



October 7, 2022

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## Policy Alert

SUBJECT: *Calixto* Settlement Agreement and Military Accessions Vital to National Interest Naturalization Applicants

### Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the [USCIS Policy Manual](#) to update guidance regarding certain Military Accessions Vital to National Interest (MAVNI) naturalization applicants based on a settlement agreement in *Calixto, et al., v. U.S. Dep't of the Army, et al.* (*Calixto* Agreement).<sup>1</sup>

### Background

Members of the U.S. armed forces who serve honorably for any period during specifically designated periods of hostilities may be eligible to naturalize under [INA 329](#). In 2009, the U.S. Department of Defense authorized the MAVNI program as a recruitment tool to enlist certain nonimmigrants and other noncitizens who had skills that were considered vital to the national interest of the United States.<sup>2</sup> Certain MAVNI applicants may be eligible to naturalize under [INA 329](#).

A qualifying period of service under [INA 329](#) is a period of service during which the applicant served honorably as a member of the Selected Reserve of the Ready Reserve or on active duty in the U.S. armed forces during a designated period of hostilities, and if separated, was separated under honorable conditions. Any time period of active duty service in the U.S. armed forces or service in the Selected Reserve of the Ready Reserve, including initial entry training such as basic combat training or officer candidate school, is generally considered sufficient for demonstrating the requisite period of service.

The determination to certify honorable service is completed by the respective Military Department.<sup>3</sup> In the case of *Calixto* class members, that is the U.S. Army.

On September 22, 2022, the U.S. Army entered into the *Calixto* Agreement to provide that *Calixto* class members may receive a certified Request for Certification of Military or Naval Service ([Form N-426](#)). Class members are individuals who enlisted in the U.S. Army, including the Selected Reserve of the Ready Reserve Delayed Training Program or Regular Army Delayed Entry Program as part of the MAVNI pilot program on or before September 30, 2017, who were not discharged or

<sup>1</sup> See *Calixto, et al., v. U.S. Dep't of the Army, et al.*, 1:18-cv-01551 (D.D.C. Sep. 22, 2022).

<sup>2</sup> The Secretary of Defense authorized the pilot program. See the DOD [MAVNI Fact Sheet](#).

<sup>3</sup> See [INA 329\(a\)](#). See [INA 329\(b\)\(3\)](#).

received an uncharacterized discharge. These applicants become eligible to apply for naturalization under [INA 329](#) as a result of the certified [Form N-426](#), even before attending initial entry training. *Calixto* class members may not have started or completed a qualifying period of service but are still considered to meet the period of service requirements for naturalization eligibility if the Army certifies a class member's [Form N-426](#).

This guidance, contained in Volume 12 of the Policy Manual, is effective as of the date of publication and applies to all currently pending applications as well as to applications filed on or after September 22, 2022. The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance on the topic.

### **Policy Highlights**

- Provides that USCIS considers *Calixto* class members who have a certified [Form N-426](#) as having met the requisite period of honorable service for naturalization eligibility under [INA 329](#).
- Explains that *Calixto* class members may provide a copy of the *Calixto* Agreement along with [Form N-400](#) and certified [Form N-426](#) as a substitute for identifying the type and duration of service in the N-426, and as evidence of honorable service or an under honorable conditions discharge.
- Explains that including the agreement and annotating Form N-400 and Form N-426 with "Calixto" at the top helps USCIS identify class members and provide for more efficient processing.

### **Summary of Changes**

Affected Section: Volume 12 > Part I > Chapter 3 > Section G, Department of Defense Military Accessions Vital to National Interest Program

- Adds new italicized subheading "Calixto Settlement Agreement Applicants" with new content at end of Subsection 1 (Military Accessions Vital to National Interest Program) and makes technical revisions in Subsection 1 and Section G introductory language.

Affected Section: Volume 12 > Part I > Chapter 5 > Section A, Required Forms

- Adds new paragraph before final paragraph of Section A.

### **Citation**

Volume 12: Citizenship and Naturalization, Part I, Military Members and their Families, Chapter 3, Military Service during Hostilities (INA 329) [[12 PM-USCIS I.3](#)]; Chapter 5, Application and Filing for Service Members (INA 328 and 329) [[12 PM-USCIS I.5](#)].