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Immigration and Naturalization Service

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Number of Pages (excluding cover page): 7

Message: Apologies for the delay. Here's the AG's statement and the opinion being appealed.

Testing Update: Tentative conclusion from counsel is that accepting assistance from the consultant would be OK, as long as the Foundation (the Robert M. McCormick Tribune Foundation) doesn't have an agenda, which I don't believe they do. Also, I've reached Andy Kolstad of the Nat'l Center for Ed. Statistics at Ed. and although he himself doesn't have this kind of expertise, he said he has 2 psychometricians on staff who he will talk to and will get back to me on Monday about ideas, suggestions, etc.



Department of Justice

STATEMENT BY ATTORNEY GENERAL JANET RENO

Tuesday, September 21, 1999

"The Department of Justice has appealed the decision of the United States District Court for the District of Utah in Galvez-Letona v. Kirkpatrick. That decision requires the Immigration and Naturalization Service to grant U.S. citizenship to a person who has a mental disability that prevents him from understanding, or forming the personal mental intention necessary to take, the citizenship oath that all applicants for naturalization must take, under the law, 'before being admitted to citizenship.'

"The oath of citizenship reflects and embodies, among other things, a new citizen's personal decision to pledge allegiance to the United States, while renouncing allegiance to any foreign nation. It also confirms satisfaction of another statutory requirement -- that the applicant be 'attached to the principles of the Constitution of the United States.'

"Although the Immigration and Nationality Act specifically provides for the waiver or modification of certain requirements to accommodate persons with disabilities, it makes no such provision for exempting a person over the age of 18 from the personal oath and attachment requirements. Indeed, the law expressly states that '[a] person may only be naturalized as a citizen of the United States in the manner and under the conditions prescribed [by the Act.] and not otherwise.' Accordingly, in my judgment, the law does not permit the INS to confer citizenship on an applicant over the age of 18 whose disability renders him incapable of personally understanding and satisfying the oath and attachment requirements.

"I recognize that there are cases in which strict adherence to the statutory requirements for naturalization, although proper under the law, may cause unusual individual hardship or seem particularly unfair. No law presently authorizes the Attorney General, or any other Executive officer, to grant relief in such cases. Congress, which establishes the conditions for naturalization, does have the ability to grant relief where it concludes that special circumstances warrant the variation of those conditions. That action may always be taken in the form of a private bill, as it was in the case of Chong Ho Kwak, an immigrant from Korea who became mentally disabled when he was criminally assaulted after completing all the requirements for naturalization except the taking of the oath. In its Report accompanying the private bill in Mr. Kwak's case, the House Judiciary Committee recognized that '[i]mmigration law prohibits anyone from attaining U.S. citizenship who is unable to take and understand the oath.' But the Committee concluded that it was 'clear Mr. Kwak intended to naturalize, that it was in no way his fault that he did not complete that process, and that [his case was] a unique situation.'

"The Justice Department will work with other Executive Departments to consider legislation that would grant the Attorney General the discretion, in appropriate circumstances, to allow a parent or other guardian to take the oath of allegiance on behalf of a mentally disabled applicant for naturalization." Compare H.R. 1846 (106th Cong.) (introduced May 18, 1999).

99-426

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--- F.Supp.2d ---
(Cite as: 1999 WL 504827 (D.Utah))

Page 1

Gustavo Galvez-LETONA, Plaintiff,

= v. =

**Wayne KIRKPATRICK, Acting OIC; Joseph
Greene, District Director INS; Janet
Reno, U.S. Attorney General, Defendants.**

No. 2:99-CV-83K.

United States District Court, D. Utah, Central
Division.

July 15, 1999.

Hakeem Ishola, Todd A. Utzinger, Leonor E.
Perretta, Ishola Utzinger & Perretta, Salt Lake City,
UT, for Gustavo Galvez-Letona, petitioner.

Carlie Christensen, Ms., U.S. Attorney's Office,
Kristen A. Giuffreda, U.S. Dept of Justice, Civil
Division, Washington, DC, for Wayne Kirkpatrick,
Acting OIC, INS, respondent.

Carlie Christensen, Ms., Kristen A. Giuffreda, (See
above), for Joseph Greene, District Director INS,
respondent.

Carlie Christensen, Ms., Kristen A. Giuffreda, (See
above), for Janet Reno, U.S. Attorney General,
DOJ, respondent.

Carlie Christensen, Ms., Kristen A. Giuffreda, (See
above), for United States Immigration and
Naturalization Service, respondent.

MEMORANDUM OPINION AND ORDER

KIMBALL, J.

*1 This matter is before the court on plaintiff's Petition for Review and Declaratory Judgment and defendants' Motion for Summary Judgment. The matter came on for hearing on Monday, June 28, 1999. The petitioner was represented by Todd A. Utzinger and Leonor E. Perretta. The defendants were represented by Kristen A. Giuffreda and Jeanette Swent. Oral argument was heard and the matter was taken under advisement. The court has carefully considered all pleadings, memoranda, and other materials submitted by the parties. The court has further considered the law and facts relevant to the parties' motions. Now being fully advised, the court enters the following Memorandum Opinion

and Order.

I. BACKGROUND

The plaintiff, Mr. Gustavo Galvez-Letona, is seeking de novo review of a decision of the Immigration & Naturalization Service denying his application for naturalization. He further seeks declaratory judgment pronouncing the statute in question and its implementing regulations and application by the Service to be in violation of the Rehabilitation Act of 1973, or in the alternative he seeks declaratory judgment that the Service incorrectly implemented the regulations and a finding that he does meet the qualifications for naturalization. He also requests costs and fees under the Equal Access to Justice Act and the Rehabilitation Act.

The facts in this matter are undisputed. The petitioner, Mr. Galvez is twenty- six years old and has permanently resided in the United States since April of 1983, when at the age of ten he came to this country from Guatemala. Mr. Galvez lives in Salt Lake City with his mother, Lily Letona, his brother, his sister- in-law and their children, all of whom are United States Citizens. The petitioner suffers from Downs Syndrome and is severely disabled both mentally and physically. He is unable to walk, talk, read or write. His mental capacity is that of an eighteen month old child. He is completely dependant upon his mother.

Mr. Galvez's mother became a legal permanent resident in April of 1980 based on an approved INS family petition which was filed by Ms. Letona's sister. Both Mr. Galvez and his brother should have been granted derivative permanent residence as they were both under 21 and unmarried at the time. Had this happened, Mr. Galvez would have been granted derivative citizenship when his mother was naturalized on January 26, 1990. It is unclear why the Guatemalan Consulate did not grant Mr. Galvez and his brother derivative permanent residence, however, because it was not granted at that time Mr. Galvez was not approved for legal permanent residence until November 30, 1990 at which time he was 18 and therefore no longer eligible for derivative citizenship under the naturalization laws.

As a legal permanent resident, Mr. Galvez was eligible for Social Security Disability payments,

--- F.Supp.2d ---

Page 2

(Cite as: 1999 WL 504827, *1 (D.Utah))

however, under recent welfare reform, these benefits have been discontinued to individuals who are not U.S. citizens. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 provided, among other things, that as of August 1, 1997, SSI benefits to disabled persons would be discontinued to individuals who are not U.S. Citizens, even if they are legal permanent residents. For this reason, Mr. Galvez's mother filed an application for naturalization on her son's behalf on October 9, 1996. Pursuant to 8 U.S.C. § 1423(b)(1), the Service waived the English and history requirements including the written examination due to Mr. Galvez's disability. However, the Service determined that Mr. Galvez was still required to affirmatively demonstrate attachment to the principles of the Constitution, take the oath of allegiance and demonstrate an understanding of the oath of allegiance. The Service interviewed Mr. Galvez on February 12, 1997 and he was obviously unable to fulfill these requirements. His mother filed a petition for rehearing and the matter was reheard by a supervisor on October 14, 1998 at which time Mr. Galvez's petition was again denied leading to the Petition before this court.

II. STANDARD OF REVIEW

*2 Mr. Galvez has exhausted all administrative remedies available under section 336 of Title 8, Code of Federal Regulations by requesting and appearing at a rehearing before an Immigration officer. This court has jurisdiction to review a denial of a petition for naturalization. Such review shall be de novo and the court shall make its own findings of fact and conclusions of law and shall, at the request of the petitioner, conduct a hearing de novo on the application. The court may either determine the matter or remand it to the Service. See 8 U.S.C. § 1421(c) and 1447(b).

Summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. See Fed.R.Civ.P. 56(c). In applying this standard, the court must construe all facts and reasonable inferences therefrom in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986);

Wright v. Southwestern Bell Tel. Co., 925 F.2d 1288, 1292 (10th Cir.1991).

Once the moving party has carried its burden, Rule 56(e) "requires the nonmoving party to go beyond the pleadings and by ... affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986); *Gonzales v. Millers Casualty Ins. Co.*, 923 F.2d 1417, 1419 (10th Cir.1991). The nonmoving party must "make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp.* at 322.

In considering whether there exist genuine issues of material fact, the court does not weigh the evidence but instead inquires whether a reasonable jury, faced with the evidence presented, could return a verdict for the nonmoving party. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986); *Clifton v. Craig*, 924 F.2d 182, 183 (10th Cir.) cert denied, 112 S.Ct. 97 (1991). Finally, all material facts asserted by the moving party shall be deemed admitted unless specifically controverted by the opposing party. D.Utah R. 202(b)(4). The parties agree that the facts in this matter are undisputed and each party has moved for a final judgment on the law.

III. DISCUSSION

Mr. Galvez sets forth three separate arguments. First, that the Service erred in requiring that he affirmatively demonstrate and communicate his attachment to the principles of the Constitution and demonstrate an understanding of and willingness to take an oath of allegiance. Secondly, that the denial of his application for naturalization violates the Rehabilitation Act of 1973, and lastly that the Service erred in finding that Mr. Galvez is not attached to the principles of the Constitution and that he is unwilling to take an oath of allegiance. [FN1]

A. The Service's Interpretation of the Statute

*3 Mr. Galvez argues that the Service wrongly interpreted the statute at issue and that persons who suffer from physical or developmental disabilities or mental impairments whose condition renders them unable to comply with the requirements of

--- F.Supp.2d ----

Page 3

(Cite as: 1999 WL 504827, *3 (D.Utah))

attachment and oath are exempt from these requirements as a matter of law.

The Service's denial of Mr. Galvez's application was based upon a memorandum from the INS office entitled a Supplemental Policy Guidance for Field Offices Part I and II. Part I was issued on March 12, 1997 and advised officers to hold these type of cases in abeyance until further guidance is provided regarding how to deal with the denial. The Service requested legal guidance from the Office of Legal counsel on how to deal with these cases and whether or not a guardian could act as a proxy. The Service was advised that everyone must take the oath and that a proxy is not allowed. A year later Part II was issued which concluded that Congress did not waive the oath of allegiance requirement for persons with disabilities and that individuals with such a significant cognitive impairment that he or she cannot demonstrate an understanding of the nature of the oath should be denied naturalization.

Mr. Galvez further argues that although the agency is entitled to deference in interpreting the regulations it enforces, that such deference is not boundless, particularly where it is irrational or clearly erroneous. Petitioner states that the Service was clearly erroneous in its interpretation of 8 U.S.C. § 1423(b)(1) which clearly allows for waivers of the English and history requirements for disabled people. If someone is unable to pass this part of the test it follows that he or she would be unable to pass the requirement of attachment and oath. Section 1423(b)(1) provides a sweeping exemption to the testing requirements and a reasonable interpretation would include the attachment and oath requirements. This section taken in conjunction with § 1448(c) would waive this requirement for disabled individuals. Section (c) deals with the consideration of special circumstances and an expedited oath for certain people including those with disabilities so long as all other requirements are met. The other requirements include 1) the applicant is at least 18; 2) lawfully admitted as a permanent resident; 3) resided continuously within the U.S. for 5 years; 4) been physically present in the U.S. for at least 30 months of the five years; 5) resided at least three months in a State or Service district having jurisdiction over the applicant's place of residence; 6) resided continuously within the U.S. from the date of application to admission to citizenship; 7) been a person of good moral character, and; 8) is not

a deserter. It is undisputed that Mr. Galvez meets these additional requirements for citizenship.

Although the agency's deference in interpreting the regulations it enforces is not boundless, See *Chevron USA v. Natural Resource Defense Counsel*, 467 U.S. 837 (1984), this court agrees with the defendant that the agency's interpretation in this matter was not clearly erroneous. The statute does not clearly waive the attachment and oath requirements for people with disabilities as argued by Mr. Galvez. To the contrary, 8 U.S.C. § 1423(b)(1), refers specifically to subsection (a) stating that "[t]he requirements of subsection (a) of this section shall not apply to any person who is unable because of physical or developmental disability or mental impairment to comply therewith." Subsection (a) deals specifically with the testing requirement which includes "an understanding of the English language, including an ability to read, write, and speak words in ordinary usage" and "a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States." This section says nothing about the attachment and oath requirements. The statute is plain on its face and "when a statute speaks with clarity to an issue, judicial inquiry into the statute's meaning, in all but the most extraordinary circumstances, is finished." *Metropolitan Stevedore Co. v. Rambo*, 515 U.S. 291, 295 (1995).

*4 It is clear to this court that had Congress intended the waiver to apply to the attachment and oath requirement, it would have specifically stated so in the statute, particularly since Congress did provide for other limited exceptions to these requirements. 8 U.S.C. § 1445(e) provides for the filing of an application other than in the Attorney General's Office and for the administration of the oath of allegiance "other than in a public ceremony" if the Attorney General determines that the person has a serious permanent disability which "prevents the person's personal appearance" or which "so incapacitates the person as to prevent him from personally appearing" to take the oath. Because Congress specified this exception for individuals with disabilities, it seems certain that if a waiver of the oath had been intended it would have been specified. Further, Congress did set forth a waiver of the attachment and oath requirements for children who are unable to understand its meaning. See 8

--- F.Supp.2d ----

Page 4

(Cite as: 1999 WL 504827, *4 (D.Utah))

U.S.C. § 1448(a). This is the only circumstance where Congress specified a waiver of the attachment and oath requirements.

The Service's interpretation of the statute and regulations was not clearly erroneous and the statute is clear on its face and for these reasons Mr. Galvez's argument on this point fails as a matter of law.

B. The Service's Interpretation of Mr. Galvez's Willingness to Show Attachment and Take the Oath of Allegiance.

Mr. Galvez next argues that the Service erred in finding that he did not fulfill the attachment and oath requirements simply because he could not vocalize nor communicate his compliance with those requirements. Galvez argues that he has demonstrated through his actions and conduct that he is attached to the principles of the Constitution, favorably disposed toward the good order and happiness of the United States and willing to take the oath of allegiance. Nothing he has done or failed to do during his life calls into question his allegiance to the United States or its way of government.

