



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

October 7, 2019

Via electronic submission

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

To Whom It May Concern:

The City of New York (“the City”) appreciates the opportunity to comment on 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.

In 1994, Congress established a critical exception to the language and civics testing requirements in the naturalization process for applicants with disabilities, creating access to citizenship for people who previously faced enormous barriers.¹ The N-648 is the application used by lawful permanent residents seeking a medical exemption to the English and civics testing requirement for naturalization on the basis of a physical, developmental, or mental health disability.² Now, USCIS has proposed changes to the N-648 form and instructions that would make completion of this form highly burdensome, impractical, and arbitrary for medical providers. If implemented, these changes will have the dire consequence of limiting access to naturalization for eligible New Yorkers with disabilities.

For these reasons, we call upon USCIS to withdraw the problematic changes and restore access to naturalization for New Yorkers with disabilities.

New York City has a strong interest in supporting access to naturalization

New York City is a city of immigrants. There are 3.2 million foreign-born people in the City, making up almost 40% of its total population. Approximately 56.2% of immigrant New Yorkers are naturalized U.S. citizens and an estimated 660,000 immigrant New Yorkers who are lawful

¹ See Section 108 of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103-416 108 Stat. 4305, 4309 (October 25, 1994) (adding INA 312(b)).

² Only medical doctors, doctors of osteopathy, or clinical psychologists licensed to practice in the United States (including the U.S. territories) are authorized to certify the form. See 8 CFR 312.2(b)(2).

permanent residents (i.e., green card holders) are potentially eligible to naturalize.³ This immigrant population is deeply tied to the City as a whole. For example, nearly 60% of New Yorkers live in households with at least one immigrant.⁴

Recognizing that New York is not only a city of immigrants, but a city that thrives because of our immigrant communities, this mayoral Administration has invested over \$30 million for a range of immigration legal services programming, including funding for the City's flagship naturalization program, NYCitizenship, as well as ActionNYC, a citywide community-based immigration legal services program providing free, safe and high-quality immigration legal services across the five boroughs. Through NYCitizenship, individuals receive comprehensive legal screenings to determine eligibility for naturalization and full legal representation in filing applications with USCIS. The program also offers these services targeted to seniors and those facing health barriers. All eligible individuals also receive legal assistance with full and partial fee waivers as well as medical disability waiver applications. Additionally, clients are connected to free and confidential financial counseling. Since its launch in 2016, over 17,000 individuals have been reached through the program.

Programs like NYCitizenship are key to unlocking the full potential of our immigrant communities. Naturalization is a powerful tool to promote income security as well as more robust voter engagement. According to a study of naturalization-eligible immigrants in 21 cities, the economic benefits of naturalization are clear. New citizens see individual annual earnings increase by an average of 8.9 percent, or \$3,200; the employment rate among this population rises 2.2 percentage points; and homeownership in this group increases 6.3 percentage points.⁵

The proposed changes will create a barrier to citizenship by placing a burden on New Yorkers with disabilities, as well as their legal representatives and medical providers

For those lawful permanent resident New Yorkers with disabilities seeking to naturalize, the proposed changes to the N-648 as well as the instructions will exacerbate the difficulties of navigating an already-onerous process for naturalization applicants, their attorneys, and medical providers completing the form.

Of particular note:

- The proposed change to the form on Question 3 in Part 3 asks the certifier to state when each disability began. This question assumes that the date a disability began is relevant, relying on false assumptions about both the applicant and the nature of the disability, including that there was necessarily a specific event or injury that caused the disability. This is simply not the case for all disabilities. Furthermore, triggering events may have taken place before the naturalization applicant came to the United States, and applicants

³ New York City Mayor's Office of Immigrant Affairs, State of Our Immigrant City: MOIA Annual Report for Calendar Year 2018, 11, available at https://www1.nyc.gov/assets/immigrants/downloads/pdf/moia_annual_report%202019_final.pdf.

⁴ *Id.* at 23.

⁵ Urban Institute Research Report, "The Economic Impact of Naturalization on Immigrants and Cities, Dec. 2015, p. VI, available at <https://www.urban.org/sites/default/files/publication/76241/2000549-The-Economic-Impact-of-Naturalization-on-Immigrants-and-Cities.pdf>

may have medical records in their countries of origin that U.S. doctors may not be able to access. Similarly, the proposed change in Question 4 in Part 3, adding “Date of Diagnosis” is irrelevant and should be stricken.

- The proposed change to the form on Question 8 is a new question about how the disability affects the applicant’s daily life activities, including the ability to work or go to school. This question invites the USCIS adjudicator to superimpose their judgment for that of the medical professional by using this arbitrary assessment (“ability to perform daily activities”) as a threshold question rather than rely on the findings of a medical professional.
- The proposed instructions ask for a more detailed explanation of why the applicant’s regular treating medical professional was unable or unwilling to complete the form. This question does not take into account the fact that the applicant may not have a regular treating physician at all (ie. someone who is in good health but may require an evaluation by a uniquely-qualified specialist for a disability that impacts their ability to take the naturalization test). There is insufficient guidance about what explanation is required here, in order to ensure that the certifying physician’s credibility is not unjustifiably questioned. Furthermore, it puts the onus on the physician to speculate as to the reason, or to investigate it – neither of which are practical or appropriate.
- The proposed instructions provide no guidance on what circumstances allow for a later-filed N-648 that was not filed concurrently with the N-400 Application for Naturalization. Such guidance would be critical for those applicants who have disabilities that may be identified, develop or worsen over the course of the lengthy adjudication times for naturalization. Without guidance, applicants who may need to later file the N-648 may be discouraged and even if submitted, such a later-filed waiver may not be accepted if the applicant does not provide sufficient explanation or evidence.

Other than the “applicant attestation” and the “interpreter’s certification,” sections of the N-648, all parts of the form must be filled out by a licensed medical professional as provided for in the N-648 instructions. Making the N-648 more onerous will take up valuable time and resources from medical professionals and could discourage some from serving as certifiers going forward.

Additionally, attorneys representing clients with disabilities who are eligible for an N-648 certification will be forced to spend additional time on these cases, both in the process of preparing the applications and during the course of representation at the interviews. This will take away time and resources from city-funded attorneys, effectively reducing the impact of the City’s investment in immigration legal services.

Finally, the new form is significantly longer and fail to meet the objectives of the Paperwork Reduction Act; they lack practical utility, and they make the application process more rigid, impractical, and burdensome. The increased hardship created by the proposed changes will be felt by applicants, their legal representatives, medical service professionals, and USCIS adjudicators.

Conclusion

These proposed changes make it more challenging for individuals with disabilities to qualify for a medical exemption, effectively making it harder for them to naturalize. Yet, USCIS has not provided any clear policy justifications to explain these proposed changes. Creating arbitrary barriers to naturalization for a specific population without any justifiable purpose is simply discrimination.

As a large and diverse city, we have seen time and again that smart policies in support of immigrants and those with disabilities serve to promote the well-being of all New Yorkers. Our policies and efforts to promote the accessibility and efficiency of the naturalization process and other immigration benefits are part of a thoughtful and equitable approach that helps ensure that New York City remains a thriving and welcoming city. For the reasons articulated above, we call upon USCIS to rescind this notice and refrain from creating additional barriers to naturalization.