



U.S. Department of Justice
Immigration and Naturalization Service

HQISD 70/33

425 I Street NW
Washington, DC 20536

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MEMORANDUM FOR REGIONAL DIRECTORS
DISTRICT DIRECTORS
OFFICERS-IN-CHARGE
SERVICE CENTER DIRECTORS

FROM: William R. Yates /s/
Deputy Executive Associate Commissioner
Office of Field Operations
Immigration Services Division

SUBJECT: Implementation Instructions for Section 114 of Public Law 107-77, "Department of Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations Act, 2002," 115 Stat. 748 (November 28, 2001)

The budget appropriation for the Immigration and Naturalization Service (INS) for fiscal year 2002 includes the authorization for the Attorney General to provide for the granting of posthumous citizenship, as of September 10, 2001, to any person who died as a result of any of the four hijackings described in subsection (e) of this section of law if an Application for Naturalization was pending on September 11, 2001, and if the Attorney General approves an application for such citizenship.

I. Persons Eligible for Posthumous Citizenship under Section 114 of Pub. L. 107-77

Section 114 sets forth the criteria for the granting of posthumous citizenship or issuance of a posthumous Certificate of Citizenship. To be eligible, an individual must:

- (1) have been an alien or non-citizen national of the United States;
- (2) have died either as a result of an injury incurred in one or more of the events described in subsection 114(c) of this act or have died as a result of an injury incurred while assisting in the emergency response to one of these events;

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- (3) have not been culpable for any of these events;
- (4) have been eligible for citizenship on their date of death and not have been barred from citizenship by any section of law not specifically waived by Section 114; and
- (5) have had pending on September 11, 2001 either an application for naturalization or an application for a certificate of citizenship.

For purposes of paragraph 2, individuals injured while assisting in an emergency response include military personnel, law enforcement officers, firefighters, emergency management personnel, search and rescue personnel, medical personnel, engineers and other personnel providing technical assistance, or volunteers. The Service also will require clear and convincing evidence establishing that the individual's death was a result of the September 11, 2001 events. Usually a clear statement of the events that caused death on the death certificate will suffice. However, the INS will consider other clear and convincing evidence when the death certificate is not available or does not clearly state that the death was caused by the September 11, 2001 events.

For purposes of paragraph 3, any person who has not been identified definitively by the Federal Bureau of Investigation (FBI) as a suspect or as culpable for the September 11, 2001 events will be presumed to meet the requirements of paragraph 3. If the FBI identifies an individual as a suspect, the Service will hold the posthumous naturalization request in abeyance until the issue is resolved. In addition, HQ Intelligence Liaison Projects Unit when supplied with: name, date/place of birth, social security number if available and last current address will also conduct a check to determine if any derogatory information exists relative to culpability for any of the events. The officer adjudicating the request should send a cc:Mail message, containing the information listed above and clearly identifying the request as a "Section 114" case to Colen G. Gardner. If this check identifies an individual as a suspect, the Service will hold the posthumous naturalization request in abeyance until the issue is resolved. If the response is "No record Found" the adjudication of the request should proceed.

Finally, for purposes of paragraph 5, the Service will consider an application for naturalization or certificate of citizenship as "pending" if the application was filed prior to September 11, 2001 in accordance with 8 CFR 103.2(a)(7) and as of September 11, 2001 and had not had any final administrative action taken on it.

II. Persons Eligible to File a Written Request for Posthumous Certificate of Naturalization or Citizenship under Pub. L. 107-77

Section 114(e) and 114(h)(4) provide that a request for the granting of posthumous citizenship or issuance of a posthumous certificate of citizenship may be filed on behalf of the

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person only by the next-of-kin (as defined by the Attorney General) or another representative (as defined by the Attorney General).

The provisions of section 114 are analogous to the provisions already in place for posthumous citizenship for military personnel under section 329A of the Immigration and Nationality Act (INA). The Service, therefore, is adopting the following definitions already published at 8 CFR § 392.1 for purposes of implementing Pub. L. 107-77:

- (A) *Decedent* means the person on whose behalf an application for a certificate of posthumous citizenship is made.
- (B) *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.
- (C) *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;
 - (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.¹

If the request is made by anyone other than the decedent's surviving spouse, the procedure described at 8 CFR § 392.3(a) shall be followed for purposes of determining who has priority to file a request:

- (A) Persons who may apply.

