

PREFACE

This book is meant to be useful to experienced immigration law practitioners who encounter clients with military-related immigration issues; in my writing, I assume that readers already understand the basic framework of U.S. immigration laws and procedures but are unfamiliar with the military aspects of those laws and procedures. As experienced immigration practitioners know, immigration law is not an area in which an attorney should dabble; as an official immigration spokesperson once said, “Immigration law is a mystery and a mastery of obfuscation ...”¹ A person with a strong background in immigration and citizenship law and practice will find this book useful when representing clients who are service members or members of a military family, or when working with military attorneys who are representing noncitizens with immigration-related legal problems. This is not a stand-alone book, however; it is only a specialized supplement to more comprehensive works that cover the full range of U.S. immigration law and policy.

The post-9/11 conflicts have caused major changes in the U.S. military, and those changes have had a substantial impact on noncitizens serving in the All-Volunteer Force, as well as on the noncitizen family members of soldiers, sailors, Marines, and those serving in the Air Force and Coast Guard. As one of the few private immigration law practitioners in the United States with a military background, I have found myself constantly answering military-related immigration questions from prospective members of the military, current U.S. military personnel, military family members, military lawyers, government officials, U.S. representatives and senators and their staffs, and fellow attorneys who are members of the American Immigration Lawyers Association (AILA). Since 9/11, I have spent several hours every day on these issues, and I have tried to put a summary of the key issues into this book in a format designed to be useful to immigration law practitioners.

U.S. military personnel are deployed in more than 100 countries around the world.² Not all U.S. military personnel are U.S. citizens; thousands of noncitizens are currently serving on active duty, and almost 10,000 new noncitizens join all branches of the military each year.³ Military personnel also have family members who are citizens of other countries. While they are overseas, military members meet foreigners, marry them, have children with them, and adopt children overseas, and then seek immigrant and nonimmigrant visas for them. Because of the presence of noncitizens in the U.S. Armed Forces and the global mobility of citizen and

¹ The full quote, attributed to legacy Immigration and Naturalization Service (INS) spokesperson Karen Kraushaar, is “Immigration is a mystery and a mastery of obfuscation, and the lawyers who can figure it out are worth their weight in gold.” *Washington Post*, Apr. 24, 2001, at B1.

² Global Security, “Where Are the Legions? Global Deployments of U.S. Forces,” *available at* www.globalsecurity.org/military/ops/global-deployments.html.

³ Julia Preston, “U.S. Military Will Offer Path to Citizenship,” *New York Times* (Feb. 15, 2009) at A1.

noncitizen military members, U.S. military personnel regularly encounter immigration issues and seek the advice of experienced immigration practitioners.

Many of the immigration laws that apply to U.S. military members and their families are the same laws that apply to other U.S. citizens and noncitizens. But there are some unique laws and unique military aspects to immigration issues. This book provides an overview of the major issues in U.S. immigration and citizenship law that affect members of the U.S. military and their families. The book discusses Selective Service and enlistment rules, the special rules and procedures for military naturalization, the effect of different types of military discharges and military criminal convictions on the ability to immigrate, and military-related issues for family members of military personnel. The book also provides a brief discussion of special laws that affect persons who do not serve in the U.S. Armed Forces but work alongside military members as civilian employees or contractors.

The book explores some common military-related issues by using examples from real cases, some of which have been published; others, this author has advised on or handled personally. Where applicable, footnotes will refer to the published cases on which these scenarios are based. Readers are urged to consult the actual cases for more details. The book ends by providing information about special resources that are available to assist military members and their families with immigration-related problems.

I also offer readers a caution: The U.S. military, through the U.S. Department of Defense and the several Armed Forces, has published a plethora of regulations and policies that purport to address various U.S. immigration issues from different angles. There are military regulations and policies governing marriages to foreigners; regulations and policies relating to requirements to file immigration paperwork for a service member's foreign family members; regulations and policies regarding enlistment and re-enlistment of noncitizens; regulations and policies regarding naturalization; and regulations regarding asylum and refugee requests, among others. Most of these regulations and policies were not written by persons with expertise in immigration law and policy, and they frequently contain inaccurate statements of the underlying law; nor are they often updated to reflect the latest changes in U.S. immigration and citizenship laws. Accordingly, although I cite to some of these regulations and policies in this book, my citation to them does not imply any endorsement of their validity. Much of what is contained in these military regulations and policies is obsolete or inaccurate.

During the several years that I worked on military-related immigration issues as a Reserve officer, I observed that the military services and the U.S. Department of Defense (DOD) are sorely in need of an expert immigration lawyer who can review and correct the misinformation on immigration and citizenship laws that is daily promulgated by well-meaning military officials through various policies and

regulations.⁴ Until such time as DOD and the services invest in hiring such a person, however, immigration practitioners (and other lawyers) are advised to be cautious about relying on any statements of immigration or citizenship law made in military regulations or policies.

Notes on Terminology

Before the passage of IIRAIRA in 1996, immigration law and procedure spoke of “exclusion” and “deportation”; after IIRAIRA, the emphasis shifted, and the terminology changed to “admission” and “removal.” However, many regulations, particularly those related to military immigration issues, still use the older terms of exclusion and deportation; and many court cases, including some U.S. Supreme Court opinions, either use the older terms or use them alongside the newer terms of admission and removal. Although conceptually distinct, the paired terms have the same practical effect: someone who is excluded is not admitted, and someone who has been deported has been removed from the country. The terms are used interchangeably throughout this book.

The U.S. Armed Forces are defined in the U.S. Code as including the Army, Navy, Air Force, Marine Corps, and Coast Guard, along with their Reserve components, including the National Guard of the United States. Occasionally, a military-related immigration statute will refer to the “uniformed services.” There are seven uniformed services of the United States—the five services of the Armed Forces, plus two noncombatant uniformed services: the Public Health Service and the National Oceanic and Atmospheric Administration.

The word “noncitizen” describes generally those persons who are not citizens of the United States. In some cases, however, a noncitizen also may be a U.S. national, if he or she holds U.S. nationality (but not citizenship) as a result of having been born in American Samoa or on Swains Island. Noncitizen U.S. nationals frequently serve in the U.S. military. They are not subject to deportation or removal from the United States, although they are treated like lawful permanent residents for other immigration purposes.

⁴ To cite just one example, which is discussed further in Chapter Eight: Army in Europe Regulation 608-3, Birth Registration, July 6, 2005, contains the statement: “Under U.S. law, most children born in the United States and children born abroad to a U.S.-citizen parent or parents generally are U.S. citizens.” Expert immigration practitioners will immediately recognize that the second half of this statement is not accurate. This 2005 regulation also refers several times to the Immigration and Naturalization Service, although that agency was abolished effective March 1, 2003, and its functions were split between three bureaus in the Department of Homeland Security. See Homeland Security Act of 2002, Pub. L. No. 107-296, §471, 116 Stat. 2135, 2178 (codified as amended at 6 USC §291).

