

BARRIERS AND CHALLENGES POSED BY USCIS IN THE NATURALIZATION APPLICATION PROCESS

This chapter outlines the many ways in which the U.S. Citizenship and Immigration Services (USCIS) poses difficulties for applicants during the naturalization process. It draws from interviews with many legal service providers and an extensive critique of the government's processing of naturalization applications found in CLINIC's 2000 report, *Citizenship at Risk: New Obstacles to Naturalization*. (See Chapter 11 on "U.S. Citizenship and Immigration Services" for recommendations to improve the naturalization process.)

Criticisms of USCIS and its predecessor, the Immigration and Naturalization Service (INS), are not new or limited to one area or issue. Congress, the Department of Justice's Office of the Inspector General, immigration advocacy organizations, and applicants have consistently cited the same complaints, as systemic problems continue year after year. However, USCIS is not entirely responsible for all problems: Some are the result of action or inaction by Congress. These are noted separately in Chapter 5.

Although the vast majority of applicants encounter no difficulties in the naturalization process, others with unique circumstances or some minor issue can experience a myriad of problems. For these people, the exciting prospect of becoming a U.S. citizen is replaced by confusion and frustration with a government bureaucracy that does not work transparently or fairly for everyone. These inequities emphasize the need for improvements in USCIS's processing and adjudication responsibilities for naturalization applications. Systemic improvements through the recommendations made in this report will better protect and administer the path to citizenship, a bedrock of American democracy.

Access to Eligibility and Application Requirements

The federal government, chiefly USCIS, does not have any wide-reaching initiative to inform immigrants of naturalization eligibility requirements. It currently offers immigrants no information about citizenship prior to or after their entry into the United States, or when a status change is granted thereafter. USCIS is not proactive in reaching out because it lacks funding for auxiliary services to immigrants and its staff is overburdened by its main responsibility of processing applications for change of status. Eligibility

information provided by USCIS is limited and available on its website; in its publication, *A Guide to Naturalization* (M-476); or in its district offices. These limited access points leave hundreds of thousands of eligible applicants each year to seek information elsewhere.

Other sources offering eligibility information are of varying quality and cost. They include: 1) private attorneys who charge significant consultation fees; 2) unauthorized practitioners of immigration law, commonly referred to as *notarios*, who charge similarly high fees for consultations, sometimes even for a free government form; 3) travel agencies seeking to expand for-profit services to the foreign-born; 4) reference sections in public libraries; and 5) charitable immigration programs that provide public education and charge a range of affordable consultation and representation fees for low-income immigrants.

Application and Other Fee Increases

The U.S. Congress requires all immigration application-processing expenses to be fully supported through application fees (63 Federal Register 43605, January 12, 1998). To this end, Congress requires USCIS to audit every two years the true cost of processing an Application for Naturalization, including the fingerprint and biometric fee. In 1997 the total fee was \$95. In 1998 it rose significantly, to \$225, plus an additional \$25 for fingerprints. In 2002 the application fee rose to \$260 and the fingerprint fee to \$50, for a total of \$310. By 2005 the citizenship application fee had risen to \$330 and the fingerprint fee to \$70, for a total of \$400. This 320 percent increase over eight years appears particularly shocking in light of USCIS's slowness in addressing serious customer service problems. Fees are expected to significantly increase again in 2007.

Fee Waivers

USCIS has broad discretion to waive any application filing fee if the applicant provides supporting documentation that he or she is unable to pay the fee (8 CFR § 103.7(c)). INS did not issue fee waiver adjudication guidance to field offices until 1999, when citizenship advocates insisted that guidelines for the law be established prior to the significant fee increase from \$95 to \$225. The USCIS guidance requires the fee waiver to be adjudicated within five working days. Earlier, few applicants were aware of the fee waiver provision in the law. Furthermore, legal immigration representatives dissuaded low-income applicants from requesting a fee waiver since INS delayed processing the application for up to a year and denied fee waivers at a rate of almost 100 percent. Currently, the average approval rate is around 80 percent.

