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Samantha Deshommes
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; Agency Information Collection Activities; Revision of a Currently Approved Collection: Medical Certification for Disability Exceptions

Dear Ms. Deshommes:

The undersigned members of the Naturalization Working Group respectfully submit the following comments in connection with Docket ID USCIS-2008-0021; Agency Information Collection Activities; Revision of a Currently Approved Collection: Medical Certification for Disability Exceptions, published in the Federal Register on April 21, 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.

Many NWG members specialize in representing the most vulnerable populations, including LPRs with disabilities. The disability waiver for the English/civics naturalization requirement is a daily matter in the immigration practice of these programs.

Further, many NWG members serve former refugees and asylees who subsequently become LPRs, 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). NWG members 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.

In 1994, Congress established an exception to the English and civics testing requirements for applicants with disabilities, creating access to citizenship for people who previously had none. Citizenship provides significant benefits to individuals and the United States as a whole – allowing people to fully participate in the government they live under, integrate more into communities, apply for certain jobs, and much more. For refugees and asylees with disabilities, citizenship allows them to preserve their eligibility for Supplemental Security Income (SSI) benefits that they may depend on to survive.

II. Changes to N-648 form and policy under the previous administration and continuation under the Biden administration

Under the previous administration, both N-648 policy and form changes were implemented that dramatically hindered people with disabilities from applying for naturalization and accessing the rights and benefits of citizenship. These policies are so far continuing under the Biden administration. Citizenship, with all of its rights and responsibilities, must be available to *all* people in a true, functioning democratic society.

On December 12, 2018, USCIS announced major changes to the policy manual guidance on disability waivers, with an effective date of February 12, 2019.¹ 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 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.² 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.³ The guidance contradicted the purpose and intent of the law, arbitrarily preventing applicants with disabilities from naturalizing.⁴ USCIS provided no evidence that the changes were

¹ Policy Alert, Sufficiency of Medical Certification for Disability Exceptions (Form N-648), USCIS (Dec. 12, 2018), uscis.gov/sites/default/files/document/policy-manual-updates/20181212-N648MedicalCertification.pdf.

² 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>.

³ 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.”

⁴ INA section 312 (b) (1) provides an exception to the testing requirements for people with certain disabilities.

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.

Two months later, on April 26, 2019, USCIS published an announcement in the Federal Register regarding major changes to the disability waiver application — Form N-648 — that would align it with the policy guidance.⁵ Extensive and burdensome questions were added regarding the date that each disability or impairment began; the date of diagnosis; the severity of each disability or impairment; how each disability or impairment affects the applicant’s daily life activities; which disabilities/impairments are expected to last over 12 months and why; the frequency of treatment and other matters. Thirty members of the NWG submitted a joint public comment⁶ on October 7, 2019, opposing the changes. The new Form N-648 took effect a year later, on October 13, 2020, and was nearly identical to the proposed version that we strongly opposed. In addition, the new form was implemented despite an existing edition dated 5/23/19 that did not expire until May 31, 2021.

Now, just six months later, USCIS is making a number of corrections to the form while keeping the content virtually the same and failing to address our fundamental concerns about the length and complexity of the form. The need to correct so many errors so soon after implementation points to a flawed process by the prior administration in issuing the 7/23/20 edition. We call on USCIS to rescind and revisit this edition entirely, as explained below.

III. Comments on the Proposed Form

A. General

USCIS’ proposed change to the Form N-648 and Instructions reduce access to naturalization for people with disabilities. The proposed changes fail to meet the objectives of the Paperwork Reduction Act, lacking practical utility and making the process more rigid, impractical, and burdensome for applicants, their legal representatives, medical professionals, and USCIS adjudicators. Detailed analysis of these issues is below.

The proposed collection of information is not necessary for the proper performance of the functions of the agency and lacks practical utility. The Form N-648 has been in use for nearly 25 years. USCIS (and INS) managed disability waiver adjudications successfully for many years with a shorter, less burdensome form. For example, the 01/13/06 edition of the N-648 was three pages long and contained just eight questions for the medical professional to answer. USCIS has not provided any justification for increasing the length to such an extreme degree, which is not practical for medical professionals, applicants, advocates, or adjudicators.

The agency’s estimate of the burden of the proposed collection is not accurate. First, USCIS has estimated 19,527 respondents, yet the last time USCIS received anywhere near that number of N-648

⁵ 84 Fed. Reg. 17870 (April 26, 2020), [federalregister.gov/documents/2019/04/26/2019-08384/agency-information-collection-activities-revision-of-a-currently-approved-collection-medical](https://www.federalregister.gov/documents/2019/04/26/2019-08384/agency-information-collection-activities-revision-of-a-currently-approved-collection-medical).

