



Sent via email to dhsdeskofficer@omb.eop.gov

Oct. 7, 2019

USCIS Desk Officer
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

**RE: Joint Public Comment on Agency Information Collection Activities;
Revision of a Currently Approved Collection: Medical Certification for
Disability Exceptions, USCIS Docket No. 2008-0021; OMB Control
Number 1615-0060**

Dear OMB USCIS Desk Officer:

The undersigned 30 organizations submit the following joint comment regarding the U.S. Citizenship and Immigration Services (USCIS) Revision of a Currently Approved Information Collection entitled "Medical Certification for Disability Exceptions," or USCIS Form N-648.

The undersigned organizations are members of the Naturalization Working Group (NWG), which 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.

I. General Comments

In 1994, Congress established an exception to the language and civics testing requirements in the naturalization process for applicants with disabilities, creating access to citizenship for people who previously had none.¹ 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.

USCIS' proposed changes to Form N-648 and instructions (the application to seek a medical exemption) will effectively 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 service professionals, and USCIS adjudicators. Detailed analysis of these issues is below.

II. Comments on N-648 Instructions

Page 1

Page Heading

On page 1, the heading at the top of the page is mislabeled. The heading says, "Medical Certification for Disability Exceptions." It should say "Instructions for Medical Certification for Disability Exceptions."

Who should submit this form and when?

New language in the instructions indicates, "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 new 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 updates indicate that a late-filed N-648 would be appropriate, yet there is no mention of this in the instructions.²

¹ Disability Waivers 101, The New Americans Campaign, www.newamericanscampaign.org/disability-waivers-101/.

² "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 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.

This omission may discourage late filing by applicants who qualify for the exception but do not understand they can still file. Additionally, a Form N-648 submitted after 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.³ Yet, the instructions do not inform the applicant to provide an explanation or submit any evidence connected to filing the Form N-648 after filing the N-400. Further instruction on this is essential given the revised 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.”⁴ Not only is the revised 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.

The instructions further state, “A certifying medical professional must complete this form within six months of submission of Form N-400 to USCIS.” This instruction is not consistent with the revised policy guidance and is confusing. There is a provision in the revised guidance that states that a Form N-648 certified more than six months before submission of N-400 may give rise to credible doubt, but there is no prohibition against such a submission.⁵ As noted above, Form N-648 submissions after N-400 filing may be accepted under certain circumstances, and these submissions would not necessarily be completed within six months of submission of form N-400, yet may still be deemed properly filed. The proposed instructional language is inaccurate and must be changed to reflect eligibility to file outside of the six-month period, and to request an explanation and provide examples of what kinds of evidence may be submitted in support.

Who should not submit this form?

The instructions tell applicants requesting an accommodation to indicate that on Part 3 of the Form N-400. However, the proposed revision to the Form N-400 eliminates the section on requesting accommodations.

Some of the undersigned organizations who submitted comments on the proposed changes to Form N-400 recommended that USCIS restore the sections of Form N-400 and its instructions assisting applicants with disabilities to understand how to apply for accommodations. If those sections are restored to the N-400, the above-referenced instructions for Form N-648 should remain the same. However, if that section is deleted from the N-400, the instructions for Form N-648 should tell applicants how to indicate their intention to submit a request for accommodation.

³ *Id.*

⁴ *See* USCIS Policy Manual, Vol. 12, Part E, Chapter 3, B.2.

⁵ *See* USCIS Policy Manual, Vol. 12, Part E, Chapter 3, E.5.

Page 2

Information Needed for Item Number 6

The heading contains a mistake. It should say “...Item Number 8” rather than number 6 as written.

Page 3

Information Needed for Item Number 22

There is a typo in the heading. It should say “...Number 22.”

The instructions ask for a detailed explanation of why the regular treating medical professional was unable or unwilling to complete this form. This prompt does not take into account that the applicant may not have a regular treating physician or may be seeking evaluation by a specialist who may be better qualified than a generalist to describe the disability. Further, it burdens the certifier to either speculate about the reason in the absence of firsthand knowledge, to or investigate, which is time-consuming and may deter the certifier from completing the form. As phrased, instructions for this question make inappropriate assumptions and fail to prompt applicants to explain reasonable and acceptable deviations. Therefore, we recommend retaining the current language: “Explain why you are completing this form instead of the regularly treating medical professional.”

General Instructions, Signature

It is important for USCIS to clarify here that a mark will be accepted for a signature. See Policy Memorandum PM-602-0134.1 (2/15/18): “An individual who cannot write in any language may place an “X” or similar mark instead of a signature.”

How to Fill Out Form N-648, 2

The instructions give various examples of questions that do not appear on the N-648, such as the name of the applicant’s current spouse. This is confusing and should be corrected.

Page 4

Processing Information, Initial Processing

The instructions state, “If your medical professional does not completely fill out this form, you will not establish a basis for your eligibility and USCIS may reject or deny your form.” This language is misleading and should be clarified to state that USCIS may request additional information on the form, causing a delay. If the form is submitted at or before the first interview and found insufficient, the applicant should be informed of the opportunity to provide additional information at the

second interview before being denied. We recommend keeping the language in the current form instructions: “Failure to provide all information requested on the form may result in USCIS determining that the form is insufficient.”