Mr. Galvez argues that "attachment to the Constitution" has never been very specifically defined and that attachment is nothing more than an agreement to act in general accord with the basic principles of the community. Further, the denial of an application for naturalization for a failure to show attachment has generally been based upon affirmative acts of the applicant. Individuals have been denied naturalization for such activities as blatantly violating the laws, refusing to vote, serve on a jury or participate in government. Mr. Galvez is a law abiding citizen who has never done anything illegal or contrary to the government, and by his actions he has shown attachment to the Constitution.

Although this court agrees that Mr. Galvez has always behaved lawfully and believes that Mr. Galvez will continue to behave lawfully in the future, this court also believes that showing attachment to the Constitution must consist of more than a negative. Mr. Galvez is unable to understand what the Constitution is, let alone able to show any kind of attachment to the principles of the Constitution. Mr. Galvez has the mental capacity of an eighteen month old child and is therefore unable

to form the intent to either act illegally or legally. Further, even if attachment could be shown by a negative, the petitioner basically admits that there are no circumstances under which he could take an oath of allegiance. For these reasons the Service did not commit error in finding that Mr. Galvez had not met the attachment and oath requirements.

C. The Rehabilitation Act of 1973

*5 Lastly, Mr. Galvez argues that the denial of his application based on the Service's interpretation of the relevant immigration statutes and regulations, violates the Rehabilitation Act of 1973 ("The Rehab Act"). The Rehab Act provides that: "No otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied benefits of, or be subjected to discrimination under any program or activity ... conducted by any Executive agency ..." 29 U.S.C. § 794(a). Congress has unequivocally expressed its intent to provide disabled victims of government discrimination a private right of action for equitable relief and damages, including attorney's fees, against the government discriminator. See *Share Ourselves v. Social Security Administration*, 971 F.2d 260, 264 (9th Cir.1992).

A review of the Supplemental Policy Guidance for Field Offices, Part I and II, indicates that the Service acknowledges that it is bound by the terms of the Rehabilitation Act. In Part I, the Service discussed the possibility of allowing developmentally disabled individuals the use of a legal guardian as a proxy in the naturalization process as an accommodation under the provisions of the Rehab Act. See INS Supplemental Policy Guidance, Part I. However, the memorandum then goes on to state, without explanation, that a proxy will not be allowed. Part II also states that some accommodations may be necessary as the Service is bound by the provisions of the Rehab Act.

To establish a violation of the Rehab Act, one must demonstrate that: 1) he is a qualified individual with a disability; 2) he was excluded from the participation in or denied a benefit or was otherwise discriminated against; 3) by an Executive agency; 4) that such denial was based on his disability. See *Layton v. Elder*, 143 F.3d 469, 472 (8th Cir.1998). The facts are undisputed that Mr. Galvez is an

--- F. Supp.2d ----

Page 5

(Cite as: 1999 WL 504827, *5 (D.Utah))

individual with a disability. There is no question that he suffers from severe Downs Syndrome which impairs his mental capacity to such an extreme that he has been found to have the mental ability of an eighteen month old child. Mr. Galvez also meets the second and third requirements under the Rehab Act. He was denied a benefit, naturalization, by an Executive agency. Lastly, it is clear that the denial of Mr. Galvez's application for naturalization was based solely on his disability. Mr. Galvez meets all other requirements for naturalization. He is over age 18. He was lawfully admitted as a permanent resident on November 30, 1990. He has resided continuously within the United States for at least five years. He has been physically present in the United States for at least 30 months of the five years preceding the application. He has resided at least three months in a State or service district having jurisdiction over the applicants place of residence. He has resided continuously within the United States from the date of application to admission to citizenship. He has been a person of good moral character, and finally, he is not a deserter. There are three reasons that Mr. Galvez's application for naturalization was denied. First, he was unable to demonstrate attachment to the principles of the Constitution. Second, he was unable to demonstrate his understanding of the oath of allegiance, and lastly he was unable to demonstrate a willingness to take the oath. He was unable to meet these three requirements only because he is disabled. Consequently, the sole reason for the denial of his application is his disability.

*6 The Service argues that denying Mr. Galvez's application was not in violation of the Rehab Act. The Act prohibits discrimination against any "otherwise qualified individual with a disability". As stated in Department of Justice regulations, an "otherwise qualified" handicapped person is one "who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature." 28 C.F.R. § 39.103. Thus, Mr. Galvez is an "otherwise qualified" individual only if he can meet the "essential" eligibility requirements of the program without any modification at all, or with "reasonable" modifications that do not alter an "essential" requirement that is basic to the nature and purpose of the program. See *School Board of Nassau County v.*

Arline, 480 U.S. 273, 287 n. 17 (1987).

The defendants argue that the attachment and oath requirements are essential to becoming a citizen and that waiving these requirements would not be a reasonable modification. Therefore, if an individual is unable to demonstrate attachment and take the oath of allegiance, he or she is not "otherwise qualified" and the Rehab Act does not apply. This court does not agree. Although the case law is clear that where a program requirement is found to be essential to the program, the Rehab Act does not mandate an accommodation that would alter or eliminate that requirement, waiving the attachment and oath requirement is a reasonable modification that does not eliminate an essential aspect of the program.

Although the attachment and oath requirements do play an important role in becoming a citizen, these requirements are not essential. Congress has made it clear that these requirements are not essential by building exceptions to these requirements into the statute. 8 U.S.C. § 1448(a) provides a discretionary exception of this requirement for children.

In the case of the naturalization of a child under the provisions of section 1443 of this title the Attorney General may waive the taking of the oath if in the opinion of the Attorney General the child is unable to understand its meaning.

A child need only take the oath and demonstrate attachment if that child is capable of understanding it. If in fact the attachment and oath requirements were essential, children could not be naturalized until they were old enough to fulfill these requirements. Further, Congress has provided for expedited oaths for religious purposes and for people with disabilities. See 8 U.S.C. § 1448(c). The cases cited by the defendants in support of their argument that essential requirements need not be waived nor modified deal with such issues as a school board not being required to accommodate a disabled teacher who could not manage a classroom alone where the ability to do this was an essential function of the job. See *Borkowski v. Valley Cent. School Dist.* 63 F.3d 131 (2d Cir.1995). In this matter, if the attachment and oath requirements were essential they would not be waived for anyone for any reasons. Obviously Congress did not see these requirements in that way.

*7 Mr. Galvez is no different than a child who is unable to understand the attachment and oath

--- F.Supp.2d ----

Page 6

(Cite as: 1999 WL 504827, *7 (D.Utah))

requirements. He is in the constant care of his mother, as is a child. He cannot support himself and never will be able to. If anyone should have these requirements waived it is those people who are in Mr. Galvez's situation. Mr. Galvez's application for naturalization was denied for the sole reason that he is disabled and this is a violation of the Rehabilitation Act. Therefore, for the reasons stated herein it is hereby

ORDERED that Mr. Galvez's Petition for Naturalization is GRANTED and this matter is REMANDED to the INS. The INS is directed to grant petitioner's request for naturalization forthwith. Defendants' Motion for Summary

Judgment is DENIED. The petitioner may submit affidavits regarding attorneys fees and costs no later than July 30, 1999. The defendants may respond no later than August 15, 1999 in order that the appropriateness of costs and fees may be determined by the court at a later date.

FN1. Initially, Mr. Galvez also argued that the statute and its application violated his rights to due process and equal protection under the Fifth Amendment, however, counsel for Mr. Galvez orally withdrew these arguments at the time of hearing.

END OF DOCUMENT



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FAX COVER

(for 36 pages including this cover sheet)

TO: Irene Bueno
FAX #: 456-5581
FROM: Germ Ratiff
DATE: 3-25
RE: NY Times Article + Disability
Draft memo

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NY Times

Forward Header

Subject: FYI
Author: RAJP53@aol.com_at_inetgw2
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From Thursday 2/18's NY Times.

RaP

<HTML>Would-Be Citizens Trip on I.N.S. Policy
Hurdle

By SUSAN SACHS

Mikhail Kholchanskiy turned 80 this month, an age that few men like him, soldiers and laborers of the former Soviet Union, ever reach. Relatives sent cards and presents, but they could not give him the one gift he craved: becoming a citizen of the United States, the country that accepted him as a refugee when he fled Ukraine in 1992.

He has tried but, weak and often befuddled since suffering a stroke and then a heart attack after his arrival in Brooklyn, Kholchanskiy says he learns a bit of English during the day only to forget it in the evening.

"I would like to show how proud I am to be in this country," he said in Russian. "I would like to stand up in front of my grandchildren and show them that I am a citizen like them."

But when Kholchanskiy interviewed with the Immigration and Naturalization Service during his application for citizenship, his daughter, Lyubov Mikityanskaya, said an I.N.S. officer told her that her father "didn't deserve anything in this country."

Like thousands of other immigrants whose physical and mental disabilities are supposed to exempt them from passing the English proficiency and civics parts of the citizenship exam, Kholchanskiy was refused a waiver from the I.N.S.

A 1994 law requires the I.N.S. to accommodate immigrants disabled by conditions like Alzheimer's disease, mental retardation and neurological damage from strokes, and whose doctors attest that they can not retain information sufficiently to pass the language and civics tests.

Almost from its inception, however, the disability waiver has been a source of tension and dispute between immigrants and the I.N.S.

It is a benefit, I.N.S. officials in Washington acknowledge, that the agency is still deciding how to best administer and that field employees sometimes misinterpret in their zeal to detect fraud.

In New York, stories like Kholchanskiy's are common. In a case recounted by lawyers for the New York Immigration Coalition, an I.N.S. officer scolded

a 78-year-old Spanish-speaking applicant, saying: "In this country we speak English. There are always some of you who try to get the easy way out." Another I.N.S. officer recently rejected a Russian woman's request for a waiver, telling her to "find a real doctor, not a Russian," according to a lawyer who was present.

Nationwide, the agency's treatment of disabled applicants has prompted several lawsuits. The latest, a class-action suit brought by immigrants in southern Florida last fall, accused the I.N.S. of arbitrarily rejecting waiver applications and rejecting out of hand any that mention age-related illnesses like senile dementia and depression.

A Federal judge in Miami has denied an I.N.S. motion to dismiss the case and has issued a preliminary injunction to two of the plaintiffs who faced a second, and final, rejection of their citizenship applications. A hearing is to be held later this month.

In New York City, immigration lawyers are preparing a formal and unusual collective protest letter about what they call "multiple persistent problems" in the way the regional I.N.S. office treats disabled applicants for citizenship, and in I.N.S. guidelines that, for the first time, appear to demand that immigrants submit copies of detailed medical records and related diagnostic tests.

Several lawyers for nonprofit groups in New York said they were also assembling cases in which disabled immigrants had been arbitrarily denied their rights to a waiver, in hopes of filing a class-action suit like the one in Florida.

Besides verbal abuse, the immigrants' complaints in the New York area include allegations that I.N.S. officers reject disability waiver requests out of hand with no explanation, mislead immigrants on how to proceed with applications, refuse to accommodate people with speech impediments or other physical frailties and routinely second-guess doctors' diagnoses in direct violation of their own internal guidelines.

I.N.S. officials in Washington said that they were aware of the complaints and that they began to train field employees several months ago about the rights of the disabled and to help them determine when doctors had adequately made the medical connection necessary to obtain a waiver.

"It's a very useful and very good provision that allows us to show some humanity and discretion in adjudicating these cases," said William R. Yates, acting head of naturalization. "It is difficult, however, because our officers do not get medical training."

Yates said the I.N.S. had no statistics, either nationally or for the New York region, on disability waivers in the last four years.

But the New York Immigration Coalition, an umbrella organization for about 200 advocacy groups in the city, said its own informal survey indicated that out of 300 to 400 applications submitted in September, only 1 to 2 percent were approved. The figures include only those disability waiver requests from immigrants represented by lawyers. Many immigrants try on their own.

In one case, a 37-year-old Hispanic woman, whose doctor attested that she was mentally retarded and could not write even in her native Spanish, went to the I.N.S. with her waiver request and was not allowed to bring a family member with her to the interview, said Lauren Dreilinger, a lawyer with the

New York Association for New Americans, an advocacy group.

After a few minutes, the field employee emerged and told her family that he had rejected the waiver and had administered the English proficiency test.

The woman, he said, failed. At a second naturalization interview a few months later, Ms. Dreillinger said, the field employee again shrugged off the waiver request and told her, "You don't look mentally retarded."

When Kholchanskiy went for his first interview with the I.N.S., the field employee asked him questions in English, his daughter said.

He did not understand them, and the officer announced that he had failed the citizenship test.

His daughter said that the second time Kholchanskiy was called for an interview, in December, an I.N.S. supervisor said his waiver application was insufficient, but refused to say why.

I.N.S. officials in New York said they did not have information about the specific incidents, but said that if applicants were treated rudely, it would be a violation of agency policy.

Until Dec. 30, when field employees received guidelines, there was not even a form for rejecting a disability waiver or informing immigrants what was lacking on their application. In New York, immigration lawyers said, the I.N.S. simply told immigrants they had failed the English test. If an applicant fails the test three times, naturalization is denied.

To become a citizen, an applicant must have lived in the United States for five years, be at least 18 years old and of good moral character, pass a civics test and English test, and take an oath of allegiance.

The disability waiver was part of an overhaul of immigration laws in 1994. Two years later, sweeping changes in the Federal welfare laws eliminated social benefits for noncitizens, triggering a vast increase in citizenship applications in general.

But it took the I.N.S. until the spring of 1997 to issue administrative regulations for the disability waivers. By then, one class-action lawsuit accusing the agency of arbitrarily rejecting applications had been filed by immigrants in California -- a Federal judge eventually dismissed it when the I.N.S. regulations were published -- and complaints from disabled immigrants seeking to become naturalized were mounting.

Stephen A. Rosenbaum, the plaintiffs' lawyer in the California suit and now a staff lawyer at Protection and Advocacy, an advocacy group for the disabled in Berkeley, Calif., has filed three civil rights complaints in the last year with the Justice Department against the I.N.S.

Agency officials say the main problem in administering the disability waiver program, at least as it is now conceived, is that field employees are asked to make judgments about medical or developmental issues that are rarely clear-cut.

Most of the field employees also have a law enforcement background and are naturally cautious when reviewing immigrants' applications, said Gerri Ratliff, the head of the division that is revising guidelines for the employees.

Irina Matiychenko, a lawyer with the New York Legal Assistance Group, said

she represented a client who had had a stroke, was confined to a wheelchair and could not speak. The woman submitted her doctors' diagnosis and copies of an MRI and CAT scans.

 A public health service officer who was working as a consultant to the I.N. S.

 rejected all of it. The officer said he would conduct his own neurological test, Mrs. Matiychenko recalled, and he asked the applicant to squeeze his hands. When she did, he declared her fit.