Unfortunately, USCIS offices continue to have wide discretion over fee waiver approval. Applicants must submit lengthy documentation of their household income and expenses, even if they have already been found eligible for a means-tested federal benefit such as food stamps. Furthermore, USCIS has failed to create a fee waiver form that would make the request easier for the applicant to prepare and for adjudicators to review supporting documentation. Private legal representatives and charitable organizations are left to create their own format for the fee waiver application.

Application Length and Detail

Accessing an Application for Naturalization (N-400) is a challenge, and understanding it completely is an even greater challenge. This is particularly true for applicants who speak limited English or have no assistance. The current N-400 application, in use since August 2001, has up to 107 questions, many requiring fully written answers, as opposed to “yes” or “no” responses.

This 10-page form requires six pages of instructions and notes that creating a form that poses the least possible burden is difficult since “immigration laws are very complex.” The instructions suggest it will take an estimated average time of two hours and eight minutes to learn about and complete the form and four hours to assemble and file the information, a total of six hours and eight minutes. This average length of time does not take into consideration the many immigrants who have language limitations. The form’s length can discourage applicants from pursuing naturalization, although having readily available, competent assistance can mitigate this drawback.

The form’s detail and complexity pose a challenge to many applicants. Of the possible 107 questions, up to 50 have legal consequences, and answering every question with full knowledge of the legal consequences is of paramount

importance. Yet not all applicants understand the context of the questions. Many questions require knowledge of naturalization law and the advice of a legal representative. Furthermore, answering truthfully is a test of good moral character, a requirement itself for naturalization.

Poor Customer Service

A persistent criticism of USCIS, and earlier, of INS, is the difficulty of getting even basic information. Often, applicants have no knowledge of the status of their cases, receive no response to their letters, cannot reach information line staff with knowledge of their cases, and receive unhelpful, even hostile responses from clerks at USCIS service desks. Congressional staff are frustrated by the deluge of requests for information on pending naturalization cases, and even they sometimes get no response or a very slow response from USCIS. Attorneys who have the legal right to represent clients are also frustrated by the information gap. Immigrants who have waited years to be called for a naturalization interview are unable to confirm with USCIS that their files are in the correct office and retrievable.

When occasional problems occur in a case, it is often impossible for immigrants to reach anyone at USCIS to resolve them. Immigrants must go to great lengths to access vital information about their cases.

Applicants may use the USCIS customer service number, 1-800-375-5283, to log a change of address, correct USCIS data entry errors, request the return of original documents, and, most often, to seek a status check on a pending case. The customer service number is often busy. Once a caller gets through, a machine directs him or her through a labyrinth of prompts, ending with a recorded voice stating the approximate length of time the case will be pending, sometimes as long as 570-600 days. This number is generated from a computer program that consistently suggests exceedingly long and often misleading ranges. Customer service representatives, when reachable after long waits, offer no more details than the digital recorded voice.

Legal immigration practitioners widely regard the customer service number as time-consuming and useless. Contract employees staff the line, and their knowledge of immigration is elementary, at best. Although this number was established, in part, for applicants to update USCIS about a new address, the system is so flawed that it is still necessary to also write a letter to the USCIS Service Center and relevant district office with the same information.

The USCIS also offers website status checks at www.uscis.gov. Although faster to access than phone information, the website gives the same status details as the 800 number—the computer-generated range of days required for the case to be completed.

Visiting the local immigration office has long been a painful exercise in endurance, patience, and persistence. For decades INS inefficiencies meant immigrants had to form long lines outside district offices in predawn hours in the hope that they would be able to get some information. After a long wait in line, immigrants often found themselves making inquiries to an inadequate number of government employees who were ill-tempered, and ill-prepared. Even a long wait did not guarantee that they would be able to see an immigration officer that day, as each district cut off new inquiries after reaching a daily quota. This treatment was normal at most large district offices.

To improve its customer service performance and reduce long lines at district offices, USCIS introduced a web-based appointment system, called INFOPASS, in early 2004. The appointment system has replaced walk-in public access at all district offices.

USCIS customers, typically immigrants and legal representatives, log on to www.uscis.gov and click INFOPASS. A language is selected followed by an appointment option. A zip code is entered to indicate the closest district office. The type of appointment is selected. Name, date of birth, zip code, phone number, and e-mail address are entered. An appointment date and time is typically scheduled within two weeks. Customers are informed about what documents are needed to enter the federal building. If no appointment times are available, the customer is asked to inquire again.

