

Ten Things That Immigration Lawyers Should Know About the Army's New Non-Citizen Recruiting Program

By Margaret D. Stock*

On November 25, 2008, US Secretary of Defense Robert Gates signed a memorandum authorizing the Secretaries of the Army, Navy, and Air Force to implement a new non-citizen recruiting pilot program for the United States Armed Forces. Titled “Military Accessions Vital to the National Interest” (MAVNI), the new pilot program allows certain non-citizens who are legally present in the United States to join the military and apply immediately for US citizenship without first obtaining lawful permanent residence. The US Army MAVNI recruiting program, which seeks to recruit health care professionals and persons who speak certain strategic languages, begins on Monday, February 23, 2009.¹ The Army has chosen New York City as the site for recruiting those who seek to enlist on the basis of their language skills, while Army health care professionals will be recruited nationwide. Immigration lawyers should become familiar with this unusual program so that they can accurately advise clients who may be interested in serving in the United States Army.²

1. Under This Program, More Legal Aliens Can Enlist in the United States Military.

The MAVNI program expands the categories of persons who can lawfully enlist in the United States Armed Forces. Previously, the Armed Forces—the US Army, Navy, Air Force, Marine Corps, and Coast Guard³—have generally enlisted only citizens and non-citizen nationals of the United States; lawful permanent resident aliens (including conditional lawful permanent residents); and certain nationals of the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau who are admissible as non-

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¹ In conjunction with the Army's launch of the pilot program, the Department of Homeland Security has published a new rule in the Federal Register confirming that persons who enlist in the Army under this program are authorized to work. *See* 74 Fed. Reg. 7993 (Feb. 23, 2009).

² The Navy and Marine Corps also reportedly plan to implement the pilot program, but have not yet publicly announced any details.

³ 10 USC §101(a)(4) (2009).

immigrants under the Compacts of Free Association with those nations.⁴ Yet Section 504(b)(2) of the military enlistment statute also authorizes the Secretary of any Armed Force to enlist other aliens “if the Secretary determines that such enlistment is vital to the national interest.”⁵ Under guidance from the Secretary of Defense, the Secretary of the Army has determined that the enlistment of certain high quality legal aliens is vital to the national interest, and has authorized the Army to commence the MAVNI pilot program beginning February 23, 2009, and ending no later than December 31, 2009. The legal non-citizens to be recruited include doctors, nurses, and persons who can demonstrate proficiency in any one of the foreign languages listed in Appendix 1.⁶

The Office of the Secretary of Defense set the immigration eligibility criteria for the program; they are also listed in Appendix 1. Anyone who currently holds asylee, refugee, Temporary Protected Status (TPS), or one of numerous non-immigrant statuses (E, F, H, I, J, K, L, M, O, P, Q, R, S, T, TC, TD, TN, U, or V) may be eligible. A non-citizen must have held one of those legal statuses for at least two years; having changed between these statuses during the two-year period will not bar enlistment. In addition, if the person holds a non-immigrant status (E, F, H, I, J, K, L, M, O, P, Q, R, S, T, TC, TD, TN, U, or V), he or she cannot have had a single absence from the United States of more than 90 days in the past two years (multiple absences are apparently fine, as long as no single trip exceeded 90 days).

Persons whose status is not listed in the eligibility criteria cannot enlist under this pilot program. Thus, those holding B visa or other visitor status—including those who entered on the Visa Waiver Program—are not eligible. Asylum applicants are not eligible, although once they have been granted asylum, they may become eligible.

2. Unauthorized Immigrants Cannot Enlist in the Army Under this Program.

Despite rumors to the contrary on the Internet and in some media outlets, the MAVNI program is not open to unauthorized or undocumented immigrants. Although undocumented immigrant males are required to register for the draft,⁷ there currently is no draft and no US Armed Force accepts undocumented immigrants for enlistment. The Army has not accepted undocumented immigrants for enlistment since the Vietnam War. Although one occasionally reads that an undocumented immigrant has managed to enlist in the military, these are isolated cases that have involved mistake, false documentation,

⁴ See 10 USC §504(b)(1) (2009). In January 2006, Congress enacted a unified enlistment statute for the US Armed Forces in 10 USC §504. Prior to this statute being enacted, each Service had different enlistment rules.

⁵ 10 USC §504(b)(2) (2009).

⁶ The Fact Sheet at Appendix 1 can also be found at www.defenselink.mil/news/mavni-fact-sheet.pdf.

