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106TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 106–563

HMONG VETERANS' NATURALIZATION ACT OF 2000

APRIL 6, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HYDE, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 371]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 371) to expedite the naturalization of aliens who served with special guerrilla units in Laos, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Hmong Veterans' Naturalization Act of 2000".

SEC. 2. EXEMPTION FROM ENGLISH LANGUAGE REQUIREMENT FOR CERTAIN ALIENS WHO SERVED WITH SPECIAL GUERRILLA UNITS OR IRREGULAR FORCES IN LAOS.

The requirement of paragraph (1) of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a)(1)) shall not apply to the naturalization of any person—

(1) who—

(A) was admitted into the United States as a refugee from Laos pursuant to section 207 of the Immigration and Nationality Act (8 U.S.C. 1157); and

(B) served with a special guerrilla unit, or irregular forces, operating from a base in Laos in support of the United States military at any time during the period beginning February 28, 1961, and ending September 18, 1978; or

(2) who—

(A) satisfies the requirement of paragraph (1)(A); and

(B) was the spouse of a person described in paragraph (1) on the day on which such described person applied for admission into the United States as a refugee.

SEC. 3. SPECIAL CONSIDERATION CONCERNING CIVICS REQUIREMENT FOR CERTAIN ALIENS WHO SERVED WITH SPECIAL GUERRILLA UNITS OR IRREGULAR FORCES IN LAOS.

The Attorney General shall provide for special consideration, as determined by the Attorney General, concerning the requirement of paragraph (2) of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a)(2)) with respect to the naturalization of any person described in paragraph (1) or (2) of section 2 of this Act.

SEC. 4. DOCUMENTATION OF QUALIFYING SERVICE.

A person seeking an exemption under section 2 or special consideration under section 3 shall submit to the Attorney General documentation of their, or their spouse's, service with a special guerrilla unit, or irregular forces, described in section 2(1)(B), in the form of—

(1) original documents;

(2) an affidavit of the serving person's superior officer;

(3) two affidavits from other individuals who also were serving with such a special guerrilla unit, or irregular forces, and who personally knew of the person's service; or

(4) other appropriate proof.

SEC. 5. DETERMINATION OF ELIGIBILITY FOR EXEMPTION AND SPECIAL CONSIDERATION.

In determining a person's eligibility for an exemption under section 2 or special consideration under section 3, the Attorney General—

(1) shall review the refugee processing documentation for the person, or, in an appropriate case, for the person and the person's spouse, to verify that the requirements of section 2 relating to refugee applications and admissions have been satisfied;

(2) shall consider the documentation submitted by the person under section 4;

(3) shall request an advisory opinion from the Secretary of Defense regarding the person's, or their spouse's, service in a special guerrilla unit, or irregular forces, described in section 2(1)(B) and shall take into account that opinion; and

(4) may consider any certification prepared by the organization known as "Lao Veterans of America, Inc.", or any similar organization maintaining records with respect to Hmong veterans or their families.

SEC. 6. DEADLINE FOR APPLICATION AND PAYMENT OF FEES.

This Act shall apply to a person only if the person's application for naturalization is filed, as provided in section 334 of the Immigration and Nationality Act (8 U.S.C. 1445), with appropriate fees not later than 18 months after the date of the enactment of this Act.

SEC. 7. LIMITATION ON NUMBER OF BENEFICIARIES.

Notwithstanding any other provision of this Act, the total number of aliens who may be granted an exemption under section 2 or special consideration under section 3, or both, may not exceed 45,000.

Amend the title so as to read:

A bill to facilitate the naturalization of aliens who served with special guerrilla units or irregular forces in Laos.

PURPOSE AND SUMMARY

The purpose of this bill is to expedite the naturalization of aliens who served with special guerrilla units in Laos during the Vietnam War.

BACKGROUND AND NEED FOR THE LEGISLATION

I. BACKGROUND

The Hmong "are a mountain people from southern China and northern areas of Burma, Laos, Thailand, and Vietnam. . . . Beginning in the 1950's, Hmong soldiers fought the Communist Pathet Lao movement in Laos, and some Hmong later assisted U.S. forces during the Vietnam War. After the war ended in 1975, the Pathet Lao gained control of Laos and persecuted and imprisoned many of the Hmong allies of the United States." [1] Between 130,000 and 150,000 Laotian Hmong have entered the U.S. as refugees since 1975.