¹The Service is retaining this reference to service organizations adopted from 8 CFR § 392.1 to cover those deceased military personnel, particularly from the Pentagon, who may have been represented by such organizations.

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- (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.

If the Service receives more than one request submitted by persons who share the same degree of relationship to the decedent, the Service will process the request in the order of the requestor's chronological seniority.

Section 114(i) provides that only the U.S. citizen parent who filed an N-600 or N-643 pursuant to section 322 of the INA on a child's behalf is eligible to file the request for the posthumous certificate under this section of law. Thus, in the case of biological or adopted child who was under the age of 18 and eligible for a certificate of citizenship under section 322 of the INA on September 11, 2001, the Service will only accept requests from the U.S. citizen parent.

III. Deadline for Filing of Requests for Posthumous Certificates of Naturalization or Citizenship under Pub. L. 107-77

A request for the granting of posthumous citizenship or issuance of a posthumous certificate of citizenship under this act must be filed not later than 2 years after the later of—

- (1) November 28, 2001, or
- (2) the date of the person's death.

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IV. Processing of Requests for Posthumous Certificates of Naturalization or Citizenship under Pub. L. 107-77

A. Receipt of Written Requests for Posthumous Naturalization or Issuance of Posthumous Certificate of Citizenship

For purposes of implementing section 114, the Service is not creating a new form as was done with section 329A military posthumous naturalization. Unlike section 329A, the Service already has a pending application for the deceased applicant that contains most of the information the Service will need to process the certificates.

The Service, therefore, will require that individuals interested in requesting posthumous naturalization or a posthumous certificate of citizenship under this act only file a written request, preferably containing sufficient identifying information (e.g., the A number, name, date of birth, and last place of residence) about the decedent in order for the Service to determine if the decedent had a pending application and which district has jurisdiction over the case.

Any Service office can accept the written request. However, the INS website and the announcement made by the INS Office of Public Affairs will suggest that any such request be submitted to the INS office that has jurisdiction over the decedent's place of residence at the time of their death.

Any office that receives such a request should query CIS and/or C4 in order to determine the location of the N-400, N-600 or N-643. The request should be forwarded to the office that currently has the N-400, N-600 or N-643. If the evidence of the required relationship (or status as an authorized representative) necessary to file the request does not accompany the request, the INS office that has the N-400, N-600 or N-643 should request it from the person seeking the posthumous naturalization or certificate of citizenship.

B. Processing of Pending N-400s, N-600s or N-643s

Section 114 requires that all applications, whether for N-400, N-600 or N-643, were pending on September 11, 2001. For purposes of this act, the Service will consider an application as "pending" if the application met the filing requirements of 8 CFR § 103.2(a)(7) and no final decision was issued on the application.

(1) N-400s

For purposes of an N-400, an N-400 is pending at a Field Office if the INS has not yet issued a naturalization certificate or issued a denial either at the conclusion of section 335 or 336 proceedings under section 336 of the INA.

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The following processing actions must be taken for pending N-400s when the Service receives a written request for posthumous citizenship:

- (a) All pending N-400s at Service Centers should be forwarded to the Field Office that would have conducted an examination of the applicant.
- (b) All N-400s that were denied after September 11, 2001 for failure to submit fingerprints or for failure to submit the fingerprinting fee should be reopened and forwarded to the Field Office that would have conducted an examination of the applicant.
- (c) All N-400s that had been administratively closed for failure to appear for an initial examination less than one year prior to September 11, 2001 or on or after September 11, 2001 should be reopened on a Service Motion, without fee, and adjudicated according to the instructions in this Memorandum.
- (d) All N-400s that had been denied for "Lack of Prosecution" on or after September 11, 2001 should be reopened on a Service Motion, without fee, and adjudicated according to the instructions in this Memorandum.

(2) *N-600s and N-643s*

For purposes of an N-600 or N-643, an N-600 or N-643 is pending at a Field Office or the Vermont Service Center if a final decision has not been issued by the district director pursuant to 8 CFR 341.5 or by the Administrative Appeals Unit (AAU) on review under 8 CFR 103.3.

The following processing actions must be taken for pending N-600s or N-643s when the Service receives a written request for issuance of a posthumous certificate of citizenship:

- (a) All N-600s or N-643s that have been denied for failure to respond to request for evidence under 8 CFR 103.2 on or after September 11, 2001 should be reopened on a Service Motion, without fee, and adjudicated according to the instructions in this Memorandum.
- (b) All N-600s that had been denied for "Lack of Prosecution" on or after September 11, 2001 should be reopened on a Service Motion, without fee, and adjudicated according to the instructions in this Memorandum.

