



NATURALIZATION WORKING GROUP

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November 5, 2021

Samantha Deshombres
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, D.C. 20529-2140

RE: Docket ID USCIS-2008-0021; OMB Control Number 1615-0060; Agency Information Collection Activities; Revision of a Currently Approved Collection: Medical Certification for Disability Exceptions

Dear Ms. Deshombres:

The undersigned members of the Naturalization Working Group, and other naturalization service providers and advocates, respectfully submit the following comments in connection with Docket ID USCIS-2008-0021; OMB Control Number 1615-0060; Agency Information Collection Activities; Revision of a Currently Approved Collection: Medical Certification for Disability Exceptions, published in the Federal Register on October 6, 2021.

I. Introduction of Stakeholders and Expertise

The Naturalization Working Group (NWG) is coordinated by the National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund and made up of national and local organizations committed to helping legal permanent residents (LPRs) become United States citizens. The NWG strives to improve federal policies and practices related to naturalization and to educate legislators and other policymakers about the need to address barriers to naturalization. Our coalition's expertise derives from its multiple member organizations that have significant experience in promoting naturalization and in assisting newcomers with the U.S. citizenship process, including immigrants who are serving in our military. The NWG is the policy complement to the New Americans Campaign (NAC), a diverse nonpartisan national network of respected immigrant-serving organizations, legal service providers, faith-based

organizations, immigrant rights groups, foundations, and community leaders. The Campaign transforms the way aspiring citizens navigate the path to becoming new Americans.

II. Comments on the Proposed Form

A. General

We greatly appreciate USCIS' efforts to shorten and simplify the form based on the concerns we raised in our June 21, 2021 comments.¹ Overall, this revision is clearer and more succinct. It eliminates burdensome, unnecessary questions about the diagnosis that existed in the prior version. It also lays out the questions in a way that will assist medical professionals in providing the information needed, by including some of the basic instructions in the form itself.

The proposed revision is dramatically different from the earlier version we commented on and is a major improvement. The length of the form has been cut nearly in half, from eight pages in the previous version to just over four pages. The current form in use is nine pages long. The proposed form will remove barriers to naturalization posed by the current form and create a more streamlined and efficient process for everyone involved in the disability waiver process: applicants, medical professionals, advocates, and USCIS adjudicators.

B. The Form

On page 1, under "START HERE," there are instructions that are taken from the previous version of the form instructions. In our experience, medical professionals often fail to read the form instructions, so it is helpful to pull out key information from the instructions and put it at the beginning of the form. Also, the bullet formatting style is new and more user friendly. The last bullet, a new addition reminding medical professionals to use common terminology is important and helpful.

Part 1, Applicant Information

The new revision no longer requests the applicant's Social Security Number, address, gender, or other unnecessary information. We support USCIS' efforts to shorten Part 1 by collecting only key information.

Part 2, Certifying Medical Professional Information

The emphasis on the certifying medical professional in the new revision is an improvement. The previous revision heavily emphasized that the form should be certified by the regularly treating medical professional. The current policy manual guidance states that failure to explain the doctor-patient relationship or provide sufficient justification for not having the form completed by the regularly treating medical professional is cause for credible doubt and denial of the Form N-648.² Yet, for many applicants, their regularly treating medical professional is a nurse practitioner who is not authorized to certify the form, or they have to see a specialist to certify the form because their regularly treating medical professional is not able to do it, or not

¹ <https://cliniclegal.org/resources/federal-administrative-advocacy/clinic-and-partners-submit-joint-public-comment-n-648>

² Policy Manual, Volume 12, Part E, Chapter 3, Section E, Number 5. Credible Doubt, Discrepancies, Misrepresentation, and Fraud, <https://www.uscis.gov/policy-manual/volume-12-part-e-chapter-3>

willing to devote the time needed to provide sufficient detail on the form. The previous emphasis on the regularly treating medical professional created barriers for eligible applicants.

Part 3, Information About Disabilities and/or Impairments

General: The number of questions in Part 3 has been greatly reduced and simplified to only the most important information, as required by the regulations.³ In particular, we note that the question about the applicant's daily life activities has been deleted. We greatly appreciate this deletion, as the question is extremely problematic and invites the adjudicator to substitute his/her judgement for that of the medical professional.

Also, questions about the description of the disabilities; cause of the disabilities; dates of diagnosis; dates of onset; date/location the doctor first examined the applicant; which disabilities are expected to last over 12 months and why; frequency of treatment; if the doctor is the one who regularly treats the applicant; duration of treatment; name and address of regularly treating medical professional; and explanation of why this doctor is certifying the form instead of the regularly treating medical professional have all been deleted. We strongly support these deletions of unnecessary questions that have been added over the years as the form has grown far too long and burdensome for disabled applicants. The excessive length of the current form is a hindrance that discourages people with disabilities from pursuing naturalization.