On the surface, INFOPASS appears to be an efficient use of technology to rectify long-standing problems. Lines have been significantly reduced since few districts allow walk-ins without an INFOPASS appointment, except in cases of emergency. While the system is gaining appreciation, it is not without criticism.

The primary concern of immigration advocates is for immigrants who do not have access to computers or who are not computer literate. Legal immigration representatives, as frequent users, have a wide range of opinions about INFOPASS. They report that the system is so busy that it is almost inaccessible during daytime work hours, requiring users to log on late in the evening. This time constraint poses significant problems for immigrants using computers at public libraries or social service agencies that close in the early evening or have time restrictions for computer use.

Some district offices give immigrants access to INFOPASS in their lobbies while others do not. The severe limitation on walk-in access without an appointment restricts people even with legitimate reasons from being in the building, such as family members of applicants. Rudeness by federal security guards is a frequent complaint. Even when an appointment is made, there is no guarantee that the officer

assigned will have the applicant's case file. As a result, the officer may recite the bare minimum of information from the USCIS customer service phone line or website or, worse, give incorrect information.

Electronic Filing

In January 2006 USCIS announced plans to require electronic filing for all applications, along with the creation of electronic accounts. Applicants would be required to complete a 19-page form, pay a \$100 fee, and submit fingerprints to open an account with USCIS before filing for any immigration status change. This proposal is troubling for many reasons, only a few of which are mentioned here. First, many low-income immigrants do not have access to computers or know how to use them, so mandatory electronic accounts and filing would pose a major barrier and prevent them from accessing immigration status benefits for which they are eligible. Second, a mandatory electronic system may drive many immigrants to seek help from *notarios* and create a massive for-profit industry of unqualified individuals filling out immigration forms on the computer and giving immigration advice that could have grave consequences for clients. Third, USCIS requests an enormous amount of personal information on its 19-page electronic form, and this information may be used for enforcement purposes as well as immigration status benefits. Fourth, a new computer-based system would eliminate the naturalization group application workshop model, which is paper-driven. The workshop model is a crucial component of a national citizenship program proposed in this report.

Failure to Update Change of Address Requests

Immigrants are required by law to inform USCIS of any change of address within 10 days of the change. The penalty for not notifying USCIS may be a fine, imprisonment, or removal. Although the law has been in place many years, it was never enforced in the past. Also, for years, INS consistently failed to process change of address information, causing many immigrants to miss appointments and have their cases administratively closed.

To comply with the law, immigrants may file an Alien's Change of Address Card (AR-11) or call the customer service number and give the change of address information to a customer service representative. Critics complain that information sent by card continues to not be updated in USCIS databases. USCIS uses over 50 different customer databases that are not integrated. Critics also complain that a call to the customer service number also does not guarantee that all databases will be automatically updated. USCIS has told legal immigration representatives that it is

necessary for immigrants to complete the AR-11, call the customer service number, and write a letter to the relevant USCIS Service Center and district office. Few immigrants without representation know of this persistent USCIS deficiency or how to overcome it.

Data Entry Errors

USCIS depends heavily on temporary and long-term contractual hires to conduct data entry of over a million applications for all immigration status changes per year. Data entry errors are typically wrong dates or names misspelled. Wrong dates can cause delays when USCIS erroneously believes a person is not time-eligible for a benefit. Wrong names typed on a document can cause identification confusion, also resulting in delay.

USCIS data entry clerks may also fail to enter a Form G-28 in the database. The G-28, or Notice of Entry of Appearance as Attorney or Representative, informs USCIS that the applicant has legal counsel and that all correspondences must be sent to both the applicant and representative. When USCIS fails to enter G-28 information correctly, an applicant may be informed of an interview while the legal representative is not, or the reverse. Either way, missed appointments can occur, delaying the application. To bypass this error-prone process, several USCIS applications may now be filed electronically online.

