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Series/Staff Member: Diana Fortuna

Subseries:

OA/ID Number: 12025

FolderID:

Folder Title:

Disability/Naturalization Regulations

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Bill Yeomans - gd, smart

DOT

514 4127

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THE WHITE HOUSE
OFFICE OF DOMESTIC POLICY

Assistant to the President for Domestic Policy

To: Fortuna

Draft response for POTUS
and forward to CHR by: _____

Draft response for CHR by: _____

Please reply directly to the writer
(copy to CHR) by: _____

Please advise by: _____

Let's discuss: _____

For your information: ☒ _____

Reply using form code: _____

File: _____

Send copy to (original to CHR): _____

Schedule ? : ☐ Accept ☐ Pending ☐ Regret

Designee to attend: _____

Remarks: _____

JUSTIN DART, JR.
907 6TH STREET, S.W., APT. 516C
WASHINGTON, D.C. 20024
202/488-7684

DEC 24 1996
COPY

~~CONFIDENTIAL~~

DETERMINED TO BE AN ADMINISTRATIVE

MARKING INITIALS: JD DATE: 10/13/17

December 20, 1996

Hon. Bill Clinton
President
The White House
Washington, D.C. 20500

Dear President Clinton:

Yoshiko and I appreciate the opportunity to meet you and Mrs. Clinton last Saturday evening at your beautiful White House Christmas party. Again, congratulations to you and Vice President Gore on your well deserved reelection. You took a stand against a politics of retreat that would have been disastrous for Americans with and without disabilities. In the presidential election you – and people first democracy – prevailed. Mrs. Dart and I, and a three to one majority of our colleagues with disabilities, are proud to have supported you. But the job of building a bridge to the 21st century is far from complete.

Since the election Justice for All has sponsored a series of conference calls with disability community leaders in every state to assess the post election situation, and to focus on developing our agenda for the late 90s and the early years of the new century. We will be presenting this agenda to you in writing – and in person at the meetings you periodically hold with us. There will be no surprises. You have expressed frequent support for most of our proposals.* We look forward to working with you to achieve them.

However, there are two issues which my colleagues believe require your immediate attention. I agree with them.

I. The disability community is deeply concerned about potential negative consequences of the new welfare law. Two stand out.

First. More than 300,000 poor children with significant disabilities could be cut off from their present benefits under SSI, with devastating effects on them and their families. Your administration will soon set out the definition of disability that will be used to determine the SSI eligibility, and often the Medicaid eligibility, of these children.

I join my colleagues in urging a broad definition. While there may be cases where inappropriate payments are made, I know these form a tiny fraction of the total. I believe that cutting

EQUAL ACCESS TO THE AMERICAN DREAM

investments in the health and family life of thousands of poor children with significant disabilities would be economically counter-productive and morally wrong. You have an opportunity to take a simple action that will be both popular and correct.

Second. The new welfare law could cause thousands of immigrants to lose their health care rights, principally because discrimination on the basis of their disabilities has delayed their citizenship. There is a profound difference between stopping welfare checks to able bodied people, and cutting off impoverished people with serious illness and disabilities from the hospitals, nursing homes, medicines and other services necessary to sustain life. I cannot imagine it happening in the richest, most democratic and caring nation in all history.

I join my colleagues in urging you to order the continuation of immigrants' health and welfare services until they have been processed through INS and their due process rights have been exercised (material enclosed).

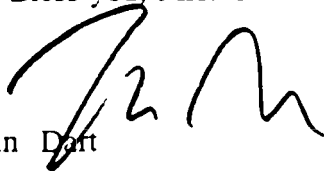
I know you did not intend these negative consequences when you signed the welfare law. You stated very clearly that there were problems, and that they would be fixed. I assume you already plan to take the actions we recommend, or to remedy the situation in some other responsible way.

II. The ADA and other civil rights laws are foundational to the empowerment of millions of Americans with disabilities in the productive mainstream. DOJ under Janet Reno, EEOC and other federal agencies are making a dedicated effort to fulfill their enforcement responsibilities, however they lack resources. We urge increased FY '98 funding in staff and programs which would enable your administration not only to address flagrant violations, but to inform business, government and citizens of their rights and responsibilities. These modest investments will minimize costly litigation and increase the productivity and the quality of the culture.

Please ask your staff to contact me with any questions.

Mr. President, Mrs. Dart and I have profound faith in your principled leadership. We are with you during the next four years and beyond.

God Bless you, Mrs. Clinton and Chelsea.


Justin Dart

*Briefly, we of the disability community are virtually unanimous in urging the reauthorizations of the IDEA and the Rehabilitation Act in forms that strengthen the empowerment of people with disabilities to shape their own lives; federally guaranteed quality health care for all, with citizen choices; a national program of home and community based services that guarantee no American will ever again be forced to be in an institution or a nursing home; eliminating the massive disincentives to productivity in that exist in most welfare, social security and health care laws; fighting assertions that the lives of people with severe disabilities are not worth living, that their health care should be rationed, that they should be "assisted" to die; completing the legal foundation for an accessible society – housing, transportation, technology, telecommunications, insurance required by law to be accessible and affordable to all people.

To: Justin Dart
From: Pat Wright
Re: Impact of Welfare Reform on People with Disabilities
of Non-Citizen Status
Date: 12/18/96

Disability advocate that is part of group (PREDF) living on this issue
COPY

Justin:

Per your request the following is a brief discussion of the issues being raised throughout the country concerning the Immigration issue. The states most effected by this provision are those who have held Federal Contracts for processing specific immigrant populations such as the Vietnamese, and other Asian populations, Cuban and Mexican communities.

This issue has captured the attention of the leaders of the disability community more than any other issue in recent times. Although there has been much discussion concerning the Welfare Reform Provisions, little attention has been paid to the impact of these changes to the community with disabilities. Rarely do we as a community argue for "different treatment" however, in this situation there is no "equal." The communities do not have programs that provide free medication, hospitalization or in home services. The elderly and/or disabled man or woman living in a nursing home or at home is dependent upon the receipt of those services to remain alive. This is not a political discussion as to whether an able-bodied welfare recipient should receive something for nothing. This is a matter of LIFE and DEATH.

Background:

The immigration process in the US is not considered an easy process to navigate for anyone let alone for persons with disabilities. For the purposes of this discussion there are four parts to the immigration process: 1) the application, 2) the testing: a written History and English exam; 3) the interview; 4) the oath.

In 1982, the Dept. of Justice issued 504 Federally Conducted Rules applying all the principles of non-discrimination that are embodied in 504 (e.g., reasonable accommodation) to the INS.

As a result of continued discrimination, Congress in 1994, passed an amendment to the immigration Act that provided a "wavier" from the English and History tests if you had a physical, mental or developmental disability. Although the report language is not expansive it does state that the intent of Congress was to exempt people with disabilities from "any tests that would prevent them from becoming citizens" if they are unable to take the tests as a result of their disabilities. However, the statutory language speaks nothing about the oath.

When the Welfare provisions passed prior to the election, Congress had denied Benefits to any person who was not a citizen. It became clear to the Disability

Rights Education and Defense Fund (DREDF), California Rural Law Assistance (CRLA), International Institute of the East Bay and the Asian Law Caucus, that many people with disabilities were not being processed through INS. Upon further investigation it was determined that INS regional offices were either not granting waivers passed by Congress, or were telling people that those waivers did not exist. In some instances offices would not tell applicants what materials they needed to provide to the INS in order to secure the "waiver." In Los Angeles County the INS office publicly stated (although later recanted) that INS was not going to process any claim for citizenship of a person with a disability until the INS headquarters issued a regulation clarifying what the regional offices needed to obtain from the applicant applying for such waiver. In addition to these issues there have been many cases in which INS was not processing applications because they did not know how to treat someone with a disability or how to determine what was the appropriate accommodation. }

A federal class action lawsuit was filed on July 3, 1996. Miraculously, many of the original plaintiffs in the class action lawsuit have recently received notification of their new citizenship; some after receiving previous denials. The INS has also issued an NPRM which most disability groups have already made comments. An interim final regulation is soon to be published which will address some of these issues. However, as a result of the litigation two new issues have emerged: one substantive and the other political. DREDF presented this problem to The Leadership Conference of Civil Rights at their December board meeting. The Executive Committee has instructed Wade Henderson, executive director, to assist in finding a solution to the political problem. It would be helpful for the President to become involved in both issues, but it is this "political problem" that needs his immediate attention.

The problem:

People with cognitive disabilities who are apply for the "waiver" may be caught in a policy quagmire. By applying for the waiver they are saying that they are unable to comprehend what is on the tests because of the nature of their disability (brain injury, mental retardation, Alzheimer's etc.). That fact alone, states some officials at the Dept. of Justice and the INS, would render them **unqualified** to take an oath of citizenship because INS would not know if the oath was meaningful to the individual. When DREDF suggested, in a request for settlement discussions, that it would be a reasonable accommodation under 504 to have a guardian attest to the individual's willingness they said that that was "unacceptable". Hence, if a person with a disability asks for a waiver it could have the effect of automatically disqualifying them from citizenship.] ??

Because people with disabilities have been either discouraged from or discriminated against in the process of applying for citizenship for the past years, millions of people who are currently receiving SSI benefits and Medicaid will be terminated from those services as of Aug. 22 1997. Most of these people

are elderly and disabled, living in nursing homes or at home with in home services. Some have never heard of the "wavier," and those who have been encouraged to apply for citizenship have been turned away or discouraged from applying at all.

The solution:

The solution to this problem does not lie solely in a regulatory fix of the wavier and providing reasonable accommodation in the application, interview and oath process, it lies in a very Bold action by President Clinton.

The President must allow the "tolling" of the benefits for these people until they have been processed through INS and until all their due process rights have been exercised. He is the only person who can order it. The president needs to be made him aware of this problem. No one wants to tell the president because it would mean less savings in the budget. To this date, to the best of our knowledge, none of the agencies will speak up. This is a life and death issue.

} not legally possible right?

The President needs to be aware that:

1. SSA states that there are over a million adults who upon application for benefits self identified as non-citizens
2. The road to Medicaid is through SSI.
3. People with disabilities will be cut off of the medications that keep them alive.
4. People with disabilities will have the funds that pay for their nursing home cut
5. People with disabilities will have their PAS cut off.
6. The impact of the survival of persons with disabilities are illness is much greater than on non-disabled.
7. Even if people are granted the disability wavier because they have a cognitive impairment the INS has told DREDF that they may not be eligible for citizenship because if they have that type of impairment they will not be able to take a "meaningful oath" (understand the US constitution and its Responsibilities)

} ??

I community can not believe that President Clinton wants to have people with disabilities die in order to stop welfare fraud. By signing the welfare bill he signed a death warrant for some people with disabilities. This is far worse than Kevorkian ever was.

This is genocide. In some cases the U.S. have taken in "boat people from Vietnam" and now we are going to say because you are not a citizen of the US we are going to leave you to die. They should have stayed in their own country to die with dignity fighting for freedom in stead of gasping for breath in the US.

\ There are a number of disability groups who would make themselves available to meet with the President or anyone else privately or publicly to brief the

administration on these issues from a disability perspective. If we get no response, there is no alternative but to go to the press with these issues. Kicking elderly, disabled and sick, men and women out of nursing homes or watching someone **DIE** from not receiving their insulin will make photo opps the nightly news would love to show.

Do not let the President be confused with the issuance of the INS reg. With that regulation, even if it is perfect, INS will not be able to process all these people in time. There are possibly hundreds of thousands of people in this category who could meet all the other requirements of citizenship. However, there are also many more who have never received a green card and so their time has not begun to run. Should we also leave those people to die and take away their medication or nursing care?