 "What's happening now is that an absolute stranger, who knows nothing about the patient, is making a medical determination," Mrs. Matiychenko said.

Thursday, February 18, 1999

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U.S. Department of Justice
Immigration and Naturalization Service

HQ 70/33-P

425 I Street NW
Washington, DC 20536

MEMORANDUM FOR ALL REGIONAL DIRECTORS
ALL DISTRICT DIRECTORS (EXCEPT FOREIGN)
ALL OFFICERS IN CHARGE (EXCEPT FOREIGN)

FROM: William R. Yates
Acting Deputy Executive Associate Commissioner
Office of Field Operations
Immigration Services Division

SUBJECT: Section 312 Disability Naturalization Adjudications

3/23/99 DRAFT

This memorandum provides comprehensive policy guidance for the review of all Forms N-648, Medical Certification for Disability Exceptions and supercedes the following memoranda:

- (1) **March 12, 1997, Section 312 Disability Naturalization Adjudications: Supplemental Policy Guidance for Field Offices**
- (2) **March 16, 1998, Section 312 Disability Naturalization Adjudications: Supplemental Policy Guidance for Field Offices, Part II**
- (3) **August 11, 1998, Memorandum to Clarify INS Policy on the Processing of Form N-648 Medical Certifications for Disability Exceptions**
- (4) **December 30, 1998, Section 312 Disability Naturalization Adjudications**

This memorandum also has several other purposes. In the December 30, 1998 memorandum, we provided criteria for review of responses to Part II, Question 3 on the N-648. These criteria generated some confusion and some offices interpreted the criteria as changing the standard of review of N-648s. This memorandum restates the review standard and provides new examples to demonstrate acceptable and unacceptable answers to Question 3 on the N-648. This review standard should be the standard that is applied to all currently pending N-648s.

Subject: Section 312 Disability Naturalization Adjudications

This memorandum also addresses: (1) issues related to the validity, timeliness, and review of the N-648 at the interview; (2) the addition of doctors of osteopathy to the list of medical professionals authorized to complete the N-648; (3) the role of the District Adjudications Officer (DAO) in the current N-648 review process; (4) procedures for requesting additional information and handling of cases suspected of fraud; (5) procedures field offices must follow to evaluate certain N-648s reviewed since December 30th; and (6) future consolidation of N-648 reviews by medical professionals at the Service Centers.

A. **Disability Exceptions under Section 312**

Each Supervisory District Adjudications Officer (SDAO) and DAO responsible for reviewing N-648s should be thoroughly familiar with the standard for the section 312(b) disability exception. The standard is clearly stated in the Immigration and Nationality Act (Act) as well as in the regulations at 8 CFR 312.2.

Section 312(b) provides that the English and civics requirements "shall not apply to any person who is unable because of **physical or developmental disability or mental impairment** to comply therewith." A doctor must establish that the applicant has a "**medically determinable**" physical or developmental disability or mental impairment in order for the applicant to qualify for the disability exception. "Medically determinable" means that the disability or impairment, or combination thereof "results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical or laboratory¹ diagnostic techniques to have resulted in functioning so impaired as to render an individual unable to demonstrate an understanding" of English and/or U.S. history and government.

In simple terms, this standard requires that the doctor establish that the applicant has a physical or mental abnormality that has impaired an individual's functioning so severely that the individual is unable to learn or demonstrate knowledge of English and/or U.S. history and government.

B. **Medical Professionals Authorized to Complete the N-648**

Under 8 C.F.R. 312.2, the following medical professionals who are licensed to practice in the United States (including Guam, Puerto Rico, and the Virgin Islands) are authorized to complete an N-648 on behalf of an applicant: 1) medical doctors; 2) doctors of osteopathy²; and 3) clinical psychologists. Doctors must also certify, under penalty of perjury, that their statements are true and correct. In addition, doctors completing the form must certify either that their medical specialty or that experience and other qualifications permit them to make such a complex disability assessment. For instance, mental impairments should be diagnosed either by clinical psychologists or medical or osteopathic doctors with a specialization in neurology or

¹ The final rule published in the Federal Register at 64 FR 7990, effective March 22, 1999, changes "clinical and laboratory" to "clinical or laboratory".

² The final rule also adds doctors of osteopathy to the list of medical professionals authorized to complete N-648s.

Subject: Section 312 Disability Naturalization Adjudications

psychiatry, or by authorized medical professionals whose experience and other qualifications permit them to make a diagnosis of mental impairments. Therefore, general practitioners or family doctors who practice internal medicine are authorized to diagnose mental impairments if they have the requisite experience and qualifications. SDAOs and DAOs should review Part II, Questions 3 and 6 of the N-648 to determine whether the authorized medical professional has the specialization or experience and other qualifications to make an assessment of the applicant's mental impairment(s).

C. Validity and Timeliness of the N-648

Questions also have been raised about the timeliness and expiration of the Form N-648 and whether it is valid only for a certain time period. The only time restriction on the filing of the Form N-648 is the requirement that it be submitted within six months of when it was completed by the doctor. Thus, if filed within the six month timeframe, the Form N-648 is valid and **never** expires.

If an applicant submits an N-648 for the first time either: (1) with the N-400; (2) at the initial interview; (3) at reexamination; or (4) at a section 336 denial hearing, the N-648 is valid as long as it was completed and signed by certifying physician within six months. Therefore, DAOs should not reject N-648s that were filed properly with the Form N-400 and submitted within six months of the date of filing, simply because the interview occurs more than six months after the N-400 was filed.

However, if the applicant's first N-648 was deemed insufficient and the applicant submits an amended or second N-648 within the timeframe specified by the Service, the second or amended N-648 is valid, regardless of the length of time between submissions.

D. Appropriate Role of Adjudicators in Reviewing N-648s

DAOs and SDAOs are responsible for determining whether the applicant meets the requirements of section 312. In reviewing the N-648, the DAO's role is to determine whether the N-648 contains sufficient information to establish that the applicant is eligible for a disability exception. The medical professional's role is to certify the applicant's diagnosis and how this condition has affected the applicant's ability to learn or demonstrate knowledge of English and/or U.S. history and civics.

DAOs should not deny the existence of a disability or impairment by questioning the doctor's diagnosis. All SDAOs and DAOs are directed to use courtesy, respect, and sensitivity in reviewing N-648s and in conducting all aspects of the naturalization process for persons with disabilities. DAOs should not:

- (1) Direct or recommend that applicants undergo specific medical tests to establish their disability;

Subject: Section 312 Disability Naturalization Adjudications

- (2) Require that applicants or doctors provide the names or dosages of medications prescribed;
- (3) Refer applicants to commercial medical referral services listed in telephone directories or to any specific medical provider.

E. Standard of Review of the N-648

SDAOs and DAOs are responsible for reviewing every N-648 (including instances where an applicant submits multiple N-648s at the same time) to ensure that the required identifying information is provided (e.g., applicant name and A number, certifying doctor's license number, etc.) and that the form contains the required signatures of the applicant and doctor. DAOs should allow applicants to complete missing identifying information at the time of the interview (e.g., applicant's signature or A number). DAOs also should ensure that all questions are legible and answered fully and completely. After reviewing an N-648 for sufficiency, DAOs may either accept the original, amended or second N-648 as sufficient, continue the case and request additional information because the first N-648 is incomplete or insufficient, or reject the second or amended N-648 as insufficient. (See Section F below)

1. Clarification of Standard of Review

The most important question on the N-648 form is Part II, Question 3, which asks doctors to "describe any findings of a physical or mental disability or impairment" which, in their professional medical opinion, would prevent the applicant from demonstrating knowledge of English and/or U.S. history and civics. Doctors are asked to answer this question based on their examination of the applicant, and to describe their findings in detail. They are also asked to provide a Diagnostic Statistical Manual (DSM) diagnosis (code) if appropriate.

In an attempt to provide DAOs and SDAOs with more specific guidance about the review process, the December 30, 1998 memorandum included criteria for reviewing answers to Question 3. Item two of the four-part response required the certifying doctor to provide:

"(2) a detailed explanation of how you reached the diagnosis, including clinical findings and/or confirmatory laboratory tests that you relied upon to make the diagnosis."

Item two has generated some confusion and, in certain instances, N-648s may have been rejected or applicants may have been asked to resubmit N-648s because the certifying doctor failed to provide specific descriptions of the tests performed to support how he or she reached the diagnosis.

Unless and until instructed otherwise, DAOs should not require doctors to provide an explanation of how they reached their diagnosis, or provide a listing of clinical or laboratory techniques used to reach the diagnosis for an N-648 to be acceptable. However,

Subject: Section 312 Disability Naturalization Adjudications

doctors must provide a sufficiently thorough explanation of how the condition they diagnosed has impaired the functioning of the applicant so severely that the applicant is unable to learn or demonstrate knowledge of English and/or U.S. history and government.

Certifying doctors in all instances are required to provide the following three-part response to Question 3:

- (1) A full and complete description of the doctor's medical diagnosis, including, if applicable, the most recent DSM code;
- (2) An explanation of how the disability or impairment affects the applicant and prevents him or her from learning or demonstrating knowledge of English and/or U.S. history and government; and
- (3) The doctor's conclusion whether the applicant is unable to learn or demonstrate knowledge of English and/or U.S. history and government.

The focal point of the DAO's review should be to determine if the doctor has clearly stated how the condition affects the applicant's ability to function, i.e., the **nexus** between the disability and/or impairment **and** the applicant's ability to learn or demonstrate knowledge of English and/or U.S. history and government. There are no key words, phrases, or tests that will indicate sufficiency of a nexus, nor is there a list of conditions, symptoms, or complications that will always be caused by or linked to certain disabilities or impairments. Rather, DAOs and SDAOs must evaluate each N-648 individually and determine, based on all the information provided in Question 3, whether the applicant has met the burden of showing that the anatomical, physiological, or psychological abnormality described has so impaired the applicant's functioning that he or she is unable to learn or demonstrate knowledge of English and/or U.S. history and government. See **Attachment A** for examples of insufficient and sufficient answers to question 3 on the N-648.

2. Old Age and Depression

The review standard is exactly the same for all N-648s, regardless of the type of condition described. Therefore, as discussed below, DAOs should review N-648s reflecting mental impairments such as depression, or disabilities related to, associated with, or caused by "old age" the same way they review all other medically determinable conditions that may qualify for a section 312 disability exception.

"Old age" in and of itself, is not a medically determinable physical or developmental disability or mental impairment. However, an individual with a disease or disability that is related to, associated with, or caused by old age (e.g., Alzheimer's, Parkinson's disease, senile dementia, etc.) can qualify for a disability exception. Like any other disease or disability, some

Subject: Section 312 Disability Naturalization Adjudications

diseases or disabilities that result from old age may qualify for a section 312 exception, while others may not.

The critical determination for SDAOs and DAOs adjudicating a Form N-648 that reflects a disability related to old age is **not** whether the disease or disability is solely the result of old age. **Rather**, the SDAO and DAO should assess whether the Form N-648 reflects that the impairment results in functioning so impaired that the applicant is unable to learn or demonstrate knowledge of English and/or U.S. history and government. In making that determination, the DAOs should again focus on whether the doctor has established a sufficient nexus between the condition and how that condition has resulted in the applicant's impaired functioning.

Similarly, the Service has not adopted a particular or special rule for adjudicating Form N-648s reflecting "depression" as the stated disability. Depression should be treated like any other disease or disability and evaluated based on the standard under section 312. Thus, again, SDAOs and DAOs should assess whether the Form N-648 reflects that the described condition results in functioning so impaired that the applicant is unable to meet the requirements of section 312, and should rely on the criteria above in making that determination.

F. Procedures for Review of and Action on N-648s

Under 8 CFR 312.2(b)(2), applicants are required to file the N-648 with their N-400. However, the Service has given applicants wide latitude in submitting N-648s during the interview process. Service policy is to allow applicants two opportunities to present a sufficient N-648. In addition, under 8 CFR 312.5 applicants should receive two opportunities to meet the requirements of section 312 of the INA. Some District Offices have requested clarification about the timing of N-648 submissions at the interview and testing applicants on English and/or U.S. history and civics (hereinafter "English and civics").

The section below addresses the various stages of the interview process and what actions officers should take at each stage when an N-648 is involved. Attached to this memorandum are several documents related to the N-648 process. All district offices must use these attachments and discontinue use of any local or previous request for information sheets prepared for Form N-648s. The following documents are attached to this memorandum:

- (1) an Information Sheet that provides applicants with additional information about the N-648 and how to complete it properly (**Attachment B**);
- (2) a revised Notice of Incomplete N-648 ("Notice") (previously titled Request for Additional Information) (**Attachment C**);
- (3) a sample Notice that has been properly completed (**Attachment D**); and
- (4) several sample paragraphs for inclusion in the Form N-335, Decision on Application for Naturalization, that will advise applicants of the bases for rejection of an N-648 (**Attachment E**).

Subject: Section 312 Disability Naturalization Adjudications

Most of the information SDAOs and DAOs need to determine the sufficiency of an N-648 should appear on the original N-648, amended N-648, or supplementary documentation (if any) provided by the certifying doctor. DAOs should consult with SDAOs about N-648s involving complex questions or issues that need to be resolved before making a decision on such N-648s. DAOs should also consult with SDAOs about cases where there is suspected fraud in the N-648 process. (See Section H below) DAOs and SDAOs should comply with the following procedures when reviewing N-648s at the initial interview or on reexamination:

1. Initial or Preliminary Interview--No N-648 in A-File or Presented at Interview

If, at a preliminary interview, the A-file does not contain an N-648 and the applicant does not present one, the DAO should:

- (a) Proceed with the interview, including testing the applicant on English and civics;
- (b) If the applicant fails one or both, or the DAO is unable to begin the interview because of the applicant's inability to understand English, schedule the applicant for reexamination as provided under 8 CFR § 335.3(b), which will include retesting on English and civics under 8 CFR § 312.5.