Lost or Misplaced Applications

USCIS will administratively close a citizenship application when an applicant fails to respond to a notice for an appointment or information. As mentioned, cases can be administratively closed without the applicant's knowledge if USCIS fails to update a change of address. A new policy, issued in November 2005, requires USCIS officers to confirm whether a change of address notification was submitted before closing an application for failure to appear. However, due to USCIS's lack of integrated databases, errors still occur. Closed cases are sent to the National Records Center, a record-holding cave in Missouri. Applicants must secure legal representation, or be strong advocates themselves, to ascertain the status of a closed case.

Applications are also lost at the service center where they are originally filed or at district offices where the cases are adjudicated. Lost or misplaced applications are due chiefly to data entry errors of names, alien registration numbers, and immigration status. Applicants in possession of a certified mail receipt and a copy of their N-400 Form have a better chance of getting USCIS to take action on a lost application. USCIS may also delay processing a citizenship application because it is unable to locate an applicant's alien file, or "A-file." USCIS has a total of 180 days to

determine that an A-file is not retrievable and thereafter must create a temporary file, or "T-file," reconstructing the applicant's missing file with available documents.

FBI Security Check Delays

USCIS processing backlogs for naturalization applications are legendary, reaching two years in 1999. In September 2006, USCIS announced that the naturalization backlog had been reduced to five months, eliminating the backlog. However, in its new analysis of 1.1 million pending cases, USCIS excluded from counting approximately 960,000 cases that it considers to be out of its control, such as those awaiting scheduling of a judicial oath ceremony.

Regrettably, some applicants must endure a lengthy wait due to delays by the Federal Bureau of Investigation (FBI) in processing security clearance checks. All naturalization applicants must give USCIS fingerprint and biometric data. The prints and data are given to the FBI to search its national criminal database to determine if an applicant has an undisclosed criminal record or a criminal record that is a temporary or permanent bar to naturalization. The FBI usually gives USCIS results on a fingerprint check within a 24-hour turnaround time. The delay may come in the FBI name check process when the FBI checks applicants' names against those in its international database of wanted criminals and terrorists. If an applicant's name is the same or similar to a name in the database, this is called a "hit." Applicants with common names often have many hits in the database. In these cases, the FBI must investigate further to ensure that that applicant is not the same person as on the FBI's list. This investigation may require retrieving and reviewing older, paper records from hundreds of locations. This process can take several months or years.

In May 2006 USCIS estimated that between 47,000 and 48,000 naturalization cases had been on hold more than six months pending the FBI security clearance. For many applicants, security clearances are taking one to three years or more after the naturalization interview, postponing their oath of allegiance ceremony. Some applicants have had their oath of allegiance ceremonies postponed just a few days before the date, or even on the day of the ceremony. Applicants in this situation often make multiple inquires to USCIS on the status of their case over a period of months or years, only to be told that the FBI security clearance is pending and there is nothing USCIS can do about it. Some applicants in this situation are frail, elderly refugees who are losing Supplemental Security Income (SSI) due to their noncitizen status, and USCIS has refused to expedite their cases.

Until recently, the law required USCIS to make a decision on a naturalization application within 120 days after the interview. If USCIS failed to make a decision, the applicant could appeal the case to the federal district court, and

the court had the authority to naturalize the applicant or send the case back to USCIS with appropriate instructions. Appealing to the courts has been an effective remedy for many applicants experiencing interminable waits for the FBI security clearance. Typically, the court appeal compelled USCIS to expedite the security clearance and confirm that the applicant is eligible for naturalization so the case can be completed. In an effort to curtail applicants' ability to appeal these cases under the 120-day rule, USCIS announced a policy change in April 2006 requiring local offices to verify that the security check is completed before scheduling the naturalization interview. This policy effectively shifts the waiting period to before the interview rather than after and does nothing to address the problem of security check backlogs.

Difficulty Expediting Cases

Congressional passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 severely restricted noncitizen eligibility for public benefits, including SSI, Medicaid, food stamps, and Temporary Assistance to Needy Families. The welfare reform laws limited elderly and disabled refugees' eligibility for SSI to seven years. As a result, low-income elderly and disabled refugees must apply for naturalization to retain public benefits for daily support. Some may not realize they must naturalize before the seven-year limit is up. Others have already reached the limit and are facing poverty and hardship while awaiting naturalization. Loss of SSI can mean loss of housing and medical care as well.