If this President is committed to disability it is now time to act. Would he have wanted his mother kicked out of the hospital as she lay dying because no one ever told her that she must seek citizenship in order to receive healthcare from this rich country?

There is a way to spin this so that the President is viewed as a humanitarian not an executioner.

w/ other agencies - HHS, CDC, SSA, DOJ civil rights

Background:

Developing INS regulation that will waive testing requirements for naturalization (English, civics) for certain pwd

Law passed 1994; INS sent guidance to field a year ago

Taken on greater urgency because of SSI, other cuts to legal immigrants in wr

Need to make sure consistent guidance to field

Process:

Did draft reg in August; expect to do final reg in December

Issues:

Draft reg generated a lot of comment: (220)

Law says: physical or developmental disability or mental impairment *- types of disab.*

-that so impaired that individual is unable to demonstrate understanding of English language, or knowledge required

-even with reasonable modifications

1. Question of definition: disability vs. immigration groups

~~there are definitions of these terms in existing law we could use plus inability to demonstrate required understanding~~

2. Who decides: civil surgeons vs. other determinations (state agencies, SSA)

3. Oath: can't waive it; are there accommodations?

-some say have someone interpret q, rephrase if mentally retarded

-Alzheimers - alarmed by presence of people in room

(What about those in coma?)

also plan to visit those in nh

2/17/96

N-648

FORMAT TO BE
DESIGNED**Medical Attestation Form (N-400 MD)****Part I***This section to be completed by the applicant*

Last Name	First Name	Middle Name	Social Security Number
Address City State ZIP			Alien Number
Telephone Number			
Date of Birth	Sex		

I, (applicant's name), give permission to (licensed health care provider's name) to release all relevant physical and mental health information related to my medical status for the purpose of applying for an exception from the English and U.S. civics testing requirements for naturalization.

Signature

Date

Part II*This section to be completed by a licensed health care provider (see instructions)*

The individual named above is applying for an exception from the English and U.S. civics tests required of applicants for naturalization. The Immigration and Naturalization Service's regulations require that applicants for an exception based on disability submit this attestation form, completed by a licensed health care provider, along with a completed application for naturalization (Form N-400).

Please answer the following questions as clearly and completely as possible, using common terminology and complete words and phrases.

1. Date of your most recent examination of the applicant.
2. Is this your first examination of the individual? YES ___ NO ___
If yes, who is the regular attending physician? _____
3. If the applicant has a physical or mental disability or impairment, what is its likely origin? If a mental disability, at what age did the condition first manifest itself? Did the condition result from illegal use of drugs? Explain. If the applicant has a mental condition, please provide DSM diagnosis.
4. What is the condition of the applicant's disability or impairment? Is it temporary or permanent? Explain.

DRAFT

FORMAT
DES.

5. Is the applicant currently receiving any medical treatment that would allow him or her to demonstrate knowledge of basic English and U.S. government and civics? Explain.
6. Based on your examination, describe any findings of a physical or mental disability or impairment which, in your professional medical opinion, would limit or interfere with this applicant's ability to demonstrate knowledge of basic English and U.S. history and civics. Describe in detail. If none, so indicate.
7. In your professional opinion, what, if any, reasonable modifications/accommodations could be made to allow this applicant to demonstrate knowledge of basic English and U.S. government and civics for the purpose of applying for U.S. citizenship? Please describe.

I certify all the statements in response to the questions asked on this form are true, complete and correct to the best of my knowledge. I agree to release this patient's relevant medical records upon request from the U.S. Immigration and Naturalization Service. Further, I understand that any knowingly false or misleading statement, or misrepresentation or concealment of material fact, may subject me to felony criminal prosecution.

Signature

Date

(Typed) Last Name, First Name, M.I.,	Business Address City State ZIP	Telephone
License Number Licensing State	Board Certified Y N Board Certification Nr.	Medical Specialty

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

DATE 12-17-96

TO: Diana Fortuna

FROM: Debra Bond

Attached is a draft of
the INS Disability rule and
form. I will let you know when
the official comes in and notify you
of any changes.

FYI - From what I understand
on the "Interim Final" versus "Final" →
"Interim Final" does send a
weaker message to the public (a signal)

OMB FORM 38
Rev. Aug 73

An alternative would be
Final with comment - which
is stronger.

Also - please let me know
Liz Savage's read of the rule.

Thanks -

DRAFT
DEC 16 1996**BILLING CODE: 4410-10****DEPARTMENT OF JUSTICE****Immigration and Naturalization Service****8 CFR Part 312****[INS No. 1702-96]****RIN 1115-AE02****Exceptions to the Educational Requirements for Naturalization
for Certain Applicants****AGENCY:** Immigration and Naturalization Service, Justice.**ACTION:** Interim rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service (the Service) regulation relating to the educational requirements for naturalization of eligible applicants under section 312 of the Immigration and Nationality Act (the Act), as amended by the Technical Corrections Act of 1994. This 1994 amendment provides an exemption from the requirements of demonstrating an understanding of the English language, including an ability to read, write, and speak words in ordinary usage, and of demonstrating a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States, for certain applicants who are unable to comply with both requirements because they possess a "physical or developmental disability" or a "mental impairment." The interim rule establishes an administrative process whereby the Service will adjudicate requests for these exceptions while providing the public with an opportunity to comment on portions of the adjudicative process which the Service is altering in response to public comments from the previously published proposed rule.

DATES: Interim rule effective [Insert publication date]; written comments must be submitted on or

before [Insert date 60 days from the date of publication in the FEDERAL REGISTER].

ADDRESSES: Please submit written comments in **triplicate** to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1702-96 on your correspondence. Comments are available for public inspection at the above-noted address by calling (202) 514-3048 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT: Craig S. Howie or Jody Marten, Adjudications and Nationality Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514-5014.

SUPPLEMENTARY INFORMATION:

Background

On October 25, 1994, Congress enacted the Immigration and Naturalization Technical Corrections Act of 1994. Section 108(a)(4) of the Technical Corrections Act amended section 312 of the Act to provide an exemption to the United States history and government ("civics") requirements for persons with "physical or developmental disabilities" or "mental impairments" applying to become naturalized United States citizens. This exception complemented an existing exception for the disabled with regard to the English language requirements for naturalization. Enactment of this amendment marked the first time Congress authorized an exception from the civics requirements for any individual applying to naturalize.

The Technical Corrections Act did not specifically define the terms developmental disability, mental impairment, or physical disability. Congress did, however, provide limited guidance for defining these terms in the Report of the House of Representatives Committee on the Judiciary, H.

Rpt. 103-387, dated November 20, 1993. Based in part on the language of this report, the Service provided preliminary guidance to field offices on November 21, 1995, defining the three categories of disabilities and requiring disabled persons seeking an exception from the section 312 requirements to obtain an attestation verifying the existence of the disability from a designated civil surgeon.

On August 28, 1996, the Service published a proposed rule at 61 FR 44227-44230 proposing to amend 8 CFR 312 to provide for exceptions from the section 312 requirements for persons with physical or developmental disabilities or mental impairments. In the preamble to the proposed rule, the Service noted that these exceptions were not blanket waivers or exemptions for the disabled. Creation of blanket waivers would be contrary to the requirements of section 504 of the Rehabilitation Act, which provides for equal (with modifications/accommodations) but not special treatment for the disabled in the administration of Justice Department programs. The proposed rule provided that an exemption would only be granted to those individuals with disabilities who, because of the nature of their disability, could not demonstrate the required understanding of the English language and knowledge of United States civics, even with reasonable modifications or accommodations.

The Service proposed that all waiver eligibility determinations be based on medical evidence in the form of individual, one-page assessments by civil surgeons or qualified individuals or entities designated by the Attorney General, attesting to the existence of the applicant's disability. As is the case with virtually all Service adjudications for benefits, it was noted that it is the responsibility of the disabled person applying for naturalization to provide the documentation necessary to substantiate the claim for a disability-based exception.

The Service noted that it would comply with section 504 of the Rehabilitation Act of 1973

by providing reasonable modifications and/or accommodations to its testing procedures for applicants with disabilities. In addition, the Service noted that an applicant would be deemed unable to participate in the testing procedures only in those situations where there are no reasonable modifications that would enable the applicant to participate.

After the Service completed digesting the comments received from the public and after meeting with other federal benefit-granting agencies with extensive experience in administering disability related programs, it became clear that considerable changes would be made to the proposed rule. As such, the Service is implementing the policies contained in this notice on an interim basis and is seeking additional comments from the public addressing our changes prior to finalizing the rule.

Discussion of Comments

The Service received 228 comments from a variety of sources, including federal and state governmental agencies, disability rights and advocacy organizations, and private individuals. While the Service has identified 11 specific comment areas that warrant discussion, the majority of comments address three specific areas relating to the proposed rule, in particular, the definitions of the disabilities proposed by the Service at sections 312.1(b)(3)(i) and 312.2(b)(1)(i), the use of the civil surgeons as the medical professionals making the disability determinations at section 312.2(b)(2), and the other statutory requirements for naturalization. The Service also notes that of the 228 comments, 46 were in the form of two separate “form memoranda” which the Service speculates were circulated among commentators. Some commentators attached these memoranda to a cover letter, while others placed the form memorandum onto their own letterhead. An additional 12 form letters, all from the same social services agency yet signed by various staff, were also received.

The Service appreciates the overall in-depth comments that were received, especially from

other federal agencies and various disability advocacy organizations. All these comments have assisted the Service in understanding matters of concern to the disabled community, a constituent group that until now the Service has only interacted with on a limited basis. The following is a summarized discussion of the comments, opening with an issue statement, followed by a summary of the public comments, and concluding with the Service response. The discussions are listed in order according to the volume of comments received for each topic.

Definitions of the Disabilities

Issue. Should the Service change the definitions noted in the proposed rule to comport with existing federal statutes and regulations? The Service proposed to amend sections 312.1(b)(3)(i) and 312.2(b)(1)(i) of 8 CFR with definitions of physical disability, developmental disability, and mental impairment based upon the language of the legislative history as noted in H.R. No. 103-387. These definitions included provisions which excluded disabilities that were temporary in nature, that were not the result of a physical or organic disorder, or that had resulted from an individual's illegal use of drugs. H.R. No. 103-387 did not clarify whether the Congress was referring to the abuse of illegal drugs or legal drugs. Each definition included language which specified that the disability must render the individual unable to fulfill either the requirements for English proficiency or to participate in the civics testing procedures even with reasonable modifications.

Summary of Public Comments. The disability definitions received 138 comments, the largest number of specifically referenced comments. The majority of commentators noted that while it was appreciated that the Service was attempting to follow the intent of Congress, as based on the limited legislative history, it was the obligation of the Service to use definitions already in existence and that comport with existing federal statutes. In particular, 62 comments directly referenced the position

that the Service is required to use existing definitions that comport to other federal statutes, such as definitions found in the Americans With Disabilities Act and the Developmental Disability Act of 1978. These commentators also expressed particular concern over the proposed definition of developmental disability. They noted how there is disagreement within the medical community as to whether certain disabilities, such as mental retardation, are indeed developmental in nature as opposed to being a mental impairment.

As noted previously, the Service, in following the legislative history, excluded disabilities in the proposed definitions that were acquired (to exclude persons whose disability was the result of the illegal use of drugs) or disabilities non-organic or temporary in nature. Of the comments addressing the definitions, 39 specifically admonished the Service to revisit this decision. According to these commentators, by adopting the definitions as listed in the proposed rule the Service would be excluding a large number of disabled naturalization applicants. For example, individuals suffering from Post Traumatic Stress Disorder or individuals whose disability resulted from an accident would not be covered by the definitions as proposed by the Service, in that both these disabilities are acquired. An additional 18 commentators noted that the Services' definitions were too narrowly drawn. They repeating the argument that by enacting such narrowly drawn definitions the Service would potentially exclude large numbers of disabled individuals who might qualify for these Congressionally mandated exceptions.

