



Submitted via email to: USCISPolicyManual@uscis.dhs.gov

January 16, 2019

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director
20 Massachusetts Avenue, N.W.
Washington, D.C. 20529

RE: Policy Revisions Affecting Naturalization Disability Waiver Applicants (PA-2018-12)

Dear Director Cissna:

The Catholic Legal Immigration Network, Inc. (CLINIC) respectfully submits the following comments related to proposed changes to USCIS policy, procedures, and adjudications on the Medical Certification for Disability Exceptions (Form N-648). These comments are based on the expertise of CLINIC's staff, who have extensive experience developing tools and resources regarding the naturalization process and assisting individual applicants to apply for naturalization, as well as insights from our affiliates who regularly provide services to individual applicants directly and in workshop settings.

CLINIC supports a national network of community-based legal immigration services programs that primarily serve low-income immigrants and regularly advise and assist individuals in filing family-based immigration applications, naturalization applications, humanitarian forms of relief, and more. This network includes over 330 programs operating in 47 states, as well as Puerto Rico and the District of Columbia. CLINIC's network employs an estimated 2,300 staff, including attorneys and accredited representatives. According to our 2017 internal survey of our affiliates, 96 percent of survey respondents provided legal services in naturalization and citizenship, ranking it as the most frequently requested service by clients. CLINIC affiliates specialize in representing vulnerable populations, including Permanent Residents with disabilities. The disability waiver for the English/Civics naturalization requirement is a daily matter in the immigration practice of these programs.

Further, many CLINIC programs serve former refugees who subsequently become Permanent Residents, and later apply for naturalization. Among the former refugee population are many immigrants who suffered physically, mentally and emotionally in the war-torn or unstable conditions that they fled in their home countries, and who have therefore developed a condition that satisfies the requirements of INA § 312(b)(1). CLINIC affiliates also see immigrants with developmental disabilities who are severely limited in their functioning because they were deprived of a special education, including deaf people who never had the opportunity to learn sign language. These individuals are sincerely attached to the U.S. constitution and otherwise meet the requirements for naturalization. Congress made the statutory change in 1994 to ensure that they and others like them would not be prevented from naturalizing for having a

physical or mental impairment, or developmental disability, that prevented the learning of English and Civics normally required of naturalization applicants.

Our mission and our identity as a Catholic organization compels our continued advocacy on behalf of all vulnerable immigrants and refugees, including disabled permanent residents. When we acknowledge the inherent dignity and unique gifts that disabled individuals have to offer and commit to addressing the need for their fuller integration and participation in our society, we all benefit. To this end, we offer the following comments and recommendation on USCIS's proposed changes to its policy and procedures.

I. General Comments

We appreciate this opportunity to provide feedback on the proposed changes to USCIS policy, procedures, and adjudications on the Medical Certification for Disability Exceptions (Form N-648) as it represents a substantial departure from the prior policy guidance. Due to the timing and gravity of the policy changes, CLINIC, with 43 organizations, requested an extension of the December 27, 2018, deadline by which organizations may submit comments to these substantial changes to the process for applicants with disabilities. In response to our request, we were informed that an extension would not be granted. However, we were advised that a late submission would be reviewed and considered by USCIS. In good faith, we have submitted this comment prior to the policy's effective date of February 12, 2019, and request that USCIS reconsider this flawed guidance to the field and adjudicators. The abbreviated comment process followed here has not allowed sufficient time for meaningful public comment thus far.

We request that the USCIS withdraw these proposed changes to the Medical Certification for Disability Exceptions, and leave current guidance in effect.

Our primary concern is that the new guidance creates a gauntlet for highly vulnerable applicants to run in which simple mistakes and misunderstandings of a complex process are automatically viewed as indicators of fraud. It creates an undue burden for disabled applicants to meet and will be a barrier preventing many eligible disabled applicants from naturalizing.

