June 3, 2018

USCIS Dallas Field Office

6500 Campus Circle Drive East

Irving, Texas 75063

RE: Request for Waiver or Accommodation of Oath Requirement

Applicant: xxxx A#xxxx

Dear Sir or Madam:

Please waive, or in the alternative allow Ms. XXXXXXX’s mother to take the oath as her proxy as a result of her physical, developmental and mental impairment as set out in both her N-400 and N-648.

**I. Waive the oath requirement**

Applicant, XXXXXXX XXXXXXX, is deaf, mute and partially blind and, as a result of this, is unable to understand and effectively communicate her understanding of the meaning of the Oath of Allegiance. According to the Code of Federal Regulations, the Attorney General “may waive the taking of the oath if in the opinion of the Attorney General the person is unable to understand, or to communicate an understanding of, its meaning because of a physical or developmental disability or mental impairment.” I.N.A. § 377(a). Likewise, if the Attorney General “waives the taking of the oath by a person under the preceding sentence, the person shall be considered to have met the requirements of section 316(a)(3) with respect to attachment to the principles of the Constitution and well disposition to the good order and happiness of the United States.” Id.

The Office of the General Counsel for the Immigration and Nationality Service (INS) has stated previously that section 504 of the Rehabilitation Act of 1973, stating that “[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency.” Memo, Cooper, G.C. INS (Mar. 13, 2002), *citing* 29 U.S.C. § 794(a) (hereinafter Memo). The Supreme Court found that this applies to a person who in spite of their handicap, otherwise qualifies for the benefit or program. Memo, *supra*, *citing Southeastern Community College v. Davis*, 442 U.S. 397, 406 (1979). Furthermore, the Supreme Court found that an accommodation was reasonable if it does not impose financial and administrative burdens on the agency. *School Bd. of Nassau County v. Arline*, 480 U.S. 273, 287 n. 17.

## II. Allow proxy to take modified oath

The INS General Counsel found that allowing a proxy to participate in the naturalization interview does not eliminate the requirements of, or fundamentally change the nature of the naturalization process, and therefore, a disabled person who is otherwise qualified for naturalization may participate in this way. Id. The INS, and subsequently the USCIS may not use either criteria or methods of administration to prevent or impair an otherwise qualified individual from participating in the naturalization process. Memo, *supra*, *citing* 8 C.F.R. § 39.130(b)(3). A person who is “otherwise qualified” is one who is able to meet a program’s requirements if that program was modified to make to make reasonable accommodations for that person. Memo, *supra*. To determine who is otherwise qualified, the only remaining prerequisites are the continuous residence requirement and the good moral character requirement. Memo, *supra*, *citing* INA § 316, 8 U.S.C. 1427.

Ms. XXXXXXX is a native of Uzbekistan who was diagnosed with Alport Syndrome. Alport Syndrome is a genetic disease known to cause kidney failure, deafness and visual impairment. “What is Alport Syndrome?”, [www.alportsyndrome.org](http://www.alportsyndrome.org), 2010 (last accessed May 14, 2018) (hereinafter “What”). Individuals with Alport Syndrome can experience hearing loss at an early age. “What”, *supra*.

Ms. XXXXXXX received little formal education and as a result of her diagnoses with Alport Syndrome, she was never able to learn her native Russian or English, much less Russian or American Sign Language, which vary significantly. According to her doctor, as evidenced in the N-648, Ms. XXXXXXX is deaf, mute, and has decreasing vision and is forced to communicate solely through her mother using an informal sign language. It is within the discretion of immigration officials to waive the oath requirement in cases such as that of Ms. XXXXXXX. She is unable to understand and communicate her understanding of the oath of allegiance because of her lack of formal education and physical impairments. Ms. XXXXXXX is unable to understand concepts contained in the oath because she did not receive sufficient formal education and her mother is unable to communicate the meaning of some of these concepts using their informal sign language.

Ms. XXXXXXX shall not be prevented from enjoying the benefits of naturalization simply because of her inability to communicate when she is otherwise qualified. To do so would be to exclude her from a benefit for which she otherwise qualifies because of her disability, which would be in direct conflict with the Rehabilitation Act of 1973. In the alternative, to modify it so that she may assent via her proxy, her mother, imposes no significant burden on the USCIS, and therefore, it is a reasonable accommodation. Modifying or waiving the oath requirement does not fundamentally change the naturalization process and therefore, Ms. XXXXXXX may not be prevented or impaired from participating if she otherwise qualifies to naturalize. Ms. XXXXXXX is otherwise qualified to meet the criteria for naturalization if the oath requirement is waived because she has lived in the United States for the requisite five years and has good moral character. Therefore, since Ms. XXXXXXX qualifies to naturalize based on her continuous residency and good moral character, she should not be prevented from doing so as a result of her physical impairment. As such, USCIS should waive the oath requirement, or in the alternative modify the requirement so that her mother may act as her proxy.

Thank you for your time and consideration.