

EXHIBIT 46

The Army Stopped Expelling Immigrant Recruits. But an Email Suggests It's Still Trying.

By Dave Philipps

Sept. 19, 2018

BOSTON — The Army's abrupt discharges of immigrant recruits may not be over after all.

Faced with legal challenges from some of the recruits, who said they had been expelled unfairly on specious security grounds, the Army suspended the discharges over the summer and said it would re-examine its policy.

But an internal Army email message obtained by The New York Times suggests that the Army may be looking for different grounds for expelling the recruits that would sidestep the litigation.

The recruits had signed up for a program known as Military Accessions Vital to National Interests, or Mavni, which offered legal immigrants with vital language or medical skills a fast track to citizenship in exchange for military service. About 11,000 troops have joined the armed forces through the program since Mavni started in 2008.

The Defense Department ended the program in 2016, citing security concerns, and imposed strict new screening on thousands of recruits who had already signed enlistment contracts for the program but had not yet begun basic training. The Army flagged many of them as security risks, even when other federal agencies had cleared them for more sensitive jobs in the civilian world.

One was Igor Gavrish, 24, a Russian immigrant who passed stringent background checks to work with deadly viruses in a laboratory where he must have his iris scanned twice to gain entry. He tried to join the Army Reserve, but the Army classified him as a major security risk.

Another immigrant from Russia, Pavel Astashkin, was classified as potentially too risky, even though he is an airline pilot who has passed several federal security checks and regularly flies over the White House and the Pentagon.

"It makes no sense," said Mr. Gavrish, "The Army recruits us for our foreign ties, then refuses to use us because of them."

Declassified counterintelligence reports show that the security threats the Army thought it saw in the recruits were often ordinary aspects of immigrant life, like sending money or regularly telephoning relatives overseas.

A group of recruits sued the Army this summer, saying they were being unfairly discharged. The Army suspended the discharges and said it planned to "conduct a review of the administrative separation process."

The internal Army email suggests that the Army has been using the time since then to have military lawyers pore through the immigrant recruits' records, looking for possible crimes that could be used to force them out.

The email, sent to lawyers in the Army Reserve in mid-August, asked for volunteers to search the recruits' security files "to determine whether the applicants admitted to or provided information about a crime." The email was forwarding a request from the 902nd Military Intelligence Group, the unit in charge of vetting Mavni recruits.

The email did not say how the information would be used. But it noted that the recruits "are currently suing the federal government claiming they were wrongfully discharged from the Army," and suggested that during security interviews, the recruits may have "confessed to a crime."

Charging Mavni recruits with crimes would allow the Army to force them out quickly regardless of the legal challenges over background checks.

"This is alarming — they are just going on a fishing expedition," said Margret D. Stock, a lawyer and former Army Reserve lieutenant colonel who helped create the military's immigrant recruit program. She now represents several Mavni recruits. "The Army got called on the carpet in court for doing arbitrary and irrational security screenings, and so it started looking for a new way to kick these guys out."



Biao Zou said the ties to China that the Army flagged in his security file were his parents, who sell sweaters. Nolis Anderson for The New York Times

Allegations of illegal conduct could be used as grounds for discharge, even if formal charges are never filed, Ms. Stock said.

Lawyers from Fried Frank, the law firm representing the recruits who are suing the Army, declined to comment.

Asked about the email, a Defense Department spokeswoman denied that the purpose of the legal reviews of the recruits' records was to force them out of the service. The spokeswoman, Maj. Carla Gleason of the Air Force, acknowledged that any recruits who were linked to crimes would be discharged, but she said the reviews were routine checks to ensure that reporting guidelines had been followed.

"Any inference that this was an attempt to charge or discharge Mavni candidates would be inaccurate," Major Gleason said.

The major said the legal reviews requested in the email were canceled a few days after the order went out.

Ms. Stock said she believed there had since been additional emails of a similar nature requesting legal reviews. Major Gleason said she was not aware of other emails.

