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July 15, 2024

Samantha Deshommès
Chief, Regulatory Coordinator
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
Re: Comment in Response to the DHS/USCIS Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Medical Certification for Disability Exceptions; DHS Docket No. USCIS-2008-0021; OMB Control Number 1615-0060.

Submitted via Regulations.gov

Dear Chief Deshommès,

The Immigrant Legal Resource Center (ILRC) and the Disability Rights Education & Defense Fund (DREDF) submit the following comment in response to the Department of Homeland Security's (DHS) Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Medical Certification for Disability Exceptions, published on June 14, 2024.

The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC's mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates, and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations in building their capacity. The ILRC also leads the New Americans Campaign, a national non-partisan effort that brings together private philanthropic funders, leading national immigration and service organizations, and over two hundred local services providers across more than 20 different regions to help prospective Americans apply for U.S. citizenship. Through our extensive naturalization network with service providers, immigration practitioners and immigration benefits applicants, we have developed a profound understanding of the barriers faced by low-income immigrants of color seeking to naturalize. As such, we welcome the opportunity to provide comments on Form N-648, Medical Certification for Disability Exceptions.



DREDF, based in Berkeley, California, is a national nonprofit law and policy center dedicated to advancing and protecting the civil and human rights of people with disabilities. Founded in 1979 by people with disabilities and parents of children with disabilities, DREDF remains board- and staff-led by members of the communities for whom it advocates. DREDF pursues its mission through education, advocacy, and law reform efforts, and is nationally recognized for its expertise in the interpretation of federal civil rights laws protecting persons with disabilities. DREDF fights for disability access to local, state, and federal government. DREDF envisions government programs and services that are designed with the needs and interests of disabled people in mind and affirmatively accommodate and include disabled people.

The ILRC has previously communicated to USCIS our approval of the major revisions of the N-648 that took place in October 2022.¹ Overall, the revised form is clearer, more succinct, and substantially less burdensome than the prior version. Those changes were welcome as many barriers to eligible disabled applicants were removed by deleting redundant and irrelevant questions from the N-648, and by shortening the form so that it was less daunting to medical professionals and applicants. However, we expressed at that time that the inclusion of an oath waiver question for the first time on the N-648 was inadvisable. The oath waiver is based on a separate section of law and, if required, imposes burdensome requirements on the applicant. The certifying medical professional has no background in the oath of allegiance and how it can be modified to be accessible to most applicants with disabilities. We continue to have that concern, which is exacerbated by the continued publication of the N-648 for comment as an extension without change.

Specifically, Question 1 of Part 4, “Is the applicant able to understand and communicate that they understand the meaning of the Oath of Allegiance to the United States?” should be eliminated. This question asks the medical professional to make a judgment on the applicant’s ability to understand the oath of allegiance for naturalization. The medical professional signing the N-648 does not have professional knowledge of what the oath contains, nor how an oath may legally be modified or simplified to accommodate an applicant. They may have little understanding of how an applicant may be aided by family members or other supporters to understand the content of the oath. They likely do not know that certifying a need for an oath waiver imposes administrative burdens on the applicant and their family. The question of the oath waiver was not previously included in the N-648, as it is based on a separate law and is requested through a separate process but was added to the form in 2022.

Congress intended to make an oath waiver available to applicants with disabilities by explicitly changing the statute to allow that in 2000.² This was an entirely separate law than the 1994 exemption for a person “who is unable because of physical or developmental disability or mental impairment to comply” with the English or Civics requirement.³ These two laws should not be conflated by asking the medical professional who is certifying the English or civics exemption to also judge whether an oath of allegiance can be understood, thus determining whether an oath waiver is needed.⁴ The addition of this question will likely lead to many unnecessary oath waiver requests. The oath waiver is intended for a subset of applicants whose disability prevents them from

¹ ILRC, Letter to USCIS on Recent Improvements to the Naturalization Disability Waiver (N-648) (Oct. 26, 2022) <https://www.ilrc.org/resources/ilrc-letter-uscis-recent-improvements-naturalization-disability-waiver-n-648> .

² INA § 337(a). Pub. L. 106–448 (July 12, 2000).

³ INA 312(b)(1). Section 108 of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103-416 (Oct. 25, 1994).

