

## § 343b.4

### § 343b.4 Applicant outside of United States.

If the application is received by a DHS office outside the United States, an officer will, when practicable, interview the applicant before the application is forwarded to USCIS for issuance of the certificate. When an interview is not practicable, or is not conducted because the application is submitted directly to USCIS in the United States, the certificate may nevertheless be issued and the recommendation conditioned upon satisfactory interview by the Department of State. When forwarding the certificate in such a case, USCIS will inform the Secretary of State that the applicant has not been interviewed, and request to have the applicant interviewed regarding identity and possible expatriation. If identity is not established or if expatriation has occurred, the Department of State will return the certificate to USCIS for disposition.

[76 FR 53805, Aug. 29, 2011]

### § 343b.5 Verification of naturalization.

The application shall not be granted without first obtaining verification of the applicant's naturalization.

[32 FR 9636, July 4, 1967]

### § 343b.11 Disposition of application.

(a) *Approval.* If the application is granted, USCIS will prepare a special certificate of naturalization and forward it to the Secretary of State for transmission to the proper authority of the foreign state in accordance with procedures agreed to between DHS and the Department of State, retain the application and a record of the disposition in the DHS file, and notify the applicant of the actions taken.

(b) *Denial.* If the application is denied, the applicant will be notified of the reasons for denial and of the right to appeal in accordance with 8 CFR 103.3.

[76 FR 53806, Aug. 29, 2011]

## PART 343c—CERTIFICATIONS FROM RECORDS

AUTHORITY: 5 U.S.C. 552; 8 U.S.C. 1103.

## 8 CFR Ch. I (1–1–16 Edition)

### § 343c.1 Application for certification of naturalization record of court or certificate of naturalization or citizenship.

An application for certification of a naturalization record of any court, or of any part thereof, or of any certificate of naturalization, repatriation, or citizenship, under section 343(e) of the Act for use in complying with any statute, Federal or State, or in any judicial proceeding, shall be made on the form designated by USCIS in accordance with the form instructions.

[40 FR 50703, Oct. 31, 1975, as amended at 76 FR 53806, Aug. 29, 2011]

## PART 349—LOSS OF NATIONALITY

AUTHORITY: Sec. 103, 66 Stat. 173; 8 U.S.C. 1103. Interprets or applies 401(i), 54 Stat. 1169; 8 U.S.C. 801, 1946 ed.

### § 349.1 Japanese renunciation of nationality.

A Japanese who renounced United States nationality pursuant to the provisions of section 401(i), Nationality Act of 1940, who claims that his renunciation is void, shall complete Form N-576, Supplemental Affidavit to be Submitted with Applications of Japanese Renunciants. The affidavit shall be submitted to the Assistant Attorney General, Civil Division, Department of Justice, Washington, DC 20530, with a covering letter requesting a determination of the validity of the renunciation.

[32 FR 9636, July 4, 1967]

## PART 392—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WHO DIE WHILE SERVING ON ACTIVE DUTY WITH THE UNITED STATES ARMED FORCES DURING CERTAIN PERIODS OF HOSTILITIES

Sec.

392.1 Definitions.

392.2 Eligibility for posthumous citizenship.

392.3 Application for posthumous citizenship.

392.4 Issuance of a certificate of citizenship.

AUTHORITY: 8 U.S.C. 1103, 1440 and note, and 1440–1; 8 CFR part 2.

## Department of Homeland Security

## § 392.2

SOURCE: 56 FR 22822, May 17, 1991, unless otherwise noted.

### § 392.1 Definitions.

As used in this part:

*Active-duty status* means full-time duty in the active military service of the United States, and includes full-time training duty, which constitutes qualifying service under section 329(a) of the Act. Active service in the United States Coast Guard during one of the periods of hostilities specified herein shall constitute service in the military, air, or naval forces of the United States. Active-duty status also includes annual training duty and attendance, while in the active military service, at a service school designated by the military authorities under 10 U.S.C. 101(22). The order of a national guardsman into active duty for training under 10 U.S.C. 672 constitutes service in active-duty status in the military forces of the United States. Active duty in a noncombatant capacity is qualifying service.

*Decedent* means the person on whose behalf an application for a certificate of posthumous citizenship is made.

*Induction, enlistment, and reenlistment*, refer to the decedent's place of entry into active duty military service.

*Korean Hostilities* relates to the period from June 25, 1950, to July 1, 1955, inclusive.

*Lodge Act* means the Act of June 30, 1950, which qualified for naturalization nonresident aliens who served honorably for 5 years in the United States Army during specified periods, notwithstanding that they never formally 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 Hostilities, 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.

### § 392.3

(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.

### 8 CFR Ch. I (1-1-16 Edition)

tions. 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, mutilated, or destroyed.

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

**Department of Homeland Security**

**§ 392.4**

(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 for-

warded 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]

**PARTS 393–499 [RESERVED]**