, AND PARENTS.**(a) TREATMENT AS IMMEDIATE RELATIVES.—**

8 USC 1151 note.

(1) SPOUSES.—Notwithstanding the second sentence of section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)), in the case of an alien who was the spouse of a citizen of the United States at the time of the citizen's death and was not legally separated from the citizen at the time of the citizen's death, if the citizen served honorably in an active duty status in the military, air, or naval forces of the United States and died as a result of injury or disease incurred in or aggravated by combat, the alien (and each child of the alien) shall be considered, for purposes of section 201(b) of such Act, to remain an immediate relative after the date of the citizen's death, but only if the alien files a petition under section 204(a)(1)(A)(ii) of such Act within 2 years after such date and only until the date the alien remarries. For purposes of such section 204(a)(1)(A)(ii), an alien granted relief under the preceding sentence shall be considered an alien spouse described in the second sentence of section 201(b)(2)(A)(i) of such Act.

(2) CHILDREN.—

(A) IN GENERAL.—In the case of an alien who was the child of a citizen of the United States at the time of the citizen's death, if the citizen served honorably in an active duty status in the military, air, or naval forces of the United States and died as a result of injury or disease incurred in or aggravated by combat, the alien shall be considered, for purposes of section 201(b) of the Immigration and Nationality Act (8 U.S.C. 1151(b)), to remain an immediate relative after the date of the citizen's death (regardless of changes in age or marital status thereafter), but only if the alien files a petition under subparagraph (B) within 2 years after such date.

(B) PETITIONS.—An alien described in subparagraph (A) may file a petition with the Secretary of Homeland Security for classification of the alien under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)). For purposes of such Act, such a petition shall be considered a petition filed under section 204(a)(1)(A) of such Act (8 U.S.C. 1154(a)(1)(A)).

(3) PARENTS.—

(A) IN GENERAL.—In the case of an alien who was the parent of a citizen of the United States at the time of the citizen's death, if the citizen served honorably in an active duty status in the military, air, or naval forces of the United States and died as a result of injury or disease incurred in or aggravated by combat, the alien shall be considered, for purposes of section 201(b) of the Immigration and Nationality Act (8 U.S.C. 1151(b)), to remain an immediate relative after the date of the citizen's

death (regardless of changes in age or marital status thereafter), but only if the alien files a petition under subparagraph (B) within 2 years after such date.

(B) PETITIONS.—An alien described in subparagraph (A) may file a petition with the Secretary of Homeland Security for classification of the alien under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)). For purposes of such Act, such a petition shall be considered a petition filed under section 204(a)(1)(A) of such Act (8 U.S.C. 1154(a)(1)(A)).

(C) EXCEPTION.—Notwithstanding section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)), for purposes of this paragraph, a citizen described in subparagraph (A) does not have to be 21 years of age for a parent to benefit under this paragraph.

8 USC 1151 note.

(b) APPLICATIONS FOR ADJUSTMENT OF STATUS BY SURVIVING SPOUSES, CHILDREN, AND PARENTS.—

(1) IN GENERAL.—Notwithstanding subsections (a) and (c) of section 245 of the Immigration and Nationality Act (8 U.S.C. 1255), any alien who was the spouse, child, or parent of an alien described in paragraph (2), and who applied for adjustment of status prior to the death described in paragraph (2)(B), may have such application adjudicated as if such death had not occurred.

(2) ALIEN DESCRIBED.—An alien is described in this paragraph if the alien—

(A) served honorably in an active duty status in the military, air, or naval forces of the United States;

(B) died as a result of injury or disease incurred in or aggravated by combat; and

(C) was granted posthumous citizenship under section 329A of the Immigration and Nationality Act (8 U.S.C. 1440-1).

8 USC 1151 note.

(c) SPOUSES AND CHILDREN OF LAWFUL PERMANENT RESIDENT ALIENS.—

(1) TREATMENT AS IMMEDIATE RELATIVES.—

(A) IN GENERAL.—A spouse or child of an alien described in paragraph (3) who is included in a petition for classification as a family-sponsored immigrant under section 203(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(2)) that was filed by such alien, shall be considered (if the spouse or child has not been admitted or approved for lawful permanent residence by such date) a valid petitioner for immediate relative status under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)). Such spouse or child shall be eligible for deferred action, advance parole, and work authorization.

(B) PETITIONS.—An alien spouse or child described in subparagraph (A) may file a petition with the Secretary of Homeland Security for classification of the alien under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)). For purposes of such Act, such a petition shall be considered a petition filed under section 204(a)(1)(A) of such Act (8 U.S.C. 1154(a)(1)(A)).

(2) **SELF-PETITIONS.**—Any spouse or child of an alien described in paragraph (3) who is not a beneficiary of a petition for classification as a family-sponsored immigrant may file a petition for such classification under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)) with the Secretary of Homeland Security, but only if the spouse or child files a petition within 2 years after such date. Such spouse or child shall be eligible for deferred action, advance parole, and work authorization. Deadline.