2. Initial or Preliminary Interview--N-648 Included in A-File or Presented at Interview

If, at a preliminary interview, the A-file contains an N-648 or the applicant submits one, the DAO should:

- (a) Review the N-648 for sufficiency;
- (b) If the N-648 is sufficient, proceed with the interview without testing the applicant on English and civics;
- (c) If the DAO determines the N-648 is insufficient, the DAO should:

(i) Complete a Notice of Incomplete N-648 as an Attachment to the N-14

DAOs should only check those items that are necessary to be completed in order for the N-648 to be sufficient. In addition, where a DAO determines that a certifying doctor failed to provide sufficient detail as to the nexus between the applicant's condition and his or her ability to learn, the DAO should also specify the exact nature of the deficiency in the space provided. (See **Attachment D**);

- (ii)** Provide a copy of the Notice and the original Form N-648 to the applicant, requesting that the applicant resubmit the Form N-648 to the doctor for completion;

Subject: Section 312 Disability Naturalization Adjudications

- (iii) Retain a copy of the original N-648 and the Notice in the applicant's A-file;
- (iv) Before proceeding with the interview, explain to the applicant that he or she is about to be tested on English and civics. However, also explain that the applicant has another opportunity not only to qualify for the disability exception but also, if he or she fails, to be tested again on English and civics.
- (v) Proceed with the interview, including testing the applicant on English and civics;
- (iv) If the applicant fails one or both, or the DAO is unable to begin the interview because of the applicant's inability to understand English, schedule the applicant for reexamination as provided under 8 CFR § 335.3(b), which will include retesting on English and civics under 8 CFR § 312.5.

3. Reexamination--Applicant Fails to Appear or Fails to Submit an Amended or Second N-648

If an applicant fails to appear for reexamination, he or she must notify the Service of the reasons for non-appearance. If the applicant fails to establish good cause for the nonappearance, the applicant will be deemed to have failed the second examination pursuant to 8 CFR § 312.5(b) and the Service shall deny the application for naturalization pursuant to 8 CFR § 336.1.

If an applicant appears for reexamination but fails, **without good cause**, to submit an amended or second N-648, the DAO should:

- (a) Proceed with the reexamination, testing the applicant for the second time on English and civics;
- (b) If the applicant fails the English and civics tests for the second time, prepare denial of application for failure to satisfy the requirements of Section 312, including bases for rejection of the N-648 and any other applicable grounds (See **Attachment E**).

If an applicant appears for reexamination and can demonstrate **good cause** for failure to submit an amended or second N-648, the DAO should:

- (a) Stop the reexamination and do not test the applicant for a second time on English and civics;
- (b) Schedule the applicant for a reexamination at a later date under 8 CFR § 335.3(b).

Subject: Section 312 Disability Naturalization Adjudications

4. Reexamination--Applicant Submits Amended or Second N-648

If, at the reexamination, the applicant submits an amended or second N-648, the DAO should:

- (a) Review the original N-648, the Notice, and the amended or second N-648;
- (b) If the amended or second N-648 is now sufficient, proceed with the interview without testing the applicant on English and civics;
- (c) If the amended or second N-648 is still insufficient, test the applicant for a second time on English and civics;
- (d) If the applicant fails the English and civics tests for the second time, prepare denial of application for failure to satisfy the requirements of Section 312, including the bases for rejection of the N-648 and any other applicable grounds. (See **Attachment E**).

5. Reexamination--Applicant Submits N-648 for the First Time

If, at the beginning of the reexamination the applicant submits an N-648 for the first time, the DAO should:

- (a) Review the N-648 for sufficiency;
- (b) If the N-648 is sufficient, proceed with the interview without retesting the applicant on English and civics;
- (c) If the N-648 is insufficient, the DAO should:
 - (i) Complete a Notice of Incomplete N-648 as an Attachment to the N-14 (See **Attachment D**) and provide a copy of the Notice and the original Form N-648 to the applicant, requesting that the applicant resubmit the Form N-648 to the doctor for proper completion;
 - (ii) Retain a copy of the original N-648 and the completed Notice in the applicant's A file;
 - (iii) Stop the reexamination and do not test the applicant for a second time on English and civics;
 - (iv) Schedule the applicant for a reexamination at a later date under 8 CFR § 335.3(b).

If, at the reexamination, the applicant presents an N-648 after he or she has been retested and failed a second time, the DAO should:

- (a) Review the N-648 for sufficiency;
- (b) If the N-648 is sufficient, proceed with the interview;

Subject: Section 312 Disability Naturalization Adjudications

- (c) If the N-648 is insufficient, the DAO should:
- (i) Complete a Notice of Incomplete N-648 as an Attachment to the N-14 (See **Attachment D**) and provide a copy of the Notice and the original Form N-648 to the applicant, requesting that the applicant resubmit the Form N-648 to the doctor for proper completion;
 - (ii) Retain a copy of the original N-648 and the completed Notice in the applicant's A file;
 - (iii) Hold issuance of the decision on the application until an amended or second N-648 is submitted as requested or the time for submission has expired.

Once the second or amended N-648 is received, the DAO should:

- (a) Review the original N-648, the Notice, and the amended or second N-648;
- (b) If the amended or second N-648 is now sufficient, continue with the reexamination (or if the response was through the mail, call the applicant in to complete the interview);
- (c) If the amended or second N-648 is still insufficient, issue the denial of the application for failure to satisfy the requirements of Section 312, including the bases for rejection of the N-648 and any other applicable grounds. (See **Attachment E**).

6. Postponed Reexamination for Good Cause

If an applicant appears for a reexamination that was previously postponed for good cause and submits an amended or second N-648, the DAO should:

- (a) Review the original N-648, the Notice, and the amended or second N-648;
- (b) If the amended or second N-648 is now sufficient, proceed with the interview (without retesting the applicant on English and civics);
- (c) If the amended or second N-648 is still insufficient, proceed with the interview, testing the applicant for a second time on English and civics;
- (d) If the applicant fails the English and civics tests for the second time, prepare the denial of application for failure to satisfy the requirements of Section 312, including the bases for rejection of the N-648 and any other applicable grounds. (See **Attachment E**).

If an applicant appears for examination that was previously postponed for good cause but fails to submit an amended or second N-648, the DAO should:

Subject: Section 312 Disability Naturalization Adjudications

- (a) Proceed with the reexamination, testing the applicant for the second time on English and civics;
- (b) If the applicant fails the English and civics exams for the second time, prepare denial of application for failure to satisfy the requirements of Section 312, including bases for rejection of the N-648 and any other applicable grounds (See **Attachment E**).

G. Final Denials of N-400s with N-648s

The Service has determined that the current procedures for a hearing on a naturalization denial under section 336 of the Act is adequate to address N-648-related cases. A denial of an N-400 is always based on a failure to meet one or more statutory requirements for naturalization. The N-648 is a request for an exception from the section 312 requirements. Therefore, if the Service determines that an applicant is not eligible for a disability exception and the applicant fails to pass the English and civics tests, the Service will deny the N-400 for failure to meet the section 312 requirements. Thus, the N-648 review is part of the overall adjudication of the N-400 and does not have a separate appeal process.

When an applicant requests a section 336 hearing for review of an N-400 denial, including if applicable the reasons for rejection of N-648s submitted previously. As specified in 8 CFR 336.2, any applicant whose N-400 is denied may submit additional documentation, including a new N-648, prior to the reconsideration hearing. SDAOs or DAOs conducting the hearing should review the new N-648 as well as all prior submissions to determine sufficiency and establish if the applicant is eligible for a disability exception. If the N-648s are deemed sufficient on review, and the sole basis for denial of the N-400 was failure to meet the 312 requirements, SDAOs and DAOs should update the N-400, and barring no other grounds for ineligibility, approve the case for naturalization. If the N-648s are deemed insufficient on review, the SDAOs and DAOs should prepare the final hearing denial, again noting the failure to satisfy the requirements of Section 312, the bases for rejection of the N-648 and any other applicable grounds. Applicants do not receive two opportunities for submission of a new N-648 at the hearing and may not submit an N-648 for the first time.

Whether at the initial denial or denial on hearing, all denials should include the bases for rejection of an N-648. In addition to noting the statutory grounds for denial of the N-400, SDAOs and DAOs preparing N-400 denials should also specify the exact nature of the deficiency in the N-648s reviewed. To ensure consistency in preparation of N-400 denials in disability cases, offices should prepare standard Form N-335 as they do with any other denial and use the attached template (**Attachment E**) with sample language which will advise the applicant of the bases for rejection of the N-648.

H. Procedures for Cases of Suspected Fraud

Subject: Section 312 Disability Naturalization Adjudications

The Service is concerned about allegations of fraud in the N-648 program and is committed to developing anti-fraud measures that target individuals who abuse the system or attempt to gain an immigration benefit through submission of fraudulent N-648s. The Service is currently working with several INS components and outside agencies to develop credible fraud approaches.

The Service anticipates issuing field guidance in the near future that will detail our fraud initiative and instruct SDAOs and DAOs on: (1) identifying potentially fraudulent submissions; (2) researching and documenting cases, including contacting state licensing agencies and investigative divisions of medical boards for additional information; (3) appropriate actions on N-400s, e.g., continuation pending completion of investigation, denial, approval, and referral of cases to Investigations.

In the interim, District Offices should utilize current local procedures for benefit fraud referral and investigation. In general, DAOs should use the Notice of Incomplete N-648 to request the applicant and/or certifying physician clarify any questions or issues. Where there is evidence of fraud, DAOs should discuss the case with the SDAOs. After consultation, the SDAO should determine whether the case is referred to Investigations and whether the DAO should request that a second N-648 be completed by different authorized medical professional.

I. Second Review of N-648s Based on December 30, 1998 Memorandum

As stated in Section E, the December 30th memorandum may have inadvertently caused a number of N-648s to be rejected or sent back for revision because the certifying doctor failed to provide specific descriptions of how he or she reached the diagnosis, i.e. the laboratory or clinical tests performed. The Service has made a commitment to reevaluate N-648s reviewed and rejected since December 30th to ensure that the sufficiency determination is based on the current standard for disability exceptions as restated in this memorandum. Thus, all N-648s reviewed since the December 30th memorandum that were deemed insufficient solely because the certifying doctor failed to provide specific descriptions of how he or she reached the diagnosis should be reevaluated based on the current standard for N-648 review, as restated in this memorandum.

We will issue further guidance shortly as to when to begin the review, the timeframes for completion, and the reporting requirements. We anticipate the number of cases that will need to be reevaluated will be small and should fall into the following categories:

1. Cases Continued Based on December 30th Guidance

For cases where applicants were continued for reexamination, the applicant will be providing an amended or second N-648. Upon submission of the amended or second N-648, SDAOs and DAOs should review the N-648 for sufficiency based on the standard in this

Subject: Section 312 Disability Naturalization Adjudications

memorandum and follow the procedures outlined in section F above, for further action on the case.

2. N-400s Denied On or After December 31st Based on Rejection of N-648 and Applicant's Failure of the English and Civics Tests

All District Offices must identify for review N-400s denied on or after December 31st where the N-648 was rejected solely because the certifying doctor failed to provide specific descriptions of how he or she reached the diagnosis, and the applicant therefore was unable to meet the section 312 requirements. SDAOs and DAOs will need to reevaluate these N-648s for sufficiency based on the standard in this memorandum and follow the procedures outlined in section F for further action on the case.

J. Denials of Naturalization Applications Based on Failure to Assent to the Provisions of the Oath of Allegiance

Congress did not waive the oath of allegiance requirement for persons with disabilities when it passed the section 312 exception amendment. Therefore, the oath of allegiance is still required for all naturalization applicants. This position has been confirmed by the Office of Legal Counsel at the Department of Justice.

Decisions made on cases where the applicant has a significant cognitive impairment will be difficult. DAOs may be under intense pressure from family members and advocates to naturalize these individuals. If possible, DAOs should attempt to explain to family members the requirements of section 337 of the Act, and how, as the law is currently written, the oath cannot be waived for adult naturalization applicants.

DAOs must determine that the applicant: (1) understands he or she is becoming a United States citizen; (2) is forswearing allegiance to his or her country of nationality; and (3) is personally and voluntarily agreeing to a change in status to that of a United States citizen. DAOs must make reasonable accommodations, such as simplifying questions to determine whether the applicant understands the requirements for the oath of allegiance. DAOs must also make reasonable accommodations to allow applicants with disabilities to demonstrate their assent to the requirements of the oath of allegiance, such as allowing the applicant to establish assent through predetermined physical motions or signals that the applicant uses to communicate certain meanings.

For naturalization applicants who are unable to assent to the provisions of the oath (even with reasonable accommodations or modifications), offices should prepare standard Form N-335 as they do with any other denial and use the attached template (**Attachment F**) which advises the applicant that the basis of the denial will be the failure to meet the requirements of section 337 of the Immigration and Nationality Act and 8 CFR 337.1(c).

Subject: Section 312 Disability Naturalization Adjudications

K. Reasonable Accommodations and Modifications under the Rehabilitation Act

With accommodations or modifications, certain applicants with disabilities will be able to meet the section 312 requirements. Section 504 of the Rehabilitation Act of 1973 requires all Federal agencies to make reasonable accommodations for persons with disabilities. Applicants are not required to file an N-648 or present a letter or other documentation from their doctor to request an accommodation or modification to the naturalization process because of a disability.

1. Reasonable Accommodations for Signatures on Naturalization Forms

(a) Form N-648

All applicants for naturalization who are submitting are required to sign the N-648. However, in certain instances, applicants with disabilities may not be able to provide a full signature or are completely unable to sign the required forms. As a reasonable accommodation, DAOs should permit a legal guardian (including a family member holding legal guardian status) to sign the N-648 on behalf of the disabled applicant. Alternatively, the DAO should accept a mark as the applicant's signature.

(b) Form N-400

While a legal guardian may sign the preparer's box on the N-400 (Part 12 on the current N-400), the legal guardian may not sign the N-400 on behalf of the applicant at the conclusion of the interview. In cases where the applicant can make some kind of mark, the DAO should accept such mark as a reasonable accommodation for the signature. In cases where the applicant is unable to make any type of mark but has indicated assent to the requirements for naturalization, the DAO should note in the section where the signature is required (Part 11 on the N-400) that he or she has determined that the applicant has so assented and has responded to questions pertaining to the information contained on his or her form. No actual signature will thus be noted.

(c) Form N-550

In cases where the applicant is unable to make any type of mark, the DAO should note on the signature line of the Form N-550, Certificate for Naturalization: Person's Disability Prevents Signature. A legal guardian may not sign the certificate on behalf of a naturalization applicant with a disability.

2. Other Modifications to the Naturalization Process

Not all applicants with disabilities will want or require a complete exception to the testing requirements. In such instances, DAOs should exercise creativity in making accommodations to allow applicants with disabilities to take the English and civics tests. For example, individuals

Subject: Section 312 Disability Naturalization Adjudications

who are blind or visually impaired should be tested orally; hearing impaired individuals should be offered a written test or provided with a sign language interpreter upon their request; and those with limited or no use of their hands should not be required to demonstrate their writing abilities.

