

Testimony of

Louis D. Crocetti, Jr.
Associate Commissioner for Examinations
Immigration and Naturalization Service

before the

House Judiciary Committee
Subcommittee on Immigration and Claims

on H.R. 371
Hmong Veterans Naturalization Act of 1997

9:30 a.m., Thursday June 26, 1997
2226 Rayburn House Office Building

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to appear before you today to discuss H.R. 371, the Hmong Veterans Naturalization Act of 1997. The legislation is intended to expedite the naturalization of aliens who served for the United States with special guerrilla units in Laos during the Vietnam Conflict by waiving the English language requirement of section 312(a) of the Act, and designates the Hmong guerrillas as having served honorably in an active-duty status in the military, air, or naval forces of the United States during the period from February 28, 1961, to September 18, 1978, in accordance with section 329 of the Act.

Hmong guerrillas provided service to the United States Armed Forces during the Vietnam Conflict. Due to this service to the United States, these individuals were persecuted in their native country at the conclusion of the Vietnam Conflict, many of whom were granted refugee status to come to the United States. The requirements for eligibility to naturalize, particularly the requirements as to understanding the English language, are a significant barrier for the Hmong. The Hmong are a distinct ethnic group who lived in isolated mountain regions of Vietnam and Laos. While the Hmong have their own language, their language had no written form until recently. This makes the English language requirement as it relates to possessing the ability to read and write ordinary words in English for naturalization particularly prohibitive for the Hmong.

The INS takes no position as to whether the Congress should amend the Immigration and Nationality Act to provide special exceptions for the Hmong for the purpose of naturalization. However, H.R. 371 as currently written, does set a precedent in that it would establish waiver categories for a certain group of people attempting to naturalize. H.R. 371 would also be problematic to implement. Allow me to briefly review what H.R. 371 does and does not afford the Hmong.

Section 2 of the bill waives the English proficiency requirement of the INA at section 312 (a)(1). We note, however, that no mention is made of the requirement found at section 312(a)(2) regarding an understanding of United States civics. Thus, we interpret it to require a knowledge of the government and history of the United States.

In addition, the group that is qualified for the special treatment in section 2, paragraph (1) refers to persons who "served with a special guerrilla unit operating from a base in Laos." This statement is insufficiently defined and does not specifically identify the targeted group. The bill is cited as the Hmong Veterans' Naturalization Act but the qualified individuals are not identified by their status as Hmong who served with United States armed forces in Vietnam. According to the proposed definition, a person of any ethnicity would qualify for the English language waiver if they served with a guerilla unit, even if they do not fit into the special category of individuals who are prevented from learning English by the unique circumstance of their native language having no written form. The definition also includes only those guerillas who were

based in Laos. It would seem unfortunate if there were ethnic Hmong guerillas who were excluded from the special provision by the coincidence of their unit having been based in Vietnam.

Qualification of all spouses and widows in section 2, paragraph (1) is over inclusive. Some Hmong guerrillas may have married since their entry to the United States. There is no reason to believe that these spouses/widow would require the English language waiver simply based on their marriage.

Section 3 of H.R. 371 establishes documentation requirements for proof of service with a special guerrilla unit. The language of the section, however, is vague and presents considerable hurdles for the Service to overcome in accepting the documentation at face value. In essence, a naturalization applicant under this provision of law would simply have to present documents claiming to have served in a special guerrilla unit. Current statutory requirements for other former or active duty military requires certification of service by the Department of Defense. Short of actual military records, the only confirmation for the Service would be if the applicant was admitted to the United States as a refugee from southeast Asia and would have been old enough to perform military service during the Vietnam Conflict. It is the experience of the Service in implementing programs which rely on affidavits (such as the Immigration Reform and Control Act of 1986) that fraud may be prevalent.

Lastly, the Service notes concern that H.R. 371 establishes a waiver for both residency and English for a certain group of people. To date, the Congress has elected not to amend the Act with waiver provisions aimed at any particular group of people attempting to go through the naturalization process, but rather individuals who meet certain criteria. For example, section 312 offers waivers from English and civics requirements only for persons with debilitating mental or physical conditions and from English for persons with specific age and years of residency combinations. The inclusion of the language in H.R. 371 could set a precedent for other groups attempting to gain waiver categories who do not share the unique situation of the Hmong.

Thank you for the opportunity to comment on this bill. I will take any questions you may have at this time.
Questions and Answers:

Q: What is the Service opposition to an amendment to the Act that would benefit a group as worthy as the Hmong?

A: The Service is not opposed to assisting the Hmong in becoming naturalized citizens. We fully support the intent of H.R. 371. However, we do have reservations about amending the Act with waivers for specific groups of individuals. Very few ethnic groups share the unique circumstances of the Hmong. Their language tradition in Southeast Asia was entirely oral, so they do not have the experience of being "literate" in their native language. For the native born Hmong, this fact has made learning English extremely difficult, if not virtually impossible. In addition, the Hmong assisted United States armed forces during the Vietnam conflict. Few groups can claim such a combination of factors.

Q: How will the Congress be assured that the Service will adequately administer a special program aimed at assisting the Hmong through the naturalization process?

A: The Service has experience in administering special programs aimed at select groups of applicants. We will also seek the assistance of various non-governmental organizations that have experience in working with the local Hmong communities around the country, as well as other government agencies that may assist the Hmong if their efforts to gain documentation proving their military service.

Q: What are the differences in eligibility requirements for Hmong Veterans under H.R. 371 and Section 329 of the Immigration and Nationality Act? Why is this difference in eligibility standards of concern to the Service?

A: H.R. 371 allows Hmong Veterans to prove military service through the use of affidavits, refugee processing applications, and other "appropriate forms of proof". Moreover, the bill requires the Service to liberally construe evidence presented as proof of military service. Other applicants for naturalization

pursuant to section 329 of the Act, including Philippine War Veterans, have been required to complete Form N-426 (Request for Certification of Military or Naval Service) to verify their service in the United States Armed Forces. For all current application pursuant to section 329, the INS sends Form N-426 to the various division of the Armed Forces to verify service. Due to litigation in the Ninth (9th) Circuit Court of Appeals, the Service is also required to verify military service of Philippine War Veterans through the official records of the Philippine Government at Camp Aguinaldo in Manila when United States Armed Forces records are not available for an applicant. The Service is concerned that proof of military service of Hmong Veterans under H.R. 371 as proposed does not provide for independent verification of military service as is required for all other applicants under section 329. Without such independent verification and the requirement that the Service liberally construe proof of military service for Hmong Veterans, the Service would not be able to identify fraudulent claims of military service for the United States Armed Forces for these applicants.

Q: What additional problems may the Service encounter when applying the "other appropriate proof" option of acceptable evidence of military service?

A: In having a "open" standard of proof or verification, and no definitive and verifiable standards, an uneven adjudication approach from district to district will be applied. Previous programs the Service has administered in which the INS relied heavily on affidavits have proven fraud is rampant. For example, in the legalization and SAW programs under IRCA the Service had to rely heavily on affidavits from applicants to establish eligibility for the program. The Service did not have the resources to investigate the veracity of these affidavits and, therefore, many fraudulent ones were accepted as proof of eligibility. This bill as written does not provide the necessary safeguards to ensure this would not happen in this program.