Question Number 1: In the new revision, Question Number 1 is now a two-part question requesting both the diagnosis and the nexus, or explanation of how the disability or impairment prevents the applicant from learning English and/or civics. We note that USCIS has prioritized the most important information on eligibility by requesting it first, which is helpful.

The example of the relevant medical code is useful. It would also be useful to add immediately after the sentence regarding use of common terminology, "Refer to page 2 of the form instructions for an example."

USCIS should emphasize that both nexus and diagnosis must be addressed by adding a short sentence in the instructions for Question Number 1: "You must address both diagnosis and nexus between the diagnosis and the inability to learn English and/or civics."

Question Number 8: Question Number 8 is a new question that has been added to this revision. It asks the medical professional if the applicant is unable to understand or communicate an understanding of the Oath of Allegiance. USCIS' intent in adding this question is unclear.

We are concerned that this question could result in many unnecessary oath waiver requests, as medical professionals often do not understand the requirements for the oath waiver and the ability of disabled applicants to take a modified or simplified oath as a reasonable accommodation. An unnecessary oath waiver request would require the applicant to have a

³ The regulations state that the medical professional "shall be experienced in diagnosing those with physical or mental medically determinable impairments and shall be able to attest to the origin, nature, and extent of the medical condition as it relates to the disability exceptions." (8 C.F.R. § 312.2 (b) (2)). The regulations also state that the impairment(s) must have lasted or be expected to last at least 12 months; not be based on the direct effects of the illegal use of drugs; and be shown by medically acceptable clinical or laboratory diagnostic techniques. (8 C.F.R. § 312.1 (b) (3) and § 312.2 (b) (1)).

legal guardian, surrogate, or designated representative to testify on his/her behalf, and applicants who do not have a qualifying U.S. citizen relative to act as their designated representative may need to go through a lengthy court process to obtain a legal guardian in order to naturalize. For these reasons, we recommend eliminating Question Number 8 from the form.

Part 4, Interpreter Information and Certification

This part distinguishes between in-person interpretation and telephonic interpretation and has clear instructions at the beginning on how to complete this section when a telephonic interpreter was used. This is a significant improvement over the previous revision, which did not advise applicants how to properly document the use of a telephonic interpreter.

The instructions at the beginning have a typo. They refer to "Item Number 7," but there is no number 7 in this part. They should refer to Item Number 6, the interpreter's signature. The additional instruction added above the signature box, "not required for telephonic interpretations," is helpful.

Part 5, Applicant's (Patient's) Attestation/Release of Information

The signature box next to item number 2 has an added notation that an applicant can make a mark if unable to sign. We greatly appreciate this useful addition, as this is something we requested in our June 21, 2021 comments on the previous revision.

Part 6, Medical Professional's Certification

This part has been simplified and is easier to follow, with key information enumerated at the beginning. It was much longer and more cumbersome in the earlier revision, so this is a significant improvement.

C. The Form Instructions

What is the purpose of Form N-648?

This section has been improved by using headings for key information. The additional information on the definition of disability is helpful.

Who should submit Form N-648 and when?

This section has been changed to state that the N-648 "should" be submitted together with the Form N-400, instead of "must." This is a very significant change that reverses a punitive and unnecessary policy instituted by the previous administration. However, we are concerned that it does not mirror the current language in the USCIS policy manual.

In our January 16, 2019 comments on the policy revisions by the previous administration, we outlined our concerns about a concurrent filing requirement and noted that the policy manual change "makes assumptions of fraudulent intent that are not supported by evidence." We greatly appreciate this improvement in the N-648 form but urge that the policy manual be

clarified to demonstrate reversal of the previous administration's policy. This change is needed to fully remove another potential roadblock to naturalization for disabled applicants.

The current USCIS policy manual deems later filed or multiple filings of disability waivers to be indicators of fraud.⁴ As we discuss below and raised in our June 2021 comments, we again urge that USCIS withdraw the changes made to 12 USCIS-PM E.3, "Sufficiency of Medical Certification for Disability Exceptions (N-648)" on December 12, 2018, and the changes made to 12 USCIS-PM E.3 on December 4, 2020, "Properly Completed Medical Certification for Disability Exception (N-648)."

General Instructions

The instructions have added information to clarify that a legal guardian, surrogate, or designated representative may sign for an applicant deemed legally incompetent, which is very helpful information for applicants and their advocates. Language about when USCIS "will reject" a request that was in the previous revision has been changed back to "may reject," in line with the current Form N-648. This language gives USCIS adjudicators more flexibility and discretion in working with the special needs of disabled applicants.