Aside from the modifications that can be made to the test administration, DAOs must give consideration to modifications to the actual interview that would accommodate persons with disabilities. DAOs may continue to permit, under appropriate circumstances, a disabled naturalization applicant's family member or legal guardian to accompany the applicant during the interview. In addition, at the discretion of the Service, a family member or legal guardian can in some instances assist with the interview by acting as the approved English language interpreter for those applicants whose disability prevents them from fulfilling the English proficiency requirements of section 312. However, prior to the start of the interview, the DAO should ensure that the family member or legal guardian understands that the interview is being conducted with the applicant, not the family member or legal guardian. The DAO should make clear that the role of the family member or guardian is to be an interpreter and not to assist the applicant in answering questions or answering questions for the applicant. In addition, for applicants who cannot speak, family members and legal guardians should be asked about which particular physical motions or signals the applicant uses to communicate certain meanings, so the DAO knows how to interpret such signals during the interview process.

DAOs are reminded again of the need for the utmost courtesy, respect and sensitivity in adjudicating cases where the applicant requests an accommodation for the section 312 requirements. Making acceptable accommodations or modifications to the entire naturalization process is our mandate under the Rehabilitation Act of 1973.

L. Future Consolidation of N-648 Reviews by Medical Professionals at the Service Centers

With the implementation of Direct Mail and Complete File Review, the Service is planning to transfer the review of the N-648s from the District Offices to the Service Centers, where medical professionals will review the forms. At this time, the Service does not have a specific timeframe for such transfer. However, consolidation of the N-648 review process at the Service Centers will:

- further standardize the N-648 review process
- provide for review of the N-648s by medical professionals
- helps ensure that files with N-648s are interview ready when shipped to District Offices

We anticipate that the transfer of N-648 reviews at the Service Centers will also coincide with a revision to the Form N-648. The Immigration Services Division will be working in the coming months to develop a revised Form N-648 as well as transition procedures and procedures to govern the review of the forms at the Service Centers.

Memorandum for All Regional Directors
All District Directors (Except Foreign)
All Officers in Charge (Except Foreign)

Page 16

Subject: Section 312 Disability Naturalization Adjudications

Attachments (6)

5/12/11

*****DISCUSSION DRAFT – 3/23/99*****
ATTACHMENT A

The following examples help illustrate the parameters for acceptable and unacceptable N-648s based on answers to Question 3 on the form. Please note that the examples below provide only some of many possibilities for both acceptable and unacceptable responses to Question 3. Where an N-648 is insufficient, it is generally because the doctor has failed to establish a nexus between the patient's condition and his or her inability to learn or demonstrate knowledge of English and/or U.S. history and government. For instance, a common problem is a conclusory statement by a doctor that the applicant cannot learn, without an accompanying explanation of how the diagnosed condition(s) on the applicant's ability to learn. Similarly, doctors sometimes list many conditions that the applicant suffers, but provide little to no explanation about how the conditions prevent the applicant from learning or demonstrating knowledge. The number of diagnoses or conditions listed is irrelevant to the determination about the sufficiency of the disability exception. What is important is that the doctor sufficiently describes the linkage between the diagnosed conditions and the effect of those conditions on the applicant's ability to take the tests.

Example 1

Insufficient Answer:

The patient is a 75-year-old female who has hypertension and heart disease. She has suffered at least 2 heart attacks, once in 1996 and in 1997. Last year, she had a stroke with paralysis on the left side. She is unable to learn English and basic U.S. history and civics. *(Note: The doctor failed to articulate how any of the conditions listed affects, for example, the patient's memory, ability to learn new tasks, ability to concentrate, or ability to perform basic mental activities, and therefore failed to show that the applicant's condition has so impaired her functioning that she is unable to learn or demonstrate knowledge of English and/or U.S. history and government).*

Sufficient Answer:

The patient is a 75-year-old female who has hypertension and heart disease. She has suffered at least 2 heart attacks, once in 1996 and in 1997. Last year, she had a stroke with paralysis on the left side. The patient's stroke caused significant cerebral infarction (i.e., death of brain tissue), and has left her with severe and irreversible neurological damage. Because of the widespread damage to the brain tissue, she has suffered markedly decreased cerebral function and is incapable of remembering, articulating, or learning. Because of the patient's condition, she is unable to learn a new language and U.S. history and civics. *(Note: The doctor adequately addressed how the stroke impaired the applicant's mental functioning, including her ability to learn or demonstrate knowledge of English and/or U.S. history and government.)*

Example 2

Insufficient Answer:

The patient suffers from Down's Syndrome. He should be exempted from the English language and U.S. civics requirements for citizenship. *(Note: The doctor made a conclusory*

statement but failed to explain how the applicant's condition would prevent the applicant from learning or demonstrating knowledge of English and/or U.S. history and government.)

Sufficient Answer:

The patient suffers from Down's Syndrome. He is moderately retarded, with an IQ of 50. The patient's mental retardation is a global impairment, which affects cognition, language, and motor skills. Because of the patient's global impairment, he cannot learn new skills and is not capable of reasoning. His memory is deficient, and he is only capable of performing simple daily activities. Because of the patient's mental disability, he is incapable of learning a new language (even basic words of a new language) and U.S. history and civics. *(Note: The doctor adequately addressed the nexus between the condition and how the condition affected the applicant's functioning and ability to learn or demonstrate knowledge of English and/or U.S. history and government.)*

Example 3:

Insufficient Answer:

Vascular Dementia with Depression (DSM 290.43) and Psychosis
Essential Hypertension, Coronary Artery Disease, Degenerative Joint Disease, Hyperlipidemia,
Congestive Heart Failure, Prostatism, Bilateral Hearing Loss

This 68-year-old man has had long standing hypertension of 7-8 years duration and disease of the cerebral blood vessels due to arteriosclerosis, including a stroke 5 years ago. He also has an extremely severe depression, accompanied by excessive anxiety. The extent of his cognitive deficits would most definitely preclude his being able to pass basic English and Civics tests. *(Note: The doctor failed to sufficiently address how the applicant's cognitive deficits are related to the applicant's ability to learn and demonstrate knowledge of English and/or U.S. history and government.)*

Sufficient Answer:

Vascular Dementia with Depression (DSM 290.43) and Psychosis
Essential Hypertension, Coronary Artery Disease, Degenerative Joint Disease, Hyperlipidemia,
Congestive Heart Failure, Prostatism, Bilateral Hearing Loss

This 68-year-old man has had a marked, progressive loss of memory and intellectual functioning over the past 5-6 years, related to long-standing hypertension of 7-8 years duration and disease of the cerebral blood vessels due to arteriosclerosis, including a stroke 5 years ago. His immediate recall, recent memory and remote memory are all profoundly impaired as a result of the stroke. His abstracting abilities, calculations and judgment are also severely impaired. He also has an extremely severe depression, accompanied by excessive anxiety. The extent of his cognitive deficits, especially in memory functioning and concentration, in addition to his depression and anxiety, would most definitely preclude his being able to retain new words, language skills and information well enough to pass basic English and Civics tests. *(Note: The doctor sufficiently explained how the applicant's conditions affected his ability to learn and demonstrate knowledge of English and/or U.S. history and government.)*

Example 4

Insufficient Answer:

(DSM 294.1) Dementia due to Hypertension and Mediterranean fever; (DSM 296.32) Major depression, recurrent, moderate. The patient is a 64 year old widowed female who presents numerous medical problems including a history of diabetes, joint disease, Mediterranean fever, hypertension, and gastro-intestinal distress. The patient also presents memory impairments, headaches, depressed mood, insomnia, poor appetite, impaired social and occupational functioning, poor concentration, dizziness and fatigue.

The cognitive deficits and neurological symptoms cause significant impairment in her daily living skills and represent a significant decline from a previous level of functioning. The above described cognitive and emotional impairments would preclude the patient from being able to take the citizenship tests. (Note: *The doctor failed to adequately describe the nexus between the applicant's symptoms, her dementia and depression, and how the applicant's cognitive and emotional impairments affects her ability to learn and demonstrate knowledge of English and/or civics.*)

Sufficient Answer:

(DSM 294.1) Dementia due to Hypertension and Mediterranean fever; (DSM 296.32) Major depression, recurrent, moderate. The patient is a 64 year old widowed female who presents numerous medical problems including a history of diabetes, joint disease, Mediterranean fever, hypertension, and gastro-intestinal distress. The patient also presents memory impairment, headaches, depressed mood, insomnia, poor appetite, impaired social and occupational functioning, poor concentration, dizziness and fatigue.

The patient's dementia and depression have resulted in cognitive deficits and neurological symptoms that cause significant impairment in her daily living skills and represent a significant decline from a previous level of functioning. She displays deficits in both recent and remote memory. Due to the patient's severe cognitive, emotional, and physical impairment she is unable to perform daily living skills, and therefore she has to depend on the help of the family.

The above described cognitive and emotional impairments would preclude the patient from being able to learn and assimilate new skills, including language and information, and she is therefore unable to take the citizenship tests. (Note: *The doctor adequately addressed how the applicant's dementia and depression are related to the cognitive and emotional impairments that affect her ability to learn and demonstrate knowledge of English and/or civics.*)

Example 5

Insufficient Answer:

Diagnosis of mental impairment:
Dementia, Late Onset, Vascular (DSM 290.0)

Diagnosis of Physical Disability:
Hypertension for 10 years, Cardiac Arrhythmia, Angina Pectoris
Chronic Dizziness, Insomnia, Headache, Bilateral Cataract, Poor Vision
Right Ear Deafness, Peptic Ulcer Disease, Hyperlipidemia
Osteoarthritis for 16 years with Chronic Low Back Pain

This 80-year-old woman has been my patient since August 1994. Her conditions are extensive and progressively deteriorating. She cannot initiate new tasks, such as studying from audio tapes at home. The combination of physical weakness and fear of getting lost prevent her from leaving home by herself to attend classes to learn English, U.S. history and civics. As a result of her mental impairments and physical disabilities, this applicant cannot reasonably be expected to pass a test of English proficiency or a test on U.S. history and civics. (Note: *The doctor failed to adequately explain the nexus between the applicant's conditions and how those conditions affect her ability to learn and demonstrate knowledge of English and/or civics.*)

Sufficient Answer:

Diagnosis of mental impairment:
Dementia, Late Onset, Vascular (DSM 290.0)

Diagnosis of Physical Disability:
Hypertension for 10 years, Cardiac Arrhythmia, Angina Pectoris
Chronic Dizziness, Insomnia, Headache, Bilateral Cataract, Poor Vision
Right Ear Deafness, Peptic Ulcer Disease, Hyperlipidemia
Osteoarthritis for 16 years with Chronic Low Back Pain

This 80-year-old woman has been my patient since August 11, 1994. She suffers from a dementia characterized by marked progressive loss of memory and intellectual functioning over the last several years. She is disoriented as to the year, season, day, day of the week. Her immediate recall, recent memory and remote memory are also profoundly impaired. Her abstracting abilities, calculations and judgment are also impoverished. Her vision is also severely impaired.

Her conditions are extensive and progressively deteriorating. The cognitive disturbance associated with her dementia makes it impossible for her to learn new language and retain new information. As a result of these mental impairments and physical disabilities, this applicant cannot reasonably be expected to pass a test of English proficiency or a test on U.S. history and civics. (Note: *The doctor adequately addressed the connection between the applicant's condition, and how it affects her ability to learn and demonstrate knowledge of English and/or civics.*)

Example 6

Insufficient Answer to Question 3:

The patient is a 70-year-old Russian speaking male who has been under my care since 4/23/92. Patient has a long history of chronic hypertension, uncontrollable for a long time in Russia. This vascular problem has been complicated by a stroke, first in 1982 in Russia, and a second stroke in March of 1992. Patient has been hospitalized at St. Elizabeth's Hospital with residual left leg weakness and speech impairment. It is my opinion that the patient is unable to learn English as well as U.S. history and civics. (Note: *The doctor failed to describe the nexus between the diagnosis and the applicant's impaired functioning, including his ability to learn or demonstrate knowledge of English and/or civics.*)

Sufficient Answer:

The patient is a 70 year old Russian speaking male who has been under my care since 4/23/92. Patient has a long history of chronic hypertension, uncontrollable for a long time in Russia. This vascular problem has been complicated by a stroke, first in 1982 in Russia, and a second stroke in March of 1992. Patient has been hospitalized at St.Elizabeth's Hospital with residual left leg weakness and speech impairment.

Patient complains of severe memory loss and demonstrates disturbances of memory, judgment and reasoning. This memory loss is part of his progressive vascular dementia and secondary to his chronic hypertension, as well as cerebral vascular disease with cognitive impairment due to his strokes. It is my opinion that he is unable to learn English as well as U.S. history and civics. He can't acquire new knowledge required for participation in the normal testing procedure for naturalization. (Note: *The doctor adequately addressed how the disturbances of memory, judgment and reasoning are related to the applicant's diagnosed conditions, and how they have impaired the applicant's functioning, including his ability to learn or demonstrate knowledge of English and/or civics.*)

Example 8

Insufficient Answer:

The patient is a 69-year-old female who has been under my psychiatric care since 10/96. DSM-IV diagnosis: Dementia due to Multiple Medical Problems, Parkinson Disease, Cerebral Arteriosclerosis, Severe Congestive Heart Failure with ascites, Cancer of the right ear, Dizziness, Arthritis, Insomnia. She shows moderate cognitive impairment and her cognitive functioning is also declined due to her multiple medical problems. As a result of these illnesses the patient is unable to learn English and U.S. History to participate in normal testing procedure. (Note: *The doctor provided failed to provide enough information about the nexus between the diagnosis and how it impaired the applicant's functioning so as to affect her ability to learn or demonstrate knowledge of English and/or civics.*)

Sufficient Answer:

The patient is a 69-year-old female who has been under my psychiatric care since 10/96. DSM-IV diagnosis (294.1): Dementia due to Multiple Medical Problems, Parkinson's Disease, Cerebral Arteriosclerosis, Severe Congestive Heart Failure with ascites, Cancer of the right ear, Dizziness, Arthritis, Insomnia. As a result of her dementia and Parkinson's Disease, she shows cognitive impairment, including attention and orientation deficit, difficulties with naming and repetition, decreased construction abilities and significant memory loss. Her cognitive functioning is also declined due to her other medical problems. As a result of the reduction in mental capacity brought about by her multiple conditions, the learning and memorization of new information is impossible. She is therefore unable to learn English and U.S. History to participate in the normal testing procedure. (Note: *The doctor provided enough information about the nexus between the diagnosis and the applicant's impaired functioning by describing the effect of her conditions on her cognitive functioning and on her ability to learn English and/or civics.*)

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-3/23/99

U.S. Department of Justice
Immigration and Naturalization Service

Information About the Form N-648 Medical Certification For Disability Exceptions

For a permanent resident to take the Oath of Allegiance and become a naturalized citizen, he or she must demonstrate knowledge of English and U.S. history and government. The Immigration and Nationality Act authorizes an exception to this requirement for individuals who are unable to learn or demonstrate knowledge of English or civics because of a physical or developmental disability or mental impairment. This exception is known as a "disability exception."

