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(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 decedent served shall determine whether:

(i) The decedent served honorably in an active-duty status;

(ii) The separation from such service was under honorable conditions; and,

(iii) The decedent 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 must be requested by the applicant on the form designated by USCIS in accordance with the form instructions. The form will also be used to verify the decedent's place of induction, enlistment, or reenlistment.

[56 FR 22822, May 17, 1991, as amended at 76 FR 53806, Aug. 29, 2011]

§ 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 decedent shall be permitted to apply for posthumous citizenship on the decedent's behalf. A person who is a next-of-kin who wishes to apply for posthumous citizenship on behalf of the decedent, 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 decedent. The affidavit must include the name and address of the affiant, and the relationship of the affiant to the decedent.

(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 decedent'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 USCIS 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, mutiliated, or destroyed.

(b) *Application*. An application for posthumous citizenship must be submitted on the form designated by USCIS in accordance with the form instructions.

(c) *Application period*. An application for posthumous citizenship must be filed no later than two years after the date of the decedent's death.

(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.

[56 FR 22822, May 17, 1991, as amended at 74 FR 26941, June 5, 2009; 76 FR 53806, Aug. 29, 2011]

§ 392.4 Issuance of a certificate of citizenship.

(a) *Approval of application*. When an application for posthumous citizenship under this part has been approved, USCIS will issue a Certificate of Citizenship to the applicant in the name of the decedent.

(b) *Delivery of certificate*. Delivery of the Certificate of Citizenship shall be made by registered mail to the address designated by the applicant. If the applicant resides outside the United States, the certificate shall be sent by registered mail to the Service office abroad, if one is located where delivery is to be made; otherwise, it shall be forwarded to the nearest American Embassy or Consulate.

(c) *Effective date of citizenship*. Where the Service has approved an Application for Posthumous Citizenship (Form N–644), the decedent shall be considered a United States citizen as of the date of his or her death.

(d) *Ineligibility for immigration benefits*. The granting of posthumous citizenship under section 329A of the Immigration and Naturalization Act, as amended, and issuance of a certificate under paragraph (a) of this section, shall not entitle the surviving spouse, parent, son, daughter, or other relative of the decedent to any benefit under any provision of the Act. Nor shall such grant make applicable the provisions of section 319(d) of the Act to the surviving spouse.

(e) *Replacement certificate*. An application for a replacement Certificate of Citizenship must be submitted on the form designated by USCIS with the fee specified in 8 CFR 103.7(b)(1) and in accordance with the form instructions.

[56 FR 22822, May 17, 1991, as amended at 76 FR 53806, Aug. 29, 2011]

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