

became lawful permanent residents of the United States.

Next-of-kin means the closest surviving blood or legal relative of the decedent in the following order of succession:

- (1) The surviving spouse;
- (2) The decedent's surviving son or daughter, if the decedent has no surviving spouse;
- (3) The decedent's surviving parent, if the decedent has no surviving spouse or sons or daughters; or,
- (4) The decedent's surviving brother or sister, if none of the persons described in paragraphs (1) through (3) of this definition survive the decedent.

Other periods of military hostilities means any period designated by the President under Executive Order as a period in which Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force.

Representative means:

- (1) The duly appointed executor or administrator of the decedent's estate, including a special administrator appointed for the purpose of seeking the decedent's naturalization; or,
- (2) The duly appointed guardian, conservator, or committee of the decedent's next-of-kin; or,
- (3) A service organization listed in 38 U.S.C. 3402, or chartered by Congress, or State, or other service organization recognized by the Department of Veterans Affairs.

Vietnam Hostilities relates to the period from February 28, 1961, to October 15, 1978, inclusive.

World War I relates to the period from April 6, 1917, to November 11, 1918, inclusive.

World War II relates to the period from September 1, 1939, to December 31, 1946, inclusive.

§392.2 Eligibility for posthumous citizenship.

(a) *General.* Any alien or noncitizen national of the United States is eligible for posthumous United States citizenship who:

- (1) Served honorably in an active-duty status with the military, air, or naval forces of the United States during World War I, World War II, the Korean Hostilities, the Vietnam Hos-

tilities, or in other periods of military hostilities designated by the President under Executive Order; and,

(2) Died as a result of injury or disease incurred in or aggravated by service in the United States Armed Forces during a period of military hostilities listed in paragraph (a)(1) of this section. Where the person died subsequent to separation from military service, the death must have resulted from an injury or disease that was sustained, acquired, or exacerbated during active-duty service in a qualifying period of military hostilities as specified in this part.

(b) *Qualifying enlistment.* In conjunction with the qualifying service as described in paragraph (a)(1) of this section, the decedent must have:

- (1) Enlisted, reenlisted, or been inducted in the United States, the Canal Zone, American Samoa, or Swains Island;
- (2) Been lawfully admitted to the United States for permanent residence, at any time; or,
- (3) Enlisted or reenlisted in the United States Army pursuant to the provisions of the Lodge Act. In such case, the decedent shall be considered to have been lawfully admitted to the United States as a permanent resident for purposes of this section, provided he or she:

(i) Entered the United States, its outlying possessions, or the Canal Zone, at some time during the period of army service, pursuant to military orders; and

(ii) Was honorably discharged following completion of at least 5 full years of active duty service, even though the active-duty service may not have occurred during a qualifying period of hostilities specified in section 329(a) of the Act.

(c) *Character of military service.* Where the character of military service is not certified as honorable by the executive department under which the person served, or where the person was dishonorably discharged or discharged under conditions other than honorable, such service shall not satisfy the requirement of paragraph (a)(1) of this section.

(d) *Certification of eligibility.* (1) The executive department under which the

decendent served shall determine whether:

- (i) The decendent served honorably in an active-duty status;
- (ii) The separation from such service was under honorable conditions; and,
- (iii) The decendent died as a result of injury or disease incurred in, or aggravated by active duty service during a qualifying period of military hostilities.

(2) The certification required by section 329A(c)(2) of the Act to prove military service and service-connected death shall be requested by the applicant on Form N-644, Application for Posthumous Citizenship. Form N-644 shall also be used to verify the decendent's place of induction, enlistment or reenlistment.

§ 392.3 Application for posthumous citizenship.

(a) *Persons who may apply.* (1) Only one person who is either the next-of-kin or another representative of the decendent shall be permitted to apply for posthumous citizenship on the decendent's behalf. A person who is a next-of-kin who wishes to apply for posthumous citizenship on behalf of the decendent, shall, if there is a surviving next-of-kin in the line of succession above him or her, be required to obtain authorization to make the application from all surviving next-of-kin in the line of succession above him or her. The authorization shall be in the form of an affidavit stating that the affiant authorizes the requester to apply for posthumous citizenship on behalf of the decendent. The affidavit must include the name and address of the affiant, and the relationship of the affiant to the decendent.

(2) When there is a surviving next-of-kin, an application for posthumous citizenship shall only be accepted from a representative provided authorization has been obtained from all surviving next-of-kin. However, this requirement shall not apply to the executor or administrator of the decendent's estate. In the case of a service organization acting as a representative, authorization must also have been obtained from any appointed representative. A veterans service organization

must submit evidence of recognition by the Department of Veterans Affairs.

Once the Service has granted posthumous citizenship to a person, no subsequent applications on his or her behalf shall be approved, nor shall any additional original certificates be issued, except in the case of an application for issuance of a replacement certificate for one lost, mutilated, or destroyed.

(b) *Filing of application.* (1) An application for posthumous citizenship shall be submitted by mail on Form N-644, according to the instructions on the form, to the INS Service Center having jurisdiction over the applicant's state of residence. Persons residing outside the United States must mail their applications to any one of the four Service Centers.

(2) Form N-644 must be accompanied by the appropriate fee specified by and remitted in accordance with the provisions of § 103.7 (a) and (b) of this chapter. The fee may not be waived or refunded. To facilitate the certification process, a legible copy of each of the following documents, if available, should be submitted with Form N-644:

- (i) DD Form 214, Certificate of Release or Discharge from Active Duty;
- (ii) DD Form 1300, Report of Casualty/Military Death Certificate; or,
- (iii) Other military or State-issued death certificate.

(c) *Application period for requesting posthumous citizenship.* Form N-644 shall be filed with the appropriate INS Service Center not later than March 5, 1992, or 2 years after the date of the person's death, whichever date is later.

(d) *Denial of application.* When the application is denied, the applicant shall be notified of the decision and the reason(s) for denial. There is no appeal from the denial of an application under this part.

§ 392.4 Issuance of a certificate of citizenship.

(a) *Approval of application.* If the application (Form N-644) is approved, the director of the Service Center shall issue a Certificate of Citizenship, Form N-645, to the applicant, in the name of the decendent.

(b) *Delivery of certificate.* Delivery of the Certificate of Citizenship shall be