

ADDRESS REPLY TO
"THE ATTORNEY GENERAL"
AND REFER TO
INITIALS AND NUMBER

DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

January 9, 1942.

The Honorable

John J. McCloy

Assistant Secretary of War



My dear Mr. McCloy:

This is with reference to our discussion as to the conferring of citizenship upon the men in the armed forces, and the deprivation of citizenship or eligibility thereto in cases of draft evaders and deserters. We have ascertained that the matter is covered by various provisions of the Selective Service Act of 1940 and of the Nationality Act of 1940. From a legal standpoint, there are three specific situations: (1) simplified naturalization for aliens with honorable service in the armed forces; (2) ineligibility for citizenship because of avoidance of military service or desertion; (3) loss of citizenship because of desertion.

1. As to naturalization, Section 324 of the Nationality Act of 1940 (8 U.S.C. §724) provides that a person, including a native-born Filipino, who has had a total of three years' honorable service in the United States Army, Navy, Marine Corps, or Coast Guard may become naturalized upon filing a petition without the requirements of a declaration of intention, certificate of arrival, residence in the court's jurisdiction, and five years' continuous residence in the United States, which the law prescribes in other cases. Thus, naturalization is greatly simplified for aliens in the armed services.

2. Section 3(a) of the Selective Service Act of 1940, as amended by Public Law 360, 77th Congress, December 26, 1941 (50 U.S.C. §303(a)), provides that all male persons, between the ages of twenty and forty-five, except for alien enemies, shall be liable for military training and service. This amendment also incorporates a provision, which was also contained in the draft laws of 1917 and 1918, to the effect that a citizen or subject of a neutral country may apply to be relieved from liability from military service but any such person shall thereafter be barred from becoming a citizen of the United States.

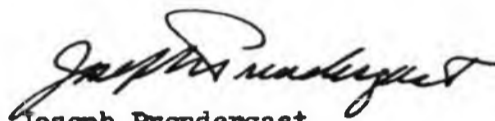
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Section 306 of the Nationality Act of 1940 (8 U.S.C. §706) also provides that a person who deserts the armed forces of the United States during war time, or who, having duly enrolled, leaves the country to avoid any draft into military service, shall, upon conviction thereof by a court martial be ineligible to become a citizen, and, further, that such deserters shall be forever incapable of holding any office of trust or profit under the United States, or of exercising any rights of citizens thereof.

3. In addition, Section 401(g) of the Nationality Act of 1940 (8 U.S.C. §801(g)) provides that a person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by deserting the armed services of the United States in time of war, upon conviction thereof by a court martial.

Attached hereto is a memorandum setting forth the full text of these statutory provisions accompanied by notes as to their legislative background.

Sincerely yours,



Joseph Prendergast
Acting Chief
Special Defense Unit

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Laws Relating to Citizenship of Persons in the
Armed Forces of the United States

1. Naturalization

Provision for naturalization of persons in the armed forces of the United States appears in Section 324 of the Nationality Act of 1940 (8 U.S.C. §724), as follows:

"724. Aliens having United States military or naval service; requirements.—(a) A person, including a native-born Filipino, who has served honorably at any time in the United States Army, Navy, Marine Corps, or Coast Guard for a period or periods aggregating three years and who, if separated from such service, was separated under honorable conditions, may be naturalized without having resided, continuously immediately preceding the date of filing such person's petition, in the United States for at least five years and in the State in which the petition for naturalization is filed for at least six months, if such petition is filed while the petitioner is still in the service or within six months after the termination of such service.

"(b) A person filing a petition under subsection (a) of this section shall comply in all respects with the requirements of this chapter [§§701 to 747 of this title] except that—

"(1) No declaration of intention shall be required;

"(2) No certificate of arrival shall be required;

"(3) No residence within the jurisdiction of the court shall be required;

"(4) Such petitioner may be naturalized immediately if the petitioner be then actually in any of the services prescribed in subsection (a) of this section, and if, before filing the petition for naturalization, such

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petitioner and at least two verifying witnesses to the petition, who shall be citizens of the United States and who shall identify petitioner as the person who rendered the service upon which the petition is based, have appeared before and been examined by a representative of the Service.

"(c) In case such petitioner's service was not continuous, petitioner's residence in the United States and State, good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during any period within five years immediately preceding the date of filing said petition between the periods of petitioner's service in the United States Army, Navy, Marine Corps, or Coast Guard, shall be verified in the petition filed under the provisions of subsection (a) of this section, and proved at the final hearing thereon by witnesses, citizens of the United States, in the same manner as required by section 309 [§709 of this title]. Such verification and proof shall also be made as to any period between the termination of petitioner's service and the filing of the petition for naturalization.

"(d) The petitioner shall comply with the requirements of section 309 [§709 of this title] as to continuous residence in the United States for at least five years and in the State in which the petition is filed for at least six months, immediately preceding the date of filing the petition, if the termination of such service has been more than six months preceding the date of filing the petition for naturalization, except that such service shall be considered as residence within the United States or the State.