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C. System Updating and NQP Requirements

CLAIMS4 has been enhanced to keep track of N-400s that are subject to a request for posthumous citizenship under section 114 of Pub. L. 107-77. A table change has been made in the database and is reflected in the Adjudication Module. On the N-400 tab, under the Basis of Eligibility, the option for "other" has been expanded to now include "Sec. 114." Upon receipt of a Section 114 request, an office must open the case in the CLAIMS 4 Adjudications Module and change the Basis of Eligibility to the "Other" option and chose "Sec. 114." Close the case and save the data changes. As sufficient information may not reside in CLAIMS4, the case will be transferred to a Manual mode for completion of processing. Notify the CLAIMS4 Help Desk to effect this action.

The NQP Processing Worksheets were designed to capture annotations relating to the processing of applications filed under any standard section of the INA. This very small group of applications may well include cases at any possible state of the processing and/or adjudication. It would be a monumental task to prescribe correct annotations for each of the possible lines of the Processing Worksheets. Therefore, for cases adjudicated pursuant to Section 114, no NQP error shall be charged for the annotations of any case that follows the guidelines in this Memorandum.

For N-600s and N-643s, when a request is received for the posthumous issuance of a certificate of citizenship, the district office which has the pending application should complete the form found in **Attachment 2** to this Memorandum and fax it to (202) 305-0108 and/or forward it as a cc:mail to "Certificates 114." When final action is taken on the application, the remaining information in **Attachment 2** should be completed and sent again to the fax and/or cc:mail address noted above.

V. Adjudication of Requests for Posthumous Certificates of Naturalization or Citizenship under Pub. L. 107-77

A. Guidelines for N-400, Applications for Naturalization

All N-400s pursuant to section 114 should be adjudicated based on the facts that existed on September 10, 2001. To the maximum extent possible, the N-400s should be adjudicated without requiring documents, testimony or input of any kind from the next-of-kin or other representative.

The Service should make every effort to properly adjudicate the application by relying on the information contained on the N-400, the applicant's A-file, databases available to the Service or required documents obtained by the INS without making requests of the next-of-kin or other representative.

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Below are guidelines for adjudicating cases of individuals who are the subject of a request for posthumous citizenship. The guidelines address each of the naturalization requirements that you may encounter when adjudicating these cases:

(1) *Residence/Physical Presence*

For applicants who had an initial examination:

- (a) If the residence/physical presence eligibility had been satisfactorily established as a result of the initial examination, this element of eligibility remains established.
- (b) If the residence/physical presence eligibility was not clearly established by Passports, Travel Documents, or other documentation at the initial examination, but the applicant testified under oath to facts that, if true, would have satisfied this requirement, the adjudicating officer can make a determination that this element of eligibility has been established based on the credible testimony of the applicant, even if requested documents or information has not yet been received.
- (c) If the residence/physical presence eligibility was not clearly established by Passports, Travel Documents, or other documentation at the initial examination, and the adjudicating officer determines that documentation or information not yet received is necessary to demonstrate this element of eligibility, the next of kin or representative should be given the opportunity to provide documentation that would establish this element of eligibility.
- (d) When the information provided at the initial examination or as follow-up to the initial examination indicates that the applicant was not eligible for citizenship on September 11, 2001 because of a lack of one of the required elements of residence/physical presence, the application should be denied.

For applicants who did **not** have an initial examination:

- (a) When the information provided on the N-400, if accurate, indicates that the residence/physical presence requirements have been fulfilled, this should be considered to sufficiently demonstrate this element of eligibility.

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- (b) When the information provided on the N-400 indicates that there is a rebuttable presumption that the applicant disrupted the required continuous residence, i.e., an absence of more than six months but less than one year, the next of kin or other representative should be offered the opportunity to present credible evidence, in writing, that the absence did not in fact disrupt the residence.
- (c) When the information provided on the N-400 indicates one or more absences of more than one year's duration during the statutory period, but the nature of the applicant employment suggests that the applicant may have been eligible for preservation of residence pursuant to an approved Form N-470, Application to Preserve Residence for Naturalization Purposes, the Service should make every effort to learn if such application had been timely filed.
- (d) When the information provided on the N-400 indicates that the applicant was not eligible for citizenship on September 11, 2001 because of a lack of one of the required elements of residence/physical presence, the application should be denied.