This form is intended to provide information about the disability exception to applicants for naturalization and to answer the most frequently asked questions relating to disability exceptions. This form must be read together with the instructions on the INS Form N-648 (Medical Certification for Disability Exceptions), and should be given to the applicant's doctor if the applicant believes that he or she might be eligible for the disability exception.

Who Qualifies for a Disability Exception?

An applicant for naturalization can qualify for a disability exception by demonstrating that he or she suffers from a medically determinable disability or impairment or combination of impairments that result(s) in functioning so **impaired** that it prevents him or her from learning or demonstrating knowledge of English and/or U.S. history and government. The authorized medical profession must therefore provide: 1) a full and complete description of the applicant's diagnosis; 2) a thorough explanation of how the condition diagnosed has impaired the functioning of the applicant so severely that the applicant is unable to learn or demonstrate knowledge of English and/or U.S. history and government; and 3) his or her conclusion about whether or not the applicant is capable of taking the English and/or U.S. history and government tests. The impairment must not be temporary (i.e., less than 12 months).

! Warning: An applicant will not qualify for a disability exception if the sole basis for the request is that he or she cannot learn or demonstrate knowledge of English and/or U.S. history and government because of old age, or if the impairment is the sole result of the illegal use of drugs.

How Does One Apply for a Disability Exception?

An applicant for naturalization may apply for a disability exception by submitting a Form N-648, Medical Certification for Disability Exceptions, along with the N-400, Application for Naturalization. The Form N-648 should be submitted with the N-400 less than six months after it was completed and signed by the authorized medical professional. The Form N-648 may be presented to the INS officer conducting the naturalization interview in limited circumstances, such as if the applicant developed a disability after submitting the N-400 application. In such cases the N-648 must have been completed within six months of the interview date. Some applicants who qualify for a disability exception may wish to try to take the English and civics tests, depending on their health on the day of their interview. Nevertheless, applicants who believe that they may need a disability exception should present the Form N-648 to the INS officer at the beginning of the interview, even if they wish to take the tests. Applicants will be given two opportunities to present a sufficient Form N-648 to INS and to pass the English and civics tests.

N-648A (3-23-99)

Which Medical Professionals Are Authorized to Complete the Form?

Medical and osteopathic doctors and clinical psychologists who are licensed to practice in the United States are authorized to complete the form N-648.

What Information Does the Doctor Need to Provide on the Form N-648?

The certifying doctor must answer completely and legibly all the questions in Part II of the Form N-648. The most important question in Part II is question 3. The certifying doctor must provide the following three-part response to question 3.

- (1) A full and complete description of the doctor's diagnosis, including, if applicable, the most recent DSM code.
- (2) An explanation of how the disability or impairment affects the applicant and prevents him or her from learning or demonstrating knowledge of English and/or U.S. history and government.
- (3) The doctor's conclusion about whether the applicant is able to learn or demonstrate knowledge of English and/or U.S. history and government.

NOTE: The certifying doctor is not limited to the space provided on the Form N-648 and should attach additional sheets of paper if necessary.

If the doctor describing a mental impairment does not have a specialization in psychiatry or neurology, the doctor must provide information about the qualifications and experience that permit him or her to diagnose a mental impairment in Question 3 and/or Question 6.

! Warning: The request for a disability exception may be summarily rejected if all the questions on the Form N-648 are not answered in a clear and legible fashion.

What if the Applicant's Request for a Disability Exception is Rejected?

If the applicant's request for a disability exception is rejected, he or she will be required to pass tests on English and U.S. history and government. The applicant will be given two opportunities to pass these tests. If the applicant fails to pass these tests after the second opportunity, the application for naturalization may be denied for this reason.

The applicant may seek administrative review of the denied application for naturalization by filing an appeal. The appeal must be filed within 30 days of receiving the denial of the application for naturalization. In seeking administrative review, the applicant may seek reconsideration of the rejected request for the disability exception (Form N-648). The applicant may rely on the Form N-648 previously submitted, or may file a new Form N-648 with supporting documentation. An INS supervisory officer will schedule a review hearing, review all information of record (including any new information submitted on appeal), and make a final decision on the Form N-648 and the application for naturalization. If the application for naturalization is denied as the result of the administrative review, the applicant may seek review of the denied application in district court.

U.S. Department of Justice
Immigration and Naturalization Service

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**Notice of Incomplete N-648
Medical Certification For Disability Exceptions**

Applicant's Name _____

A Number _____

Name of INS Officer: _____

For Official Use Only

NOTICE TO APPLICANT: The Form N-648 Medical Certification for Disability Exceptions that you have submitted is incomplete. Identified below in the boxes marked with an "X" is the information that your doctor needs to provide. Please return this letter to your doctor, along with the Form N-648, as soon as possible. Your doctor should complete the Form N-648 with the requested information, and you must bring the completed Form N-648 to your next scheduled interview. Please do not mail or drop off the completed Form N-648. **! WARNING:** You must ensure that your doctor provides all of the information requested below. If your doctor does not provide all requested information, your request for medical exception may be summarily rejected for failure to submit a complete Form N-648.

NOTICE TO CERTIFYING DOCTOR: The Form N-648 Medical Certification for Disability Exceptions that you filled out on behalf of the above-named applicant is incomplete. The deficient information is identified below in the boxes marked with an "X." Please read this letter carefully, complete the Form N-648 with the requested information, and return the completed Form N-648 to the applicant. *Note:* You are not limited to the space provided on the Form N-648 to detail your responses, and you may use more sheets of paper if necessary. **! WARNING:** If you do not provide all of the information requested below in a clear and legible fashion, the applicant's request for a medical exception may be summarily rejected for failure to submit a complete Form N-648.



Physical And Mental Health Information: *To qualify for a disability exception, the applicant must show that he or she suffers from a medically determinable disability or impairment or combination thereof that results in functioning so impaired that it prevents him or her from learning or demonstrating knowledge of English and/or civics. The impairment must not be temporary (i.e., less than 12 months). An applicant will not qualify for the exception if the sole basis for the request is that he or she cannot learn or demonstrate knowledge of English and/or civics because of old age.*

____ Please provide a full and complete medical diagnosis of the applicant's disability or impairment, including, if applicable, the most recent DSM Code (Question #3 on the Form N-648). *Note: the INS will not consider vague terms such as "organic brain syndrome" or "chronic brain syndrome" unless you identify what the etiology is.* Specific problem noted by INS: _____

____ Please explain how the disability or impairment prevents the applicant from learning or demonstrating knowledge of English and/or U.S. history and government (Question #3 of the Form N-648). Specific problem noted by INS: _____

____ Please provide your conclusion about whether the applicant is able to learn or demonstrate knowledge of English and/or U.S. history and government because of his or her condition (Question #3 on the Form N-648).

____ Please state whether or not the applicant's condition resulted from the illegal use of drugs (Question #4 on the Form N-648).

____ Please state whether or not the applicant's developmental disability first manifested itself before age 22 (Question #4 on the Form N-648).

____ Please state whether the applicant's condition is temporary (less than 12 months) or permanent (Question #5 on the Form N-648).

____ Other _____

Background Information: You Failed to Provide The Requested Background Information, or The Background Information Was Not Legible

- ☐ Please identify the date of your last examination of the applicant (Question #1 on the Form N-648).
- ☐ Please identify if this was your first examination of the applicant and, if it was, the name of the regular attending doctor (Question #2 on the Form N-648).
- ☐ Please identify your medical specialty or the qualifications and experience that permit you to make the assessment on the Form N-648 (Question #6 on the Form N-648).
- ☐ Please sign under penalty of perjury the Form N-648, and identify the date of signing. *Note: You may not use a stamp in place of your original signature.*
- ☐ Please type or print your last name, first name, and middle name on the bottom of page 2 of the Form N-648.
- ☐ Please type or print your business address and telephone number on the bottom of page 2 of the Form N-648.
- ☐ Please type or print your license number and licensing state on the bottom of page 2 of the Form N-648.
- ☐ Other _____
- _____
- _____
- _____

• **The following are examples of incomplete responses to question #3 --**

(a) The patient is a 75-year-old female who has hypertension and heart disease. She has suffered at least 2 heart attacks, once in 1996 and in 1997. Last year, she had a cerebral vascular accident (i.e. stroke) with paralysis on the left side. She is unable to learn English and basic U.S. history and civics. *(Note: The certifying doctor failed explain how the condition affects the applicant's ability to learn)*

(b) The patient suffers from Down's Syndrome. He should be exempted from the English language and U.S. civics requirements for civics. *(Note: The certifying doctor failed to identify the DSM Code, explain how the condition affects the applicant's ability to learn, and give an ultimate opinion on whether the condition diagnosed prevents the applicant from learning or demonstrating knowledge of English and/or civics).*

• **The following are examples of complete responses to question #3 --**

(a) The patient is a 75-year-old female who has hypertension and heart disease. She has suffered at least 2 heart attacks, once in 1996 and in 1997. Last year, she had a cerebral vascular accident (i.e. stroke) with paralysis on the left side. The patient's stroke has left her with severe and irreversible neurological damage. Because of the widespread damage to the brain tissue, she has suffered markedly decreased cerebral function and is incapable of remembering, articulating, or learning. In my professional medical opinion, the patient is unable to learn basic English and U.S. history and civics because of her mental and physical condition. *(Note: The certifying doctor identified the diagnosis, explained the effect the condition has on the applicant's ability to learn, and attested that the diagnosed condition prevents the applicant from learning or demonstrating knowledge of English and civics)*

(b) The patient suffers from Down's Syndrome, DSM Code 318.1. The patient's mental retardation is a global impairment that effects cognition, language, and motor skills. Because of the patient's global impairment, he cannot learn new skills and is not capable of reasoning. His memory is deficient, and he is only capable of performing simple daily activities. In my professional medical opinion, the patient is incapable of learning a new language (even basic new words of a new language) and U.S. history and civics because of his mental disability. *(Note: The certifying doctor provided the mental impairment, including the DSM Code, an explanation for how the condition affects the applicant's ability to learn, and a conclusion that the impairment prevents the applicant from learning or demonstrating knowledge of English and civics.)*

3/23/99 DRAFT

**ATTACHMENT TO N-335 WITH SAMPLE LANGUAGE
FOR RESULTS OF N-648 REVIEW**

Reference is made to your Application for Naturalization, Form N-400, which you filed on _____, pursuant to Section 316(a) (INSERT APPLICABLE SECTION OF LAW) of the Immigration and Nationality Act (INA).

(INSERT NORMAL CITES, LANGUAGE, AND PARAGRAPHS FOR OTHER GROUNDS OF INELIGIBILITY)

Under section 312 of the Immigration and Nationality Act (INA), and Title 8 of the Code of Federal Regulations (CFR), Part 312, an applicant for naturalization must demonstrate knowledge and understanding of the English language and United States history and government. However, section 312(b) of the INA provides that the English and civics requirements "shall not apply to any person who is unable because of physical or developmental disability or mental impairment to comply therewith." To qualify for an exception under section 312(b), an applicant must establish that he or she has a "medically determinable" physical or developmental disability or mental impairment. "Medically determinable" means that the disability or impairment, or combination thereof "results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical or laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual unable to demonstrate an understanding" of English and/or U.S. history and government.

Example # 1 – Failure to Submit An Amended or Second N-648

The record reflects that you submitted a Form N-648, Medical Certification for Disability Exception on _____ (INSERT DATE). On _____, (INSERT DATE) the adjudicating officer reviewed your N-648 and determined that the information contained therein was insufficient to establish that you were eligible for an exception from the section 312 requirements. Specifically, the adjudicating officer noted that (E.G. "the N-648 did not reflect the date of your last examination", **OR** "the N-648 did not contain a description of the certifying physician's medical specialty or experience and other qualifications in Part II, Question 3 or 6, which permits him or her to make an assessment of your stated diagnosis/disability". **OR** "the N-648 did not contain the certifying physician's license number and licensing state".

On _____, the adjudicating officer requested that you submit, within _____ (INSERT TIME FRAME – 30, 60, 90, etc.) days, an amended or second N-648 correcting the noted deficiencies. You failed to respond within the time period noted or to present the requested information at your reexamination. Your N-648, therefore, was rejected as insufficient and you were deemed ineligible for an exception from the section 312 requirements based on the section 312(b) disability exception.

On _____ and _____ (INSERT DATES) you were tested on your knowledge of English and U.S. History and Government. You failed to pass these tests. As a result, you have failed to meet the requirements of Section 312 and are ineligible for naturalization.

Example # 2

The record reflects that you submitted a Form N-648, Medical Certification for Disability Exception on _____ (INSERT DATE). On _____, (INSERT DATE) the adjudicating officer reviewed your N-648 and determined that the information contained therein was insufficient to establish that you were eligible for an exception from the section 312 requirements. Specifically, the adjudicating officer noted that (E.G. "the N-648 did not reflect the date of your last examination", OR "the N-648 did not contain a description of the certifying physician's medical specialty or experience and other qualifications in Part II, Question 3 or 6, which permits him or her to make an assessment of your stated diagnosis/disability" OR "the N-648 did not contain the certifying physician's license number and licensing state").

On _____, (INSERT DATE) the adjudicating officer requested that you submit, within _____ (INSERT TIME FRAME - 30, 60, 90, etc.) days, an amended or revised N-648 correcting the noted deficiencies. On _____ (INSERT DATE), you submitted an amended N-648. On _____ (INSERT DATE), the adjudicating officer again reviewed the N-648 and determined that the information contained therein was still insufficient to establish that you were eligible for a disability-exception. Specifically, the adjudicating officer noted that (E.G.--

- (1) "the N-648 still did not contain the requested date of your last examination", OR
- (2) "the N-648 still did not contain the requested description of the certifying physician's medical specialty or experience and other qualifications in Part II, Question 3 or 6, which permits him or her to make an assessment of your stated diagnosis/disability"

OR

(3) "the N-648 still did not contain the requested license number and licensing state".) Your N-648, therefore, was rejected as insufficient and you were deemed ineligible for an exception from the section 312 requirements based on the section 312(b) disability exception.

On _____ and _____ (INSERT DATES) you were tested on your knowledge of English and U.S. History and Government. You failed to pass these examinations. As a result, you have failed to meet the requirements of Section 312 and are ineligible for naturalization.

Example # 3

The record reflects that you submitted a Form N-648, Medical Certification for Disability Exception on _____ (INSERT DATE). On _____, (INSERT DATE) the adjudicating officer reviewed your N-648 and determined that the information contained therein was insufficient to establish that you were eligible for an exception from the section 312 requirements. Specifically, the adjudicating officer noted that (E.G. "while the N-648 states that you have hypertension, heart disease, and vascular dementia and should not be required to take the English and Civics tests, it does not contain any description or statement of how these diagnoses specifically affect your current functioning and ability to learn and/or demonstrate knowledge of the English language and civics.").