⁶ See joint comment submitted by the Naturalization Working Group, <https://cliniclegal.org/resources/federal-administrative-advocacy/nwg-joint-public-comment-n-648>.

applications was in FY 2013. Since that time, the number of N-648s has steadily decreased even while the overall number of N-400s increased, to a low of 3,734 N-648s in FY 2018. For the last year in which data is available, FY 2019, USCIS received just 4,688 N-648s. In our view, the excessive length of the form is a hindrance that discourages people with disabilities from seeking to naturalize. Second, USCIS has estimated an hour burden of 2.42 hours per response, yet the estimated burden for the much shorter, 5/23/19 edition of the form was 2 hours per response. USCIS has added six additional questions for the medical professional to answer, including two more narrative responses, yet only added 42 minutes to the estimated response time.

Even an under-estimate of 2.42 hours per response is an extraordinary and difficult commitment for any busy medical professional to make. The proposed form thus creates a major roadblock for disabled individuals' access to citizenship and contradicts Section 504 of the Rehabilitation Act of 1973 that protects qualified individuals from discrimination based on their disability. Section 504 states that, "no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under" any program or activity that either receives Federal financial assistance or is conducted by any Executive agency or the United States Postal Service.⁷ We recommend that the USCIS ensure against exclusion of disabled LPRs by making the form less burdensome for their medical professional to complete.

The proposed form does not minimize the burden of the collection on those who are to respond. To the contrary, this form, which is much longer than the 5/23/19 edition, greatly increases the burden on respondents. Medical professionals who were already very busy are now being asked to complete an eight-page form with 22 questions on the disability and to provide detailed, narrative responses on many of the questions. We note that USCIS has removed one of the questions in the proposed version of the form that was redundant, but this does not significantly reduce the burden on respondents. The N-648 form is very burdensome for advocates as well, who must work closely with the medical professional to ensure it is completed correctly. Often multiple calls, visits, or e-mails are required for advocates to explain the form and its requirements to the medical professional and obtain further detail in the responses. Applicants, too, may have to visit the medical professional's office multiple times to pick up the form as it goes through revisions.

B. The Form

The 5/23/19 edition of the Form N-648 was six pages long and had 12 questions on the disability, with a minimum of five narrative responses required. The proposed form is eight pages and has six additional questions on the disability, with a minimum of seven narrative responses required. The proposed form is considerably longer and more onerous than the 5/23/19 edition and goes beyond the requirements of the statute and regulation for demonstrating eligibility for a disability waiver.

The INA states that the requirements as to understanding the English language, history, principles, and form of government of the United States "shall not apply to any person who is unable because of physical or developmental disability or mental impairment to comply therewith." With regard to the medical certification, 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."

⁷ Rehabilitation Act § 504.

Furthermore, the regulations note 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 CFR 312.1 (b) (3)). The regulations do not support the excessive number of 22 questions regarding the disability in the proposed form.

Compared to the 5/23/19 edition, the proposed form contains six additional questions in Part 3 about the date that each disability/impairment began; the date of diagnosis; how each disability/impairment affects the applicant's daily life activities; which disabilities/impairments are expected to last over 12 months and why; which disabilities/impairments are the result of illegal drug use; and the frequency of treatment. In addition, several questions have been added to Part 4 about whether the medical professional questioned any telephonic interpreter regarding his/her fluency in English and accuracy/completeness in interpretation.

The level of detail that was required by the 5/23/19 edition already presented a major challenge for busy medical professionals, and applicants frequently struggled to find doctors willing and able to take the time to provide detailed information. In our experience, USCIS already unnecessarily rejected many N-648s based on the 5/23/19 edition on the ground that they lack sufficient detail, which delayed access to naturalization and created additional inefficiencies for the agency, thus contributing to its ongoing backlog of cases. The proposed changes would further enhance a longer and more onerous form that would only exacerbate this issue and frustrate the intent of the waiver. A detailed page-by-page analysis of the additional questions follows below.

The 5/23/19 edition of Form N-648 contained many instructions in the heading of the form, in Part 2 for Medical Professional Information, and after some of the questions. These instructions were helpful since, in our experience, most medical professionals do not have time to read the lengthy form instructions. Yet, most of these instructions have been removed from the proposed form. We recommend keeping these instructions.