Eight commentators noted that the Service had not included specific references to particular disabilities in the proposed rule. It was therefore suggested that the Service modify its definitions to include particular disabilities such as mental retardation and deafness and particular diseases such as Alzheimers to the language of the final rule. One commentator noted that the seriously ill should be

considered physically disabled for the purposes of gaining an exception to the section 312 requirements.

Ten separate commentators noted that the proposed language of the disability definitions would not take into consideration persons with combination disabilities. It was cited that while an individual with combination disabilities might not meet the criteria for an exception in a single category, the individual's combination of disabilities might prevent them from being able to meet the requirements of section 312, even with reasonable modifications. An example given noted that an individual with mild dementia who also suffers from hearing loss or blindness may not be able to learn the required English and civics information. Taken singularly, these disabilities might not automatically warrant an exception for the individual. However when combined, the commentators agreed the likelihood of the individual being unable to satisfy the requirements of section 312 increase, and thus may warrant the granting of an exception.

Response. The Service has devoted considerable time in evaluating the comments addressing the disability definitions, and has consulted with other federal agencies whose experience in developing and implementing disability-related benefit programs is much more extensive than that of the Service (notably the Department of Health and Human Services and the Social Security Administration). The Service has also revisited the exact language of the Act at section 312 as well as the legislative history. We have ensured that the particular concerns that Congress elected to include in the legislative record are observed, where they are justified in comporting federal statutes, and that adopting a broad definition of disability is mandated by the Act. The Service will also conform to the requirements of the Rehabilitation Act of 1973, which prohibits the creation of blanket exceptions for the disabled in the administration of Justice Department programs.

As noted, the Service has consulted with the Social Security Administration (SSA) since the publication of the proposed rule in order to gain a better understanding of disability related programs in general. While the criteria upon which the SSA renders an individual disabled for an SSA financial benefit (the focus being on an individual's inability to support themselves financially) is wholly different from the Service adjudication process for an Immigration and Nationality Act benefit, the Service finds no compelling reason why the definitions upon which these adjudications are based should not be standard between the two agencies.

Therefore, the Service is modifying the proposed rule with regard to the definitions of the disabilities as found at 312.1(b)(3)(i) and 312.2(b)(1)(i). The Service is electing to use language that for the most part comports with the regulatory language utilized by the SSA. In the revised language, the three categories of disabilities as noted in the Act are not specifically mentioned but are referenced as medically determinable physical or mental impairment(s), thereby using accepted medical and regulatory language already enacted and found within the SSA regulations. Modifications have been made to SSAs suggested language in order to maintain the Congressional intent that individuals whose disabilities are the result of the illegal use of drugs not be eligible for an exception to the section 312 requirements.

Also included in the regulatory language are provisions to recognize combination impairments, as suggested by commentators and comporting to the standards used by the SSA. However, the Service has elected not to include specific references to particular disabilities within the regulatory text found in sections 312.1(b)(3) and 312.2(b)(1). The Service believes that inclusion of particular named disabilities would have the possible effect of limiting the scope of the proposed exceptions. In other words, some disabled applicants, not seeing their particular disability noted in

the text of 8 CFR 312 might not believe they are covered by the potential exception and thus might not attempt to gain an exception even though they might be fully eligible.

By adopting these changes, the Service is addressing the public's concern regarding the proposed regulation's consistency with existing federal regulations and statutes. The burden will still be on the applicant, via the medical certification, to demonstrate to the satisfaction of the Service how the disability prevents the applicant from learning the information required by section 312 of the Act. The Service believes that it is possible to create a humane process without creating a blanket exception policy within the regulatory language and within the administration of this program. As previously noted, creation of a blanket exception would be in violation of Section 504 of the Rehabilitation Act of 1973.

Disability Determinations: Use of the Civil Surgeons and Creation of a Form

Issue. Should disabled applicants be required to be examined by a civil surgeon in order to obtain a disability certification? In the proposed rule at 8 CFR 312.2(b)(2), the Service noted that disabled applicants desiring a disability exception to the requirements of English proficiency and civics must submit medical certification attesting to the presence of the disability and executed by a designated civil surgeon or qualified individuals or entities designated by the Attorney General. The Service did not define the terms qualified individuals or entities, but did specifically request public comments on the requirements of the medical certification process and in particular on the circumstances under which the Service should consider the use of qualified individuals or entities other than civil surgeons.

Summary of Public Comments. The public responded with 125 comments directly addressing this aspect of the proposed rule. The majority of commentators had concerns over the use of civil

surgeons. It was noted by 101 commentators, including HHS (the controlling federal agency for civil surgeons), that the majority of civil surgeons are in general family practice and thus not experienced in making complex disability determinations. In addition, it was noted that civil surgeons currently base the majority of their examinations for the Service on matters relating to the admissibility of immigrating aliens and communicable diseases. This diagnosis of communicable diseases does not relate to the disability determination process, according to these commentators.

Many commentators, acknowledging the Service's need to maintain integrity in the medical determination process, noted that it would be imposing a great burden on the disabled to limit the attestation process to only civil surgeons and the unknown "qualified individuals or entities." Forty-seven commentators therefore directly requested the Service to allow the disabled to use the medical services of the person's attending physician, medical specialist, or clinical case worker rather than mandating an examination by a civil surgeon. Several of these commentators also noted that the Service must consider the stress potentially placed upon the mentally impaired if forced to undergo an examination by someone other than their own physician.

In addition to the above noted reasons offered for not limiting the medical certification process to the civil surgeons, 25 commentators stated that the pool of civil surgeons was too small to adequately serve all the disabled who might attempt to avail themselves of the disability exceptions. The small pool of civil surgeons could potentially result in disabled applicants having to wait months for appointments.

It was noted by 10 commentators that the cost of going to a civil surgeon could be prohibitive for many of the disabled on fixed incomes or public assistance, especially if the civil surgeon is required to consult with medical professionals who specialize in disabilities prior to issuing a

certification. Commentators noted that the Service should take this factor into consideration prior to finalizing any policy that would require the predominant use of civil surgeons in the disability determination process. Six commentators noted that the Service should be obliged to provide the disabled with lists of bilingual physicians qualified to render the necessary disability certification, and one commentator requested that the Service compose lists of specialist, such as psychiatrists and clinical case workers, that the disabled could use in locating a medical professional qualified to make the disability certification.

Three commentators requested the Service to abandon the proposed certification process altogether and adopt a procedure similar to that currently utilized by the SSA in making disability determinations. Another commentator stated that the certification process should be changed, and suggested that disability determination authority be given to the district director in every local Service office. According to this writer, this policy would dissuade a large number of individuals who view the section 312 disability exceptions as a means of avoiding the English language statutory requirement.

Response. In determining a final policy for the disability determination process, the Service acknowledges that it must be responsive to the needs of the applicant base, especially the needs of the disabled. However, it is also the obligation of the Service to balance these needs with the legal necessity of maintaining integrity in the disability determination process. Only one commentator addressed the fact that the Service will be faced with instances of fraud in the administration of this program and that the Service must be ever vigilant when non-disabled applicants attempt to present themselves to the Service as disabled and therefore eligible for a disability exception. Having a structured process for the determination of a disability is critical to the Service's obligation to

maintain an adjudicative process with integrity.

The Service has concluded that the public is justified in its concern over the near exclusive dependence on the civil surgeons in the disability determination process. Therefore, the Service is proposing to eliminate all references to the use of the civil surgeons in the determination process. (However, any civil surgeon meeting the criteria outlined below will be able to make a disability determination, but based on the surgeon's expertise with the particular disability, not on the fact that he or she is a civil surgeon.) In the interim, the Service is proposing that only state licensed health care providers, which includes licensed medical doctors and medical doctors with specialties, such as board certified psychiatrists, licensed psychologist, licensed physician assistants, licensed nurse practitioners, and licensed clinical social workers who are experienced in either diagnosing or caring for the disabled make the determinations that will be used by the Service. This policy will address the concerns of the public regarding the use of civil surgeons, the perception that the available pool of civil surgeons is too small to meet the needs of the disabled community, and the possible high cost of medical visits to several doctors in order to verify the existence of a disability. However, the Service notes that it is not the responsibility of this agency to provide disabled applicants with lists of bilingual medical professionals, nor is it the responsibility of the Service to provide lists of licensed health care providers qualified to perform the disability determination process. The burden is on the applicant to provide the documentation deemed necessary for the Service to make a determination as to the qualifications of the applicant for any benefit requested under the Act.

This determination process will be in effect for an interim period of time. The Service has many concerns over the preservation of integrity during the interim process, but cannot expect the public to wait for the implementation of a possible alternative determination process. In particular,

the Service has concerns over the use of attending physicians as the source of the disability determinations. Other federal agencies have advised the Service that their experience with accepting documentation from attending physicians has been negative. On occasion, attending physicians may be more willing to attest to conditions as disabilities which may not in fact be entirely disabling.

The public must also note that the naturalization program is financed entirely by the fees paid by the naturalization applicant. No Congressionally appropriated funds are dedicated to the naturalization adjudicative process. The creation of any alternative determination process would need to be financed either by the user fees paid by applicants or by other as yet unidentified non-fee sources of funding. The Service desires to learn the public viewpoint on various alternative disability determination processes.

In its proposed rule, the Service specifically requested public comments on the requirements for the medical certification. Only two commentators made specific suggestions that the Service would better serve the public as well as its own interests by creating a new public use form. Initially, the Service proposed that the medical professional making the certification issue a one-page document, attesting to the origin, nature, and extent of the applicant's condition as it relates to the disability exception. The certification was specified to be only one page in an attempt to keep applicants from submitting entire medical histories that the Service has no experience with or capacity to archive.

The Service has determined that the creation of a new public use form would be a benefit to both the Service and the public. In particular, creation of a form would take the burden off both the applicant and the licensed health care providers with regard to information dissemination. The form's instructions would include complete explanations of the disability categories and define which

licensed health care providers could execute the certification. A new form would allow the licensed health care providers to state simply, via reference to the instructional guidelines, how the applicant's disability prevents the applicant from learning the information needed to fulfill the requirements of section 312 of the Act. The form will also allow the licensed health care providers an opportunity to comment on how a particular modification or accommodation might allow the applicant to take part in the testing process. The Service also believes that a form will help ensure the integrity of the disability determination process (a vital concern of the Service) by requiring the licensed health care providers to sign and declare that the examination and certification is accurate under penalty of perjury. Lastly, a new form could possibly allow for the submission of additional background medical documentation which could reduce the likelihood of fraud.

The Service is now working with the Office of Management and Budget to obtain an emergency authorization for a new public use form for this certification process. As soon as the approval is granted, copies of this new form, possibility entitled the N-400MD will be distributed to local INS offices, the two INS national form centers and to as many voluntary and disability organizations as possible.

Other Naturalization Requirements

Two options are noted below for responding to the public comments regarding the oath. Option 1 acknowledges of the comments and notes a very abbreviated response. Option 2 fully digests the comments and offers a complete Service response.

Option 1:

The Service did not address the other requirements for naturalization specified by the Act because the 1994 Technical Corrections Act only addressed the requirements found in section 312.

However, 92 commentators did address this topic. The majority urged the Service to waive most of the other naturalization requirements for the disabled, in particular the Oath of Allegiance required by the Act in section 337.