Thoroughly completing Form N-648 and complying with the applicable guidance is already a challenge for CLINIC affiliates and their clients, as the form has grown longer and more complex over the years. The new policy guidance raises expectations of physicians even further with additional scrutiny of the form. If a physician accidentally skips a question or fails to provide sufficient detail, this is grounds for credible doubt under the new guidance.¹ The training physicians receive and the context in which they work is very different from the legal environment and requirements of an immigration application. Physicians are not accustomed to providing information in a way that is compatible with the complex legal procedures of a naturalization application. It is often challenging for physicians to understand the necessity for detailed narrative information on the nexus between the applicant's disability and their inability to learn English or U.S. history and civics. Applicants are often left vulnerable, trapped between the incompatible procedures of physicians and USCIS.

¹ Revised Policy Manual, page 10.

It is USCIS policy to “make every effort to provide accommodations to customers with disabilities.”² Complicating the process for applicants and physicians is not consistent with USCIS’s stated dedication to complying with the Rehabilitation Act. We recommend a shorter and more simplified form that requires less narrative and more yes/no questions. We also recommend streamlining the waiver process rather than adding unnecessary burdens that are inconsistent with the regulations.

II. Specific Concerns About USCIS’ Policy Manual Changes

a. Timeliness of N-648 Submission

The revised policy manual makes changes in process that penalize applicants and makes assumptions of fraudulent intent that are not supported by evidence. Under the revisions, any N-648 submitted after an initial naturalization filing must necessarily be viewed with suspicion of fraud, and an additional filing of an N-648 after an initial filing must also raise serious doubts about credibility. The revised policy manual requires the N-648 to be submitted concurrently with the N-400, only allows supplemental or later filings in limited circumstances, and deems later filings to raise “credible doubts about the validity of the medical certification, especially where little or no effort is made to explain the delay, and the applicant claims that the stated disability or impairment was present before the naturalization application was filed.”³

This is a reversal of the current policy manual, which states, “USCIS recognizes that certain circumstances may prevent concurrent filing of the naturalization application and the disability exception forms. Accordingly, an applicant may file the disability exception form during any part of the naturalization process...”⁴ There is no discussion in the revised policy guidance as to why such presumptions of fraud are justified by a later submission. Without any supporting evidence, this change is not justified.

The practice of law in naturalization, and the amount of time that the government currently requires to process naturalization applications, do not justify the requirement that any credible N-648 must be submitted with an initial filing. Current USCIS processing times for naturalization vary by USCIS District and Field Offices, but it is not uncommon for citizenship applicants to wait more than 20 months for a decision in their case in many major cities. See USCIS processing times in NYC, NY; Miami, FL; Dallas, TX; Brooklyn, NY; Atlanta, GA; and Philadelphia, PA, for example.⁵ The gathering of documentation and fees and the completion of forms for filing of the N-400 are time-consuming tasks for applicants and their representatives. As a practical matter, the additional time for preparation of the N-648 would delay applicants further in what is already a very lengthy process. The applicant does not have a place in line until the N-400 is received. Applicants and their representatives who submit an N-648 after the initial N-

² See USCIS Policy Manual, Volume 1, Part A, Chapter 11, Disability Accommodation Requests.

³ Revised Policy Manual, page 3.

⁴ Vol. 12, Part E, Chapter 3A., USCIS Policy Manual, <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartE-Chapter3.html>

⁵ See processing times results for the named cities at U.S. Citizenship and Immigration Services, “Check Case Processing Times.” Available at: <https://egov.uscis.gov/processing-times>

400 filing are likely doing so merely because it took additional time to find and consult the needed medical professional, and they did not want to delay their processing time for naturalization further.

Furthermore, an N-648 submitted after the initial naturalization filing and closer in time to the actual adjudication of the application often more than a year later would contain more up-to-date information for the adjudicating officer to consider. Rather than detracting from the credibility of the filing, an N-648 filed during processing should lend to its credibility since it is more timely in relation to the adjudication.