Policy Memorandum No. 22 (10/6/97) provides guidance to USCIS offices for expediting naturalization processing for applicants facing termination of federal means-tested benefits as a result of welfare reform. Under the guidelines, expeditious processing is permitted on a case-by-case, discretionary basis for applicants who can show extreme hardship. Unfortunately, this guidance is rarely implemented. CLINIC is aware of only three USCIS field offices that have worked with local community-based organizations to expedite cases of elderly and disabled refugees losing public benefits. USCIS headquarters has been unwilling to intervene in these cases since the guidance leaves the decision to local officials, based on their workload. Nor has USCIS headquarters been willing to establish a new policy of prioritizing these vulnerable applicants as a special group. In meetings with community-based organizations, USCIS headquarters officials have blamed the elderly and disabled refugees for waiting too long to file their naturalization applications, without recognizing the many barriers, especially the lack of adequate English, often preventing these people from applying.

Difficulty of Obtaining Disability Waivers

Persons who are unable to demonstrate an understanding of the English language or knowledge of history and civics due to a physical or mental impairment are exempt from the English, history, and civics testing requirements (CFR § 312.1 and § 312.2). A majority of applicants for the medical exemption, known as a disability waiver, are elderly. Common conditions seen in disability waiver applicants are Alzheimer's disease, dementia, severe depression, post traumatic stress disorder (PTSD), stroke, and mental retardation.

The disability waiver has been in dispute since its inception. In July 1996 a lawsuit was filed against INS for failing to implement the waiver. Amid mounting complaints by disabled immigrants, the INS finally issued administrative regulations for the waiver in March 1997, three years after the waiver was created. Following a class action lawsuit in 1998, the INS issued detailed policy guidance on the adjudication of disability waivers in April 1999.

Disability waivers remain difficult to obtain under USCIS, requiring service providers to work intensively with doctors, disabled applicants, and their families. USCIS released a new and improved disability waiver application form (N-648) in 2002, yet doctors continue to make mistakes or fail to provide the right kind of information, requiring the disabled applicant to visit the doctor two or three times, sometimes at great cost. In addition, local USCIS adjudication of waivers is sometimes inconsistent with policy guidance issued by USCIS headquarters.

In recent years, USCIS has more closely scrutinized waiver applications, especially those based on PTSD, depression, or dementia, which are common in some refugee communities that have experienced persecution or other severe hardship in their country of origin. USCIS has been placing some of these cases on hold indefinitely due to suspicion of fraud. At the same time, doctors from these ethnic communities who complete many waiver applications are often suspected of fraud themselves and black-listed by USCIS field offices. In May 2006 USCIS released new policy guidance to the field on disability waiver adjudications. The new guidance, which is intended to address USCIS's concerns about fraud, places burdensome new requirements on applicants, especially those with mental impairments. Yet the new guidance fails to provide clear guidelines for identifying fraudulent cases or procedures for investigating these cases, particularly for investigating fraudulent doctors.

Lack of Compliance on Reasonable Accommodations

Under Section 504 of the Rehabilitation Act of 1973, USCIS must provide reasonable accommodations to allow disabled applicants to participate in the naturalization process. A reasonable accommodation does not waive a legal requirement, but rather modifies it. The applicant must still meet the requirement, but the manner in which he or she meets it is modified to accommodate the applicant's disability.

Examples of reasonable accommodations include a sign language interpreter for a deaf person, an oral test for a blind person, a home interview for a person who is bedridden, and a wheelchair accessible interview site. Appropriate requests for lesser known accommodations include asking the USCIS officer to speak loudly and slowly for an applicant who is hard of hearing, asking for additional test time for a person who has difficulty writing due to arthritis, asking for a family member or other support person to attend the interview to help calm a person who has high blood pressure or developmental disabilities, and requesting a prompt interview for someone who is too ill or impaired to wait for long periods.