On _____, the adjudicating officer requested that you submit, within _____ (INSERT TIME FRAME - 30, 60, 90, etc.) days, an amended or revised N-648 correcting the noted deficiencies. On _____ (INSERT DATE), you submitted an amended N-648. On _____ (INSERT DATE), the adjudicating officer again reviewed the N-648 and determined that the information contained therein was still insufficient to establish you were eligible for a disability-exception. Specifically, the adjudicating officer noted that (E.G. "the N-648 again repeats your diagnosed ailments of hypertension, heart disease, and vascular dementia. The certifying physician also now states that some patients who have dementia can sometimes exhibit various symptoms including impaired motor skills, affected speech, and memory loss. The certifying physician further states that some patients with hypertension can exhibit confusion and poor eyesight. None of these descriptions, however, specifically address whether you actually have experienced these symptoms and, if so, whether these symptoms currently impair your ability to learn and/or demonstrate knowledge of the English language and civics.") Your N-648, therefore, was rejected as insufficient and you were deemed ineligible for an exception from the section 312 requirements based on the section 312(b) disability exception.

On _____ and _____ (INSERT DATES) you were tested on your knowledge of English and U.S. History and Government. You failed to pass these examinations. As a result, you have failed to meet the requirements of Section 312 and are ineligible for naturalization.

Accordingly, for the reasons set forth above, the application may not be approved and hereby is denied. No appeal lies from this decision. However, in accordance with 8 C.F.R. § 336.2(a), you may request a hearing before an immigration officer within thirty (30) days of the date of this notice. To do so, you must file the attached Form N-336 along with the correct fee with this Service.

01/25/11
DRAFT

ATTACHMENT TO FORM N-335

File: A00-000-000

APPLICANT: John J. DOE

APPLICATION: Application for Naturalization, Form N-400

Reference is made to your Application for Naturalization, Form N-400, which you filed on _____, pursuant to Section 316(a) of the Immigration and Nationality Act (INA).

Under section 335 of the Immigration and Nationality Act (INA), and Title 8 of the Code of Federal Regulations (CFR), Part 335.2(a), an applicant for naturalization must appear before a Service officer for examination on his or her application. During such examination, the applicant is questioned, under oath or affirmation, about his or her responses on the N-400. If necessary, the examining officer shall repeat such questions on the application in a simplified, different or more elaborate manner until the officer is satisfied that the applicant fully understands the questions being asked or is unable to understand English. 8 C.F.R. § 335.2(b).

The Service officer must make a determination on an application for naturalization. INA 335(d). Such naturalization application shall only be granted when the adjudicating officer is satisfied that the applicant has complied with all requirements for naturalization. 8 C.F.R. § 335.3(a). Further, before an applicant may be naturalized, he or she must take an oath of allegiance (INA 337(a)) and establish that it is his or her intention, in good faith, to assume and discharge the obligations of the oath of allegiance, and that his or her attitude toward the Constitution renders him or her capable of fulfilling the obligations of such oath. 8 C.F.R. § 337.1(c).

The records reflect that you appeared before an officer of the Service on _____, regarding your Application for Naturalization. At that time, the adjudicating officer attempted to review your application with you and determined that you were unable to answer questions regarding the information contained on your N-400 or to provide responses which would demonstrate to the satisfaction of the adjudicating officer that you have complied with the statutory requirements for naturalization.

[In particularly difficult cases, may wish to provide specific examples for clarity on review and for a better record. E.g. "Specifically, DAO ---- asked you on three different occasions "What is your name?" However, you were unable to respond [through the assistance of your Service interpreter] or [through reasonable physical accommodations which would permit you to print a response] or [through the recognized method as established by your legal guardian prior to the interview, i.e. through two blinks for a "yes" response] which would indicate to the officer that you understood the nature of the questions being posed.

[INSERT THIS ADDITIONAL PARAGRAPH IF APPLICABLE]

In addition, the Service officer requested responses to questions regarding your understanding of the requirements for attaining United States citizenship and of the oath of allegiance. The adjudicating officer determined that you were unable to demonstrate that you understood you were becoming a United States citizen, that you were forswearing allegiance to your country of nationality, and that you were personally and voluntarily agreeing to a change in your status to that of a United States citizen.

[In particularly difficult cases, the office may wish to provide specific examples for clarity on review and for a better record. E.g. "Specifically, DAO ---- asked you on three different occasions "Do you understand what it means to give allegiance to a country? or Do you understand what it means to be loyal to the United States?" However, you were unable to respond [through the assistance of your Service interpreter] or [through reasonable physical accommodations which would permit you to print a response] or [through the recognized method as established by your legal guardian prior to the interview, i.e. through two blinks for a "yes" response] which would indicate to the officer that you understood the nature of the questions being posed.

Accordingly, for the reasons set forth above, the application may not be approved and hereby is denied. No appeal lies from this decision. However, in accordance with 8 C.F.R. § 336.2(a), you may request a hearing before an immigration officer within thirty (30) days of the date of this notice. To do so, you must file the attached Form N-336 along with the correct fee with this Service.

INSTRUCTIONS FOR FORM N-648 MEDICAL CERTIFICATION FOR DISABILITY EXCEPTIONS

Purpose of This Form.

The Immigration and Naturalization Service's (INS) regulations require that applicants seeking an exception from the English and U.S. history and government (civics) requirements for naturalization based on physical or developmental disability or mental impairment submit this certification form, completed by a licensed medical doctor or a licensed clinical psychologist along with a completed application for naturalization (Form N-400). This certification form will be used by the INS to determine whether applicants for naturalization are entitled to an exception to the requirements.

In accordance with the Rehabilitation Act of 1973, INS makes reasonable modifications and/or accommodations to allow individuals with disabilities to participate in testing required for naturalization. Reasonable modifications and/or accommodations may include but are not limited to: Braille test forms, sign language interpreters, or off-site testing. Applicants should be advised that if reasonable modifications and/or accommodations will allow them to demonstrate knowledge of basic English and U.S. history and civics, this medical certification form is not required.

Part I of the form must be completed and signed by the applicant. The form also contains an acknowledged release by the applicant of his or her medical records to include both physical and mental health. Part II of the form must be completed and signed by the licensed medical doctor or licensed clinical psychologist performing the assessment of the applicant. The licensed medical doctor or licensed clinical psychologist is required to attest to the truthfulness of his or her certification under penalty of perjury and agree to release his or her medical records relating to 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 including first name, middle name and last name, with appropriate title. Also, indicate the number of the item to which the answer refers.

Additional medical reports may be submitted but they must be limited to not more than two pages, and have the name of the applicant, alien registration number (A #), and your signature on each page of the attachments. Additional medical records may be submitted but will not be accepted as a substitute for complete responses to questions asked on the certification 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 an exception to the English language and history and civics requirements for naturalization.
2. The INS requires that the licensed medical doctor or licensed clinical psychologist completing the form for the applicant be experienced in the area of the applicant's disability, and able to diagnose the applicant's disability and/or impairments. A certification must be made as to whether the applicant has the ability to learn English and civics sufficient to pass the INS' citizenship test. The tests require an ability to speak and write basic English and the ability to answer basic questions about the history and civics of the United States.

**INSTRUCTIONS FOR FORM N-648 MEDICAL
CERTIFICATION FOR DISABILITY EXCEPTIONS**

3. All licensed medical doctors or licensed clinical psychologists completing this form must be licensed practitioners in the State where they practice. Medical attestations will be accepted only from the following: licensed medical doctors (MDs) and licensed clinical psychologists.

4. All forms must be signed, certified, and dated by the licensed medical doctor or licensed clinical psychologist. The certification must be filed within 6 months of its completion and signature.

Penalties.

Both the applicant and the licensed medical doctor or licensed clinical psychologist are required to complete and sign the form under penalty of perjury. All statements contained in response to questions in this certification are declared to be true and correct under penalty of perjury.

Title 18, United States Code, Section 1546, provides in part:

Whoever knowingly makes under oath, or as permitted under penalty of perjury under Section 1746 of Title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement - shall be fined in accordance with this title or imprisoned not more than ten years or both.

If either the applicant or the licensed medical doctor or licensed clinical psychologist includes in this certification form any material information that the party knows to be false, the applicant and/or licensed medical doctor or licensed clinical psychologist may be liable for criminal prosecution under the laws of the United States.

The knowing placement of false information on the application may subject the applicant and the licensed medical doctor or psychologist to criminal penalties under Title 18 of the United States Code and to civil penalties under Section 274C of the Immigration and Nationality Act, 8 U.S.C. 1324c.

Privacy Act Notice: Authority for the collection of the information requested on this form is contained in 8 U.S.C. 1182(a)(15), 1183A, 1184(a), and 1258. The information will be used principally by the Service to whom it may be furnished to support an individual's application for naturalization under the Immigration and Nationality Act. Submission of the information is voluntary. It may also, as a matter of routine use, be disclosed to other federal, state, local and foreign law enforcement and regulatory agencies. Failure to provide the necessary information may result in the denial of the applicant's request for an exception to the English language and U.S. history and civics requirement in the applicant's naturalization application.

Reporting Burden: A person is not required to respond to a collection of information unless it displays a currently valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, the reporting burden for this collection of information is computed as follows: 1) learning about the form, 30 minutes; 2) completing the form, 60 minutes; and 3) assembling and filing the application, 30 minutes, for an estimated average of 120 minutes per response. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Immigration and Naturalization Service, 425 I Street, N.W., Room 5307, Washington, D.C. 20536. Do not mail your completed application to this address.

Part I. THIS SECTION TO BE COMPLETED BY THE APPLICANT *(Please print or type information)*

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

I, _____ authorize _____
(Applicant's Name) *(Licensed medical doctor or licensed clinical psychologist)*
to release all relevant physical and mental health information related to my medical status to the INS for the purpose of applying for an exception from the English language and U.S. civics testing requirements for naturalization. I certify under penalty of perjury pursuant to Title 28 U.S.C. Section 1746, that the information on the form and any evidence submitted with it is all true and correct. I am aware that the knowing placement of false information on the Form N-6 and related documents may also subject me to civil penalties under 8 U.S.C. Section 1324c.

Signature _____ Date _____

Part II. THIS SECTION TO BE COMPLETED BY A LICENSED MEDICAL DOCTOR OR LICENSED CLINICAL PSYCHOLOGIST *(see instructions)*

The individual named above is applying for an exception from the English language and U. S. history and civics test required of applicants for naturalization. The Immigration and Naturalization Service's regulations require that applicants for an exception based on disability submit this certification form, completed by a licensed medical doctor or licensed clinical psychologist, 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. _____ 19 _____
2. Is this your first examination of the individual? Yes _____ No _____
If yes, who is the regular attending physician? _____
3. Based on your examination, describe any findings of a physical or mental disability or impairment which, in your professional medical opinion, would prevent this applicant from demonstrating knowledge of basic English language and/or U.S. history and civics. Describe in detail. If applicant has a mental disability or impairment, please provide DSM diagnosis.

4. Did the applicant's disability or impairment result from the illegal use of drugs? If the applicant is developmentally disabled, did this condition first manifest itself before age 22? Please explain.
5. What is the duration of the applicant's disability or impairment? Is it temporary (less than 12 months) or permanent? Explain.
6. Please provide your medical speciality. If you are not specialized, provide your medical experience and other qualifications that permit you to make this assessment.

I certify under penalty of perjury under the laws of the United States of America, that the information on the form and any evidence submitted with it is all true and correct. I agree to release this applicant's relevant medical records upon request from the U.S. Immigration and Naturalization Service. I am aware that the knowing placement of false information on the Form N-648 and related documents may also subject me to civil penalties under 8 U.S.C. Section 1324c.

Signature _____ Date _____

Please Type or Print

Last Name	First Name	Middle Name
Business Address	City, State, ZIP Code	Telephone
License Number	Licensing State	



MAR 12 1997

425 I Street NW.
Washington, DC 20536

**Supplemental Information for Doctors and Psychologists
On Naturalization and the Exceptions from the English and Civics Requirements
for Persons with Disabilities**

By law, certain applicants for United States citizenship, or naturalization, may be granted an exception to the English language and/or history and government (civics) knowledge requirements if they have a physical or developmental disability or mental impairment that prevents them from being able to meet those requirements. Such persons must submit a new Medical Certification for Disability Exceptions (Form N-648), completed by a licensed medical doctor or licensed clinical psychologist, to the Immigration and Naturalization Service (INS). This overview provides doctors and psychologists with general information about the English and civics requirements of the naturalization process and the standards for obtaining a disability exception to those requirements.

The doctor or psychologist completing the form will need to certify whether the person's disability meets the regulatory definitions described on the form and whether the disability would prevent the person from being able to learn and demonstrate the level of basic English language and civics knowledge required at the INS examination.

On March 19, 1997, the INS will publish a final rule in the Federal Register that implements the congressionally-mandated exceptions from the English and civics naturalization requirements for person with disabilities.

Overview of Naturalization Requirements

ENGLISH REQUIREMENTS FOR NATURALIZATION

- Applicants for naturalization are required by law, unless statutorily exempted, to demonstrate "an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language" The reading and writing requirements are met "if the applicant can read or write simple words and phrases to the end that a reasonable test of his literacy shall be made and that no extraordinary or unreasonable conditions shall be imposed upon the applicant." Immigration and Nationality Act (INA), Section 312(a)(1); 8 U.S.C. 1423(a)(2).

- The applicant's ability to communicate in English must be demonstrated at the time of his or her naturalization interview with an INS officer. The applicant's ability to communicate in English is also shown by his or her ability to effectively engage in everyday activities which require an understanding of the English language, such as, going shopping, riding public transportation, making doctor's appointments, or going to the bank, etc.
- In assessing whether the applicant understands and can communicate in ordinary English, INS officers often ask questions such as "How are you?" "How long have you been in the United States?" "What country are you from?" "How many children do you have?" "How did you come to your INS interview today?" These are representative examples of the type and level of questions that an INS officer may ask an applicant to test for English proficiency. The officer will also judge comprehension and communication skills as he or she asks the applicant required questions about the information contained on his or her application. For example, the officer will ask whether the applicant has ever been arrested, been a member of a prohibited organization, or been absent from the United States for extended periods. If a question contains word that is too complex for the applicant, the officer will usually rephrase the question or explain the words in simpler English terms.
- An applicant is usually tested in written English at the INS interview, but he or she may choose to be tested in written English at an INS-approved outside testing organization. Oral English is always tested at the INS interview.
- The following list contains examples of sentences that the applicant might be expected to write at an interview following dictation by a Service officer:
 1. The American flag is red, white, and blue.
 2. The United States has fifty (50) states.
 3. There are two (2) Senators from each state.
 4. I drive a blue car
 5. I ride the bus to work
 6. Today is a nice day
- There are exceptions to the English language requirements available to applicants over 50 years of age who have resided in the U.S. as a legal permanent resident (LPR) for 20 years, or who are over 55 years of age and have resided in the U.S. as an LPR for 15 years prior to applying to become a citizen of the United States. This exception is available to such individuals regardless of whether they qualify for the disability exception.