⁷ See 50 USCS Appx §453 (2009); see also Selective Service System, “Who Must Register? – Chart,” at <http://www.sss.gov/must.htm>.

or fraud.⁸ In the past few years, the Army has put in place measures (such as checking a recruit's immigration status with DHS) to prevent undocumented immigrants from enlisting.

In addition to barring undocumented immigrants from enlisting under its auspices, the MAVNI program does not allow the enlistment of visa overstayers or persons who have fallen out of status. Furthermore, no one with a criminal record is eligible under this program; Army MAVNI recruits are not permitted to apply for the "conduct waivers" that are sometimes available to US citizens and some Lawful Permanent Resident (LPR) recruits who have criminal records.⁹

3. The Army Is Not Sponsoring Anyone For A Visa Or Assisting Anyone Outside the United States to Enter the US In Order to Enlist.

Under the MAVNI program, the Army is not sponsoring anyone for a visa or green card or authorizing anyone to enter the United States for the purpose of enlistment. This program is not available to persons who are overseas. Instead, MAVNI allows certain aliens who are already legally present in the United States to enlist.

Under the Army's rules, all MAVNI recruits must pass an English test and score 50 or higher on the Armed Forces Qualification Test (AFQT).¹⁰ Thus, Army MAVNI recruits will be required to meet higher standards than US citizen Army recruits. Those MAVNI recruits who seek to enlist on the basis of their foreign language proficiency will be tested on that proficiency.

4. Persons Who Enlist Under MAVNI Can Apply for US Citizenship Immediately, Even if They Do Not Have Lawful Permanent Resident Status.

Under the wartime military enlistment statute, anyone serving honorably in the United States Armed Forces (whether in an active status or in the Selected Reserve) is eligible to naturalize, regardless of immigration status.¹¹ Wartime military naturalization applicants pay no fees for filing their naturalization applications. No minimum period of honorable service is required prior to filing for wartime naturalization, and applicants are exempt from the residency and physical presence requirements that apply to other naturalization applicants.

⁸ See Margaret D. Stock, *Essential to the Fight: Immigrants in the Military, Five Years After 9/11* (Immigration Policy Center, Nov. 2006), available at <http://www.immigrationpolicy.org/index.php?content=f0611>.

⁹ See Lizette Alvarez, "Army Giving More Waivers in Recruiting," N.Y. Times, Feb. 14, 2007 (describing increase in "moral waivers" given to US citizens and some LPR recruits). Unlike US citizens, most non-citizens (including LPRs) who commit crimes are subject to deportation or removal proceedings.

¹⁰ The other Services are reportedly considering a lower AFQT score for their MAVNI recruits, but have not yet announced details.

¹¹ See 8 USC §1440, INA §329 (2009).

How might this program apply to your clients? To give just one example, a J-1 doctor who has been in the United States legally for two years and who is licensed to practice medicine in the United States may enlist in the Army Reserve under the MAVNI program. Upon enlistment, the doctor may apply for US citizenship, even if the doctor has not yet met the 2-year home residency requirement or obtained lawful permanent residence.¹² Notwithstanding the lack of a “green card,” the doctor may receive US citizenship in six months or less. The doctor and her civilian employer will thereby save time and the thousands of dollars in costs associated with the processing of the complex paperwork normally required to move from J-1 to lawful permanent resident. In return, the United States Army Reserve will gain a new military doctor.

5. Persons Who Enlist Under MAVNI Will Be Fingerprinted and Screened.

Anyone seeking to enlist in the Army under the MAVNI program will be required to provide an Army recruiter with US government documents proving that he or she is in the United States legally and meets the MAVNI immigration eligibility criteria. The recruiter will then transmit the documents to the Department of Homeland Security through a newly established procedure. DHS will review the documents, verify their validity, and advise the recruiter whether the potential recruit meets the MAVNI eligibility criteria. Recruits will also be fingerprinted—as are all Army recruits—and the fingerprints checked against US government databases. In appropriate cases, applicants will undergo additional security screening before being permitted to enlist.

6. Health Care Professionals Can Go Active Duty or Join the Reserve; Language Enlistees Must Sign A Four-Year Active Duty Enlistment Contract.

The Office of the Secretary of Defense has directed that MAVNI language recruits must enlist for a minimum four-year contractual active duty tour, but health care professionals have a choice of a three-year contractual active duty tour, or six years in the Selected Reserve. Health Care professionals who seek the three-year active duty tour or service in the Selected Reserve must enlist specifically as doctors or nurses; they need not have any specialized language skills, but they must meet the Army’s stringent credentialing requirements for doctors and nurses.