(2) *Good Moral Character*

For applicants who had an initial examination:

- (a) If the good moral character eligibility had been satisfactorily established as a result of the initial examination, this element of eligibility remains established.
- (b) If the initial examination revealed that the applicant had been arrested on a charge that falls within the categories of cases listed in Policy Memorandum # 78, dated April 27, 2001, for which official disposition documentation is required and the applicant has not yet submitted the documentation, the INS should request that the next-of-kin or other representative provide documentation from the Court or law-enforcement agency.
- (c) If, based on the information from the examination and/or the follow up, it is determined that that applicant has failed to demonstrate the required good moral character, the application should be denied.

For applicants who did **not** have an initial examination:

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- (a) If fingerprints had been submitted to the FBI that caused a Non-ident response to be returned from the FBI, the applicant should be considered to have demonstrated good moral character unless there is other evidence that this is not the case, e.g. evidence in the A-file that the applicant had disqualifying conviction(s) in another country.
- (b) If fingerprints had been submitted, either once or twice, to the FBI and were found to be unclassifiable, the INS should request that the next-of-kin or other representative obtain the State or local police clearance from all jurisdictions in which the applicant resided during the statutory period.
- (c) If fingerprints had been submitted to the FBI that caused an Ident response to be returned from the FBI, the INS should request that the next-of-kin or other representative obtain evidence of the dispositions of all arrests that fall within the categories of cases listed in Policy Memorandum # 78, dated April 27, 2001, for which official disposition documentation is required.
- (d) If fingerprints had not yet been submitted to the FBI, the applicant's name, date of birth, country of birth and as much biometrics information as is known should be forwarded by cc:Mail to Jack L. Hartsoch at Clarksville, WV. The subject of the cc:Mail should be "Sec 114 Posthumous Citizen Applicant." Jack Hartsoch will inform the field office of the results of the background checks.
- (e) If the background checks reveal that the applicant lacked the good moral character required for naturalization, the application should be denied.

(3) *Attachment*

For applicants who had an initial examination:

- (a) If the attachment eligibility had been satisfactorily established as a result of the initial examination, this element of eligibility remains established.
- (b) As the decedent will not be required to take the oath of renunciation and allegiance, the applicant's eligibility or lack of eligibility for admission to citizenship by means of a modified oath is not an issue. Even if this issue has not yet been resolved, the application should be granted.

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- (c) If the applicant had indicated that he or she was unwilling to perform work of national importance under civilian direction, the application should be denied. See *Interpretations* 337.2(b)(2)(v).

For applicants who did **not** have an initial examination:

- (a) Barring any other evidence to the contrary, the process of filing an application for naturalization that includes satisfactory responses to the questions relating to attachment should be accepted in these cases as sufficient evidence that the applicant had demonstrated the requisite attachment.
- (b) As the decedent will not be required to take the oath of renunciation and allegiance, the applicant's eligibility or lack of eligibility for admission to citizenship by means of a modified oath is not an issue. Even if this issue has not been resolved, the application should be granted.
- (c) If the applicant had indicated that he or she was unwilling to perform work of national importance under civilian direction, the application should be denied. See *Interpretations* 337.2(b)(2)(v).

(4) *English and Civics Requirements*

Section 114(d)(2) specifically states that no demonstration of any part of the requirements of Section 312 of the INA shall be required for the granting of posthumous citizenship. This applies to all cases without regard to whether or not there has been an initial examination and without regard as to whether or not the applicant demonstrated the INA 312 requirements at a first or second examination.

(5) *Oath Requirement*

Section 114(d)(3) specifically states that no oath of renunciation or allegiance shall be required for the granting of posthumous citizenship. The next of kin or other representative should not be required to take the oath of renunciation or allegiance for the applicant. The next of kin or other representative should not be required to participate in any public or private ceremony for the issuance of the Certificate of Naturalization. However, in keeping with the spirit of 8 CFR § 337.2(a), the Certificate of Naturalization should be delivered or presented in such a manner as to preserve the dignity and significance of the occasion while respecting the wishes of the recipient.