The Service will not address the issue of the oath in this rulemaking. Any decision on the oath will need to be addressed in a separate rulemaking exercise, which is currently under review.

Option 2:

Issue. Must disabled naturalization applicants meet the other requirements for naturalization, including the ability to take an oath of renunciation and allegiance? In order for an applicant for naturalization to be approved, the Service must be satisfied that the applicant has met the requirements as stipulated in the Act. The 1994 Technical Corrections Act amended the Act regarding the requirements found in section 312, but did not amend the requirements found in section 316 (Requirements as to Residence, Good Moral Character, Attachment to the Principles of the Constitution, and Favorable Disposition to the United States). Neither did it amend section 337 (Oath of Renunciation and Allegiance). Therefore, the Service did not address any of the other requirements for naturalization in the proposed rule.

Summary of Public Comments. While the Service did not address the other requirements for naturalization, 92 commentators did make direct references to these requirements. The vast majority of these writers (89 of the 92) stated that it was incumbent upon the Service to waive the other naturalization requirements for the disabled, in particular the oath of allegiance. Commentators stated that the intent of Congress was to relieve the disabled from requirements they could not be expected to meet, to remove barriers in the naturalization process for the disabled, and not to create an additional test whereby disabled applicants would in effect be tested on their ability or capacity to

take the oath. Writers also stated that while Congress did not directly address the issue of the other requirements for naturalization, it was the obligation of the Service to comply with Congressional intent and waive the oath requirement. These commentators stated that by not waiving the oath, the Service would place the disabled in a situation of being exempt from the civics requirements of section 312, but required to have a working knowledge of civics in order to take and understand the Oath of Allegiance. Writers further stated that this situation of exempting certain requirements but holding the disabled to other requirements would be a violation of the Rehabilitation Act of 1973 and the Department of Justice regulations. These regulations prohibit the government from utilizing “criteria or methods of administration the purpose or effect of which would...(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.” (28 CFR sec. 39.130 (b)(3))

These writers noted it was not only the obligation of the Service to follow Congressional intent, but that the Service had the authority to waive the oath requirement for any applicant under the Service authority to naturalize applicants via the administrative naturalization process. This administrative naturalization authority was given to the Service by Congress as part of the Immigration Act of 1990 (IMMACT). Twenty of these writers also suggested that the Service consider the alternative idea of allowing a family member, legal guardian, or court appointed trustee stand in for the disabled applicant during the administration of the oath. This would in effect create an oath by proxy procedure, available to the disabled when the disability prevents the applicant from understanding the language of the oath.

Two writers stated that the Rehabilitation Act of 1973 and companion disability rights statutes were enacted to ensure fairness to the disabled community with regard to employment and physical

accessibility. Therefore, they do not relate to the naturalization process. These commentators stated that the other naturalization requirements, in particular the oath, are mandatory and should not be waived for any applicant, disabled or not. One additional writer suggested that the Service seek clarification from Congress on the issue of disabled applicants unable to meet all the requirements for naturalization.

Response. (Awaiting advisory opinion from the General Counsel)

Acceptance of Disability Certifications from Other Government Agencies

Issue. Should the Service accept disability certifications issued by other government agencies? In the proposed rule at section 312.2(b)(2), the Service noted that it may consult with other Federal agencies in determining whether an individual previously determined to be disabled by another Federal agency has a disability as defined in the proposed rule language. This consultation could be used in lieu of the Service-required medical certification.

Summary of Public Comments. Thirty-eight commentators stated that the Service should be obligated to accept a certification of a disability from a federal or state governmental agency in lieu of having the disabled naturalization applicant seek an additional medical certification.

Response. The Service has consulted with other federal agencies regarding this matter. It was pointed out to the Service that with most agencies, the determination of a disability leads to either a financial or medical benefit. The SSA noted that the criteria they review prior to granting an individual a disability benefit is entirely different than the requirements that all applicants applying for naturalization must meet. In addition, a disability which might render an individual eligible for a financial or medical benefit from another federal or state agency may not in all cases render the same individual unable to learn the information required by section 312 of the Act.

After careful review, the Service has determined that it will not accept certifications from other government or state agencies as absolute evidence of a disability warranting an exception to the requirements of section 312. However, and as noted in the proposed rule, the Service reserves the right to consult with other federal agencies on cases where an applicant has been declared disabled. The Service notes that the unquestioned acceptance of another agencies disability determination would equate to a blanket waiver of the section 312 requirements for anyone with a disability that has been so recognized by another agency. Such a blanket waiver, as has been previously noted, is not permitted under the provisions of Section 504 of the Rehabilitation Act of 1973.

Appeal Language

Issue. Should a special appeal procedure be created for disabled naturalization applicants?

Summary of Public Comments. Twenty-six commentators noted in the proposed rule that the Service failed to include any references to an appeal procedure for a disabled naturalization applicant who is denied naturalization based on the Service ruling a medical certificate attesting to a disability as non-acceptable. Six of these commentators stated that since Service officers were not medical professionals, they should be obliged to accept a medical certificate. These same commentators additionally stated that any applicant's certificate that might be denied be afforded an immediate appeal to the local Service District Director. Three commentators suggested that the Service be required to obtain independent medical evidence prior to denying any naturalization case, based on questions about the disability certification. Twelve commentators stated that the Service should be obligated to establish a separate appeal process for the disabled, also repeating the request that the appeal be forwarded immediately to the local Service District Director.

Response. All applicants seeking to naturalize, including the disabled, may avail themselves

of the hearing procedure already in place in the event the naturalization application is denied. Applicants may request a hearing on a denial under the provision of section 336 of the Act. The regulations governing these hearings are found at 8 CFR section 336.2. At the rehearing, the case will be reheard by another officer of equal or a higher grade. Applicants may submit additional independent evidence as may be deemed relevant to the applicant's eligibility for naturalization. If the denial is sustained, the applicant may seek de novo reconsideration in federal court. With the additional training Service adjudication officers will receive regarding disabled applicants and the disability-based exception to the requirements of section 312, the Service is of the opinion that in the interim, the current appeal procedure for a denied naturalization application is sufficient.

In the interest of making an accommodation, the Service is considering a modification to the current hearing procedure. The procedure under consideration contemplates utilizing the current hearing process which could be augmented with an independent opinion issued on the disability finding. An augmented hearing process would need to be financed through the user fees paid by the applicant or by other as yet unidentified non-fee sources of funding. As noted previously, the naturalization program is entirely funded by user fees, with no additional funding appropriated by the Congress. The Service welcomes additional public comments on this idea. However, such a procedure would necessitate a separate regulatory amendment to 8 CFR section 336.2.

Reasonable Modifications/Accommodations, Special Training, and Quality Control

Issue. Should examples of reasonable modifications and accommodations to the naturalization testing procedure be included in the language of the regulation? Noted in the preamble to the proposed rule were statements that pursuant to section 504 of the Rehabilitation Act of 1973, the Service would make reasonable modifications and accommodations to its testing procedures to

enable naturalization applicants with disabilities to participate in the process.

Summary of Public Comments. Twenty-two commentators raised specific references to the modifications and accommodations. In particular, commentators felt that the Service should include in the text of the final rule examples of the modifications or accommodations which might be afforded the disabled during the testing and interview process. Writers stressed that appropriate modifications depend upon the applicant's individual needs. One commentator stated that it would be more efficient for the Service to interview the disabled off-site rather than modifying each officer's work station in each Service office for complete disability access.

Response. The Service is in compliance with its obligations under Section 504 of the Rehabilitation Act and provides accommodations and modifications to the testing procedures when required. The Service currently makes regular accommodations and modifications for disabled applicants for the full range of INS services.

However, the Service has reservations about including exact language within the text of the regulation detailing particular accommodations or modifications. It is the opinion of the Service that the appropriate place for such language is in the accompanying field policy guidance and instructions that will be distributed to all Service offices upon publication of the interim and final rules. Service offices are routinely reminded of the obligations Section 504 places on all governmental agencies regarding accommodating the disabled community. The Service notes that it is current Service policy to conduct off-site testing, interviews, and where authorized, off-site swearing-in ceremonies in appropriate situations.

Four commentators suggested that the Service create special training directed at Service officers in all local Service offices. This training would remind officer staff of their responsibilities

under Section 504 of the Rehabilitation Act and offer staff examples of exact modifications and accommodation to the testing procedures. An example might be the officer taking into account the special testing needs of naturalization applicants with learning impairments. The Service agrees with this suggestion and will initiate special training for local district office adjudication officers. Program staff at Service Headquarters are currently working with the SSA on the creation of this training module and plan to provide this special training as close to the publication of this interim rule as possible. The Service asks the public for suggested training methods which may be of value to the adjudication offices responsible for hearing those cases where the applicant is requesting a disability-based exception to the requirements of section 312.

In addition to the special training efforts that will be undertaken, the Service is committed to ensuring that substantial quality control mechanisms are followed regarding these disability-related naturalization adjudications. Currently, all Service offices responsible for processing naturalization cases must comply with mandatory quality control procedures. These procedures include regular supervisory review of every stage of the naturalization process, from clerical data entry and final decisions, to regular N-400 random samplings. These quality control procedures are not optional instructions that Service offices are encouraged to follow. These procedures are mandatory for every office. The Service is committed to ensuring that all naturalization cases are handled properly, administratively processed correctly, and adjudicated fairly.

The Service will supplement these current quality control procedures with additional procedures particularly directed at cases where applicants have requested an exception from the requirements of section 312. These procedures will include the previously referenced special training efforts for local Service adjudicators as well as supplemental random samplings of cases where the

applicant has a disability and has requested an exception. The Service is currently investigating the possibility of entering into a contract with a private entity to perform these random samplings. Such an arrangement would ensure an unprecedented level of objectivity in reviewing disability related cases. It would also allow the Service to gain independent medical viewpoints on these disability adjudications as well as opinions on medical certifications which may have been questioned by the local Service officer. The Service requests public comments on additional quality control methods which may assist the Service in ensuring that its disability related adjudications are fair and accurate.

Exemption of all §312 Requirements for the Elderly

Issue. Should the Service grant a total exemption to the elderly for the requirements of section 312 of the Act?

Summary of Public Comments. While the proposed rule did not address the issue of applicants over the age of 65 being exempted from all requirements of section 312, 16 commentators urged the Service to adopt such a policy. Writers based their requests on the assumption that applicants over the age of 65 were inherently unable to learn a new language or information on United States civics due to their advanced age. Therefore, commentators suggested a new policy whereby elderly applicants would have the naturalization requirements found under section 312 waived. One additional writer asked that the Service waive the English requirements for any legal immigrant attempting to naturalize.

Response. Section 312 of the Act offers no blanket exemption to applicants over the age of 65 with respect to the English proficiency requirements. Congress has afforded naturalization applicants over the age of 50 with 20 of years permanent residence and applicants over the age of 55 with 15 years of permanent residence an exemption from the English language requirements.

Congress has not, however, expanded these exemptions to other groups. Congress has also granted “special consideration” to applicants over the age of 65 with 20 years permanent residence regarding the civics knowledge requirements. (The Service will address the section 312 “special consideration” provisions in the overall regulatory revision of section 312.)

The Service cannot create a new exemption category to the Act. Only the Congress has the authority to amend the Act. As such, the Service cannot act on this particular suggestion.

Treating the Disabled with Compassion and Discretion

Issue and Summary of Comments. The need for compassion and discretion in adjudicating disability naturalization cases. In the Service’s preliminary guidance to field offices regarding section 312 disability naturalization cases, dated November 21, 1995, offices were reminded to use compassion and discretion in their dealings with the disabled. Fifteen commentators noted that this language was missing from the proposed rule and requested the Service to include said language in the text of the final rule.

