INTERIM MEMO FOR COMMENT

Posted: 01-27-2011

Comment period ends: 02-10-2011

This memo is in effect until further notice.

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

January 24, 2011 **PM-602-0027**

Policy Memorandum

SUBJECT: Eligibility for Members of the National Guard of the United States to Naturalize under Section 329 of the Immigration and Nationality Act and Acceptance of NGB Form 22 as Certification of Military Service for National Guard Veterans; Revision to the *Adjudicator's Field Manual* (*AFM*) Chapter 72.2(d)(3); *AFM* Update AD10-42

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Purpose
This Policy Memorandum (PM) provides field guidance pertaining to members of the Army National Guard of the United States and the Air National Guard of the United States (hereafter "National Guard") for purposes of naturalization under section 329 of the Immigration and Nationality Act (INA). This PM also provides field guidance and an *AFM* update on the acceptance of National Guard Bureau (NGB) Form 22, "National Guard Report of Separation and Record of Service," as certification of service in the Armed Forces for purposes of naturalization under section 328 or 329 of the INA.

Scope
Unless specifically exempted herein, this PM applies to and binds all USCIS employees.

Authority
INA § 328, 329

Background
On November 24, 2003, the National Defense Authorization Act for Fiscal Year 2004, [Pub. L. 108-136, 117 Stat. 1392 (2003)] amended the INA to extend the benefit of naturalization under section 329 to individuals who have served honorably as members of the Selected Reserve of the Ready Reserve[1] of the U.S. Armed Forces during designated periods of hostilities.

The Selected Reserve consists of those units and individuals within the Ready Reserve designated by their respective services as so essential to the national military strategy that they have priority over all other Reserves. They also adhere to specific training requirements

[1] Prior to passage of Pub. L. 108-136, service members had to have active duty service in order to qualify under section 329 of the INA.

determined by their respective services.[2] A service member's affiliation with the Selected Reserve is determined by the U.S. Armed Forces. With regard to National Guard members, the National Guard determines when one of its members is a member of the Selected Reserve.

Most members of the National Guard adhere to Selected Reserve training requirements and are, accordingly, members of the Selected Reserve of their respective services. See Attachment C. When a National Guard member is a member of the Selected Reserve, his or her service allows naturalization under INA section 329 based on that service. The applicant need not have active duty service or be part of a National Guard unit "during such time as the unit is Federally recognized as a reserve component of the Armed Forces and that unit is called for active duty" in order to qualify under section 329.[3]

Policy
All USCIS offices are directed to comply with this guidance.

A National Guard member applying for naturalization under section 329 who does not have qualifying active duty service must show service in the Selected Reserve. For an applicant who files for naturalization while still a member of the National Guard, this is accomplished through a properly annotated Form N-426, "Request for Certification of Military or Naval Service." For an example of a properly annotated Form N-426 that establishes Selected Reserve service, see Attachment A.

For National Guard members who file for naturalization after separation from service, however, proof of service can be accomplished through NGB Form 22 (see Attachment B). The National Guard Bureau has informed USCIS that it only issues NGB Form 22 to those members of the Guard who served in the Selected Reserve. See Attachment C. Accordingly, the NGB Form 22 is conclusive proof of service in the Selected Reserve and can be used to document military service for purposes of sections 328 and 329 of the INA.[4]

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[2] Note that not all members of the Reserves qualify – only those in the "Selected Reserve of the Ready Reserve." See January 24, 2004 PM, *Implementation Instructions for Title XVII of Public Law 108-136, "National Defense Authorization Act for Fiscal Year 2004."*

[3] Please note that the regulatory definition of "active duty status" for member of the National Guard contained in 8 CFR 329.1 has not been updated since the passage of the National Defense Authorization Act for Fiscal Year 2004. Nonetheless, because of the enactment of the NDAA for 2004, National Guard members are no longer required to meet the definition of active-duty status contained in 8 CFR 329.1.