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B. Guidelines for N-600s and N-643s filed under Section 341

All approvable applications filed pursuant to INA 341 are adjudicated on behalf of persons who claim to have already acquired U.S. citizenship under the relevant provision of law governing his or her case. This section of law provides benefits only to those persons who had an N-600, Application for Certificate of Citizenship or an N-643, Application for Certificate of Citizenship on Behalf of an Adopted Child, pending on September 11, 2001. All pending N-600s and N-643s shall be adjudicated according to the section of law that was in effect at the time that the person was born or, for those individuals who acquired citizenship automatically after birth, at the time the last condition was fulfilled in order for the person to become a citizen of the United States.

Whenever it is possible to adjudicate an N-600 or N-643 pursuant to this section of law without the next of kin or representative being required to present additional documentation not submitted with the application or available in INS file(s), no additional requests or requirements shall be made of the next of kin or other representative.

B. Guidelines for N-600s and N-643s for Parents Filed on Behalf of Biological and Adopted Child under Section 322

As provided in Part I of this Memorandum, the child must have had an N-600 or N-643, filed by his or her U.S. citizen parent pursuant to Section 320 of the INA, pending on September 11, 2001. The N-600 or N-643 must have been approvable if it had been adjudicated on September 11, 2001.

In the usual processing of applications filed under INA 322, pursuant to 8 CFR § 322.4, the U.S. citizen parent and the child shall appear in person before a Service officer for examination on the application for a certificate of citizenship. In those cases in which the application is clearly approvable without the appearance or additional testimony of the U.S. citizen parent, the parent should not be required to appear for an interview under this section.

VI. Issuance and Delivery of Posthumous Certificates of Naturalization or Citizenship

A. Certificates of Naturalization

When an application is approved under this section of law, the document to be sent shall be a standard Form N-550, Certificate of Naturalization. Immediately after "conducted by the Immigration & Naturalization Service" the annotation "Certificate issued posthumously; oath waived" shall be added. The date of naturalization shall be September 10, 2001 for all Certificates issued pursuant to this section of law.

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B. Certificates of Citizenship for Individuals Who Filed N-600s or N-643s Under Section 341

(1) *Date of Citizenship*

All approvable N-600s and N-643s adjudicated under this law were filed by or on behalf of persons who are already citizens of the United States. The date shown on the certificate shall be the date on which the person acquired or derived citizenship under whatever section of law the person became a citizen.

(2) *Type of Certificate To Be Issued*

All N-600s approved under this section of law should result in the issuance of a standard N-560, Certificate of Citizenship. The N-560 should be issued as an AA or AB Certificate if the person was born a citizen of the United States. The N-560 should be issued as an A Certificate if the person became a citizen by action of law at some date later than the date of birth.

(3) *Annotation of Certificate*

Immediately following the date of issuance, the annotation "Issued posthumously" should be added to the N-560.

(4) *Delivery of Certificate*

Section 114(h)(3) specifically states that the usual requirements relating to the taking of the oath and presence within the United States shall not apply. The next of kin or representative shall not be required to appear at any INS office or to participate in any public or private ceremony in order to be issued the certificate. However, in keeping with the spirit of 8 CFR § 341.7, the Certificate of Citizenship should be delivered or presented in such a manner as to preserve the dignity and significance of the occasion while respecting the wishes of the recipient.

C. Certificates of Citizenship for U.S. Citizen Parents Filing on Behalf of Biological or Adopted Child Under Section 322

(1) *Date of Citizenship*

The date of citizenship on all certificates issued under this law for applications filed pursuant to INA 322 shall be September 11, 2001.

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(2) *Type of Certificate To Be Issued*

All N-600s and N-643s approved under this section of law should result in the issuance of a standard N-560, Certificate of Citizenship as an A Certificate.

(3) *Annotation of Certificate*

Immediately following the date of issuance, the annotation "Issued posthumously" should be added to the N-560.

(4) *Delivery of Certificate*

Section 114(h)(3) specifically states that the usual requirements relating to the taking of the oath and presence within the United States shall not apply. The next of kin or representative shall not be required to appear at any INS office or to participate in any public or private ceremony in order to be issued the certificate.

VII. No Derivative Benefits

Section 114(g) provides that no derivative immigration benefits under the INA are available to any spouse, son, daughter, or other relative of a person granted posthumous citizenship under this section.

Because section 114(h) only authorizes the posthumous issuing of Certificates to persons who were already citizens before September 11, 2001, the prohibition against any benefits under the Immigration and Nationality Act for any spouse, son, daughter, or other relative of a person granted posthumous citizenship that is found in section 114(g) does not apply in the case of persons whose citizenship is posthumously documented pursuant to section 114(h).

Attachment