"(e) Any such period or periods of service under honorable conditions, and good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States, during such service, shall be proved by duly authenticated copies of records of the executive departments having custody of the records of such service, and such authenticated copies of records shall be accepted in lieu of affidavits and testimony or depositions of witnesses."

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The following note is contained in the explanatory comments submitted to Congress in 1939 along with the draft of the Nationality Act. (Nationality Laws of the United States, Part I, p. 35. House Committee Print, 1939). Present Section 324 was then proposed Section 323.

"Probably the most complex, vague, and baffling provisions of the naturalization laws are those which provide for the naturalization of persons by reason of service in the various branches of the military and naval forces of the United States. They were not clear as to their scope prior to the World War, but the legislation hastily enacted during the time the United States was at war proved then and since to be even more difficult of interpretation and construction. So many separate classes were created and so many variations were made as to the proof to be furnished by each class that the precise requirements have not as yet been fully determined (sec. 2166, R.S.U.S., as amended by sec. 2, act of May 9, 1918, 40 Stat. 547; U.S.C., title 8, sec. 395; sec. 4, act of June 29, 1906, as amended by the act of May 9, 1918, 40 Stat. 542-546; as amended by sec. 6(d), act of March 2, 1929, 45 Stat. 1514, and sec. 2, act of May 25, 1932, 47 Stat. 165; U.S.C., title 8, secs. 388 to 394, inc.; (U.S.C., title 8, sec. 388)).

"After the armistice additional military provisions were enacted extending for limited periods the benefits of World War legislation to persons who served in the military or naval forces of the United States (act of July 19, 1919, 41 Stat. 222; secs. 1 and 7, act of May 26, 1926, 44 Stat. (pt. 2) 654, 655; U.S.C., title 8, sec. 241; sec. 3, act of March 4, 1929, 45 Stat. 1546; U.S.C., title 8, sec. 392a; sec. 1, act of May 25, 1932, 47 Stat. 165; U.S.C., title 8, 392b; act of June 24, 1935 (Public, No. 160, 74th Cong.), and act of June 24, 1935 (Public, No. 162, 74th Cong.)).

"The most recent legislation relating to World War veterans is that represented by two acts approved the same day, June 24, 1935, cited above. One provides for the naturalization of certain alien veterans of the World War who served in the armed forces of the United States, and who prior to the act of 1935 (Public, No. 162), were ineligible to citizenship because not free white persons or of African nativity or descent. This legislation also provides for the validation of naturalization judgments in the cases of such racially ineligible veterans as well as the certificates of naturalization issued thereon.

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"The other act of June 24, 1935 (Public, No. 160), extends the act of 1932 for the naturalization of alien veterans of United States forces to include petitions for naturalization which may be filed prior to May 25, 1937, with some of the liberal exemptions from the usual requirements which were offered during the World War. This measure contains an unusual provision in that its benefits are extended to include certain aliens who were lawfully admitted to the United States for permanent residence, who departed therefrom between August 1914 and the entrance of the United States into the World War, and who served honorably in the military or naval forces of any of the countries allied with the United States during the World War. This measure is, as indicated, temporary legislation and will continue for a period slightly less than 2 years.

"Prior to the enactment of these two most recent laws, extended discussions were had with representatives of the War and Navy Departments concerning the desirability of a simplified procedure which, as permanent legislation, would apply equally to persons serving honorably in either the United States Army, Navy, Marine Corps, or Coast Guard. As a result there has been drafted proposed section 323, which is quoted in this report. It has been approved in substance by the representatives of those departments as a substitute for the many miscellaneous and widely varying provisions now in force."

2. Ineligibility for citizenship as a result of avoidance of military service or desertion.

Section 3(a) of the Selective Service Training Act of 1940 (50 U.S.C. §303(a)), as amended December 20, 1941 (Public Law 360, 77th Congress), provides:

"(a) Except as otherwise provided in this act, every male citizen of the United States, and every other male person residing in the United States, who is between the ages of twenty and forty-five at the time fixed for his registration, or who attains the age of twenty after having been required to register pursuant to section 2 of this act, shall be liable for training and service in the land or naval forces of the United States; Provided, That any citizen or subject of a neutral country shall be relieved from liability for training and service under this act if, prior to his induction into the land or naval

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forces, he has made application to be relieved from such liability in the manner prescribed by and in accordance with rules and regulations prescribed by the President, but any person who makes such application shall thereafter be debarred from becoming a citizen of the United States: Provided further, That no citizen or subject of any country who has been or who may hereafter be proclaimed by the President to be an alien enemy of the United States shall be inducted for training and service under this act unless he is acceptable to the land or naval forces."

Originally, the Selective Service Act of 1940 included only male citizens and male aliens residing in the United States who have declared intentions to become citizens, between the ages of twenty-one and thirty-six.

The provision barring citizens or subjects of neutral countries from American citizenship, where they apply to be relieved from liability for military service, is identical with the one which appeared in the draft laws of 1917 and 1918. (50 U.S.C. §202).