Response. The Service understands the desire of the disabled advocacy community to have this language included in the final rule. However, the Service feels that such language is more appropriate for inclusion in the supplemental policy guidance that will be distributed to field offices upon publication of this rule. The special training previously mentioned that the Service will require for adjudication officers will also stress the need for compassion and discretion in dealings with all applicants for benefits under the Act.

A Single Test and Single Determination

Issue and Summary of Public Comments. Should the Service use a single test and single determination process? Seven commentators noted that the proposed rule implies that there are two

separate tests, due to the structure of the regulation which addresses English proficiency at section 312.1 and knowledge of United States civics at section 312.2. The Service was therefore urged to adopt a single test format. These commentators also suggest that the Service only require one determination for the medical certification process.

Response. The Service notes that while the current structure of the regulation features two distinct parts regarding English proficiency and knowledge of United States civics, current procedures do, in effect, offer applicants a single test. During the mandatory naturalization interview, the applicant's English proficiency is determined by the verbal interaction between the adjudication officer and the applicant. Most civics testing is also done orally, which provides the adjudication officer with additional evidence of the applicant's English proficiency. The public should also note that in the Request for Comments contained in the proposed rule, the Service emphasized that the entire regulatory structure of section 312 was under review. Commentators' suggestions about combining the requirements of section 312.1 and 312.2 into one consolidated section shall be considered during the redrafting of 8 CFR section 312.

With regard to the request for a single determination of the disability, the Service will require each applicant requesting an exception to the requirements found at section 312 to submit a single medical certification. The certification should note the existence of the disability, the recommendation of the licensed health care provider that the applicant be exempted from the requirements of section 312, and any modifications the licensed health care provider might recommend if the test was administered to the applicant. This certification must address, however, both the English proficiency and United States civics knowledge requirement and the applicant's inability to meet either one or both of the requirements. This is necessary since both must be met in

order for the individual to be naturalized, absent a waiver.

Expedited Processing for the Disabled

Issue and Summary of Public Comments. Should the disabled be afforded expedited processing of their naturalization applications? Four commentators addressed the issue of expedited processing of naturalization applications for persons with disabilities. Three writers stated it was the obligation of the Service to expedite these naturalization cases, in that the standing the applicant has with other government agencies regarding social service benefits could be affected by the applicant's not being a United States citizen. One of these commentators suggested that the Service institute a 30-day processing window for disabled applicants, to ensure that the Service could grant the applicant any reasonable modification necessary to possibly take part in the normal testing procedure. One writer noted that the disabled should not be granted expedited processing in that such an accommodation would be inconsistent with current Service policy.

Response. The policy of the Service, found in the Operating Instructions at §103.2(q), is to process all applications in chronological order by date of receipt. This procedure ensures fairness and equity for all applicants. The Service shall continue to observe this procedure with regard to naturalization applications from the disabled. The public should note, however, that any applicant able to show evidence of an emergent circumstance may request the local district director for an exception to this policy. It is within the discretion of the district director to either grant or deny a request for expedited processing of any Service adjudication.

Miscellaneous Comments

Ten commentators implored the Service to take into consideration their particular personal circumstances surrounding disability naturalization cases currently or about to be submitted to the

Service. While the Service has empathy for these writers, the proposed rule for which comments were solicited addressed procedural issues, not particular cases. The Service is confident that each of these individual cases will be adjudicated equitably when presented to an adjudications officer for review.

One writer expressed dismay that the Service was considering an exception to the section 312 requirements for certain disabled aliens attempting to naturalize. This writer stated that disabled aliens should be required to return to their native countries and that the United States should focus its attention on assisting native-born disabled citizens. The Service would note that the 1994 Technical Corrections Act mandates this change to the Services' regulations. The Service is obligated to follow the direction of the Congress when Congress so amends the Act.

One commentator suggested that the Service embark upon a media campaign in order to notify the disabled about the provisions of this legislative change. The writer speculated that there is no method in existence by which the Service can notify the disabled community of this possible exception. Based on the number of comments received from various disabled rights advocacy groups, the Service is of the opinion that the vast majority of individuals who might benefit from this exception will have a means of being informed about the provisions of the exceptions. The Service would also note that it is working with the SSA on informational materials for all alien SSA beneficiaries who may wish to apply for naturalization.

One writer noted that the current application for naturalization, Form N-400, should be amended to include references to the disability related exceptions. The Service recognizes this problem and notes that the N-400 is currently under revision. Any revision will include information regarding the disability exceptions to the section 312 requirements.

Another commentator requested that the Service be flexible in adjudicating naturalization applicants from the disabled. The Service has every intention of being flexible in these adjudications to the extent allowable under the law. The special training effort that will be instituted should assist the Service in meeting the goals of being flexible and fair in the adjudication of these naturalization applications.

Request for comments

The Service is seeking public comments regarding this interim rule. In particular, the Service is seeking comments regarding the modifications made to the proposed rule, published at 61 FR 44227. It should again be noted that the Service is engaged in an additional revision of 8 CFR part 312. That additional revision will be issued as a proposed rule, also with a request for public comments.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605 (b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule has been drafted in a way to minimize the economic impact that it has on small business while meeting its intended objectives.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Under Executive Order 12866, section 6(a)(3)(B)-(D), this proposed rule has been submitted to the Office of Management and Budget for review. This rule is mandated by the

1994 Technical Corrections Act in order to afford certain disabled naturalization applicants an exemption from the educational requirements outlined in section 312 of the Immigration and Nationality Act.

Executive Order 12612

The regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 8 CFR Part 312

Citizenship and naturalization, Education.

Accordingly, part 312 of chapter I of title 8 of the Code of Federal Regulations is amended for an interim amount of time as follows:

PART 312--EDUCATIONAL REQUIREMENTS FOR NATURALIZATION

1. The authority citation for part 312 continues to read as follows:

Authority: 8 U.S.C. 1103, 1423, 1443, 1447, 1448.

2. In § 312.1, paragraph (b)(3) is revised to read as follows:

§ 312.1 Literacy requirements.

* * * * *

(b) * * *

(3) The requirements of paragraph (a) of this section shall not apply to any person who is unable, because of a medically determinable physical or mental impairment or combination of impairments

which has lasted or is expected to last at least 12 months, to demonstrate an understanding of the English language as noted in paragraph (a) of this section. The loss of any cognitive abilities based on the direct effects of illegal drug use will not be considered in determining whether a person is unable to demonstrate an understanding of the English language. For purposes of this paragraph, the term medically determinable means an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual unable to demonstrate an understanding of the English language as required by this section, or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications to the methods of determining English proficiency as outlined in paragraph (c) of this section.

* * * * *

3. Section 312.2 is amended by:

- a. Revising the last sentence of paragraph (a);
- b. Redesignating paragraph (b) as paragraph (c) and by
- c. Adding a new paragraph (b), to read as follows:

§ 312.2 Knowledge of history and government of the United States.

(a) * * * A person who is exempt from the literacy requirement under § 312.1(b)(1) and (2) must still satisfy this requirement.

(b) Exceptions. (1) The requirements of paragraph (a) of this section shall not apply to any person who is unable to demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States because of a medically

determinable physical or mental impairment, that already has or is expected to last at least 12 months. The loss of any cognitive skills based on the direct effects of illegal drug use will not be considered in determining whether an individual may be exempted. For the purposes of this paragraph, the term medically determinable means an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual to be unable to demonstrate the knowledge required by this section or that renders the individual unable to participate in the testing procedures for naturalization, even with reasonable modifications.

(2) Medical certification. All persons applying for naturalization and seeking an exemption from the requirements of § 312.1(a) and paragraph (a) of this section based on the disability exceptions must submit form N-400___, to be completed by one of the following state licensed health care providers: licensed medical doctors, medical doctors with specialties such as board certified psychiatrists, licensed psychologist, licensed physician assistants, licensed nurse practitioners, and licensed clinical social workers. These health care providers shall be experienced in diagnosing or caring for 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 noted under § 312.1(b)(3) and paragraph (b)(1) of this section. An affidavit or attestation by the applicant, his or her relatives, or guardian on his or her medical condition is not a sufficient medical attestation for purposes of satisfying this requirement.

Dated:

Doris Meissner,

Commissioner,

Immigration and Naturalization Service.

DRAFT

Medical Attestation Form (N-400 MD)

Part I

This section to be completed by the applicant

Last Name	First Name	Middle Name	Social Security Number
Address City State ZIP			Alien Number
Telephone Number			
Date of Birth	Sex	[REDACTED]	

I, (applicant's name), give permission to (licensed health care provider's name) to release all physical and mental health information related to my medical status for the purpose of applying for an exception from the English and U.S. civics testing requirements for naturalization.

Signature

Date

Part II

This section to be completed by a licensed health care provider (see instructions)

The individual named above is applying for an exception from the English and U.S. civics tests required of applicants for naturalization. The Immigration and Naturalization Service's regulations require that applicants for an exception based on disability submit this attestation form, completed by a licensed health care provider, along with a completed application for naturalization (Form N-400).

Please answer the following questions as clearly and completely as possible, using common terminology and complete words and phrases.

1. Date of your examination of the applicant.
2. Is this your first examination of the individual? YES___ NO___
If yes, who is the regular attending physician? _____
3. [REDACTED]
4. [REDACTED]
5. If the applicant has a physical or mental disability or impairment, what is its likely origin? At what age did the condition first manifest itself? Did the condition result from illegal use of drugs? If the applicant has a mental condition, please provide DSM diagnosis.

6. [REDACTED]

7. What is the condition of the applicant's disability or impairment? Is it temporary or permanent? Explain.

8. [REDACTED]

9. Based on your examination, summarize any findings of a physical or mental disability or impairment which, in your professional medical opinion, would limit or interfere with this applicant's ability to learn basic English and U.S. history and civics. Describe in detail. If none, so indicate.

10. In your professional opinion, what, if any, reasonable modifications/accommodations could be made to allow this applicant to participate in English and U.S. civics testing for the purpose of applying for U.S. citizenship. Please describe.

I certify all the statements in response to the questions asked on this form are true, complete and correct to the best of my knowledge. I agree to release this patient's medical records upon request from the U.S. Immigration and Naturalization Service. Further, I understand that any knowingly false or misleading statement, or misrepresentation or concealment of material fact, may subject me to felony criminal prosecution.

Signature

Date

? relevant

(Typed) Last Name, First Name, M.I.,	Business Address	City	State	ZIP	Telephone	
License Number	Licensing State	Board Certified	Y	N	Board Certification Nr.	Medical Specialty

INSTRUCTIONS FOR COMPLETING THE MEDICAL ATTESTATION FORM FOR THE DISABILITY WAIVER

Purpose of this Form.

The Immigration and Naturalization Service's (INS) regulations require that applicants for an exemption from the English and U.S. history and government (civics) requirements for naturalization submit this attestation form, completed by a licensed health care provider, along with a completed application for naturalization (Form N-400). This form is to be used in making a disability exemption determination for applicants applying for naturalization. Part I of the form which includes personal information should be completed and signed by the applicant. The applicant is also signing a release of his or her medical records to include both the physical and mental health records. Part II of the form must be completed and signed by the licensed health care provider performing the assessment of the applicant. The licensed health care provider is required to attest to the veracity of his attestation and agree to release his or her records on the applicant upon request by the INS.

General instructions

Please answer all questions by typing or printing clearly in black ink. Indicate that an item is not applicable with "N/A." If an answer is "none," write "none". If you need extra space to answer any item, attach a sheet of paper with the name of the applicant, and the alien registration number(A#), and your complete name to include first name, middle initial and last name, with appropriate title, and indicate the number of the item.