[4] Currently, veterans of the Armed Forces who were issued DD Form 214, "Certificate of Release or Discharge from Active Duty," are permitted to submit DD Form 214 in lieu of certification of Form N-426. See April 29, 2009 PM, *Acceptance of DD Form 214 as Certification of Military or Naval Service for Veterans of the U.S. Armed Forces.* Accordingly, this memorandum extends the same benefit to members of the National Guard who receive NGB Form 22 instead of a DD Form 214.

Effective immediately, USCIS will accept an uncertified Form N-426 along with an NGB Form 22 from veteran National Guard applicants if all of the following conditions are met:

1. The applicant is separated from the Armed Forces at the time of filing Form N-400;
2. The applicant submitted a photocopy of his or her NGB Form 22 that lists eligible service (such service should also be listed on Form N-426); and
3. NGB Form 22 lists information on the type of separation and character of service (such information may be found in block 24).

Note that USCIS will not accept NGB Form 22b, "Army National Guard Recruit Force Pool Report," as certification of Selected Reserve service because, as further explained in Attachment C, it is issued to National Guard members who never served in the Selected Reserve.

Immigration Services Officers may request additional verification if needed to verify military service.

If…	**Then…**
Form N-426 establishes that the applicant has served in active duty status or in the Selected Reserve of the Ready Reserve during a designated period of hostility[5]	The applicant has met the evidentiary requirement for military service under INA section 329(a).
Form N-426 does not list service in active duty status or in the Selected Reserve of the Ready Reserve service during a designated period of hostility	Applicant or National Guard certifier must resolve the deficiency before USCIS will consider the certification requirement met. The following evidence will serve as fulfillment of the certification requirement: 1) Form N-426 with "active duty" or "Selected Reserve of the Ready Reserve" annotated or the applicable box checked[6]; OR 2) If the applicant is separated from the Armed Forces, a copy of the applicant's DD Form 214 or NGB Form 22 that lists eligible service. *** DO NOT ACCEPT NGB Form 22b*

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[5] The type of service designation appears on the "Military Service" section on page 1 of the current version OR the "Reserve or National Guard Service" section on page 2, 4, or 6 of the previous version (Revision date 10/16/08), which is still accepted.
[6] Form N-426 with "Other" checked in the "Military Service" section on page 1 (Form N-426 with Revision date 3/24/09) does not fulfill the military service requirements for INA section 329.

If a naturalization application filed by a member of the National Guard was denied on or after November 24, 2003 on the sole ground that the applicant did not have qualifying active duty status or did not belong to a National Guard unit during such a time that the unit was called for active duty, the applicant may seek reconsideration of the denial by requesting a Service motion to reopen in writing at his or her local USCIS office. If it is determined that the applicant had qualifying service in the Selected Reserve of the Ready Reserve and his or her application was incorrectly denied on this basis alone, USCIS will treat the applicant's request as a Service motion to reopen under 8 CFR 103.5(a)(5). The USCIS office with current jurisdiction will grant the motion and continue with the naturalization proceedings.

Implementation
This PM is effective immediately. Immigration Services Officers who review National Guard naturalization application packets or conduct naturalization interviews must ensure compliance with this PM.

The *AFM* is revised as follows:

☞ 1. Paragraph (d)(3) of Chapter 72.2 is revised to read:

(3) **N-426**: Request for Certification of Military or Naval Service.

An applicant who is filing under **section 328** or **329** of the Act must submit Form **N-426**, Request for Certification of Military or Naval Service (see 8 CFR 328.4, 329.4(a)). Form N-426 confirms whether the applicant served in an active duty status or within the Selected Reserve of the Ready Reserve, honorably or otherwise, and whether he or she has ever been excused or released from military service based on a claim of alienage. The military completes Form N-426 by certifying military service from official records and the Form is submitted to USCIS with the Application for Naturalization.