Section 306 of the Nationality Act of 1940 (8 U.S.C. §706) further provides:

"706. Convicted deserters.—A person who at any time during which the United States has been or shall be at war, deserted or shall desert the military or naval forces of the United States, or who, having duly enrolled, departed, or shall depart from the jurisdiction of the district in which enrolled, or went or shall go beyond the limits of the United States, with intent to avoid any draft into the military or naval service, lawfully ordered, shall, upon conviction thereof by a court martial, be ineligible to become a citizen of the United States; and such deserters shall be forever incapable of holding any office of trust or of profit under the United States, or of exercising any rights of citizens thereof. (Oct. 14, 1940, c. 876, Title I, §306, 54 Stat. 1141.)"

The following statement as to this provision appears on page 23, Part I, of the report transmitted to Congress along with the draft of the Nationality Act.^{1/}

^{1/} Section 401(h) referred to in the text is set forth below in connection with desertion.

"Proposed section 306 continues the provisions of current law which bar from citizenship deserters and other evaders of military and naval service in time of war. The offense is a grave one. This penalty, because of its severity, is effective only after conviction by a court martial (sec. 1996, R.S.U.S.; and act of August 22, 1912, 37 Stat. 356, amending sec. 1998, R.S.U.S.; U.S.C. title 8, sec. 11). This subject is discussed, with citations of decisions of courts in the comment on section 401(h).

"Very careful consideration was given to this provision by representatives of the War and Navy Departments also, who felt it to be a necessary measure."

3. Loss of citizenship because of avoidance of military service or desertion.

Section 401 of the Nationality Act of 1940 (8 U.S.C. §801) provides as follows:

"801. Naturalization in foreign state; effect upon child; foreign military service, employment, voting; desertion, treason. — A person who is a national of the United States, whether by birth or naturalization shall lose his nationality by:

"(g) Deserting the military or naval service of the United States in time of war, provided he is convicted thereof by a court martial; - - -
(Oct. 14, 1940, c. 876, Title I, §401, 54 Stat. 1168.)"

The following pertinent comment appears on page 68 of Part I of the report transmitted to Congress along with the proposed Nationality Act:

"The existing law penalizing desertion is found in section 1998 of the Revised Statutes of the United States, which was originally taken from an act of Congress of March 3, 1865 (13 Stat. 490), and, as amended by an act of August 22, 1912 (37 Stat., Pt. 1, 356, R.S. 1998) reads as follows:

"Sec. 1998. That every person who hereafter deserts the military or naval service of the United States, or who, being duly enrolled, departs the jurisdiction of the

district in which he is enrolled, or goes beyond the limits of the United States, with intent to avoid any draft into the military or naval service, lawfully ordered, shall be liable to all the penalties and forfeitures of section nineteen hundred and ninety-six of the Revised Statutes of the United States: Provided, That the provisions of this section and said section nineteen hundred and ninety-six shall not apply to any person hereafter deserting the military or naval service of the United States in time of peace: And provided further, That the loss of rights of citizenship heretofore imposed by law upon deserters from the military or naval service may be mitigated or remitted by the President where the offense was committed in time of peace and where the exercise of such clemency will not be prejudicial to the public interests: And provided further, That the provisions of section eleven hundred and eighteen of the Revised Statutes of the United States that no deserter from the military service of the United States shall be enlisted or mustered into the military service, and the provisions of section two of the act of Congress approved August first, eighteen hundred and ninety-four, entitled "An Act to regulate enlistments in the Army of the United States," shall not be construed to preclude the reenlistment or muster into the Army of any person who has deserted, or may hereafter desert, from the military service of the United States in time of peace, or of any soldier whose service during his last preceding term of enlistment has not been honest and faithful, whenever the reenlistment or muster into the military service of such person or soldier shall, in view of the good conduct of such person or soldier subsequent to such desertion or service, be authorized by the Secretary of War.

"Section 1996 of the Revised Statutes, referred to in section 1998, reads as follows:

"Sec. 1996. All persons who deserted the military or naval service of the United States and did not return thereto or report themselves to a provost-marshal within sixty days after the issuance of the proclamation by the President, dated the 11th day of March, 1865, are deemed to have voluntarily relinquished and forfeited their rights of citizenship, as well as their right to become citizens; and such deserters shall be forever incapable of holding any office of trust or profit under the United States, or of exercising any rights of citizens thereof.

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"The provisions of sections 1996 and 1998 of the Revised Statutes are distinctly penal in character. They must, therefore, be construed strictly, and the penalties take effect only upon conviction by a court martial (Huber v. Reilly, 1866, 53 Penn. St. 112; Kurtz v. Moffitt, 1885, 115 U.S. 487).

It is not proposed to repeal or further amend Revised Statutes 1996 and 1998, although the provision of subsection (h) of section 401, which technically is not a penal law, will coincide with them insofar as forfeiture of "rights of citizenship" is concerned. The original statute was passed before the acquisition of the outlying, unincorporated territories, but presumably the existing law would now be construed as applicable to non-citizen nationals as well as citizens of the United States. The proposed new provision is clearly applicable to all nationals of the United States, whether or not they are citizens of the United States."