Should you wish to include any additional medical reports, they must be limited to not more than two pages, and have the name of the applicant, and the alien registration number (A#), and your signature on each page of the attachments. Additional medical records will not be accepted as a substitute for complete responses to questions asked on the attestation form.

1. You are requested to provide an accurate assessment of the applicant's disability or impairment so the INS can determine whether to grant as exemption to the English and civics requirements for this applicant for applicant for naturalization.
2. The INS requires that the licensed health care provider completing the form for the applicant be a specialist in the area of applicant's disability, and able to diagnosis applicant's disability and/impairments. An assessment whether the applicant has the ability to learn English and civics sufficient to pass the INS' citizenship tests must be made. The tests require an ability to speak and write English and the ability to answer basic questions about the history and government of the Unites States.
3. All licensed health care providers completing the form are required to be licensed practitioners in the State where they practice. The INS accepts medical attestations from the following health care providers: licensed medical doctors (MDs), MDs who are board certified in a speciality, such as, psychiatrists, licensed psychologists, licensed physicians assistants, licensed nurse

practitioners, and licensed clinical social workers. If the applicant requires a medical determination from a specialist, such as, the Board Certified Psychiatrist, it must be secured. That practitioner must attest to his or her speciality and competency to make the required assessment.

4. All forms must be signed, certified, and dated by the licensed health care provider.

The Arc of the United States

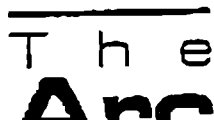
Governmental Affairs Office

1730 K Street, NW, Suite 1212
Washington, D.C. 20006-3868
(202) 785-3388 • FAX (202) 467-4179 • TDD (202) 785-3411-4179
E-mail: arcga@radix.net

FAX FORM (COVER SHEET)

SENT BY:☐ Paul Marchand☐ Evelyn Powell☒ Marty Ford☐ Brenda Walker☐ Kathy McGinley☐☐ Douglas ForandDATE: 10/28/96TO: Diana FortunaFAX #: 456-7028NUMBER OF PAGES (INCLUDING COVER SHEET): 6DOCUMENT DESCRIPTION: The Arc's INS Comments

REMARKS: _____



a national organization
on mental retardation
formerly Association for

The Arc of the United States Governmental Affairs Office

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E-mail: arcga@radix.net

October 11, 1996

Director
Policy Directives and Instructions Branch
Immigration and Naturalization Service
425 I Street, NW
Room 5307
Washington, DC 20536

INS Reference Number: 1702-96

Dear Sir/ Madam:

Thank you for this opportunity to comment on the proposed rules for exceptions to the educational requirements for naturalization for certain applicants. We particularly appreciate the opportunities provided to The Arc of the United States staff by officials of the Immigration and Naturalization Service/ to discuss various aspects of the proposed rule and the purposes behind it. We believe that our comments are more focused and specific because we were able to clarify certain issues and gain a better understanding of the purposes of the regulation. INS staff were very open and helpful in answering our questions prior to the closure of the public comment period.

The Arc is in its 46th year of service to people with mental retardation. Together the more than 1,100 state and local chapters of The Arc across the country form the largest voluntary organization in the United States devoted solely to the welfare of the more than seven million people who are mentally retarded and their families and to the prevention of this condition for future generations. The Arc is committed to securing for all people with mental retardation the opportunity to choose and realize their goals of where and how they learn, live, work, and play.

The Arc is pleased with the overall thrust of the proposed regulation and the potential ability of some people with mental retardation to naturalize using the proposed expansions to this exemption. However, we have some specific concerns regarding the language proposed for the definitions of disability, some concerns regarding the use of civil



*a national organization
on mental retardation*

formerly Association for
Retarded Citizens of the United States

*Spec provisions
defined in guid.
fraud penalties
should apply
penalty*

Counsel

1. will always ask them if no
2. get + save - No - SSA will do defective wk
(no work ret)
3. MA - No
4. pres cr - notice to 1 million later
- reg for future CDR) this winter
 won't apply this std here

Comments of The Arc
October 11, 1996
page 2

surgeons, and some issues to raise regarding the linkage of this exemption to the requirements for taking the oath. Our specific concerns are discussed below.

Definitions of disability

1. We urge that INS use existing federal definitions of "developmental disability" and "mental impairment" to minimize the potential for confusion regarding federal policy. INS should require that people seeking an exemption from the English proficiency and history/government examinations would meet one of those definitions and would further show that the functional criteria for the exemption applies to that individual.

A number of well-known definitions already exist in current law. The federal definition of developmental disability can be found in Public Law 103-230, Section 103 (Developmental Disabilities Assistance and Bill of Rights Act of 1994 -- included amendment to definition). The federal definition of mental impairments has been developed by the Social Security Administration and can be found at 40 CFR, Part 404, Subpart P, Appendix 1 ("Listing of Impairments"), Section 12.00.

Not all of the people who meet these federal definitions would or should be eligible for the exceptions. INS should require that the individual also prove to the satisfaction of the examiner (whether through the civil surgeon, or otherwise, see below) that the individual meets the functional test for the exemptions, currently written as:

"so impaired as to render an individual to be unable to demonstrate an understanding of the English language as required by this section, or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications." (Sec. 312.1(b)(3))

or "so impaired as to render the individual unable to demonstrate the knowledge required by this section or that renders the individual unable to participate in the testing procedures for naturalization, even with reasonable modifications." (Sec. 312.2 (b))

Imposition of the INS functional criteria as a second step serves to properly narrow the eligible population without unnecessarily confusing established federal disability policy and law.

2. All references to the physical origin or organic basis of the disability should be removed from the regulation. For many disabilities, there is no known cause or origin.

To adopt a method of determining eligibility for the exemption by looking to the past for the origins of the disability will create an administrative burden far beyond any perceived benefit. It will also result in hurting people who were not intended to be affected

Since Feb -
220

Dir -

by the limitation. To pursue such criteria would require looking into the origins of disability for every applicant for the exception. For many, the facts will be unknowable, for others the documentation will be impossible to obtain. For INS, it would mean denying people the exemption for extraneous reasons completely unknown and out of the control of the individual. There is, however, a basis for medically determining the presence of a disabling condition. The Social Security Act uses the term "medically determinable"; this terminology or approach could assist INS in avoiding fraud.

There are other regulations to establish whether an applicant for the exemption is disqualified for citizenship on the basis of past illegal drug use. The rules regarding good moral character, at Sec. 316.10, will handle the concerns raised by the House Committee Report. Since the drug use language and physical or organic basis language do not appear in the statute, it is best to handle these issues through other existing means.

3. While mental retardation was not listed specifically in the amendments, it is useful to examine the potential affect of the proposed regulation on people with mental retardation since we understand that the impetus for the changes in the naturalization law came as a result of the problems encountered by a young man with mental retardation who was trying to naturalize with his family.

a). Some people with mental retardation will be covered by the definition of developmental disability and the Social Security regulations regarding mental impairments (as discussed above). Generally, these definitions will cover people with the more severe levels of mental retardation and, while the two populations will significantly overlap, it is not clear that they are completely duplicative. This is due to the very different purposes for which the definitions were developed. However, most people with mental retardation will not be covered by either of the two definitions; these are people with mild mental retardation, who make up about 87 percent of those with mental retardation. Therefore, if the intent is to ensure access to the exemption by any person with mental retardation who meets the additional INS functional criteria, and The Arc strongly believes it should, then INS should consider adding a definition of mental retardation to the regulation which is based on the accepted professional definition, found in *Mental Retardation: Definition, Classification, and Systems of Supports, 9th Edition*, published by the American Association on Mental Retardation.

b). Further, unless INS drops the references to the origin of the disability, substantial numbers of people with mental retardation will be ineligible for the exemption even though they may meet the additional INS functional criteria. That is because the cause of mental retardation is unknown for many people: for children with mild mental retardation, as many as 75 percent have unknown causes, while about 30 percent of people with severe mental retardation have unknown causes.

c). Finally, the developmental disability definition also covers people who do not have mental impairments. Therefore, it should remain as a separate definition. For people with mental retardation, those who never had or no longer have access to records to prove age of onset may be able to show their eligibility by meeting the mental impairment definition.

4. INS should consider giving guidance to its examiners at the local level regarding the impact of combinations of impairments on a person's ability to adapt to various situations. For example, a person with mild mental retardation who also has a hearing impairment may find it more difficult to adapt to the hearing impairment due to cognitive limitations. Therefore, the examiner must be trained to focus on the individual functional capacities of the applicants being interviewed, rather than relying on patterns of typical limitations or accommodations needed.

5. INS should also ensure that there is no gap between the reasonable accommodations or modifications that the agency will make for applicants and the granting of exemptions under this proposed regulation. No one with a significant disability who has difficulty with the English and history/government requirements should be denied the exemption or the accommodations necessary to satisfy the requirements.

Use of Civil Surgeons

6. We agree with the proposal to allow the Attorney General to designate "qualified individuals or entities" to provide the attestation of eligibility for the exemptions in Sec. 312.1(b)(3) and 312.2(b) in lieu of the civil surgeon. This is particularly important since many people will have extensive documentation of disability which will be expensive to re-create; others will have difficulty in dealing with an unknown professional due to their cognitive or other impairment; and many will have disabling conditions which can only be properly diagnosed by various appropriate professionals. The Arc suggests that in designating these additional professionals, the Attorney General should include licensed psychologists (who generally perform the tests to diagnose mental retardation); state mental retardation/developmental disabilities agencies; and vocational rehabilitation or habilitation professionals.

Where civil surgeons are involved, we agree with the proposed rule that the civil surgeon must take into account any documentation that the individual has regarding the presence of a disabling condition.

Further, we agree that INS should have the authority to consult with other federal agencies regarding any previous determinations of disability. We urge caution, however, that absence of a previous determination not be interpreted to mean that the person is not disabled. Since the purposes and eligibility criteria (including requirements for financial eligibility, in some cases) of the various federal programs are all different, an individual's

Comments of The Arc
October 11, 1996
page 5

lack of a previous determination of disability should not have any impact on the application for the exemption.

Taking the Oath

8. Finally, The Arc believes it is important to recognize the relationship between the exemption from the testing requirements and the ability to take the oath of allegiance required for naturalization.

As INS is aware, accommodations for disability may be necessary for administration of the oath. While certain accommodations, such as for hearing or vision impairment or physical accessibility, may be more widely recognized, people with cognitive impairments such as mental retardation may need accommodations in understanding and taking the oath. Such accommodations might include: describing the components of the oath at a language level understandable to the applicant; allowing a person with a close relationship to assist the applicant in acknowledging the loyalty requirements; and allowing a close third party to "interpret" the applicant's responses for the examiner. While this issue may be beyond the scope of this regulation, we also urge INS to consider the possibility of guardians (where they are present), close third parties (such as family members), or people serving with the applicant's power of attorney to attest to the oath for the applicant. Without such accommodations in naturalization policies, the intent of the statutory change to provide more opportunities to people with disabilities could be made meaningless.

We hope that these comments are useful in revising the proposed regulation to meet the needs of people with disabilities who are seeking the exemption from the testing requirements. The Arc is also willing to work with INS staff and district offices regarding any training issues raised by the changes in the law.

If there are any questions on the above comments, please contact Marty Ford, Assistant Director, The Arc Governmental Affairs Office, at 202/785-3388. We would be happy to provide you with any additional information necessary.

