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VIA EMAIL: rfs.regs@dhs.gov

Department of Homeland Security, USCIS
Chief, Regulatory Management Division
Clearance Office
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RE: Comments on Revision of Form N-648, 73 Fed. Reg. 20058 (April 14, 2008)

Dear Sir or Madam:

The Catholic Legal Immigration Network, Inc. (CLINIC) submits the following comments in response to the request for public comment by the U.S. Citizenship and Immigration Services (USCIS) on the revisions to Form N-648 (Medical Certification for Disability Exceptions) at 73 Fed. Reg. 20058 (April 14, 2008).

I. CLINIC's interest in the proposed revisions

CLINIC, a subsidiary of the U.S. Conference of Catholic Bishops (USCCB), supports a national network of charitable immigration programs. The network includes 173 affiliated immigration programs which operate out of 267 offices in 48 states. The network employs roughly 1,200 attorneys and accredited paralegals who, in turn, serve 600,000 low-income immigrants each year. Naturalization is consistently ranked among the top five legal services provided by our member agencies.

CLINIC has been closely involved in naturalization and disability waiver policy issues for more than a decade. Beginning in early 1999, CLINIC participated in a working group consisting of community-based organizations (CBOs) and Immigration and Naturalization Service (INS) staff who met regularly to discuss disability-related issues. The group was formed by INS in response to the settlement in *Campos, et al v. INS et al.*, a lawsuit filed on behalf of disability waiver applicants. Through the working group CLINIC and other CBOs provided input to INS on policy guidance related to disability waivers, reasonable

accommodations, and oath waivers. The group also worked on revisions to the current N-648 Form, which is a significant improvement from the previous version.

Despite past improvements to the Form N-648, CLINIC has found that medical professionals often fail to provide what USCIS views as sufficient information needed to adjudicate N-648 waivers. As a result, disabled applicants must often make multiple visits to medical professionals to obtain additional information, incurring additional expenses. In addition, N-648 cases are extremely time-consuming for legal representatives from our network, who work very closely with medical professionals to ensure that the N-648 is well-documented before submitting it to USCIS. An improved Form N-648 that clearly solicits required information will reduce the number of back-and-forth exchanges with medical professionals and will make the disability waiver process smoother for applicants, their legal representatives, and USCIS adjudicators.

II. The N-648 instructions should reflect current USCIS guidance regarding the N-648 adjudications process.

In May 2006, USCIS issued N-648 policy guidance to address concerns about fraud. The guidance created a new requirement for medical professionals to provide information on the Form N-648 about how they reached their diagnosis, including specific tests used.¹ We are opposed to this new requirement, which is burdensome and unnecessary. Medical professionals that complete the N-648 Form sign an attestation stating that their diagnosis is true. Moreover, USCIS guidance states that “The adjudicator should assume that the medical professional’s diagnosis is valid in the absence of credible doubt.”² We also note that while INS briefly instituted this requirement in 1998, it was eliminated in the April 1999 policy guidance that resulted from the *Campos* lawsuit settlement.

Despite the fact that we disagree with this requirement, should USCIS maintain the requirement, it must be reflected on the N-648 Form. It is not reflected on the current Form N-648. In CLINIC’s experience, when medical professionals fail to include information about how a diagnosis was reached, USCIS often requires applicants to obtain additional information from the medical professional, further prolonging the N-648 adjudication process and creating additional expenses for applicants. Therefore, in order to ensure a more fair and efficient application process, the N-648 Form must be revised to clearly request this information.

III. The sample sufficient and insufficient responses on pages 1-2 of the existing N-648 Form should be updated to reflect the requirement that medical professionals include information on how the diagnosis was reached.

¹ The guidance, entitled “Adjudication of Form N-648, Medical Certification for Disability Exceptions to the INA Section 312 Naturalization Requirements,” states “The Form N-648 must also include a sufficiently thorough explanation of how the disability or impairment was diagnosed. The medical professional should include a list of medically acceptable clinical or laboratory diagnostic tests employed to determine that the applicant has a condition that makes him or her unable to learn or demonstrate knowledge of English and/or U.S. history and government.”

² USCIS guidance issued September 18, 2007, entitled, “Guidance Clarifying the Adjudication of Form N-648, Medical Certification for Disability Exceptions.”

The sample sufficient and insufficient responses on pages 1-2 of the existing N-648 Form are very helpful and should be maintained in any revised version of the N-648 Form. However, the samples should be updated to reflect the new requirement to provide information about how a diagnosis was reached.

IV. The Form N-648 instructions should encourage (but not require) medical professionals to type responses on the Form N-648.

As many medical professionals have poor handwriting and difficulty fitting their answers into the spaces provided on the N-648 Form, the instructions should strongly encourage (but not require) typed responses using the fillable version of the N-648 Form available on the USCIS website. This will ensure that USCIS adjudicators are furnished with legible information and add to the efficiency of the adjudication process.