The revised policy manual also contains language that mistakenly presumes lack of credibility for applicants who file a supplemental N-648: “Two different Forms N-648 from different medical professionals may also raise questions of credibility about the validity of the medical certification.”⁶ As a practical matter, a supplemental N-648 may be filed because an applicant either had no representation at an earlier stage of filing, or was poorly informed about the requirements for a disability waiver. The revision here makes little sense, in addition to needlessly prejudicing applicants, since elsewhere adjudicators are instructed that they may require an applicant to make a submission of an additional N-648.⁷

b. Physician-Patient Relationship

The revised policy manual requires that the physician provide a “description of the doctor-patient relationship indicating whether the medical professional regularly treats the cited condition, or an explanation of why he or she is certifying the disability form instead of regularly treating medical professional.”⁸

This requirement exceeds the statutory and regulatory requirements, which only specify that the medical professional be a licensed medical or osteopathic doctor or clinical psychologist.⁹ The provision requires confidential information about a legally protected relationship between physician and patient, and it requires a medical professional to have knowledge about other physicians that an individual may or may not consult. This poses an unreasonable requirement and one that may be an impossible hurdle for many applicants. Applicants may not have a physician who regularly treats their disability, and the physician completing the N-648 cannot supply information from other physicians that he or she does not have.

c. Blind Applicants

In discussing accommodations, the revised guidance gives an example of someone who is visually impaired.¹⁰ It suggests that someone who is visually impaired be accommodated with a large print version of the reading test in order to complete the requirement and then states, “However, if a person is not able to read because of a medical condition even with an accommodation, then the person needs to file a Form

⁶ Revised Policy Manual, page 2.

⁷ Revised Policy Manual, page 10.

⁸ Revised Policy Manual, page 4.

⁹ 8 CFR §312.2(b)(2).

¹⁰ Revised Policy Manual, page 5.

N-648.” This represents a departure from longstanding policy and practice on accommodations for blind applicants.

Under current policy on accommodations, a person who is blind is able to request an oral test in English as a reasonable accommodation, and is not required to obtain a disability waiver for the English reading and writing requirement. By way of comparison, a person who is unable to speak can communicate non-verbally (such as by pointing or using sign language) as an accommodation, and does not have to file an N-648 for the English speaking requirement. Blind applicants should be accommodated on the citizenship test, and should not be required to go through the lengthy and difficult process of obtaining a disability waiver. A simple medical record can be used to verify someone’s blindness, so there is no need for an in-depth analysis of their condition.

d. Applicant’s Daily Life

The revised guidance states, “Form N-648 requires the medical professional to describe the severity of the effects of the medical condition on the applicant’s daily life.”¹¹ This is an error. There is no such question on the Form N-648. The guidance then states, “The officer can question the applicant during the naturalization interview about the applicant’s daily life activities.” There is no basis in the law, regulations, or form for USCIS to question the applicant about his/her daily life activities. This line of questioning presumes fraud, and should not be used without just cause. It is clearly intended to seek evidence of fraud, which is unfounded. It directly contradicts the current policy guidance, which states that “an officer SHOULD NOT... Question the applicant about his or medical care, community and civic affairs, or daily living activities unless the facts in the form or during the examination directly contradict facts in the A-file.”¹² Asking questions about the applicant’s daily living activities is unjustified, goes far beyond the scope of the established waiver process, and will unnecessarily lengthen an already long process. Further, such a practice may encourage adjudicators to substitute their own judgement for the medical professional’s opinion on the applicant’s diagnosis.

e. Use of Interpreters

The revised guidance states, “If the person who interpreted at the medical examination is the same person as the person interpreting at the naturalization interview, the interpreter must then be disqualified from interpreting for that applicant going forward.”¹³ USCIS should not automatically disqualify the interpreter in this situation. In our experience, a close family member often serves as the interpreter for both the medical exam and the naturalization interview, and there may be a very good reason for this situation. Particularly for applicants with mental impairments, there may be only one person they trust who is capable of interpreting for them. The purpose of disability accommodations is to take into account the particular physical and mental conditions of individual applicants, and creating rigid rules such as this would create barriers for applicants without any available remedy.

¹¹ Revised Policy Manual, page 8.

¹² USCIS Policy Manual, Volume 12, Part E, Chapter 3, Section D.1.