The major said that stringent vetting of noncitizen recruits was vital, because some recruits in the Mavni program had been linked to foreign intelligence agencies. But she declined to give any specifics, saying the information was classified.

Major Gleason said the Defense Department did not know of any soldiers in the program who had been publicly charged with offenses related to terrorism or espionage.

Most recruits in the Mavni program came to the United States on student visas. Many have multiple graduate degrees, and they are, on average, better educated, better behaved and better performing than the typical soldier, according to a 2017 RAND Corporation report. One Mavni recruit was the Army's soldier of the year in 2012.

Though Mavni recruits typically must enlist in low-level jobs that do not require a security clearance, they are put through all the background checks required for top-secret clearance, including a review of years of finances and travel and several lengthy interviews.

"I've been through so many screenings, they know me better than I know myself," said Mr. Astashkin, the pilot, who lives in Chicago.

Mr. Astashkin, 32, who has degrees in engineering and information technology and speaks Latvian and Russian, came to the United States in 2013 to go to flight school, and then became a flight instructor, training American military pilots who were transitioning to civilian flying jobs. Many of those veterans became his friends, he said, and they inspired him to enlist in the Army in 2016. His enlistment has been in limbo ever since, stalled by a backlogged security vetting system.

In the meantime, he has been working as a commercial pilot for SkyWest Airlines, and said that he had Mayor Bill de Blasio of New York and his staff as passengers on a recent flight.

"There is no security reason I cannot be a good soldier, but it is not up to me, it is all politics," he said.

He is worried that turmoil in the Mavni program will drag on until his visa expires this winter. If that happens and he is deported back to Russia, he could be jailed there for trying to join the American military.

Tilak Poudel, a doctoral student at the University of Toledo in Ohio, was turned away by the Army because he has relatives in Nepal with government jobs. He said most of them were schoolteachers. Nolis Anderson for The New York Times

"They will treat it like a mercenary — it won't be tolerated at all," he said. "For me it is a little scary."

Mr. Gavrish has the same fear. He came to the United States as a student in 2012, earned a degree in molecular biology and began working with drug-resistant tuberculosis at a high security virus lab at Boston University.

He enlisted in the Army in 2015, seeing it as an honorable way to earn his citizenship, and completed the required security screenings last year, but has not been called to start basic training.

He obtained copies of the Army's findings through the Freedom of Information Act and saw that he was listed as a "major risk" because of foreign ties in Russia and a criminal history.

But the report listed no criminal activities, and only one foreign tie, to his father, who owns a carwash in Vladivostok. Mr. Gavrish insisted that he had never been in trouble with the law.

Mr. Gavrish said he was now working a second job on weekends, saving money for a lawyer to apply for political asylum.

Many of the recruits now in limbo may be discharged and deported before the challenges now in federal court can be decided.

Biao Zou, 32, came from China to study business at the State University of New York in Buffalo and got perfect scores on the Army physical fitness test when he enlisted. But his files show that, like Mr. Gavrish, he was red-flagged for foreign ties that turned out to be his parents.

"They are not anything to do with the government," Mr. Zou said in an interview. "They sell sweaters."

His student visa has expired. The Army arranged for a three-year grace period for recruits like him, but that, too, will run out soon.

The problems with the Mavni program are also costing the Army talent at a time when the service is falling short of its enlistment goals.

Tilak Poudel, a doctoral student at the University of Toledo, in Ohio, is helping to develop a more efficient way to produce hydrogen gas from water, using only solar power.

"This would be an awesome technology for the Army," said Mr. Poudel, who is from Nepal. "You can produce renewable fuel in the field, and the byproduct is clean water soldiers can drink."

He enlisted in 2015, but was never called for training, and learned this summer that he had been discharged over ties to the Nepalese government. Those ties turned out to be relatives in low-level jobs, most of them public-school teachers.

"I will be able to continue with my research, maybe in another country," he said. "But I love America. It gave me great opportunity. I chose to serve this country. It just didn't choose me."