(3) **ALIEN DESCRIBED.**—An alien is described in this paragraph if the alien—

(A) served honorably in an active duty status in the military, air, or naval forces of the United States;

(B) died as a result of injury or disease incurred in or aggravated by combat; and

(C) was granted posthumous citizenship under section 329A of the Immigration and Nationality Act (8 U.S.C. 1440-1).

(d) **PARENTS OF LAWFUL PERMANENT RESIDENT ALIENS.**—

(1) **SELF-PETITIONS.**—Any parent of an alien described in paragraph (2) may file a petition for classification under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)), but only if the parent files a petition within 2 years after such date. For purposes of such Act, such petition shall be considered a petition filed under section 204(a)(1)(A) of such Act (8 U.S.C. 1154(a)(1)(A)). Such parent shall be eligible for deferred action, advance parole, and work authorization. 8 USC 1151 note.
Deadline.

(2) **ALIEN DESCRIBED.**—An alien is described in this paragraph if the alien—

(A) served honorably in an active duty status in the military, air, or naval forces of the United States;

(B) died as a result of injury or disease incurred in or aggravated by combat; and

(C) was granted posthumous citizenship under section 329A of the Immigration and Nationality Act (8 U.S.C. 1440-1).

(e) **WAIVER OF GROUND FOR INADMISSIBILITY.**—In determining the admissibility of any alien accorded an immigration benefit under this section for purposes of the Immigration and Nationality Act, the ground for inadmissibility specified in section 212(a)(4) of such Act (8 U.S.C. 1182(a)(4)) shall not apply. 8 USC 1151 note.

(f) **NATURALIZATION FOR SURVIVING SPOUSES.**—

(1) **IN GENERAL.**—Section 319(d) of the Immigration and Nationality Act (8 U.S.C. 1430(d)) is amended by adding at the end the following: “For purposes of this subsection, the terms ‘United States citizen’ and ‘citizen spouse’ include a person granted posthumous citizenship under section 329A.”

(2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall apply with respect to persons granted posthumous citizenship under section 329A of the Immigration and Nationality Act (8 U.S.C. 1440-1) due to death on or after September 11, 2001. 8 USC 1430 note.

(g) **BENEFITS TO SURVIVORS; TECHNICAL AMENDMENT.**—Section 329A of the Immigration and Nationality Act (8 U.S.C. 1440-1) is amended—

(1) by striking subsection (e); and

(2) by striking “Attorney General” each place that term appears and inserting “Secretary of Homeland Security”.

(h) TECHNICAL AND CONFORMING AMENDMENTS.—Section 319(d) of the Immigration and Nationality Act (8 U.S.C. 1430(d)) is amended—

(1) by inserting “, child, or parent” after “surviving spouse”;
 (2) by inserting “, parent, or child” after “whose citizen spouse”; and

(3) by striking “who was living” and inserting “who, in the case of a surviving spouse, was living”.

SEC. 1704. EXPEDITED PROCESS FOR GRANTING POSTHUMOUS CITIZENSHIP TO MEMBERS OF THE ARMED FORCES.

Section 329A of the Immigration and Nationality Act (8 U.S.C. 1440-1) is amended—

(1) by striking subsection (c) and inserting the following:

“(c) REQUESTS FOR POSTHUMOUS CITIZENSHIP.—

“(1) IN GENERAL.—A request for the granting of posthumous citizenship to a person described in subsection (b) may be filed on behalf of that person—

“(A) upon locating the next-of-kin, and if so requested by the next-of-kin, by the Secretary of Defense or the Secretary’s designee with the Bureau of Citizenship and Immigration Services in the Department of Homeland Security immediately upon the death of that person; or

“(B) by the next-of-kin.

“(2) APPROVAL.—The Director of the Bureau of Citizenship and Immigration Services shall approve a request for posthumous citizenship filed by the next-of-kin in accordance with paragraph (1)(B) if—

“(A) the request is filed not later than 2 years after—

“(i) the date of enactment of this section; or

“(ii) the date of the person’s death;

whichever date is later;

“(B) the request is accompanied by a duly authenticated certificate from the executive department under which the person served which states that the person satisfied the requirements of paragraphs (1) and (2) of subsection (b); and

“(C) the Director finds that the person satisfied the requirement of subsection (b)(3).”; and

(2) by striking subsection (d) and inserting the following:

“(d) DOCUMENTATION OF POSTHUMOUS CITIZENSHIP.—If the Director of the Bureau of Citizenship and Immigration Services approves the request referred to in subsection (c), the Director shall send to the next-of-kin of the person who is granted citizenship, a suitable document which states that the United States considers the person to have been a citizen of the United States at the time of the person’s death.”.

SEC. 1705. EFFECTIVE DATE.

8 USC 1439 note.

(a) IN GENERAL.—Except as provided in subsection (b), this title and the amendments made by this title shall take effect as if enacted on September 11, 2001.

8 USC 1439 note.

(b) EXCEPTION.—The amendments made by sections 1701(b) (relating to naturalization fees) and 1701(d) (relating to naturalization proceedings overseas) shall take effect on October 1, 2004.