¹³ Revised Policy Manual, page 9.

f. Credible Doubt

The revised guidance presents an extremely long list of factors that may give rise to credible doubt, and lead to finding the Form N-648 insufficient.¹⁴ Several of these factors simply indicate an insufficiently completed form or could have reasonable explanations instead of pointing to possible fraud. In our experience, it is not uncommon for medical professionals to fail to complete all the questions on the form or provide insufficient detail. This is a frequent reason our affiliates advise applicants to return to the physician to get additional information on the form before filing it. We have seen cases in which previous medical reports did not indicate a long-term medical condition because of a lack of good medical care and proper diagnosis in the applicant's native country. We have also seen cases where the applicant initially saw his/her family physician, but later sought an additional N-648 from a specialist with expertise in his/her particular disability. These are reasonable explanations that show no ill intent on the applicant's part. The list of factors for credible doubt should be greatly reduced because it is overbroad, and would impute possible fraud on well-meaning applicants who simply submitted insufficient information.

g. Requests for Evidence

The revised guidance hinders due process by failing to mandate a Request for Evidence (RFE) should an N-648 be deemed insufficient. The current policy manual clearly instructs an officer who finds an applicant ineligible for the disability exception who fails to meet the English and civics requirement, "The officer must issue the applicant a request for evidence addressing the issues with the medical disability form."¹⁵ This mandatory instruction is removed from the revised policy manual, which states, "USCIS may choose to issue the applicant a request for evidence that specifically addresses the issues with the Form N-648."¹⁶ The issuance of an RFE is sound administrative practice that promotes efficiency, as it outlines the issues on which USCIS requires more information, and guides the applicant on how to properly respond. Without an RFE, the applicant is deprived of a meaningful opportunity to respond to USCIS' findings because the applicant lacks notice of the issues USCIS identified. We strongly support the mandatory issuance of an RFE when an N-648 is deemed insufficient for these reasons.

h. The revised policy guidance exceeds the requirements of the statute at INA § 312(a)(b)(1) and the regulations at 8 CFR §312.1(b)(3) and 8 CFR §312.2

As stated above, Congress added revised §312(a)(b)(1) to the INA in 1994 to ensure that certain naturalization applicants with disabilities would still be able to qualify for citizenship. The language is simple. The section waives the requirement of understanding reading, writing and speaking of ordinary English and the knowledge of the fundamentals of civics as follows: "The requirements of subsection (a)¹⁷ **shall not apply** to any person who is unable because of physical or developmental disability or mental impairment to comply therewith" (emphasis added).

¹⁴ Revised Policy Manual, page 10.

¹⁵ USCIS Policy Manual, Volume 12, Chapter 3, F.1. <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartE-Chapter3.html>

¹⁶ Revised Policy Manual, page 14.

¹⁷ Subsection (a) contains the English and Civics requirements for naturalization.

The regulations at 8 CFR §312.1(b)(3) added details on the type of qualifying condition, its duration, its effect on cognitive abilities, and additions at 8 CFR §312.2 provided details on the type of medical practitioner that is acceptable, and the need for nexus between the condition described and the inability to learn English and civics. These sections of regulations are relatively brief, representing less than two pages of requirements, yet the revisions of the policy manual run 15 pages of text, much of it containing requirements that are not discussed in the statute or the regulations. The new burden of explanation for late submissions and multiple submission of N-648 are not described in the regulations, nor is the requirement that the N-648 describe the doctor-patient relationship, certify whether the doctor is the regular treating physician, and explain why he or she is certifying the form instead of a regularly treating physician.

CLINIC recommends that USCIS adjust its revisions to the policy manual to more closely align with the statutory and regulatory provisions. Adding requirements and limitations to the disability waiver process in the policy manual that do not exist in the statute or regulations deprives the public of the opportunity to effectively review and comment on the changes.

III. Conclusion

We request that the USCIS withdraw these proposed changes to the Medical Certification for Disability Exceptions, and leave current guidance in effect. USCIS has not provided evidence that these changes are necessary or beneficial. In fact, they would contradict the purpose and intent of the underlying statute and regulations by arbitrarily preventing applicants with physical and developmental disabilities from qualifying for naturalization.

We appreciate and encourage USCIS's continued dialogue and engagement with the community and stakeholders, particularly as USCIS seeks to reduce mounting naturalization backlogs that disproportionately affect vulnerable and disabled applicants.

Thank you for your consideration of these comments. Please do not hesitate to contact Jill Marie Bussey, Director of Advocacy at 301-565-4844 or jbussey@cliniclegal.org, with any questions or concerns about our recommendations.

Sincerely,



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