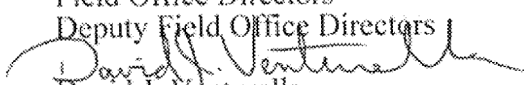




U.S. Immigration  
and Customs  
Enforcement

OCT 14 2009

MEMORANDUM FOR: Field Office Directors  
Deputy Field Office Directors

FROM:   
David J. Venturella  
Acting Director

SUBJECT: Department of Defense (DOD) Enlistment of Certain  
Nonimmigrant and other Aliens Determined to be Vital to the  
National Interest.

Purpose

The purpose of this memorandum is to reiterate the authority of all Field Office Directors (FODs) to exercise prosecutorial discretion when dealing with certain aliens who are current or former members of the U.S. military. See U.S. Immigration and Customs Enforcement policy and guidance, dated September 3, 2004, entitled "Issuance of Notices to Appear, Administrative Orders of Removal, or Reinstatement of a Final Order on Aliens with United States Military Service."

Background

Under 10 U.S.C. § 504(b)(1) (2009), a person may enlist in the armed forces only if the person is a national of the U.S.; an alien lawfully admitted for permanent residency; or a person described in one of three Compact of Free Associations. However, section 504(b)(2) of Title 10 provides, that the Secretary of Defense may authorize the enlistment of a person not described in paragraph (1) if the Secretary determines that such enlistment is vital to the national interest.

The Department of Defense (DOD) is implementing its Military Accessions Vital to the National Interests (MAVNI) Program, pursuant to 10 U.S.C. § 504(b)(2) (2009), allowing DOD to enlist certain nonimmigrant and other aliens determined to be vital to the national interest. Specifically, DOD will enlist certain medical professionals and individuals with foreign language skills and associated cultural backgrounds.

Instructions

The Office of Detention and Removal Operations (DRO) Headquarters is reminding all FODs that DHS has the authority to exercise prosecutorial discretion not to initiate removal proceedings against an individual, and may exercise such discretion not to initiate removal proceedings against aliens and their dependents that are cooperating with DOD and the U.S. military under the auspices of the MAVNI Program. In addition, careful review and consideration should be given before any enforcement action or charging documents are issued against any nonimmigrant status violator that is part of the DOD MAVNI Program.

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**Questions regarding this matter may be directed to the DRO Criminal Alien Program, Special Programs, (b)(6),(b)(7)(C) at (202) 732 (b)(6),(b)(7)(C)**