At great personal peril and loss of life, the Hmong fought with American forces and performed critical roles in dangerous missions. A former CIA officer stated to the Subcommittee on Immigration and Claims that, "[t]hroughout the war, CIA's paramilitary forces collected intelligence, used it in combat operations to tie down some 50,000 North Vietnamese forces in Laos, rescued downed American pilots and protected sensitive American installations at remote mountain tops. . . ." [2] The Hmong guarded LIMA Site 85, one of America's most important intelligence gathering sites during the Vietnam War. Close to the border of North Vietnam, this site allowed the United States to "look-down" electronically, on targets in Hanoi, the Red River Valley, and the Ho Chi Minh trail.

Many Hmong refugees have found it difficult to naturalize because of a difficulty in learning English. This is due to the facts that they came from a tribal society without a written language until recent decades and that many Hmong were recruited to be guerrillas at the ages of 12–14 and hence did not attend school. In order to naturalize, permanent residents must demonstrate an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language.[3]

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[1] World Book Encylcopedia "H" 270 (1995).

[2] *Hmong Veterans' Naturalization Act of 1997; and Canadian Border Boat Landing Permit Requirements: Hearing before the Subcomm. on Immigration and Claims of the House Judiciary Comm.*, 105th Cong., 1st Sess. at 19–20 (1997)(statement of Theodore Shackley)(hereinafter cited as "*Hearing*").

[3] Immigration and Nationality Act sec. 312(a)(1).

II. CONCERNS ABOUT FRAUD AND THE ADMINISTRATION'S POSITION IN THE 105TH CONGRESS

H.R. 371 is designed to ease the path to naturalization in various ways for Hmong individuals who had fought in the CIA-organized guerrilla units in Laos. In the 105th Congress, there were expressions of concern about potential fraud because of the possibility that Hmong refugees who did not actually serve in guerrilla units could claim to have done so. These concerns were related to difficulties in identifying which Hmong refugees actually fought on behalf of the United States as few records were kept of these covert operations.

According to data from the Departments of State and Justice, about 2,600 families (about 12,000 people) entered under a category reserved for those who claimed to have fought alongside U.S. forces. However, these figures were suspect because (1) they were self-reported claims and (2) there were no compelling reasons for guerrillas to claim this status.

On June 26, 1997, the Subcommittee on Immigration and Claims held a hearing on a 105th Congress bill providing naturalization relief to Hmong guerrillas (also numbered H.R. 371). Louis Crocetti (Associate Commissioner for Examinations, Immigration and Naturalization Service) testified that:

> H.R. 371 would . . . be problematic to implement. . . .
>
> . . . .
>
> In essence, a naturalization applicant under [H.R. 371] would simply have to present documents claiming to have served in a special guerrilla unit. . . . It is the experience of the Service in implementing programs which rely on affidavits (such as the Immigration Reform and Control Act of 1986) that fraud may be prevalent.[4]

Mr. Crocetti further testified that the INS "takes no position as to whether Congress should amend the INA to provide exceptions to the Hmong."[5]

On May 21, 1998, Ann Harkins, Acting Assistant Attorney General, Office of Legislative Affairs, Department of Justice, sent a letter to Lamar Smith, Chairman of the Subcommittee on Immigration and Claims, stating that:

> As introduced . . . H.R. 371 provided potential opportunities for fraud, particularly because of lax documentation requirements for proof of service with special guerrilla units or irregular forces.
>
> Since the hearing concerning H.R. 371 in June 1997, the Immigration and Naturalization Service (INS) has provided technical assistance in redrafting the bill to: (1) tighten the documentation requirements; (2) require the Department of Defense to review the documentation; and (3) require the Department of Defense to advise the INS with respect to the credibility of claims of service with special guerrilla units or irregular forces. As a consequence, the Department does not object to this bill which, as re-

[4] *Hearing* at 23–24.
[5] *Id.* at 23.

> vised, would minimize the risk of fraud while maximizing the intended benefit [to] certain Hmong individuals and their spouses.

III. THE BILL

H.R. 371 in the current Congress is generally based on the Department of Justice proposal from 1998 and incorporates changes adopted by the committee last Congress to address fraud-related concerns. The bill would exempt naturalization applicants from the English language requirement if they were admitted into the United States as refugees from Laos and served with special guerrilla units or irregular forces operating from bases in Laos in support of the United States at any time during the period beginning February 28, 1961, and ending September 18, 1978, or who were spouses of such persons on the day on which such persons applied for admission as refugees.