The Application for Naturalization (Form N-400) has a section on page 2 where disabled applicants can list any accommodations needed. In addition, Policy Memorandum No. 92 (1/21/03) requires all local USCIS offices to: provide information to applicants on how to request accommodations, create a procedure for reviewing accommodations requests in a timely fashion, and designate staff to handle accommodations requests. However, very few USCIS district offices seem to be in compliance with this guidance, and USCIS headquarters has been unwilling to survey local offices about their methods for providing reasonable accommodations. A review of USCIS district office websites found only four that provide information to applicants on how to request reasonable accommodations, and only one that provides the name and e-mail address of the staff person designated to handle accommodations requests. As a result, most disabled applicants have no way of obtaining information about accommodations or communicating their accommodations needs to the local USCIS district office conducting their interview.

Applicants who are homebound and bedridden with serious illness often have the most difficulty obtaining reasonable accommodations. Arranging to have their fingerprints taken and their interview and oath conducted at their place of residence can be difficult and time consuming for family members or service providers working with them. One challenge is communicating the need for homebound services to the local USCIS office. The applicant may have to make multiple requests for accommodations before a homebound appointment is granted. Another challenge is obtaining the

services in a timely fashion. The citizenship application may be delayed many months, as USCIS often lacks sufficient staff to handle requests for homebound appointments.

Inconsistent Provision of Due Consideration

According to USCIS Policy Memorandum No. 73 (12/26/00), all applicants should be given ten questions on U.S. history and civics, and must answer at least six questions correctly to pass. Applicants should be given up to three sentences to read and three sentences to write in English, and must be able to read one of the three sentences and write one of the three sentences in order to pass. On the writing test, applicants should not be failed for making spelling, capitalization, or punctuation errors unless the errors would prevent a reasonable person from understanding the sentence.

For applicants who struggle to pass the citizenship test, due consideration is a helpful provision. Due consideration is found in 8 CFR § 312.2(c)(2), which states that in choosing test questions, phrasing questions, and evaluating responses, USCIS officers must take the applicant's background into consideration, including age, education, length of residence in the United States, opportunities and efforts made to prepare for the test, and any other relevant factors. For example, if the applicant is elderly, has only a few years of education in his or her native country, and has faithfully taken citizenship classes for a year, the officer should use his or her discretion to adjust the difficulty of the test for that applicant and perhaps ask easier questions. Since USCIS officers may not be aware of the applicant's background, CLINIC encourages applicants to prepare a due consideration letter describing their circumstances and take this to the interview.

Because there are no clear guidelines to field offices on how to implement the due consideration requirement, it is applied unevenly among different USCIS officers and field offices. Some USCIS officers are not familiar with the requirement or do not apply it at all. One USCIS naturalization supervisor at a local district office told citizenship service organizations that his officers used randomly generated history and civics questions from the computer, and could not deviate from these questions. This practice conflicted with existing USCIS policy guidance at that time that required officers to review the randomly generated questions and determine if any were too advanced for the applicant. In its current efforts to redesign the citizenship test, the Office of Citizenship is planning to address problems with due consideration by creating clear guidelines for field offices to follow. Service organizations involved in the test redesign process believe it is very important to ensure that due consideration is provided to those vulnerable applicants who require it.

Cost and 30-day Deadline for an Appeal

For applicants who are denied naturalization, the cost of appealing a denial can be prohibitive. At \$265, it is almost as much as the \$330 cost to file a new application. Yet, an appeal has far fewer procedures and is far less time consuming for USCIS. An appeal only requires it to schedule another interview and review the file. At the same time, applicants have a 30-day deadline to file an appeal, which is often not enough time for applicants to secure legal counsel and assistance. Finally, some offices take many months to schedule an appeal interview, leaving applicants in limbo and unable to file a new application until they have a final decision on the appeal.

Conclusion

Despite all the barriers and problems described, immigrants continue to desire and seek U.S. citizenship. A majority of citizenship applicants complete the process without any problems or unusual delays. However, for the unfortunate minority that experiences a glitch, the citizenship process can be extremely frustrating and negative. USCIS must correct the systemic problems in its policies and processing of applications to ensure that fewer applicants fall through the bureaucratic cracks and to provide swift corrective action for those who do.