Paperwork Reduction Act

The burden for this revision has been changed to 2 hours and the instructions specify that this burden is for the medical professional. On the previous revision, a much longer form, the burden was listed as 2 hours and 25 minutes. Also, a separate burden has been added for the applicant in this revision: 8 hours, so the total burden is now 10 hours. This revised burden estimate is more realistic, based on our experience with the Form N-648.

III. Changes to N-648 Form and Policy Manual Under the Previous Administration

Under the previous administration, both N-648 policy manual and form changes were implemented that dramatically hindered people with disabilities from applying for naturalization and accessing the rights and benefits of citizenship. We applaud USCIS' efforts to revise and improve the Form N-648, as detailed above. The N-648 policy manual changes made by the previous administration are still in effect and must be quickly addressed. The N-648 form cannot guide adjudicators through a policy. Only the USCIS policy manual can properly do that.

On Dec. 12, 2018, USCIS announced major changes to the policy manual guidance on disability waivers, with an effective date of Feb. 12, 2019.⁵ The changes were made to 12 USCIS-PM E.3 of the USCIS Policy Manual, and to 12 USCIS-PM E.3 of the USCIS Policy Manual, described in

⁴ See 12 USCIS-PM E.3, "Sufficiency of Medical Certification for Disability Exceptions (N-648)" announced in a Policy Alert, (Dec. 12, 2018), uscis.gov/sites/default/files/document/policy-manual-updates/20181212N648MedicalCertification.pdf. Also see changes to 12 USCIS-PM E.3, "Properly Completed Medical Certification for Disability Exception (N-648)." announced in a Policy Alert, December 4, 2020) <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20201204-N-648.pdf>.

⁵ See 12 USCIS-PM E.3, regarding treatment of later filed or multiple filings of N-648. These changes were announced in the Policy Alert, Sufficiency of Medical Certification for Disability Exceptions (Form N-648), USCIS (Dec. 12, 2018), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20181212-N648MedicalCertification.pdf>

the policy alert entitled “Properly Completed Medical Certification for Disability Exception (N-648)” on December 4, 2020.

In public comments, experts called for the proposed changes to be withdrawn in their entirety.⁶ The new guidance created a gauntlet for highly vulnerable applicants to run, in which simple mistakes and misunderstandings of a complex process were automatically viewed as indicators of fraud and grounds for denial.⁷ The guidance contradicted the purpose and intent of the law, arbitrarily preventing applicants with disabilities from naturalizing.⁸ USCIS provided no evidence that the changes were necessary or beneficial. There was no engagement with the affected public prior to making this major policy manual change, and USCIS did not respond to any of the public comments submitted after its publication. The policy manual change implemented many of the worst practices advocates had complained of in some USCIS offices where disabled applicants were treated with disdain and regarded with a dismissive presumption of fraud by adjudicators. Despite these factors, USCIS implemented the guidance.

We again urge that USCIS withdraw the changes made to 12 USCIS-PM E.3, “Sufficiency of Medical Certification for Disability Exceptions (N-648)” on December 12, 2018, and the changes made to 12 USCIS-PM E.3 on December 4, 2020, “Properly Completed Medical Certification for Disability Exception (N-648).” These revisions to the policy manual were improvidently issued and further created barriers to naturalization. To comply with the February 2, 2021, Executive Order on removing barriers to naturalization,⁹ these changes should be withdrawn in their entirety and USCIS should engage with stakeholders to ensure that the policy manual is consistent with the revised Form N-648.

IV. Additional Recommendations

In addition to our comments above on the Form N-648 revisions, we would like to reiterate the following complementary recommendations to ensure that the entire waiver process and policy creates access to naturalization for people with disabilities, as intended:

A. Ensure the disability waiver application form and process is less burdensome and creates, rather than hinders access to naturalization for people with disabilities, as intended by INA § 312(b)(1):

- In order to address the urgent, ongoing issues with the N-648 process and policy that are hindering access to naturalization for people with disabilities, we urge USCIS to quickly implement the latest Form N-648 revisions that were published in the Federal Register on

⁶ See CLINIC Comment on Policy Changes Affecting Naturalization Disability Waiver Applicants (Jan. 16, 2019), <https://cliniclegal.org/resources/federal-administrative-advocacy/clinic-comment-policy-changes-affecting-naturalization>.

⁷ The guidance, available at <https://www.uscis.gov/policy-manual/volume-12-part-e-chapter-3> greatly expanded the grounds for denying an N-648. Part 5 lists 14 factors that may give rise to “credible doubt,” including: the medical professional did not provide sufficient detail about the diagnostic techniques used or the doctor-patient relationship; the applicant or medical professional failed to justify a late filing of the N-648; and “any other articulable grounds that are supported by the record.”

⁸ INA §312(b)(1) provides an exception to the testing requirements for people with certain disabilities.

