

EXHIBIT 48



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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Judge Scratches USCIS Policy For Foreign Military Recruits

By **Daniel Wilson**

Law360 (May 23, 2019, 8:16 PM EDT) -- A Washington, D.C., federal judge vacated a U.S. Citizenship and Immigration Services policy delaying citizenship applications for foreign military recruits until it receives a "suitability determination" from the U.S. Army, saying USCIS has wrongly used those determinations in place of its own judgment.

USCIS' July 2017 policy, holding off on processing naturalization applications of military recruits who enlisted through the Military Accessions Vital to the National Interest, or MAVNI, program until it receives a "military service suitability determination" from the Army, is "arbitrary and capricious," in violation of the Administrative Procedure Act, U.S. District Judge Ellen S. Huvelle ruled Wednesday.

The government had argued that by waiting until the Army completes its suitability determination, USCIS then has all relevant information at hand, helping it to meet its obligation to ensure those recruits meet the necessary "good character" standard for naturalization.

But, as the government itself has acknowledged, there are "significant differences" between USCIS' naturalization standards and those used by the DOD for military suitability, which means some recruits may still qualify for naturalization even if they are ultimately bounced out by the military, according to the judge.

And USCIS is required under immigration law to conduct its own investigations of applicants for naturalization and independently assess their moral character or "attachment to the Constitution," Judge Huvelle noted.

"In practice ... USCIS is making no such independent assessment, because it treats an unsuitable [suitability determination] as determinative for purposes of naturalization," she said.

Character and national security concerns may be able to justify USCIS waiting until the Defense Department completes its MAVNI background investigations before proceeding with an application, Judge Huvelle said, while noting that the department has completed those investigations for the MAVNI class, making the issue effectively moot.

But they do not justify further waiting for the Army's suitability determination, a separate phase that "synthesizes" that background check information and "considerably lengthens the time before USCIS can address naturalization applications," she found.

Douglas W. Baruch of Fried Frank Harris Shriver & Jacobson LLP, said in a statement Thursday that his team was "extremely pleased with this result and the relief it affords to our clients," whom he described as "thousands of patriotic and talented U.S. Army soldiers."

"From the outset of this litigation two years ago, these soldiers asked for nothing more than to exercise their lawful right to become United States citizens," he said. "With the court's decision, our clients will now have that opportunity and their years of suffering in immigration limbo should come to an end."

A representative for USCIS declined to comment on the order late on Thursday, saying it had not

been given sufficient notice to provide an appropriate response.

MAVNI was launched in 2008 to allow noncitizens with in-demand skills — like medical training or certain language proficiencies — to serve in the military, receiving an expedited path to citizenship in exchange for their service.

Amid growing national security concerns, the DOD later began to ramp up its background screening for MAVNI applicants, with recruits eventually allowed to ship off to basic training only upon completion of the background check and further scrutiny by the DOD and Army to arrive at a final suitability determination.

This has caused MAVNIs, as they are commonly known, to wait "significantly longer" between enlistment and training, in the meantime being placed in the Army's Delayed Training Program, drilling as reservists while they wait, according to the opinion.

As a result, hundreds of MAVNIs received "certification of honorable service" forms from the Defense Department — a prerequisite for USCIS approval — while still stuck in the training phase, rather than while at basic training as had been typical, and subsequently applied to USCIS for naturalization.

USCIS then mutually agreed with the department — amid several examples of MAVNIs naturalized before derogatory information was later discovered, or later bounced out of the Army — that it was "in the best interest of the United States" to make naturalization decisions only once the DOD's full suitability determination process was completed.

As a result, it put a hold on those naturalization applications in April 2017 and — after a classified DOD Office of Inspector General report issued in June that year, further looking into national security issues related to the MAVNI program — issued guidance in July 2017 effectively formalizing the requirement to wait for a final suitability determination before moving forward with naturalization.

Following that April hold, Kusuma Nio and other MAVNIs had sued, alleging the Defense Department and USCIS were unlawfully holding up MAVNIs naturalization applications as a result of the department improperly stepping into the naturalization process.

The suit is one of several suits filed by MAVNIs, including those yet to receive their certification of honorable service, subjected to ongoing security checks, or **alleging the Army wrongly discharged** them.

The plaintiffs are represented by Douglas W. Baruch, Jennifer M. Wollenberg, Kayla Stachniak Kaplan, Neaha P. Raol and Katherine L. St. Romain of Fried Frank Harris Shriver & Jacobson LLP.

The government is represented by Joseph H. Hunt, William C. Peachey, Colin A. Kisor, Elianis N. Perez and C. Frederick Sheffield of the U.S. Department of Justice's Civil Division and Office of Immigration Litigation.

The case is Nio et al. v. U.S. Department of Homeland Security et al., case number 1:17-cv-00998, in the U.S. District Court for the District of Columbia.

--Editing by Connor Relyea.

Update: This story has been updated to include USCIS' response.