⁴ It should be noted that the language for the two statutes is also distinct. The language of the statute specifically denotes the Attorney General’s ability to “waive” the requirement of the oath of allegiance while exceptions are enumerated for English and civics testing. See 8 U.S.C. § 1448(a) and 8 U.S.C. §1423(b).

understanding or assenting to the oath even if it is vastly simplified as an accommodation.⁵ The legislative history of the oath waiver shows that it is intended for people who are unable to communicate verbally due to a significant disability, such as applicants who are in a coma or who are unable to communicate verbally even with supports.⁶ Many persons who qualify for a waiver of the English or civics requirement due to a disability will, in fact, be able to understand an oath with an accommodation. Many medical professionals, without an understanding of alternatives to the oath waiver such as a simplified oath, will mistakenly check “no” in Part 4 of the N-648 and subject the applicant to the battery of requirements that USCIS imposes on applicants who use an oath waiver.

If an oath waiver is requested the applicant will need to have a qualifying U.S. citizen relative who is also a primary caregiver or a court-ordered legal guardian, surrogate or designated representative act on their behalf.⁷ Many applicants do not have one of the limited U.S. citizen relatives currently allowed by the USCIS Policy Manual to act for them in this process, nor do they have the time or funds available to go through a lengthy court-ordered guardian or representative process.

In addition, we note that there is no legal authority for the Form N-648 to be used to waive an oath. The form was developed and institutionalized by implementing regulations for the disability waiver of English and civics only.⁸ The disability waiver of English or civics was enacted in 1994. The oath waiver was enacted in 2000 and was not even in existence when the N-648 was created by regulation, Because the oath waiver was thought to involve only a small number of persons with severe disabilities, the government decided not to create a separate form to apply for it when it was implemented by policy guidance.⁹ The agency should now reconsider that decision, as the lack of a specific form to request an oath waiver has created confusion and processing delays for both applicants and adjudicators. Keeping the oath waiver question on the N-648 is not a solution.

We recommend that USCIS eliminate the question about the oath of allegiance from the N-648, since the English or civics disability exemption is the focus of this form, based on an underlying law that is separate from that of the oath requirement and its waiver.

Additionally, we request again that USCIS alter both the governing regulations and USCIS Policy Manual¹⁰ to expand the definition of “Authorized Medical Professionals” to include nurse practitioners and other medical professionals who are licensed and **“experienced in diagnosing those with physical or mental medically determinable impairments.”**¹¹ Many of those applicants who require a disability exception regularly see and are treated by

⁵ The USCIS Policy Manual describes the accommodations that allow simplified language that can be allowed for the oath, as well as alternative methods of communication such as non-verbal blinking or tapping. 12 USCIS-PM C.3, <https://www.uscis.gov/policy-manual/volume-12-part-c-chapter-3>.

⁶ 146 Cong. Rec. S6121, S6122; Bureau of Citizenship and Immigration Services (BCIS), William R. Yates, *Procedures for Implementing the Waiving of the Oath of Renunciation and Allegiance for the Naturalization of Aliens Having Certain Disabilities* (June 30, 2003). For a review of the legislative history of the oath waiver see, ILRC, *Naturalization: The Oath of Allegiance Waiver for Persons with Severe Disabilities* (Jan. 2024) https://www.ilrc.org/sites/default/files/2024-01/01-24%20Naturalization_SDP%20allegiance%20oath%20waiver.pdf.

⁷ This limited list of persons who can act in place of an applicant with a disability are in 12 USCIS-PM C.3.A.4 and 12 USCIS-PM J.3.C.2.

⁸ See 8 CFR 312.2(b)(2).

⁹ See Bureau of Citizenship and Immigration Services (BCIS)(later USCIS), William R. Yates, *Procedures for Implementing the Waiving of the Oath of Renunciation and Allegiance for the Naturalization of Aliens Having Certain Disabilities* (June 30, 2003).

¹⁰ USCIS PM 12.E.3.D.

¹¹ 8 CFR § 312.2(b)(2).

medical professionals who do not fall into one of the enumerated categories and expanding the definition would allow for the medical professional who knows the applicant best, to provide information on their qualification for a disability waiver. By prioritizing the medical professional who regularly treats the applicant, the agency will allow for a more complete and accurate accounting of the applicant's basis for a waiver and reduce the numbers of insufficient N-648s received. This will cut back on processing times and the need for Requests for Evidence, thereby reducing the strain on the agency's resources and adjudicators.

We urge USCIS to consider these recommendations and amend Form N-648.

Please reach out to Elizabeth Taufa, etaufa@ilrc.org, if there are any questions.

Sincerely,

/s/Elizabeth Taufa

Elizabeth Taufa

Senior Policy Attorney and Strategist

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/s/Claudia Center

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