V. The N-648 instructions should clarify eligibility for the disability waiver.

Under “What is the Purpose of This Form,” the third paragraph should state, “The person asking you to complete this form is seeking a waiver of the English and/or civics requirements based on a physical or developmental disability or mental impairment *that makes the applicant unable to learn.*” This would help distinguish eligible disabilities from ineligible disabilities that do not affect the ability to learn, and would reduce the number of unqualified applicants and those who may be victimized by notarios.

In addition, the instructions should provide a brief explanation of the differences in the definition of disability used by the Social Security Administration and Department of Veterans Affairs versus the definition used by USCIS for the disability waiver. On page 1 of the Form N-648, Part II, under “NOTE,” these differences are referenced. A brief explanation of the differences would help to avoid confusion on the part of applicants and medical professionals who are not aware of the differences. Alternatively, this recommendation could be addressed in a “Frequently Asked Questions” sheet for applicants and medical professionals. CLINIC recommends that, as part of the form revision process, USCIS create public education materials about waiver eligibility, including a FAQ sheet, and make these available on its website where the Form N-648 is downloaded.

VI. “Oral test” should be added to the examples of reasonable accommodations provided on the N-648 Form.

On page 2, under the section entitled “What if the Applicant Needs Help to Take the English or Civics Test?,” “oral test” should be added to the examples of reasonable accommodations that are provided, as this is a common accommodation for blind applicants.

VII. Additional/specific recommended changes to Form N-648.

To address the concerns outlined above and to further facilitate a medical professional’s clear understanding of the level of information that should be provided on the N-648 Form, we recommend the changes below. In some cases, we recommend breaking lengthy questions into

separate parts so that all required information is clearly delineated. Where appropriate, we have recommended that questions elicit more exact, non-narrative responses, such as “yes” or “no,” that reduce the possibility of misinterpretation.

A. Part II, page 1, “NOTE” must be revised for clarity.

On page 1, part II, there appears to be an error in the first sentence under “NOTE.” As written, the sentence is incomprehensible and must be revised. We are unsure as to the intended meaning of the sentence and therefore cannot suggest alternative language.

B. Changes recommended to Part II, Question 2. Diagnosis of disability and/or impairment(s).

The questions in this section should be revised to read as follows:

Diagnosis of disability and/or impairment(s). (*See Instructions for examples.*)

2. (a) Provide your clinical diagnosis of the applicant’s disability and/or impairments.
- (b) Describe the disability and/or impairment(s) in terms a person without medical training can understand.
- (c) Describe the specific diagnostic tests, tools, or methods you used to reach your diagnosis.³
- (d) Provide the date of onset of the disability and/or impairment(s) described above, if known. If unknown, so state.
- (e) Provide the relevant DSM-IV code(s) for each mental impairment and/or disability that you described above. If a DSM-IV code does not exist, write “N/A.”

C. Changes recommended to Part II, Question 3. Connection between disability and/or impairment(s) and inability to learn/demonstrate.

The questions in this section should be revised to read as follows:

3. (a) Based on your examination of the applicant, is there a *connection* between the disability and/or impairment(s) and the applicant’s inability to learn and/or demonstrate knowledge of English and/or U.S. history and civics?

³ We believe this question is an important addition. Should USCIS continue to require medical professionals to provide information on how their diagnoses were reached, it is important for the question to refer not only to “tests,” but also to “tools” or “methods” in order to be inclusive of applicants with mental impairments. Many mental impairments cannot be diagnosed via a specific laboratory test, such as a CT scan, but rather are diagnosed via interviews, questionnaires, and observations of patients’ symptoms.

☐ Yes ☐ No **NOTE:** *If you answer “No,” applicant is ineligible for a waiver.*

(b) If you answered “Yes,” what are the symptoms or limitations of the applicant’s disability and/or impairment(s) that prevent the applicant from learning and/or demonstrating knowledge of English and/or U.S. history and civics? *(See instructions for examples.)*

D. Changes recommended to Part II. Background information.

We suggest that a new question number 9 be added to this section that reads, “9. If you are a general practitioner diagnosing a mental impairment, describe your experience or qualifications to do so.”

This change is suggested to reflect a requirement outlined in existing USCIS N-648 guidance and the USCIS Field Adjudicator’s Manual which states, “The medical professional completing the N-648 must have general experience in the area of the applicant’s disability and must be qualified to diagnose the applicant’s disability and/or impairments. A doctor who is a general practitioner and not a specialist may complete the form if his or her experience or other qualifications permit him or her to make the disability and/or impairment(s) assessment.”⁴ By adding this question, general practitioners will be alerted to a USCIS requirement of which they may not otherwise be aware.

VIII. Conclusion

CLINIC appreciates your consideration of these comments. Given INS/USCIS’ history of working closely with CBOs on the previous revision of the Form N-648, we hope that USCIS will meet with CBOs before the new form is issued to discuss our comments and feedback. We believe such a discussion would result in a better form, and would therefore be beneficial to both USCIS and the CBOs who work closely with medical professionals.

Sincerely,



Donald M. Kerwin
Executive Director

⁴ Section 72.2(d)(5)(C)(2) of the Field Adjudicator’s Manual and Supra at Note 2.