



NATIONAL OFFICE

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Submitted via regulations.gov

June 25, 2019

Samantha Deshommes, Chief
Office of Policy and Strategy
Regulatory Coordination Division
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue NW
Washington, DC 20529-2140

**RE: Public Comments 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 Ms. Deshommes:

The Catholic Legal Immigration Network, Inc. (CLINIC) submits these comments in response to 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, posted April 26, 2019.

CLINIC supports a national network of community-based legal immigration services programs that primarily serve low-income immigrants and regularly advise and assist individuals in filing family-based immigration applications, naturalization applications, humanitarian forms of relief, and more. This network includes over 370 programs operating in 49 states and the District of Columbia. CLINIC’s network employs an estimated 2,300 staff, including attorneys and accredited representatives. According to our 2017 internal survey of our affiliates, 96 percent of survey respondents provided legal services in naturalization and citizenship, ranking it as the most frequently requested service by clients. CLINIC affiliates specialize in representing vulnerable populations, including Permanent Residents with disabilities. The disability waiver for the English/Civics naturalization requirement is a daily matter in the immigration practice of these programs.

Further, many CLINIC programs serve former refugees who subsequently become Permanent Residents, 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). CLINIC affiliates 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. Congress made the statutory change in 1994 to ensure

that they and others like them would not be prevented from naturalizing for having a physical or mental impairment, or developmental disability, that prevented the learning of English and Civics normally required of naturalization applicants.

Our mission and our identity as a Catholic organization compels our continued advocacy on behalf of all vulnerable immigrants and refugees, including disabled permanent residents. When we acknowledge the inherent dignity and unique gifts that disabled individuals have to offer and commit to addressing the need for their fuller integration and participation in our society, we all benefit. To this end, we offer the following comments and recommendation on USCIS's proposed changes to Form N-648 and its instructions.

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?

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 the 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 which case the new guidance acknowledges that a late-filed N-648 would be appropriate.

This omission may discourage late filing by applicants who qualify for the exception but do not understand they can still file. Additionally, an N-648 submitted later may not be accepted if the applicant does not provide a "credible explanation and sufficient evidence," as stated in the USCIS Policy Manual (Vol. 12, Part E, Chapter 3, B). Yet, the instructions do not inform the applicant to provide an explanation or submit any evidence connected to filing the 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." 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 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 of such a submission. 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 would still be properly filed. The new language is inaccurate and should be changed to reflect eligibility to file outside of the six-month period, and 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 N-400. However, the proposed revision to the N-400 eliminates the section on requesting accommodations.

CLINIC’s comment 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.

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. The question does not take into account that the applicant may not have a regular physician or may be seeking evaluation by a specialist who may be better qualified to describe the disability. Further, it burdens the certifier to either speculate about the reason because this info is not available, to or investigate which is time consuming and may deter the certifying from completing the form. The regular treating medical professional may *not* be unable or unwilling to complete this form. Another explanation may exist. Perhaps the regular treating medical professional is willing, but the applicant and his/her family members have decided to seek the assistance of a specialist who can provide information that is more detailed to USCIS. Furthermore,

the certifier may not be privy to this information, or the applicant may not have a regular treating physician. The question as phrased shows a clear bias on the part of USCIS, treating the situation with immediate suspicion. We recommend keeping the current language of the form: “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 your 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 say 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 is given an 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.”

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 regulations only state that the medical professional, “shall be able to attest to the origin, nature, and extent of the medical condition as it relates to the disability exceptions.”

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 has new questions added on 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 if the medical professional

questioned the interpreter about his/her fluency in English and accuracy/completeness in interpretation.

Our network of practitioners report that the level of detail already required by the form presents a major challenge for busy medical professionals, and they frequently must struggle to have doctors take the time to provide more detailed information. We understand that USCIS already unnecessarily rejects many forms on the auspices of lack of sufficient detail, which delays access to naturalization and create 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. The proposed changes fail to consider that the medical professional may not have the time and capacity to devote nearly three hours to completing a single form for a patient. The proposed, new form creates a major roadblock for disabled individuals' access citizenship, which is not consistent with 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. CLINIC recommends that the USCIS lessen burden on doctors, by making the form shorter, easier, and simpler to complete.

Page Heading

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

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 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. Their doctor will not have this information, especially not a very specific date such as MM/DD/YYYY. This question also presumes that the person had a specific event or injury that caused the disability, such as a stroke or heart attack, and that the date is available in the U.S. medical record. This is often not the case. For example, when did the cancer begin? When did the depression, dementia, mental illness, or PTSD begin? This information is often unknowable.

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 need for an additional question on the severity. This question is unnecessary since existing questions on the N-648 illicit the information needed to determine the applicant’s qualifications for the exception. We recommend removing question 7 from the proposed form.

Question 8 is a new question USCIS has added on 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 and to use daily activities as an overly simplistic litmus test for N-648 eligibility, such as presuming that someone who can drive can pass the citizenship test.

There is no basis in the statute or regulations for USCIS to question the applicant about his/her daily life activities. It wrongfully presumes fraud and 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). The presumption of fraud at the outset and without justification denies the applicant a chance at a fair hearing. Question 8 is over-reaching and should be removed.

Conclusion

We respectfully request that the USCIS withdraw the problematic changes as detailed above. Many of these changes place unreasonable burdens on busy medical professionals, require them to input information that they may not have, and some seem to be errors. In fact, some changes would contradict the purpose and intent of the underlying statute and regulations by arbitrarily preventing applicants with physical and developmental disabilities from qualifying for naturalization.

We appreciate and encourage USCIS's continued dialogue and engagement with the community and stakeholders, particularly as USCIS seeks to reduce mounting naturalization backlogs that disproportionately affect vulnerable and disabled applicants.

Thank you for your consideration of these comments. Please do not hesitate to contact Jill Marie Bussey, Director of Advocacy at 301-565-4844 or jbussey@cliniclegal.org, with any questions or concerns about our recommendations.

Sincerely,



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Advocacy Director
Catholic Legal Immigration Network, Inc.