The bill would also provide the aliens described above with special consideration as to the civics requirement for naturalization. Section 312(a)(2) of the INA provides that a naturalization applicant must demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of Government, of the United States. Section 312(b)(3) of the INA already provides special consideration for aliens over 65 years of age who have been living in the United States for periods totaling at least 20 years subsequent to lawful admission for permanent residence. Under this standard, applicants are tested at a less difficult level.[6] Applicants are asked 10 questions from a special list of 25 U.S. history and Government questions. Six must be answered correctly.

The bill requires aliens to submit documentation of their, or their spouse's, service with a special guerrilla unit, or irregular forces. The bill provides that in determining an alien's eligibility for benefits under this bill, the Attorney General (1) shall review refugee processing documents to verify that an alien was admitted to the United States as a refugee from Laos, (2) shall consider the documentation submitted by the alien, (3) shall request an advisory opinion from the Secretary of Defense, and (4) may consider any certification prepared by the Lao Veterans of America, Inc. or similar organizations.

The Lao Veterans of America includes tens of thousands of Hmong and Lao veterans and their families who played roles in the U.S. covert war in Laos and Vietnam. It has stringent requirements for membership:

> The criteria for joining our organization is first, filling out an application and submitting to an initial interview, secondly determining that the prospective member served a minimum of 1 year as a veteran and thirdly, be certified by a former commander or his representative, or the leader of the U.S. Secret Army in Laos, Major General Vang Pao. Finally, the applicant must be verified by a three member

[6] Memorandum from Louis D. Crocetti, Jr., to all INS field offices (Dec. 22, 1995), reproduced in 73 *Interpreter Releases* 86 (Jan. 16, 1996).

military review board appointed by the Lao Veterans of America's Board of Directors and Advisory Board.[7]

To further reduce the potential for fraudulent claims, the bill provides that a maximum of 45,000 permanent residents may take advantage of the benefits provided by the bill. The 45,000 figure was chosen because according to information provided by the Lao Veterans of America, this is the outside range of the number of Hmong who actually should qualify for benefits under the bill.

This legislation is supported by the American Legion and the Special Forces Association.

HEARINGS

No hearings were held on H.R. 371 in the 106th Congress. However, the committee's Subcommittee on Immigration and Claims held 1 day of hearings on the predecessor bill in the 105th Congress, also H.R. 371, on June 26, 1997. Testimony was received from Congressman Bruce Vento; Louis D. Crocetti, Jr., Associate Commissioner for Examinations, Immigration and Naturalization Service; Susan Haigh, Ramsey County Commissioner, St. Paul, Minnesota; Mark Pratt; and Mark Krikorian, Executive Director, Center for Immigration Studies.

COMMITTEE CONSIDERATION

On March 28, 2000, the committee met in open session and ordered favorably reported the bill H.R. 371 without amendment by a voice vote, a quorum being present.

VOTE OF THE COMMITTEE

H.R. 371 was approved by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform were received as referred to in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

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[7] Letter from Wangyee Vang, National President, Lao Veterans of America, Inc., to Lamar Smith, Chairman, Subcommittee on Immigration and Claims (March 25, 1998).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the committee sets forth, with respect to the bill, H.R. 371, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 4, 2000.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 371, the Hmong Veterans' Naturalization Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers Jr.
Ranking Democratic Member

H.R. 371—Hmong Veterans' Naturalization Act of 1999.

CBO estimates that implementing this legislation would cost less than $500,000 annually in appropriated funds over the next two years. The bill also would affect direct spending, so pay-as-you-go procedures would apply, but we estimate that the net effects would be less than $500,000 annually. H.R. 371 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not have a significant effect on state budgets. The bill would have no impact on local or tribal governments.

H.R. 371 would relax the naturalization requirements relating to English language proficiency and knowledge of civics for certain Laotians and their spouses. The bill would limit those eligible to apply under these relaxed standards to no more than 45,000 people who would have to apply for citizenship within 18 months of the bill's enactment. The naturalization fee is $225, so enacting H.R. 371 could increase fees collected by the Immigration and Naturalization Service (INS) by up to $10 million, mostly in fiscal year 2001. We expect that the INS would spend the fees (without further appropriation), mostly in the year in which they are collected, so enacting H.R. 371 would result in a net budgetary impact of less than $500,000 in any year.

This legislation would require the INS to consult with the Department of Defense (DoD) regarding the military service of each applicant for naturalization under the bill's provisions. We expect that DoD would spend less than $500,000 annually on consultation.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226–2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the committee finds the authority for this legislation in Article 1, section 8, clause 4 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short Title

Section 2. Exemption from English Language Requirement for Certain Aliens Who Served with Special Guerrilla Units or Irregular Forces in Laos

Section 312(a)(1) of the Immigration and Nationality Act requires that, to be naturalized, a person must demonstrate an understanding of the English language, including an ability to read, write, and speak words in ordinary usuage in the English language, provided that the requirements relating to ability to read and write shall be met if the applicant can read or write simple words and phrases to the end that a reasonable test of his literacy shall be made and that no extraordinary or unreasonable conditions shall be imposed upon the applicant.