Sincerely,



Joan Thompson
Chairperson, Governmental Affairs
Committee

Author: HQEXM USA.HQEXM USA POST OFFICE 1:CSHOWIE at GroupWise
Date: 9/18/96 9:19 AM
Priority: Normal
TO: Lin C Liu at HQ-007
CC: Ramona L McGee at HQCOU
CC: HQEXM USA.HQEXM USA POST OFFICE 1:DEROSEN at GroupWise
CC: HQEXM USA.HQEXM USA POST OFFICE 1:JMARTEN at GroupWise
CC: HQEXM USA.HQEXM USA POST OFFICE 1:TECOOK at GroupWise
Subject: Meeting on Disability Regulation

----- Message Contents -----

Date: 09/18/1996 09:19 am (Wednesday)
From: Craig S Howie
To: CCMAIL.HQ-007.Liu Lin C
CC: DEROSEN, TECOOK, CCMAIL.HQCOU.McGee Ramona L, JMARTEN
Subject: Meeting on Disability Regulation

Lin: As I mentioned, Marty Ford from ARC has requested a meeting to discuss the disability proposed rule. I have already clarified with her that

1) this will not be a negotiated rule making session, and 2) the topic will

only be the proposed rule, not issues regarding the welfare bill. She said

their concern is our definition of the congressionally designated disabilities, and how they do not seem to mesh with the definitions the medical community uses. (Our comments from SSA also note this concern.) According to Ms. Ford, the groups interested in attending are:

1. ARC
2. Nat'l Assn. of Protection & Advocacy Systems *Curt D.*
3. Bassalon (sp) Center for Mental Health Law
4. Alzheimer Assn. *Judy Riggs*
5. Counsel of Jewish Federations
6. Nat'l Alliance for the Mentally Ill
7. CLINIC

Please let me know what OPP thinks of this, and whether you would like to participate. Craig Howe

TO: Diana Fortuna (456-7431)
FR: Lin Liu

per our discussion

Effective date delayed 30 days unless emergency

10/25/96

223 comments
- 50-60 form

*Call Marty

20 good subst comments

1. Def of impairments - pot Δ - not organically based
HHS lang best

2. Who det^{design + by INS} - civil surgo^{under CDC - disease testing} or others by AG ^{Who?}
other "agencies" say accept our determin. ^{act determ for another route}
(SSA no comments) (lic psychd.)

3. Oath - Does law allow this? - immigrant advoc
some sign of recognition - don't have to repeat

Next wk - 1st int gp mtg

Carl Decker
Rigg
Koyanagi ~~Stine~~

Wk of Nov 4 - interag gp.

Exec staff clearance 11/18 - ~~but~~ really everyone

Then simult OMB/DOJ

$\Rightarrow$ mid-Dec

Hayashi

Craig Horvitz INS

$\rightarrow$ 616-7869
Don't call

Alzh - being in rm don't know

Office of Policy Development
United States Department of Justice
10th Street and Constitution Avenue, NW
Washington, D.C. 20530

FAX COVER PAGE
August 22, 1996; 11:18 am

TO: **Diana Fortuna** FAX: 456-7028
White House/DPC Staff VOICE: 456-5570

FROM: **Kevin R. Jones** VOICE: (202) 514-4604
Deputy Assistant Attorney General FAX: (202) 514-9112

Room 4256, Main Justice Total Pages (excluding this cover): 14

Additional Message:

Attached is the INS rule waiving educational testing requirements for naturalization for persons with disabilities; this is the version that reflects the Civil Rights Division's position and was sent over to OMB previously. I have not yet seen the comments from Isabelle Pinzler today, but we will be forwarding them as soon as we get them.

Also, on the welfare bill, INS has been coordinating with the State Dept. Legal Advisor's Office regarding the provisions in the bill relating to treaty obligations:

- Section 401(c)(2)(B) authorizes federal benefits for nonimmigrants or LPR's if the U.S. is required to pay such benefits under reciprocal treaty agreements. Apparently, there are 22 bilateral investment treaties containing "national treatment" provisions for the payment of federal benefits to foreign nationals, in addition to obligations in NAFTA and GATT. National treatment means that such aliens should be eligible to receive the same federal health, retirement or disability benefits as U.S. citizen working in a comparable capacity; it does not cover the full range of "federal public benefits" covered by the welfare bill.
- Section 402(b)(2) provides that the restriction on Title II Social Security benefits do not apply if the alien is "lawfully present" in the U.S. as determined by the AG, or if nonpayment would contravene an international agreement under § 233 of the Social Security Act, or if nonpayment would be contrary to § 202(t) of the Social Security Act regarding aliens outside the U.S.

The attached fax explains how these two provisions relate to existing treaty obligations.

BILLING CODE: 4410-10

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 312

[INS No. 1702-96]

RIN 1115-AE02

**Waiver of Educational Requirements for Naturalization
for Certain Applicants**

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: The Immigration and Naturalization Service (the Service) is amending its regulation relating to the educational requirements for naturalization of eligible applicants. This is necessary to implement changes to section 312 of the Immigration and Nationality Act (the Act) as amended by the Technical Corrections Act of 1994. The amendment provides an exemption from the requirements of demonstrating an understanding of the English language, including an ability to read, write, and speak words in ordinary usage, and of demonstrating a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States, for certain applicants who are unable to comply with both requirements because they possess a "physical or developmental disability" or a "mental impairment."

DATES: Written comments must be submitted on or before [Insert date 60 days from the date of publication in the FEDERAL REGISTER].

ADDRESSES: Please submit written comments in triplicate to the Director, Policy Directives and

Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1702-96 on your correspondence. Comments are available for public inspection at the above-noted address by calling (202) 514-3048 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT: Craig S. Howie, Adjudications Officer, Adjudications and Nationality Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514-5014.

SUPPLEMENTARY INFORMATION:

Background

Section 312 of the Act requires a person seeking naturalization as a citizen of the United States to demonstrate an understanding of the English language and a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States. On October 25, 1994, Congress amended section 312 of the Act, through the enactment of the Immigration and Nationality Technical Corrections Act of 1994 (Technical Corrections Act), Public Law 103-416, 108 Stat. 4309, section 108(a)(4).

Under the new subsection (b) of section 312 of the Act, certain persons are exempt from the English proficiency and history and government requirements of section 312(a) if they possess a "physical or developmental disability" or a "mental impairment."

Congress did not specifically define the phrases "physical and developmental disability" or "mental impairment" in the Technical Corrections Act. However, Congress did provide limited guidance for defining these terms in the Report of the House of Representatives Committee on the Judiciary, H.R. No. 103-387, November 20, 1993. The relevant comments, found on pages 5 and

Accomm-
use of people

6 of the report, read:

The bill also provides a general waiver of all testing requirements for persons of any age who, because of "physical or developmental disability or mental impairment," could not reasonably be expected to pass the test. This is not intended to include conditions that are either temporary or that have resulted from an individual's illegal use of drugs.

An individual who is developmentally disabled is one who shows delayed development of a specific cognitive area of maturation, i.e., reading, language, or speech, resulting in intellectual functioning so impaired as to render the individual unable to participate in the normal testing procedures for naturalization. This is not an acquired disability, but one whose onset occurred prior to the 18th birthday.

An individual who is mentally disabled is one for whom there is a primary impairment of brain function, generally associated with an organic basis upon which diagnosis is based, resulting in an impairment of intellectual functions, including memory, orientation or judgment. This definition does not include individuals whose mental disability is not the result of a physical disorder. An individual who is physically disabled is one who has a physical impairment that substantially limits a major life activity.

It is clear that the amendment to section 312 is intended to exempt only those individuals who,

because of their disability, cannot demonstrate the requisite literacy and knowledge as required under section 312 of the Act.

On November 21, 1995, the Service provided policy guidance to its field offices with preliminary instructions for adjudication of naturalization applications based on the expanded exemptions provided under the Technical Corrections Act. The Service also provided preliminary definitions of the terms "developmental disability," "physical disability," and "mental impairment" following the language in H.R. No. 103-387. Applicants seeking disability waivers were required to submit medical evidence (e.g., a one-page certification from a designated civil surgeon) with their N-400, Application for Naturalization, supporting their claim of disability. The Service reminded field offices that the disability waiver applied only to the provisions of section 312 and that applicants must still satisfy all other requirements for naturalization, including the ability to take an oath of allegiance.

Amendment of existing regulation.

In order to implement the changes to section 312 of the Act as mandated by the Technical Corrections Act, the Service is proposing to amend 8 CFR 312.1 and 312.2 to provide definitions of the terms "developmental disability," "physical disability," and "mental impairment," and to outline procedures for individuals who seek disability waivers pursuant to section 312(b)(1) of the Act.

This proposed rule not only modifies the Service's current preliminary guidance to the field but also comports with existing Federal policies and regulations for implementing nondiscriminatory disability based programs as required under section 504 of the Rehabilitation Act of 1973, as amended by section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978, and 28 CFR part 39. This proposed rule also provides that a waiver will be granted only to those individuals with disabilities who, because of the nature of their disability, cannot demonstrate

the required understanding of the English language and knowledge of American history and government.

The section 312(b) disability-waiver is not a blanket exemption from the testing requirements to be granted based solely on evidence of a disability. To interpret section 312(b) as a blanket exemption not only would have the tacit effect of perpetuating the negative stereotype that people with disabilities are unable to participate fully in mainstream activities, but also would be contrary to the requirements of section 504 of the Rehabilitation Act.

All waiver-eligibility determinations will be based on evidence of a cognitive impairment, resulting in an inability to learn the required language and history and government material. Therefore, the disabled applicant must show that his or her disability actually interferes with the ability to learn the required language and knowledge skills. Those individuals with disabilities who cannot demonstrate a cognitive impairment will not receive waivers but will be provided with any reasonable modification in the test administration process necessary to comply with section 504 of the Rehabilitation Act.

It will be the responsibility of the disabled person applying for naturalization to provide the documentation necessary to substantiate the claim for a disability-based exception. The Service has no desire for applicants with disabilities to submit extensive medical reports or medical background information regarding their condition. Since Service officers are not physicians and should not be placed in the position of making a medical determination, the Service will use designated civil surgeons to confirm the existence of a particular disability. The civil surgeons will review the necessary background medical reports, submitted by the applicant or the applicant's medical specialist. Civil surgeons not experienced in diagnosing developmental disabilities or other cognitive

impairments shall be required to consult with professionals who are experienced in diagnosing cognitive impairments prior to making an eligibility determination. If the surgeon is in agreement with the background information and has consulted with the necessary specialist, he or she will issue a one-page certification, verifying the existence of a disability as defined under 8 CFR 312.1(b)(3) and 312.2(b)(1), and attesting to the applicant's inability to participate in the normal testing procedures required under section 312 of the Act. The Service fully intends to work with the civil surgeons in developing guidance and procedures for the preparation of the certification needed by an applicant with a disability for this particular exception.

Request for comments

The Service is seeking public comments regarding this proposed rule. It should also be noted that the Service is engaged in a complete revision of 8 CFR part 312. The complete 8 CFR part 312 revision will be issued as a proposed rule, also with a request for public comments. The provisions noted within this proposed rule will be incorporated into the overall 8 CFR part 312 revision. In addition, any comments made in response to this proposed rule will be incorporated with other comments received on the overall 8 CFR part 312 revision.

Paperwork Reduction Act

The information collection requirement contained in this proposed rule at 8 CFR 312.2 has been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act. Comments on this information collection requirement should be sent directly to the following two addresses:

Office of Information and Regulatory Affairs (OMB)
725 17th Street, NW
Washington, DC 20503

Attn: DOJ/INS Desk Officer
Room 10235

Immigration and Naturalization Service
Policy Directives and Instructions Branch
425 I Street, NW
Washington, DC 20536
Attn: INS No. 1702-96
Room 5307

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605 (b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule has been drafted in a way to minimize the economic impact that it has on small business while meeting its intended objectives.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Under Executive Order 12866, section 6(a)(3)(B)-(D), this proposed rule has been submitted to the Office of Management and Budget for review. This rule is mandated by the 1994 Technical Corrections Act in order to afford certain disabled naturalization applicants an exemption from the educational requirements outlined in section 312 of the Immigration and Nationality Act.