Note that veterans of the Armed Forces who were issued DD Form 214, Certificate of Release or Discharge from Active Duty, are permitted to submit DD Form 214 along with an uncertified Form N-426. Although National Guard members with active duty service may be issued DD Form 214, they are also issued NGB Form 22, National Guard Report of Separation and Record of Service at the time of separation. NGB Form 22 is a certification of National Guard service that captures the dates and character of service (type of discharge). Accordingly, National Guard veterans who were issued NGB Form 22 are permitted to submit that form along with an uncertified Form N-426, to prove qualifying military service.

Both DD Form 214 and NGB Form 22 are certifications of military service. USCIS will accept a completed but uncertified Form N-426 submitted by an applicant filing for

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naturalization under section 328 or 329 who has separated from the Armed Forces so long as all of the following conditions have been met:

(1) The applicant is separated from the Armed Forces at the time of filing **Form N-400**;

(2) The applicant submitted a photocopy of his or her DD Form 214, Certificate of Release or Discharge from Active Duty (or photocopies of multiple **DD Form 214s**), or a photocopy of his or her NGB Form 22, National Guard Report of Separation and Record of Service (or photocopies of multiple NGB Form 22s) that list the eligible period(s) of service (such service should also be listed on Form N-426); and

(3) The DD Form 214 or NGB Form 22 contains information on the type of separation and character of service (such information is most likely found on page "Member-4" of DD Form 214 or Block 24 of NGB Form 22).

The NSC may request additional verification if needed to verify military service.

Note: NGB Form 22 is issued to National Guard members who have served in the Selected Reserve of the Ready Reserve. Conversely, NGB Form 22b, Army National Guard Recruit Force Pool Report, is issued to National Guard members who never serve in the Selected Reserve; therefore USCIS will not accept NGB Form 22b as certification of Selected Reserve service.

See April 29, 2009 Policy Memorandum, Acceptance of DD Form 214 as Certification of Military or Naval Service for Veterans of the Armed Forces and January 24, 2011 Policy Memorandum, Eligibility for Members of the National Guard of the United States to Naturalize under Section 329 of the Immigration and Nationality Act and Acceptance of NBG Form 22 as Certification of Military Service for National Guard Veterans.

☞ 2. The *AFM* **Transmittal Memoranda** button is revised by adding, in numerical order, the following entry:

AD10-42 1-24-2011	Chapter 72.2(d)(3)	Provides field guidance on the acceptance of NGB Form 22, "National Guard Report of Separation and Record of Service," as certification of service in the Armed Forces for purposes of naturalization under section 328 or 329 of the INA.

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Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions regarding the operational guidance in this policy memorandum may be directed through appropriate channels to the Field Operations Directorate.

Attachments

Attachment A: Form N-426, Request for Certification of Military or Naval Service

Attachment B: NGB Form 22, National Guard Report of Separation and Record of Service

Attachment C: Letter from Craig R. McKinley, Chief, National Guard Bureau (November 29, 2010)

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Attachment A

OMB No. 1615-0053; Expires 10/31/2011

Department of Homeland Security
U.S. Citizenship and Immigration Services

N-426, Request for Certification of Military or Naval Service

Persons who are serving or have served under specified conditions in the Armed Forces of the United States are granted certain exemptions from the general requirements for naturalization. To establish eligibility, the law requires the department with custody of the service record to certify whether the service member served honorably, and whether each separation from the service was under honorable conditions. Certification of the service member's military service listed on this form is required. **Submit this form with Form N-400, Application for Naturalization.** If the service member was issued Form DD 214, Certificate of Release or Discharge from Active Duty, attach a photocopy. For further assistance, contact the Military Help Line, 1-877-CIS-4MIL (1-877-247-4645) or visit **www.uscis.gov/military**.