Question 3 in Part 3 is a new question added after the 5/23/19 edition that asks when each disability/impairment began. This question presumes that every applicant has a long history of healthcare in the U.S., but the reality is that many individuals have disabilities that began before they came to the U.S. Medical professionals may not be able to access information about conditions or treatment occurring outside the country, especially not information as specific and precise as month and day of onset. This question also presumes that the person had a specific event or injury that caused the disability, such as a stroke or heart attack, but this is often not the case with respect to frequently occurring conditions such as cancer, depression, dementia, or Post Traumatic Stress Disorder. This question is unreasonable and should be removed from the form.

Question 4 in Part 3 is a new question added after the 5/23/19 edition that asks for the date of diagnosis. This question is redundant and unnecessary since question 14 already asks about the date and location the medical professional first examined the applicant regarding the condition(s) listed on the N-648. Question 4 should be removed from the form.

Question 7 in Part 3 is a new question not found in the 5/23/19 edition and asks for a description of how the disability/impairment affects the applicant's daily life activities, including the ability to work or go to school. This question invites the adjudicator to substitute his/her judgement for that of the medical professional by using ability to perform daily activities as an overly simplistic litmus test for N-648 eligibility. It would be inappropriate to presume, for example, that someone who can drive or perform

simple, repetitive manual work on a job has the necessary physical and mental abilities to take a citizenship test in its standard form. There is no basis in the applicable statute or regulations for USCIS to question the applicant about his/her daily life activities. The proposed addition of this question directly contradicts past policy guidance that was in effect prior to February 2019, which stated that “an officer SHOULD NOT... Question the applicant about his or her 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.”⁸ Question 7 is overreaching and should be removed.

Question 8 in Part 3 has been re-phrased from the 5/23/19 edition, which read, “Has the applicant’s disability and/or impairments lasted, or do you expect it to last 12 months or more?” The new question reads, “Have any of the applicant’s disabilities and/or impairments lasted, or do you expect any of them to last, 12 months or more?” Question 9 was then added, “Provide an explanation as to which disabilities or impairments are expected to last over 12 months and why.” Question 9 requires an excessive level of detail that is not supported by the regulations and should be removed.

Question 10 in Part 3 has been re-phrased from the 5/23/19 edition, which read, “Is the applicant’s disability and/or impairments the result of the applicant’s illegal use of drugs?” The new question reads, “Are any of the disabilities and/or impairment(s) the result of the applicant’s illegal use of drugs?” Question 11 was then added, “If yes, provide an explanation as to which disabilities or impairments are the result of the applicant’s illegal use of drugs.” Question 11 requires an excessive level of detail that is not supported by the regulations and should be removed. Question 10 should be returned to the earlier phrasing in the 5/23/19 edition.

Question 18 in Part 3 is a new question not found in the 5/23/19 edition regarding the frequency of treatment. Given that the medical professional has already been asked to indicate the duration of treatment, when they first examined the applicant, and when they last examined the applicant, the additional question about the frequency of treatment is excessive and unnecessary. It should be removed.

C. The Instructions

On page 1, under “Who should submit Form N-648 and when,” the instructions state, “USCIS generally only considers a Form N-648 that is concurrently submitted with a Form N-400 to be filed timely, but later-submitted or multiple Forms N-648 may be accepted in certain circumstances.” The instructions provide no guidance on what circumstances allow for submitting Form N-648 at a later stage in the N-400 process. The language in the instructions does not take into account those applicants who are caught in long backlogs and have disabilities that develop or worsen while they are waiting for naturalization. In such cases, USCIS’ policy manual indicates that a late-filed N-648 would be appropriate, yet there is no mention of this in the instructions.

This omission discourages late filing by applicants who qualify for the exception but do not understand they can still file. Additionally, a Form N-648 submitted after the Form N-400 may not be accepted if the applicant does not provide a credible explanation and sufficient evidence, according to the USCIS Policy Manual.⁹ Yet, the instructions do not inform the applicant to provide an explanation or submit any

⁸ USCIS Policy Manual, Vol. 12, Part E, Chapter 3, D. Guidelines for Officer’s Review.

⁹ “USCIS may consider a later-filed Form N-648 if the applicant provides a credible explanation... and submits sufficient evidence in support of the explanation. For example, if a significant change in the applicant’s medical condition since the submission of the initial Form N-648 has taken

evidence connected to filing the Form N-648 after filing the N-400. Further instruction on this is essential given the policy guidance that says "...without sufficient probative evidence, a late submission can raise credible doubts about the validity of the medical certification, especially where little or no effort is made to explain the delay." Not only is the policy ill-conceived, but the language in the instructions is deficient in that it does not request an explanation or provide examples of what kinds of evidence may be submitted in support of filing the N-648 after the N-400.