A contractual obligation to serve exists when a person voluntarily signs an enlistment agreement. In addition to the contractual obligation, all persons who join the US Army (including US citizens) are subject to an eight-year statutory military service obligation that requires them to remain on the military rolls for eight years total, even if they are no longer on active duty or in a Selected Reserve unit.¹³ After completing their

¹² Failure to meet the two-year home residency requirement is a ground of inadmissibility that must be overcome before someone can be approved for lawful permanent residence, but it is not a bar to obtaining US citizenship. *See* 8 USC §1182(e), INA §212(e).

¹³ *See* 10 USC §651 (2009); Army Regulation 135-91, Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Procedures (Feb. 1, 2005), ¶2-

minimum contractual enlistment period, MAVNI enlistees—like all other military personnel—may serve any remaining statutory military service obligation in the Selected Reserve, Inactive National Guard, or Individual Ready Reserve. The eight-year statutory obligation applies to MAVNI candidates just as it does to every other person who joins the US military.

7. Language Enlistees Are Eligible for More Than Eighty Army Jobs; Health Care Professionals Will Be Recruited for Specific Specialties.

Enlisted Army soldiers contract with the Army to serve in particular “Military Occupational Specialties” (MOSs). While US citizens are eligible to enlist in any MOS, non-citizens are not permitted to enlist in an MOS that requires a security clearance. Under the MAVNI program, some eighty-three of the Army’s MOSs are available. The available specialties include Interpreter/Translator Aide; Infantry; Cavalry Scout; many Combat Engineer jobs such as Construction Equipment Operator, Plumber, and Firefighter; and numerous medical jobs, such as Operating Room Specialist, Dental Specialist, Pharmacy Specialist, and Preventive Medicine Specialist. Some of the specialties may not be available when an applicant enlists because the quota for those specialties may have already been filled. If this happens, the enlistee should choose a different specialty.

Once a MAVNI enlistee becomes a US citizen, he or she can apply to re-classify into a different military specialty, including one that requires a security clearance. He or she can also apply to become an officer upon obtaining US citizenship.

Qualified doctors and nurses who enlist under MAVNI will not select an enlisted MOS; instead, they will be filling a doctor or nurse job in the Army and will eventually become commissioned officers. A list of the professional medical specialties that the Army seeks is found at Appendix 2. The desired medical specialties needed by the Active Army include Internal Medicine, Psychiatrist, General Dentist, and Oral Surgeon; the Army Reserve desires to recruit Obstetricians, Psychiatrists, General Surgeons, Plastic Surgeons, Dentists, and many others.

For most foreign-educated but US-licensed doctors, the Army credentialing process may pose few obstacles because they likely already meet the Army’s stringent requirements. Nurses, however, are a different matter. Because the Army Nurse Corps requires its nurses to have obtained a degree from an American nursing school,¹⁴ most

1 (“The statutory MSO [Military Service Obligation] is incurred on initial entry into the Armed Forces whether by induction, enlistment, or appointment. . . On and after 1 June 1984, all soldiers incurred an 8–year statutory MSO.”).

¹⁴ See Army Nurse Corps Specialties & Requirements, http://www.goarmy.com/amedd/nurse/corps_specialties_requir.jsp (Army Nurses must “[h]ave a Bachelor degree in nursing (BSN) or Master's degree in Nursing (MSN) from a nursing school accredited in the United States”). Even Canadian nursing degrees are considered an unsatisfactory credential at the present time.

US-licensed foreign nurses are not eligible for commissioning in the Army Nurse Corps. US-licensed nurses who do not have an American degree, but who would like to become Army nurses, can choose to (1) enroll at their own expense in an American nursing program that will give them the required American degree, or (2) enlist in the Army under the MAVNI language specialist option—if they possess the necessary language skills—and choose any available MOS (including a medical one). Later, they may become Army nurses by applying to Army educational programs that will allow them to obtain the required American degree.¹⁵ After obtaining an American degree, they can apply to become members of the Army Nurse Corps. This is a convoluted route to becoming an Army nurse, but unless the Army Nurse Corps changes its rules to recognize foreign nursing degrees, this appears to be the only option for US-licensed nurses with foreign nursing degrees who wish to be Army nurses.