For USCIS Use Only
Date Returned:
To:
Initials:
Comments:

Alien Registration Number	Military Service Number	Date of Request
A 1234567802		07/31/2010

Name Used During Active Service *(Last, First, Middle)*	U.S. Social Security Number	Date of Birth	Place of Birth (Country and City)
SAMPLE, John, Quentin	xxxxx1234	07/16/1980	Anytown, State

Present Address: 12 Main Street, Anytown, ST 01234

Phone Number(s): 123-456-7890 E-Mail Address(es): john.sample12@us.army.mil

Military Service
List all periods of service. (Use a blank sheet if more space is needed.)

TO BE COMPLETED BY APPLICANT OR CERTIFYING OFFICIAL				TO BE COMPLETED BY CERTIFYING OFFICIAL
Branch of Service	Date Service Began	Date Service Ended	Type of Service *(includes all active, reserve, and National Guard Service)*	Applicant served honorably or is currently serving honorably?
Army	Jan 1, 2009		☐ Active Duty ☒ Selected Reserve of the Ready Reserve* ☐ Other _____	☒ Yes ☐ No (give details in Remarks)
			☐ Active Duty ☐ Selected Reserve of the Ready Reserve* ☐ Other _____	☐ Yes ☐ No (give details in Remarks)
			☐ Active Duty ☐ Selected Reserve of the Ready Reserve* ☐ Other _____	☐ Yes ☐ No (give details in Remarks)

*Selected Reserve of the Ready Reserve members: (1) participate in at least 48 scheduled drills or training periods during each year and serve on active duty for training at least 14 days each year; or (2) participate in training at encampments, maneuvers, outdoor target practice, or other exercises at least 15 days each year. (10 U.S.C. 10143)

Where did the applicant enlist (Country, State, and City where the applicant entered service)?
USA, State, Anytown

Has the applicant reenlisted? ☐ Yes ☒ No

Where did the applicant reenlist?

Signature of Applicant

Separation Information

Is the applicant separated?	☐ Yes	☒ No
If separated, select discharge type:	☐ Honorable	☐ Other (give details in Remarks section)
Was the applicant discharged on account of alienage?	☐ Yes	☐ No (if "Yes," give details in Remarks section)

Remarks

Use for continuation of any of the above items. You should also list in the space below any **derogatory information** in your records relating to the service member's character, loyalty to the United States, disciplinary actions, convictions, or other matters concerning his or her fitness for citizenship. **(Use a blank sheet if more space is needed.)**

Certification
TO BE COMPLETED BY CERTIFYING OFFICIAL

I am authorized to certify that the information given here concerning the service of the person named on this form is correct according to the records of the

State Army National Guard
Name of Department

Official Signature _____

Name and Title _____

[SEAL, *if available*]
(No State-issued notary Public seals accepted.)

Date _____

Phone Number and E-Mail Address _____

Attachment B

NATIONAL GUARD REPORT OF SEPARATION AND RECORD OF SERVICE

The proponent agency is NGB-ARH. The prescribing directive is NGR 600-200.

Report of separation and record of service in the National Guard of and as a Reserve of the

1. LAST NAME- FIRST NAME- MIDDLE NAME	2. DEPARTMENT, COMPONENT AND BRANCH	3. SOCIAL SECURITY NUMBER

4. DATE OF ENLISTMENT	5a. RANK	5B. PAY GRADE	6. DATE OF RANK	7. DATE OF BIRTH

8a. STATION OR INSTALLATION AT WHICH EFFECTED	8b. EFFECTIVE DATE

9. COMMAND TO WHICH TRANSFERRED

10. RECORD OF SERVICE	YEARS	MONTHS	DAYS
(a) NET SERVICE THIS PERIOD			
(b) PRIOR RESERVE COMPONENT SERVICE			
(c) PRIOR ACTIVE FEDERAL SERVICE			
(d) TOTAL SERVICE FOR PAY			
(e) TOTAL SERVICE FOR RETIRED PAY			