Many applicants file for naturalization without legal representation, and either do not know that they might qualify to waive the English/civics requirement because of their disability, or they attempt to file an N-648 but fail to understand the level of detail required to be successful in such a waiver. These pro se naturalization applicants often seek counsel after their initial attempt at a waiver has failed, and thus a late or duplicate filing of an N-648 occurs with legal assistance. Such applicants should not be punished with a presumption of fraud as they are in the current guidance.

On page 3 under "Signature," it is important for USCIS to provide clarification for applicants with disabilities who are unable to write their signature on the form, but are able to make a mark, and whether USCIS will accept a mark for a signature. The policy manual section on reasonable accommodations states, "An applicant's mark is acceptable as the applicant's signature on the naturalization application or documents relating to the application when an applicant is unable to sign."¹⁰

IV. Additional Recommendations

In addition to our comments above on the Form, we submit 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 adequately address the issues with the N-648 process and policy that are actually counter-productive to access to naturalization for people with disabilities, we urge USCIS to immediately allow applicants to use the earlier edition of the Form N-648 dated 5/23/19. Again, as detailed above, the current, 7/23/20 edition, as well as the proposed version, are much longer and more onerous than the 5/23/19 edition. They place unreasonable burdens on busy medical professional and arbitrarily prevent applicants with disabilities from qualifying for naturalization. Both the forms and the policy guidance contradict the purpose and intent of the underlying statute and regulations that created a means for applicants with disabilities to naturalize. In the longer term, USCIS should simplify the 5/23/19 edition of the Form N-648 by reducing the number of questions and making it easier for medical professionals to complete.
- Immediately rescind the N-648 Policy Guidance that took effect on February 12, 2019. USCIS should revert to the previous version of the policy guidance on Form N-648. The new guidance greatly

place, a later-filed Form N-648 would be appropriate. Other explanations for not filing the Form N-648 with the initial Form N-400 may also be acceptable..." See USCIS Policy Manual, Vol. 12, Part E, Chapter 3, B.2.

¹⁰ See Volume 12 of the Policy Manual, Part C, Chapter 3, Section A, #3 Allowing Relatives and Others to Attend Examinations and Assist in Signing Forms.

expanded the grounds for denying an N-648 application and made it more difficult for disabled applicants seeking to naturalize. In the longer term, USCIS should revisit the previous version of the guidance and make revisions to ensure 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.

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

- Re-establish a regular stakeholder working group. USCIS should re-establish the working group that existed in the past and begin meeting regularly with stakeholders once again to discuss how to improve access to naturalization for people with disabilities. The previous working group met over a period of several years to provide input on policy guidance and forms related to disabled applicants.
- 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 hope you will invite stakeholders to meet with you soon to discuss and address these immediate issues and put forth a long-term plan for improving the N-648 process and overall accessibility. For any questions, or to arrange engagement, please contact Laura Burdick, Field Support Coordinator, Catholic Legal Immigration Network at lburdick@cliniclegal.org and Peggy Gleason, Senior Staff Attorney, Immigrant Legal Resource Center at pgleason@ilrc.org.

Sincerely,

Asian Americans Advancing Justice - Los Angeles
Asian Counseling and Referral Service (ACRS)
Asian Pacific Islander Legal Outreach
Bonding Against Adversity, Inc.
Boulder Valley Unitarian Universalist Fellowship
Catholic Charities of Los Angeles
Catholic Legal Immigration Network, Inc.
Catholic Legal Services, Archdiocese of Miami
Central American Resource Center (CARECEN)
Central American Resource Center (CARECEN) Los Angeles
Chaldean Community Foundation
Chinese Information and Service Center (CISC)
City of Jersey City - Office of the Mayor
City University of New York- Citizenship Now!
Diocesan Migrant & Refugee Services, Inc.
Dominicanos USA
Entre Hermanos

HIAS Pennsylvania
Hmong American Women's Association Inc.
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Legal Resource Center (ILRC)
Immigration Hub
Immigration Institute of the Bay Area
Interfaith Refugee and Immigration Service (IRIS)
Kentucky Refugee Ministries
Korean Resource Center (KRC)
Lutheran Immigration and Refugee Service
Massachusetts Immigrant and Refugee Advocacy Coalition
Mexican American Opportunity Foundation
Michigan Immigrant Rights Center
MWRC
National Hispanic Caucus of State Legislators
National Immigrant Justice Center
National Partnership for New Americans
Oasis Legal Services
OCA-Greater Houston
OneAmerica
PARS Equality Center
Promise Arizona
Refugee and Immigrant Center for Education and Legal Services (RAICES)
Refugee Women's Alliance (ReWA)
SAHARA
Seattle Office of Immigrant and Refugee Affairs
Self-Help for the Elderly
UnidosUS