⁹ Executive Order, “Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans,” (Feb. 2, 2021) Section 5 of the order is “Promoting Naturalization.” <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/02/executive-order-restoring-faith-in-our-legal-immigration-systems-and-strengthening-integration-and-inclusion-efforts-for-new-americans/>

October 6, 2021. We believe these revisions will remove significant barriers and greatly improve the naturalization process for vulnerable applicants.

- The policy manual guidance on the Form N-648 needs to be consistent with the form. USCIS should move quickly to revisit the policy manual guidance that was in effect prior to Feb. 12, 2019 and make revisions for consistency and ensuring that it balances USCIS' need to uphold the integrity of the program with disabled applicants' rights to obtain the benefits of citizenship and full participation in our democratic system. We encourage USCIS to engage with stakeholders in the revision process.
- Beyond the form and policy manual guidance, we encourage USCIS to consider broader improvements to the disability waiver adjudication process, such as pre-adjudication of Forms N-648, expanding the list of authorized medical professionals to include licensed nurse practitioners, increased training for USCIS adjudicators, and increased public engagement. We support the recommendations listed in the CIS Ombudsman's Annual Report to Congress in June 2021.¹⁰

B. Increase public transparency and open lines of communication with stakeholders who assist applicants with disabilities to naturalize:

- Provide an effective point of contact at USCIS headquarters who is empowered to address problems with disability waiver adjudications at the local level that are identified by NWG members and other stakeholders. If needed, re-establish a regular stakeholder working group to discuss how to improve access to naturalization for people with disabilities.
- Provide training and informational resources on the revised Form N-648 for medical professionals and legal advocates who are assisting disabled applicants. It would be helpful for legal advocates to be able to give medical professionals links to Form N-648 information or fact sheets on the USCIS website that are clear and easy to understand. The information should also be easy to print and provide to the medical professionals in hard copy format when needed.
- In the interest of transparency, USCIS should provide data to stakeholders for FY 2020 and on a quarterly basis thereafter on the number of N-648s received, approved, and denied. In addition, USCIS should provide data on the number of reasonable accommodations requests received and the outcome of those requests, as well as the number of oath waiver requests received, approved, and denied.

V. Conclusion

Thank you for your consideration of our comments. We again urge that USCIS withdraw entirely the changes made to 12 USCIS-PM E.3, "Sufficiency of Medical Certification for Disability Exceptions (N-648)" on December 12, 2018, and the changes made to 12 USCIS-PM E.3 on December 4, 2020, "Properly Completed Medical Certification for Disability Exception (N-648)." We hope you will reach out to stakeholders to seek feedback on revisions needed in the N-648 policy manual guidance to improve the disability waiver adjudication process and overall

¹⁰ https://www.dhs.gov/sites/default/files/publications/dhs_2021_ombudsman_report_med_508_compliant.pdf, pp. 40-50

accessibility. For any questions, or to arrange engagement, please contact Laura Burdick, Field Support Coordinator, Catholic Legal Immigration Network at burdick@cliniclegal.org and Peggy Gleason, Senior Staff Attorney, Immigrant Legal Resource Center at pgleason@ilrc.org.

Sincerely,

ABCD Parker Hill/Fenway NSC
Asian Americans Advancing Justice-Los Angeles
Asian Counseling and Referral Service
Bonding Against Adversity Inc
Boulder Valley Unitarian Universalist Fellowship I
CASA
Catholic Legal Immigration Network, Inc.
Center for People with Disabilities
Central American Resource Center of California (CARECEN Los Angeles)
Central Valley Immigrant Integration Collaborative
Chaldean Community Foundation
Chinese Community Center, Houston
Chinese Information and Service Center (CISC)
City of Jersey City - Office of the Mayor
City of Seattle, Office of Immigrant and Refugee Affairs
Community Upliftment Program, Inc
Dominicanos USA
Emerald Isle Immigration Center
Employee Rights Center
Esperanza Immigration Legal Services
Esperanza Legal Assistance Center
GMHC
HIAS Pennsylvania
Hmong American Women's Association, inc.
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Legal Resource Center
Immigration Resource Center of San Gabriel Valley
International Rescue Committee
Massachusetts Alliance of Portuguese Speakers (MAPS)
Massachusetts Immigrant and Refugee Advocacy Coalition
Merrimack Valley Immigrant & Ed Center
Michigan Immigrant Rights Center
Minkwon Center
Mujeres Latinas En Accion
NALEO Educational Fund
National Immigration Forum
National Partnership for New Americans
OCA-Greater Houston
OneAmerica
Project Citizenship
Public Law Center
Refugee Women's Alliance (ReWA)

Self-Help for the Elderly
St. James Cathedral Immigrant Assistance
UnidosUS

Vilma L Galvez
Jean Nuttall
Sophia E. Soberon