11. TERMINAL DATE OF RESERVE/MILITARY SERVICE OBLIGATION

12. MILITARY EDUCATION (Course Title, number of weeks, month and year completed)

13. PRIMARY SPECIALTY NUMBER , TITLE AND DATE AWARDED
(Additional specialty numbers and titles)

14. HIGHEST EDUCATION LEVEL SUCCESSFULLY COMPLETED

SECONDARY/HIGH SCHOOL YRS (Gr 1-12)

COLLEGE YRS

15. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED THIS PERIOD
(State Awards may be included)

16. SERVICEMAN'S GROUP LIFE INSURANCE COVERAGE

☐ YES ☐ NO AMT

17. PERSONNEL SECURITY INVESTIGATION

a. TYPE b. INVESTIGATION

18. REMARKS

19. MAILING ADDRESS AFTER SPERATION (Street, City, County, State, and Zip Code)

20. SIGNATURE OF PERSON BEING SEPERATED

21. NAME, GRADE AND TITLE OF AUTHORIZING OFFICER

22. SIGNATURE OF OFFICER AUTHORIZED TO SIGN

23. AUTHORITY AND REASON

24. CHARACTER OF SERVICE	25. TYPE OF CERTIFICATE USED	26. REENLISTMENT ELIGIBILTY

27. ☐ REQUEST ☐ DECLINE COPIES OF MY NGB FORM 22 INITIALS _____

Attachment C

NATIONAL GUARD BUREAU
1636 DEFENSE PENTAGON
WASHINGTON DC 20301-1636

NOV 29 2010

Chief, National Guard Bureau

Mr. Alejandro Mayorkas
Director, United States Citizenship and Immigration Services
United States Citizenship and Immigration Services Headquarters
20 Massachusetts Avenue Northwest, Room 5110
Washington, DC 20529

Dear Mr. Mayorkas:

Members of the Army National Guard Personnel Policy Division have been working with Ms. Debra Rogers, Associate Director of your Field Operations Directorate, to ensure that the preferential immigration treatment due to service members in the Selected Reserve of the Ready Reserve can be more easily accorded to Army National Guard Soldiers and Air National Guard Airmen. In particular, I understand that personnel from our two organizations are working together to ensure that your officers recognize National Guard Bureau Form 22, without further certification, as proof of qualifying Selected Reserve service. The goal is for your officers to accept National Guard Bureau Form 22 as proof of qualifying service, just as they accept Department of Defense Form 214 as proof of active duty service.

I further understand that the United States Citizenship and Immigration Services relies on the various military departments to certify qualifying service; therefore, the National Guard Bureau offers the following guidance regarding the nature of National Guard Bureau Form 22 and of Selected Reserve service:

All service members in drilling units of the Army National Guard or Air National Guard serve in the Selected Reserve, as is evident by comparing 10 United States Code 10145(b) with 10 United States Code 10143(a).

Presently, the overwhelming majority of our Army and Air National Guard members serve within the Selected Reserve; they are issued a National Guard Bureau Form 22 at the end of their service. The National Guard Bureau Form 22 provides a record of their service in the Selected Reserve. A small number of Army National Guard Soldiers never serve in the Selected Reserve and are not issued a National Guard Bureau Form 22; they are recruits who never shipped to their initial entry training. These recruits are issued the National Guard Bureau Form 22b. The National Guard Bureau Form 22b differs substantially from the National Guard Bureau Form 22. Enclosed are copies of National Guard Bureau Form 22 and National Guard Bureau Form 22b.

The effective date of a National Guard Bureau Form 22 is the date of separation from the Selected Reserve. I understand that calculating the time served in the Selected Reserve may determine the eligibility of certain Guardsmen for preferential treatment. The precise length of service in the Selected Reserve can be calculated by subtracting the time indicated in block 10(a) from the effective date located in block *8(b)* of National Guard Bureau Form 22.

I can confirm that enlisted personnel attend their initial entry training in a Title 10 status. The authority typically used is 10 United States Code 12301 (d).