The bill provides that the above requirement does not apply to the naturalization of any person who 1) was admitted into the United States as a refugee from Laos pursuant to section 207 of the INA and served with a special guerrilla unit, or irregular forces, operating from a base in Laos in support of the United States military at any time during the period beginning February 28, 1961, and ending September 18, 1978, or 2) was admitted into the United States as a refugee from Laos pursuant to section 207 of the INA and was the spouse of a person described in point 1 on the day on which such person applied for admission into the United States as a refugee.

Section 3. Special Consideration Concerning Civics Requirement for Certain Aliens Who Served with Special Guerrilla Units or Irregular Forces in Laos

Section 312(a)(2) of the Immigration and Nationality Act requires that, to be naturalized, a person must demonstrate a knowledge and understanding of fundamentals of the history, and of the principles and form of Government, of the United States.

The bill specifies that the Attorney General shall provide for special consideration concerning this requirement for aliens described in section 2 of the bill.

Section 4. Documentation of Qualifying Service

A person seeking benefits under section 2 or 3 of the bill shall submit to the Attorney General documentation of their, or their spouse's, service with a special guerrilla unit, or irregular forces, described in section 2, in the form of 1) original documents, 2) an affidavit of the serving person's superior officer, 3) two affidavits

from other individuals who also were serving with such a special guerrilla unit, or irregular forces, and who personally knew of the person's service, or 4) other appropriate proof.

Section 5. Determination of Eligibility for Exemption and Special Consideration

In determining a person's eligibility for benefits under section 2 or 3 of the bill, the Attorney General 1) shall review the refugee processing documentation for the person, or in an appropriate case, for the person and the person's spouse, to verify that the requirements of section 2 relating to refugee applications and admissions have been satisfied, 2) shall consider the documentation submitted by the person under section 4, 3) shall request an advisory opinion from the Secretary of Defense regarding the person's, or their spouse's, service in a special guerrilla unit or irregular forces and shall take into account that opinion, and 4) may consider any certification prepared by the Lao Veterans of America, Inc., or any similar organization maintaining records with respect to Hmong veterans or their families.

Section 6. Deadline for Application and Payment of Fees

Applications for benefits under the bill must be filed, with appropriate fees, not later than 18 months after the date of enactment of the bill.

Section 7. Limitation on Number of Beneficiaries

The total number of aliens who may be granted benefits under sections 2 or 3 may not exceed 45,000.

AGENCY VIEWS

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, March 29, 2000.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This letter presents the views of the Department of Justice on H.R. 371, the "Hmong Veterans Naturalization Act of 1999." The Department appreciates the courage of the Hmong veterans who would benefit from enactment of this legislation, as well as the particular challenge that the English and civics requirements for naturalization present to many such veterans and their spouses. We support this bill but would like to share with you several technical comments about H.R. 371 as introduced.

Section 5(3) states that in determining eligibility for exemption and special consideration, the Attorney General shall request an advisory opinion from the Secretary of Defense. However, the bill does not require the Department of Defense to provide the advisory opinion. Furthermore, no provision is made regarding how the Attorney General shall proceed if the Department of Defense is unable to provide an advisory opinion. It is not necessarily the case that in every situation a Department of Defense opinion would be needed to determine eligibility. In the interest of flexibility, we rec-

ommend amending this clause to provide that the Attorney General may request an advisory opinion; that upon request, the Secretary of Defense shall provide the requested opinion to the extent possible; and that the Attorney General shall take into account any opinion that the Secretary of Defense is able to provide.

Section 7 provides that the total number of aliens who may be granted an exemption under section 2 or special consideration under section 3, or both, may not exceed 45,000. If deserving Hmong veterans or their spouses otherwise qualify for the benefits provided by this legislation, we question why it would be appropriate or necessary to deny them because of this cap. We also note that this provision is likely to cause uncertainty among the beneficiaries of this legislation.

Thank you for the opportunity to provide our views. Please do not hesitate to call upon us if we may be of further assistance. The Office of Management and Budget has advised us that, from the standpoint of the Administration's program, there is no objection to the submission of this letter.

Sincerely,

ROBERT RABEN, *Assistant Attorney General.*

Identical letter sent to the Honorable John Conyers, Jr.

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