Executive Order 12612

The regulation will not have substantial direct effects on the States, on the relationship

between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 8 CFR Part 312

Citizenship and naturalization, Education.

Accordingly, part 312 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 312—EDUCATIONAL REQUIREMENTS FOR NATURALIZATION

1. The authority citation for part 312 continues to read as follows:

Authority: 8 U.S.C. 1103, 1423, 1443, 1447, 1448.

2. In § 312.1, paragraph (b)(3) is revised to read as follows:

§ 312.1 Literacy requirements.

* * * * *

(b) * * *

(3) The requirements of paragraph (a) of this section shall not apply to any person who is unable because of physical or developmental disability or mental impairment to demonstrate an understanding of the English language, as noted in paragraph (a) of this section. Physical disability, developmental disability, and mental impairment do not include conditions that are temporary or that have resulted from an individual's illegal drug use. For the purposes of this paragraph, the term:

Developmental disability means an impairment, the onset of which precedes an individual's 18th birthday, that causes an individual to show delayed development of a specific cognitive area of

maturation, i.e., reading, language or speech, resulting in intellectual functioning so impaired as to cause an individual to be unable to demonstrate an understanding of the English language as required by this section.

Mental impairment means a primary impairment of brain function, generally associated with an organic basis upon which the diagnosis is based, resulting in an impairment of intellectual functions such as memory, orientation, or judgement that causes an individual to be unable to demonstrate an understanding of the English language required by this section. This definition does not include a mental impairment that is not the result of a physical disorder.

Physical disability means a physical impairment that substantially limits an individual's major life activities in a way that causes that individual to be unable to demonstrate an understanding of the English language required by this section.

* * * *

3. Section 312.2 is amended by:

- a. Revising the last sentence of paragraph (a);
- b. Redesignating paragraph (b) as paragraph (c) and by
- c. Adding a new paragraph (b), to read as follows:

§ 312.2 Knowledge of history and government of the United States.

(a) * * * A person who is exempt from the literacy requirement under § 312.1(b)(1) and (2) must still satisfy this requirement.

(b) Exceptions. (1) The requirements of paragraph (a) of this section shall not apply to any person who is unable because of physical or developmental disability or mental impairment to demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles

and form of government of the United States. Physical disability, developmental disability, and mental impairment do not include conditions that are temporary, or that have resulted from an individual's illegal drug use. For the purposes of this paragraph, the term:

Developmental disability means an impairment, the onset of which precedes an individual's 18th birthday, that causes an individual to show delayed development of a specific cognitive area of maturation, i.e., reading, language or speech, resulting in intellectual functioning so impaired as to cause an individual to be unable to demonstrate the knowledge required by this section.

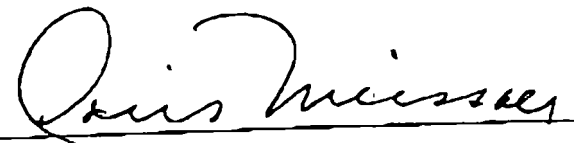
Mental impairment means a primary impairment of brain function, generally associated with an organic basis upon which the diagnosis is based, resulting in an impairment of intellectual functions such as memory, orientation, or judgement that causes an individual to be unable to demonstrate the knowledge required by this section. This definition does not include a mental impairment that is not the result of a physical disorder.

Physical disability means a physical impairment that substantially limits an individual's major life activities in a way that causes that individual to be unable to demonstrate the knowledge required by this section.

(2) Medical certification All persons applying for naturalization and seeking an exemption from the requirements of § 312.1(a) and paragraph (a) of this section based on one of the enumerated disability exceptions must submit a certification from a designated civil surgeon (as defined in 42 CFR 34.2), attesting to the origin, nature, and extent of the person's medical condition as it relates to the disability exceptions noted under § 312.1(b)(3) and paragraph (b)(1) of this section. The certification shall be a letter-sized one-page document, signed and dated by the civil surgeon. The civil surgeon, in particular those not experts in diagnosing developmental disabilities or other cognitive impairments,

shall consult with other qualified physicians and psychologists prior to providing a certification, and may require the person seeking a disability-based exception to furnish evidence from a medical specialist or psychologist to support the person's claim of a qualifying disability. Any additional medical evidence required by a civil surgeon to assist in the evaluation shall only be for the use of the civil surgeon. The additional evidence shall not be attached to the civil surgeon's certification or filed with the applicant's application for naturalization as background or supporting documentation. An affidavit or attestation by the person, his or her relatives, or guardian on his or her medical condition is not a sufficient medical attestation for purposes of satisfying this requirement.

8/19/96
Dated:



Doris Meissner,

Commissioner,

Immigration and Naturalization Service.

HR 3734 - Personal Responsibility and
Work Opportunity Reconciliation Act of 1996

Section 401(c)(2)(B):

Section 401(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 precludes payment of federal benefits to aliens in the United States who are not "qualified aliens." Section 431 defines "qualified aliens" to include legal permanent resident aliens, asylees, refugees, parolees, and aliens granted withholding of deportation or conditional entry. Aliens admitted to the United States as nonimmigrants under the Immigration and Nationality Act, 8 U.S.C. 1101, et seq. are not, however, "qualified aliens," within the meaning of Section 431.

Section 401(c)(2)(B) authorizes the payment of federal benefits to aliens permitted to enter the United States as nonimmigrants or legal permanent residents if the United States is required to pay such benefits under reciprocal treaty agreements as determined by the Attorney General, after consultation with the Secretary of State. The United States has committed to provide national treatment, on a reciprocal basis, in trade, investment, and other commercial activities to foreign nationals of our treaty partners under numerous international agreements. Specifically, the United States is a party to twenty-two bilateral investment treaties and many more treaties of Friendship, Commerce and Navigation containing specific "national treatment" provisions that obligate the United States to pay federal benefits to nationals of these forty-five countries living in the United States as nonimmigrants on the same basis as U.S. citizens. The United States is also required to accord national treatment under the North American Free Trade Agreement and the General Agreement on Trade in Services.

(FYI: Under a typical bilateral investment treaty, the United States is obligated to accord national treatment to aliens living in the United States as nonimmigrants (e.g., E-2 visa beneficiaries). National treatment means that such aliens should be eligible to receive the same federal health, retirement, or disability benefits as a United States citizen working in a comparable capacity. Although section 401(c)(2)(A) does cover many of the obligations imposed by national treatment provisions contained in bilateral investment treaties, it does not do the whole job, because it does not address the full range of federal benefits.)

NAFTA
GATT

Egypt
Panama
Senegal
Zaire
Morocco
Turkey

Cameroon
Bangladesh
Guatemala
Congo
Poland

Tunisia
Sri Lanka
Czech Republic
Slovakia
Argentina
Kazakhstan

Romania
Armenia
Bulgaria
Kyrgyzstan
Moldova

WELFARE REFORM BILL--SOCIAL SECURITY PAYMENTS TO ALIENS

The welfare reform bill the President is expected to sign tomorrow includes a provision that restricts the payment of Social Security and other Federal public benefits to aliens.

Under section 401(a) of the bill, an alien who is not a "qualified alien," as defined in section 431 of the bill, would not be eligible for any "Federal public benefit." A Federal public benefit is defined in the bill to include "any retirement, welfare, health, disability...benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States." The term "qualified alien" is defined in section 431(b) of the bill to include an alien lawfully admitted to the United States for permanent residence, an asylee, a refugee or an alien who has been paroled into the United States for more than 1 year or whose deportation is being withheld or who was granted conditional entry prior to April 1, 1980.

Under section 401(b)(2) of the bill, the new benefit restriction would not apply to any benefit payable under title II of the Social Security Act (i.e., the Social Security retirement, survivors and disability insurance program) if the benefit is based on an application filed in or before the month of enactment, if it is payable to an alien who is lawfully present in the United States as determined by the Attorney General, or if nonpayment would contravene an international Social Security agreement concluded pursuant to section 233 of the Social Security Act. Finally, the restriction would not apply if nonpayment would be contrary to section 202(t) of the Social Security Act (which establishes the conditions under which Social Security benefits may be paid to aliens who are outside the United States).

Agreements concluded pursuant to section 233 generally guarantee that each country party to the agreement will pay its Social Security benefits to residents of the other country. The United States has concluded such agreements with 17 countries:

Austria
Belgium
Canada
Finland
France
Germany

Greece
Ireland
Italy
Luxembourg
Netherlands

Norway
Portugal
Spain
Sweden
Switzerland
United Kingdom

Section 202(t)(1) of the Social Security Act provides that benefits may not be paid to an alien who has been outside the

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United States for more than 6 months unless the alien meets one of several exceptions listed in the subsequent paragraphs of section 202(t). Section 202(t)(2), for example, provides that benefits may be paid to an alien outside the United States without any time limitation if the alien is a citizen of a country that has a social insurance or pension system of general application under which qualified U.S. citizens can receive benefits without restriction while they are outside the foreign country. About 66 countries have been determined to have such systems. Section 202(t)(3) provides that the alien nonpayment provision will not apply if nonpayment would be contrary to a U.S. treaty obligation in effect on August 1, 1956. The United States has treaties with 7 countries that require the United States to pay its Social Security benefits to citizens of the other country while outside the United States. These countries are:

Ireland
Germany

Israel
Greece
Netherlands
(survivors
benefits only)

Italy
Japan

Section 202(t) includes other exceptions to the alien nonpayment provision that may apply to citizens of additional countries.

As a result of the exception in section 401(b)(2) of the welfare reform bill, it appears that the benefit restriction in section 401(a) will only apply to Social Security benefits when those benefits are payable to an alien who is in the United States but not lawfully present in the United States. It does not appear that any treaty or international agreement would require the United States to pay benefits to an alien who is in the United States but not lawfully present.

Section 401(c)(2) of the Welfare Reform bill excludes from the definition of a Federal public benefit subject to the restriction in section 401(a) "benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Attorney General, after consultation with the Secretary of State."

It does not appear that section 401(c)(2) has any impact on Social Security benefits, since section 401(b)(2) of the bill already includes specific exceptions for international Social Security agreements (under section 233 of the Social Security Act) and for treaties dealing with Social Security (by virtue of the reference to section 202(t) of the Social Security Act).

EXECUTIVE OFFICE OF THE PRESIDENT

24-Sep-1996 02:14pm

TO: Diana M. Fortuna

FROM: Debra J. Bond
Office of Mgmt and Budget, OIRA

CC: Wendy A. Taylor

SUBJECT: RE: tomorrow's noon meeting on disability reg

This is the list so far of attendees for the INS Disability Rule Meeting:

INS -- Lin Liu, Tom Cook, Craig Howie and Ramona McGee
HHS -- Dennis Hayashi ←
CDC -- Bob Irwin
SSA -- Margie LaFond, William Daly and one other
DOJ -- waiting response from Liz Savage
HHS -- possibly someone from Judy Moore's staff
OMB -- various OMB staff

Will anyone else from DPC be coming in your place? After the meeting, I had hoped that OMB/DPC could discuss privately our views on the possible extension of the comment period. As you know, the comment period expires Friday and we would need to make a recommendation to INS as quickly as possible. Could you let me know later in the day tomorrow your view on the extension? Thanks--

→ Dec - rule out either way

12 comments

oath - visit?

- organic
- Docs

Y3 SST bones - mental