The point of contact in this matter is Colonel Dennis Chapman, Chief, Army National Guard Personnel Policy Division, at 703-607-5904 or dennis.chapman@us.army.mil.

Sincerely,

Craig R. McKinley
General, US Air Force
Chief, National Guard Bureau

Enclosures

Attachment C

NATIONAL GUARD REPORT OF SEPARATION AND RECORD OF SERVICE

The proponent agency is NGB-ARH. The prescribing directive is NGR 600-200.

Report of separation and record of service in the National Guard of and as a Reserve of the

1. LAST NAME- FIRST NAME- MIDDLE NAME	2. DEPARTMENT, COMPONENT AND BRANCH	3. SOCIAL SECURITY NUMBER

4. DATE OF ENLISTMENT	5a. RANK	5B. PAY GRADE	6. DATE OF RANK	7. DATE OF BIRTH

8a. STATION OR INSTALLATION AT WHICH EFFECTED	8b. EFFECTIVE DATE

9. COMMAND TO WHICH TRANSFERRED	10. RECORD OF SERVICE	YEARS	MONTHS	DAYS
	(a) NET SERVICE THIS PERIOD			
	(b) PRIOR RESERVE COMPONENT SERVICE			
	(c) PRIOR ACTIVE FEDERAL SERVICE			
11. TERMINAL DATE OF RESERVE/MILITARY SERVICE OBLIGATION	(d) TOTAL SERVICE FOR PAY			
	(e) TOTAL SERVICE FOR RETIRED PAY			

12. MILITARY EDUCATION (Course Title, number of weeks, month and year completed)	13. PRIMARY SPECIALTY NUMBER , TITLE AND DATE AWARDED (Additional specialty numbers and titles)
14. HIGHEST EDUCATION LEVEL SUCCESSFULLY COMPLETED SECONDARY/HIGH SCHOOL YRS (Gr 1-12) COLLEGE YRS	15. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED THIS PERIOD (State Awards may be included)
16. SERVICEMAN'S GROUP LIFE INSURANCE COVERAGE ☐YES ☐NO AMT	
17. PERSONNEL SECURITY INVESTIGATION a. TYPE b. INVESTIGATION	

18. REMARKS

19. MAILING ADDRESS AFTER SPERATION (Street, City, County, State, and Zip Code)	20. SIGNATURE OF PERSON BEING SEPERATED
21. NAME, GRADE AND TITLE OF AUTHORIZING OFFICER	22. SIGNATURE OF OFFICER AUTHORIZED TO SIGN

23. AUTHORITY AND REASON

24. CHARACTER OF SERVICE	25. TYPE OF CERTIFICATE USED	26. REENLISTMENT ELIGIBILTY

27. ☐REQUEST ☐DECLINE COPIES OF MY NGB FORM 22 INITIALS _____

NGB FORM 22, 20091101 (USE PREVIOUS EDITIONS UNTIL EXHAUSTED)

ARMY NATIONAL GUARD
RECRUIT FORCE POOL REPORT

The proponent is NGB-ARH. For use of this form see NGR 614-1.

The personal information contained in this document is protected by the Privacy Act of 1974.

Member Information: (To Be Completed by Personnel Officer)

1. Name (Last, First MI)	2. SSN	3. Date	4. Grade/Rank

5. Effective Date of Entry in Recruit Force Pool	6. Date Departed Recruit Force Pool	7. Total Period in Recruit Force Pool
		Years Months Days

8. REASONS FOR RELEASE:

The above named individual is released from the Recruit Force Pool based on the following reasons:

- ☐ Enlistment into the Selected Reserve
- ☐ Exceeded the maximum period in RFP
- ☐ Moved out of State
- ☐ Transferred to new State of
- ☐ Other

9a. Typed Name of Personnel Officer	9b. Grade/Rank	9c. Signature

10. Remarks