III. Comments on Form N-648

General

The current form is six pages long. The proposed, new form is nine pages. The new form is much longer and more onerous than the current form 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.”⁶ 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

The current form contains 12 questions on the disability or impairment. The proposed, new form contains 23 questions, almost double the amount. The new form proposes new questions about the date that each disability/impairment began; the date of diagnosis; the severity of each disability/impairment; how each disability/impairment affects the applicant’s daily life activities; why each disability/impairment is expected to last over 12 months; which disability/impairments are the result of illegal drug use; the frequency of treatment; and whether the medical professional questioned the interpreter about his/her fluency in English and accuracy/completeness in interpretation.

The level of detail already required by the form presents a major challenge for busy medical professionals, and applicants frequently must struggle to find doctors willing and able to take the time to provide detailed information. In our experience, USCIS already unnecessarily rejects many forms on the ground that they lack sufficient detail, which delays access to naturalization and creates additional inefficiencies for the agency, thus contributing to its burgeoning backlog of cases. The proposed changes would result in a longer and more onerous form that would only exacerbate this issue and frustrate the intent of the waiver.

The estimated completion time suggested by USCIS is 2 hours and 25 minutes, which is an extraordinary and difficult commitment for any busy medical professional to make. The proposed, new 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

⁶ INA § 312 (b)(1).

⁷ 8 C.F.R. § 312.2 (b)(2).

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.⁸ We recommend that the USCIS ensure against exclusion of disabled legal permanent residents by making the form less burdensome for their doctors to complete.

Page Heading

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Instructions

The current N-648 form contains many instructions in the heading of the form, in Part 2 for Medical Professional Information, and after some of the questions. These instructions are 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, new form. We recommend keeping these instructions in the new form.

The proposed form now requires the medical professional to ask the interpreter two questions:

- Do you certify that you are fluent in English and the following language _____?
- Do you further certify that you will accurately and completely interpret all communications between the applicant and me (the medical professional)?

These questions are duplicative and impose an additional, unnecessary burden on the medical professional. Interpreters who are present for the medical appointment are already required to sign a certification that addresses these two questions in Part 4 of the N-648.

Part 2

The instructions that appear under Part 2 (Medical Professional Information) do not match the content in this section.

Part 3

Question 3 in Part 3 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. Doctors may not be able to access information about conditions or treatment occurring outside the country, especially not information as specific and

⁸ Rehabilitation Act § 504.

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.

Question 7 asks the medical professional to “Describe the severity of effects of each disability and/or impairment listed in Part 3, Item 1. Explain the basis or your assessment, i.e., known symptoms of condition, tests conducted, observations, etc.” No additional instructions are provided for this question, so the medical professional may be uncertain of the level of detail needed to sufficiently answer the question. Moreover, Question 7 is redundant of questions 8 (effects on applicant’s daily life) and 13 (effects on applicant’s ability to demonstrate English/civics knowledge). Both questions 8 and 13 will require the medical professional to address the severity of the disability/impairments. There is no logical need for an additional question on the severity. We recommend removing question 7 from the proposed form.

Question 8 is a proposed new question about 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 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, 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” (D. Guidelines for Officer’s Review). Question 8 is overreaching and should be removed.

IV. Conclusion

We respectfully request that USCIS withdraw the problematic changes as detailed above. Many of these changes would place unjustified burdens on applicants, legal representatives, busy medical professionals, and USCIS’s own staff, who already are faced with extraordinarily large backlogs of applications awaiting adjudication for unreasonably long periods. Some proposed changes are needlessly duplicative, and would contradict the purpose and intent of controlling statutes and regulations by arbitrarily preventing applicants with physical and developmental disabilities from qualifying for naturalization.

Thank you for your consideration of these comments. Please do not hesitate to contact Erin Hustings, Legislative Counsel at NALEO, at ehustings@naleo.org with any questions or concerns about our recommendations.

Sincerely,

Asian Americans Advancing Justice - Atlanta
Asian Americans Advancing Justice - Los Angeles
Asian Pacific American Legal Resource Center
Bonding Against Adversity
Boulder Valley Unitarian Universalist Fellowship Immigration Justice
Task Force
Canal Alliance
CASA de Maryland, Inc.
Catholic Legal Immigration Network, Inc.
Central American Resource Center of California (CARECEN Los
Angeles)
Chinese Community Center
GMHC, Inc.
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Legal Resource Center
Immigration Institute of the Bay Area
Interfaith Refugee and Immigration Service
International Rescue Committee
International Rescue Committee- Atlanta
Latin American Coalition
Massachusetts Immigrant and Refugee Advocacy Coalition
NAKASEC VA
NALEO Educational Fund
National Partnership for New Americans
North Carolina Asian Americans Together (NCAAT)
OCA-Greater Houston
OneAmerica
Refugee Women's Alliance
Self Help for the Elderly
Services, Immigrant Rights & Education Network (SIREN)
UnidosUS
West African Community Council