8. Citizenship Can Be Revoked If a MAVNI Enlistee Fails to Complete His or Her Enlistment.

MAVNI enlistees are not eligible for US citizenship under the regular naturalization statutes; because they do not have Lawful Permanent Residence (LPR) status, they are only eligible to apply for US citizenship under the wartime military naturalization statute. This statute allows for revocation of US citizenship if the enlistee does not complete five years of honorable military service.¹⁶ Thus, MAVNI applicants who enlist for a three or four-year active duty term must also complete at least one or two years of honorable service in the Individual Ready Reserve, or they may face revocation of their citizenship.

9. The Pilot Program Will End on December 31, 2009, Or When 1000 Qualified Non-Citizens Have Been Recruited, Whichever Comes First.

When announcing his guidance to the Service Secretaries with regard to the MAVNI program, Secretary of Defense Robert Gates also placed a limit of 1,000 on the number of persons who could be recruited into the US Armed Forces under the MAVNI pilot program. The Army has been given the task of recruiting 890 of the allocated slots. Among those 890 slots, 333 have been reserved for health care professionals, and 557 for persons who demonstrate proficiency in the foreign languages listed in Appendix 1. The end date for the pilot program is December 31, 2009, although it may end earlier, or be extended, as the Department of Defense desires.

¹⁵ See, e.g., the Army Medical Enlisted Commissioning Program (AECMP), <http://www.goarmy.com/amedd/undergrad.jsp>, in which the Army allows selected enlisted soldiers to obtain a US nursing degree at the Army's expense.

¹⁶ See 8 USC §1440(c), INA §329(c) (2009) (“Revocation.—Citizenship granted pursuant to this section may be revoked . . . if the person is separated from the Armed Forces under other than honorable conditions before the person has served honorably for a period or periods aggregating five years.”).

10. Interested Persons Can Find More Information on the “Go Army” Website.

The Army has established two special websites for non-citizens who are interested in finding out more about the MAVNI pilot program. The links are:

<http://www.goarmy.com/info/mavni> (for persons with language skills)

<http://www.goarmy.com/info/mavni/healthcare> (for doctors and nurses)

As discussed above, the MAVNI program is being conducted as a pilot program. Accordingly, the program may change or expand in the future. To give just one example, the list of languages may change. Accordingly, the Army encourages anyone who speaks a language other than one of the thirty-five listed in Appendix 1 to fill out the website form and indicate his or her interest in joining the Army. The Army will use this information to gauge the merits of changing or expanding the program in the future to meet specialized language needs. Please have your interested clients complete the Go Army website questionnaire, even if their foreign language is not one of the ones listed in the DOD Fact Sheet. If program eligibility requirements change, an Army recruiter will contact them.

Recruiting for the MAVNI health care portion of the pilot program is taking place nationwide; thus, interested non-citizen doctors or nurses can contact any Army Medical recruiter to begin the enlistment process. All applicants should, however, begin the process by completing the questionnaire on the websites listed above.

Recruiting for the Army MAVNI language pilot program is taking place only in New York City. Applicants who wish to be part of the language pilot must already be in the New York City area or be willing to travel to New York City at their own expense to complete recruitment processing. After completing the form on the website, they will be contacted by an Army recruiter, or they may initiate contact with any New York City Army recruiter to begin enlistment processing. Non-citizens who are interested in the MAVNI program, but who are not health care professionals or who are not in the New York City area are encouraged to complete the website information form even if they are not currently eligible for the program or do not wish to travel to New York City. If the pilot program is expanded to other geographic areas in the future, an Army recruiter will contact them.

This article has provided basic information for immigration attorneys about the requirements of the MAVNI program, the specifics of the Army’s implementation of the program, and the resources available to answer clients’ questions about MAVNI. The new Army MAVNI pilot program represents an important option for legal non-citizens who are interested in joining the US military, but who previously were denied the opportunity to serve. The requirements for this program are complex, and a skilled immigration attorney who is familiar with the program’s requirements can help non-citizens understand whether they are eligible for this unique opportunity.

Appendix 1

Department of Defense Fact Sheet, found at:

<http://www.defenselink.mil/news/mavni-fact-sheet.pdf>

MILITARY ACCESSIONS VITAL TO NATIONAL INTEREST (MAVNI) RECRUITMENT PILOT

The Secretary of Defense authorized the military services to recruit certain legal aliens whose skills are considered to be vital to the national interest. Those holding critical skills – physicians, nurses, and certain experts in language with associated cultural backgrounds – would be eligible. To determine its value in enhancing military readiness, the limited pilot program will recruit up to 1,000 people, and will continue for a period of up to 12 months.

ELIGIBILITY

1. The applicant must be in one of the following categories at time of enlistment:
 - a. asylee, refugee, Temporary Protected Status (TPS), or
 - b. nonimmigrant categories E, F, H, I, J, K, L, M, O, P, Q, R, S, T, TC, TD, TN, U, or V
2. The applicant must have been in valid status in one of those categories for at least two years immediately prior to the enlistment date, but it does not have to be the same category as the one held on the date of enlistment; and
3. An applicant who may be eligible on the basis of a nonimmigrant category at time of enlistment (see 1b above) must not have had any single absence from the United States of more than 90 days during the two-year period immediately preceding the date of enlistment.

Health Care Professionals

- Applicants must fill medical specialties where the service has a shortfall
- Applicants must meet all qualification criteria required for their medical specialty, and the criteria for foreign-trained DoD medical personnel recruited under other authorities
- Applicants must demonstrate proficiency in English
- Applicants must commit to at least 3 years of active duty, or six years in the Selected Reserve

Enlisted Individuals with Special Language and Culture Backgrounds

- Applicants must possess specific language and culture capabilities in a language critical to DoD
- Applicants must demonstrate a language proficiency

- Applicants must meet all existing enlistment eligibility criteria
- Applicants must enlist for at least 4 years of active duty

(Services may add additional requirements)

Languages

- Albanian
- Amharic
- Arabic
- Azerbaijani
- Bengali
- Burmese
- Cambodian-Khmer
- Chinese
- Czech
- Hausa
- Hindi
- Hungarian
- Igbo
- Indonesian
- Korean
- Kurdish
- Lao
- Malay
- Malayalam
- Moro
- Nepalese
- Persian [Dari & Farsi]
- Polish
- Punjabi
- Pushtu (aka Pashto)
- Russian
- Sindhi
- Sinhalese
- Somali
- Swahili
- Tamil
- Turkish
- Turkmen
- Urdu
- Yoruba

BACKGROUND

Non-citizens have served in the military since the Revolutionary War. The Lodge Act of 1950 permitted non-citizen Eastern Europeans to enlist between 1950 and 1959. Additionally, the United States officially began recruiting Filipino nationals into the Navy in the late 1940s, when it signed the Military Bases Agreement of 1947 allowing US military bases in the Philippines. In total, over 35,000 Filipinos enlisted in the Navy through the program between 1952 and 1991.

Today, about 29,000 non-citizens serve in uniform, and about 8,000 legal permanent resident aliens (green card holders) enlist each year. Law ensures that the sacrifice of non-citizens during a time of national need is met with an opportunity for early citizenship, to recognize their contribution and sacrifice.

In fact, today's service members are eligible for expedited citizenship under a July 2002 Executive Order, and the military services have worked closely with the US Citizenship and Immigration Services (USCIS) to streamline citizenship processing for service members. Since Sept. 11, 2001, nearly 43,000 members of the Armed Forces have attained their citizenship while serving this nation.

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Appendix 2

Medical Specialties To Be Recruited Under the Army MAVNI Pilot

Regular Army

Medical Corps

60P Pediatrician
60W Psychiatrist
61F Internal Medicine
61H Family Practice

Dental Corps

63A General Dentist
63M Oral Surgeon

Nurse Corps

Army Nurses: All specialties

Army Reserve

Medical Corps

60C Preventive Medicine	61F Internal Medicine
60J Obstetrician/Gynecologist	61H Family Practice
60K Urologist	61J General Surgeon
60N Anesthesiologist	61K Thoracic Surgeon
60S Ophthalmologist	61M Orthopedic Surgeon
60T Otolaryngologist	61Z Neurosurgeon
60W Psychiatry	62A Emergency Medicine
61G Infectious Disease Officer	61L Plastic Surgeon

Dental Corps

63A General Dentist	63F Prosthodontist
63B Comprehensive Dentist	63N Oral Surgeon

Nurse Corps

66H Medical Surgical Nurse	
66H8A Critical Care Nurse	66F Nurse Anesthetist
66E Operating Room Nurse	66N Generalist Nurse

Specialist and Medical Service Corps

65D Physician Assistant

67F Optometry

71A Microbiology

71E Clinical Laboratory

72A Nuclear Medicine

72B Entomology

73B Clinical Psychologist

64A Veterinarian