U. S. HISTORY AND GOVERNMENT REQUIREMENTS FOR NATURALIZATION

- An applicant is required by law, unless otherwise exempted, to demonstrate "a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States." INA, Section 312(a)(2); 8 U.S.C. 1422 (a)(2).

- The following are examples of questions the applicant may be asked:
 1. How many states are in the union?
 2. What is the Constitution?
 3. What are the three branches of government?
 4. Can you name the two Senators from your state?
 5. Who is the President of the United States?
- Applicants are usually tested in history and government at the INS interview, but they may elect to be tested at an INS-approved outside testing organization.

OTHER NATURALIZATION REQUIREMENTS

- The disability exceptions are not blanket exemptions from all naturalization requirements. Congress did not authorize the INS to waive any of the other naturalization requirements for applicants with disabilities.
- Applicants must, for example, be able to demonstrate their good moral character, have the necessary residency as a permanent resident (five years, or three years if married to a U.S. citizen), and possess the ability to take the statutorily prescribed oath of allegiance. INS will continue to make reasonable accommodations to enable persons with disabilities to demonstrate that they can meet these requirements.

BACKGROUND INFORMATION ON DISABILITY REGULATION

- On October 25, 1994, Congress passed the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, 108 Stat. 4309 (1994). Section 108(a)(4) of this Act amended Section 312 of the INA to provide exceptions to the English language proficiency and history and government knowledge requirements for naturalization for persons with "physical or developmental disabilities" or "mental impairments."
- The final rule implementing this law provides that an exception shall be granted to any person "who is unable to satisfy the English language and civics requirements of Section 312 of the INA 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.
- 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 either to demonstrate an understanding of the English language, fulfill the requirements for English proficiency, even with reasonable modifications to the

methods of determining English proficiency, or demonstrate civics knowledge, as required by Section 312 of the INA..." Loss of cognitive abilities based on the direct effect of the illegal use of drugs is not covered as a disability.

PROCEDURES FOR OBTAINING THE EXCEPTIONS

- In order to base its adjudications of requests for the disability exceptions on solid medical evidence, the INS requires all persons seeking an exception to submit a new form N-648, Medical Certification for Disability Exceptions, to be completed by a licensed medical doctor or a licensed clinical psychologist. These certifying professionals must have a state license to practice in the United States (including the U.S. territories of Guam, Puerto Rico or the Virgin Islands). They must be experienced in diagnosing persons with physical disabilities or mental impairments. They must attest to the origin, nature, and extent of the medical condition as it relates to the exceptions for English and civics.
- The medical certification form may be submitted in support of requests for both the English proficiency and civics knowledge exceptions. Form N-648 may be photocopied. Forms may be obtained from local INS district offices, or by calling the INS Forms Center at 1-800-870-FORM. By the end of March, applicants may also call 1-800-755-0777 for information about the disability exceptions. Hearing impaired individuals may call 1-800-767-1TDD between 8:00 a.m. and 5:00 p.m., weekdays.
- Under penalty of perjury, both the applicant and the medical professional must attest that all information submitted is true and correct. A legal guardian may sign the N-648 authorizing the release of additional medical records to the Service.
- The INS reserves the right to request a doctor or an applicant to submit additional supporting evidence. The INS may also require a second certification from another qualified professional in cases where the Service has credible doubts about the veracity of a medical certification initially presented.
- Persons with disabilities who are not seeking an exception to the English and civics requirements do not need to submit Form N-648.
- In conformance with Section 504 of the Rehabilitation Act of 1973, INS will continue to provide reasonable modifications in its testing procedures to enable naturalization applicants who have disabilities to participate in the process. Examples of such modifications may include providing sign language interpreters, wheelchair-accessible test sites, or modifications in test format or administration procedures, among others.

THE MEDICAL CERTIFICATION (INS FORM N-648) FOR THE DISABILITY EXCEPTIONS

- A person who qualifies as disabled for other government benefit program is not necessarily unable to learn or demonstrate English proficiency or civics knowledge for naturalization.
- The certifying doctor or psychologist must assess the applicant's disability or impairment(s) to determine whether they are of such a degree as would prevent the applicant from being able to meet the basic English and civics requirements for naturalization as described above. Some individuals will have disabilities that qualify them for certain financial and other public benefits, but that do not prevent them from learning and demonstrating the ordinary English proficiency and civics knowledge required for citizenship.
- Questions #1 and #2 on Form N-648 request basic factual information; and are self-explanatory. The INS must know that the applicant was in fact examined, the date of such examination, and had an assessment made of his or her condition.
- Question #3 requires a diagnosis of the applicant's disability or impairment, and the certifier's assessment as to why the disability or impairment would prevent the applicant from meeting the English and/or civics requirements. If there is a mental impairment, the certifier must provide the DSM diagnosis.
- Question #4 requires that the certifier address whether the applicant's disability resulted from the illegal use of drugs. If applicant's condition was caused by the illegal use of drugs he or she is ineligible for the disability exceptions. Additionally, the certifier must specify when the developmental disability was first manifested, since under the regulation, the condition must have occurred prior to age 22.
- Question #5 requires that the certifier address the duration of the applicant's disability because only permanent disabilities (i.e. in existence 12 months or longer) meet the criteria for the exceptions.
- Question #6 requires a statement of medical speciality. The certifier must demonstrate how his or her education and experience qualify him or her to make this assessment of the applicant's physical or developmental disabilities or mental impairments.
- The certifier must also provide the INS with his or her state medical license number and licensing state for verification by the INS.

FACT SHEET

3/19/97

Final INS Rule:

Exceptions from English and Civics Testing Requirements For Naturalization Applicants With Disabilities

On March 19, 1997, the Immigration and Naturalization Service (INS) will publish a final rule in the *Federal Register* that implements Congressionally-mandated exceptions from the English and civics (U.S. history and government) requirements for naturalization for persons with disabilities that prevent them from meeting such requirements. This final rule makes changes to the proposed rule published in August, 1996. The INS invites public comments for 60 days on certain new proposals contained in this final rule concerning quality control, the appeals process and training for adjudicators.

BACKGROUND

- On October 25, 1994, Congress passed the Immigration and Nationality Technical Corrections Act of 1994. Section 108(a)(4) of this Act amended Section 312 of the Immigration and Nationality Act (INA) to provide exceptions to the English proficiency and history and government knowledge requirements for naturalization for persons with "physical or developmental disabilities" or "mental impairments."
 - While the proposed rule was under development, INS provided policy guidance to its field offices with preliminary instructions for adjudication of naturalization applications based on the exceptions provided under the 1994 Technical Corrections Act. The Service also provided preliminary definitions of the terms concerning disability and mental impairment in the Act.
 - The INS has consulted extensively with the Department of Health and Human Services (HHS), the Social Security Administration (SSA), and other government health agencies for guidance in developing the regulatory language contained in this final rule.
 - The INS published a proposed rule to implement this legislative change on August 28, 1996. INS has carefully considered 228 comments on the proposed rule which were submitted by a wide range of immigrant assistance groups, health professionals, organizations that assist persons with disabilities, and individuals. The final rule addresses these comments and makes substantial modifications.
-

THE FINAL RULE

Definitions

- The Service has modified the definitions of qualifying disabilities contained in the proposed rule in response to many public comments that the definitions were too narrow and inconsistent with existing definitions in other federal statutes.
- The rule now provides that an exception shall be granted 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..." or who is unable for any of the same reasons "to demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States."
- "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 [Section 312], or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications to the methods of determining English proficiency..." The definition of "medically determinable" is the same with regards to the exception from the civics knowledge requirement. Loss of cognitive abilities based on the direct effect of the illegal use of drugs is not covered as a disability.
- This interpretation of the disability and mental impairment terms in the Technical Corrections Act comports more closely with existing federal policies (such as Social Security Administration definitions) and regulations for implementing the nondiscrimination requirements of Section 504 of the Rehabilitation Act of 1973.

Procedures for Obtaining the Exceptions

- In order to base its adjudication of requests for the disability exceptions on solid medical evidence, the INS requires all persons seeking an exception to submit a new Form N-648, Medical Certification for Disability Exceptions, to be completed by a licensed medical doctor (which includes psychiatrists) or a licensed clinical psychologist. These certifying professionals must be licensed to practice in the United States (including the U.S. territories of Guam, Puerto Rico or the Virgin Islands). They must also be experienced in diagnosing persons with physical disabilities or mental impairments. They must attest to the origin, nature, and extent of the medical condition as it relates to the exceptions for English and civics. A person who qualifies as disabled for other government benefit programs is not necessarily unable to demonstrate the level of English proficiency or civics knowledge required for naturalization.

- The categories of health professionals who may certify an applicant's disability were expanded and clarified in response to comments that the proposed rule was too narrow in its near-exclusive dependence on civil surgeons. Civil surgeons who meet the current requirements may still certify an applicant's disability.
- The medical certification form may be submitted in support of requests for both the English proficiency and civics knowledge exceptions. Form N-648 may be photocopied. Forms may be obtained from local INS district offices, by calling the INS Forms Center at 1-800-870-3676, or by ordering it through the Internet at <http://www.usdoj.gov/ins>. By the end of March, applicants may also call 1-800-755-0777 or TDD: 1-800-767-1TDD, for information about the disability exceptions.
- Under penalty of perjury, both the applicant and the medical professional must attest that all information submitted is accurate. A legal guardian may sign the N-648 authorizing the release of additional medical records to the Service.
- The Service reserves the right to request an applicant to submit additional supporting evidence or a second certification from another qualified professional in cases where the Service has credible doubts about the veracity of a medical certification that has been initially presented.
- Persons with disabilities who are not seeking exceptions to the English and civics requirements do not need to submit Form N-648.
- In conformance with Section 504 of the Rehabilitation Act of 1973, INS will continue to provide reasonable modifications in its testing procedures to enable naturalization applicants who have disabilities to participate in the process. Examples of such modifications may include providing sign language interpreters, wheelchair-accessible test sites, or modifications in test format or administration procedures, among others.

Other Naturalization Requirements

- The disability exceptions are not blanket exemptions from all naturalization requirements. Congress did not authorize the Service to waive any of the other naturalization requirements outlined in the INA for applicants with disabilities.
- Applicants must, for example, be able to demonstrate their good moral character, have the necessary residency as a permanent resident (five years, or three years if married to a U.S. citizen), and have the ability to take the statutorily prescribed oath of allegiance. INS will continue to make reasonable accommodations to enable persons with disabilities to demonstrate that they can meet these requirements.

- When necessary, INS will accommodate applicants with disabilities by modifying procedures used to determine whether an applicant meets the requirements for naturalization, including those related to administration of the oath of allegiance. The Service believes that many applicants with disabilities, while excepted from the English and civics requirements, will be able to have a limited but sufficient understanding of the concepts of the oath.
- Each applicant's capabilities regarding the oath requirement will be assessed on a case-by-case basis. Although a disabled applicant need not understand every word of the oath at the interview, the INS officer must conclude that an applicant has an understanding of the nature of the oath. The Service will explain the oath in simplified terms to individuals who, because of their disability, have difficulty understanding it. If the officer concludes that an applicant does understand the nature of the oath, the oath can be administered. For example, an inquiry by an officer at the interview might include an attempt to determine whether the applicant understands that he or she is becoming a U.S. citizen, is forswearing allegiance to his or her other country of nationality, and personally and voluntarily agrees to this change of status. No requirements will be imposed on applicants with disabilities that are not required of other naturalization applicants.
- INS officers will also accept a wide variety of signals from an applicant with a disability that indicate that the applicant understands the nature of the oath, including, but not limited to, a simple head nod, eye blinking, or other signals specific to the individual that mean "yes" or "no".



425 I Street NW.
Washington, DC 20536

QUESTIONS & ANSWERS
PREPARED BY THE U.S. IMMIGRATION AND NATURALIZATION SERVICE

FINAL RULE ON EXCEPTIONS FROM ENGLISH AND CIVICS TESTING
REQUIREMENTS FOR NATURALIZATION FOR APPLICANTS WITH
DISABILITIES

- Q:** Which types of disabilities qualify for the new exceptions to the Section 312 requirements for naturalization regarding English proficiency and knowledge of United States history and government?
- A:** Three broad categories of disabilities were identified by Congress. They are "developmental disabilities," "mental impairments," and "physical disabilities." The Technical Corrections Act of 1994 did not specifically define these terms. The final rule published by the INS on March 19, 1997 in the *Federal Register* defines these disability groups as "medically determinable physical or mental impairments or combination of impairments." This definition comports with existing federal policies (such as those of the Social Security Administration) and regulations implementing the nondiscrimination requirements of Section 504 of the Rehabilitation Act of 1973. Disabilities and mental impairments do not include conditions that are temporary (a duration of less than 12 months) or that have resulted from an individual's illegal use of drugs.
- Q:** What are the principal changes made by INS to the proposed rule on the Section 312 disability exceptions issued in August, 1996?
- A:** The Service carefully considered 228 comments to the proposed rule and has made substantial changes to address those many thoughtful comments. The primary changes include:
- The definitions of disabilities and mental impairments now comport more closely with similar definitions in existing federal programs.
 - The categories of professionals who may certify an applicant's disability or mental impairment have been expanded and clarified to include licensed medical doctors (which includes medical doctors with specialties such as board certified psychiatrists) and licensed clinical psychologists, who are experienced in diagnosing disabilities. These professionals must be licensed to practice in the United States (including the U.S. territories of Guam, Puerto Rico, and the Virgin Islands). The proposed rule contained a near-exclusive dependence on civil surgeons. Civil surgeons who meet the current requirements may still certify an applicant's disability.

- Promulgation of a new, standardized Form N-648, Medical Certification for Disability Exceptions, to be completed by an appropriate medical professional. The Form may be submitted in support of requests for one or both of the exceptions from the English and civics requirements.

- Reservation of the Service's right to require additional supporting documentation or to require the applicant to submit a second disability certification when the Service either requires the additional information to make an accurate decision on the request for the exception or has credible doubts about the veracity of the initial medical certification submitted.

Q. What about people with disabilities who could probably take the tests if some sort of accommodations were made for them?

A. Where a reasonable accommodation or modification to the testing procedures would enable a naturalization applicant with a disability to participate in the process, the Service will provide such accommodation, as required by the Rehabilitation Act. This has been the Service's long-standing practice. There is no need for a medical certification in such a case. For example, modifications may include sign language interpreters, wheelchair-accessible interview sites, on-site interviewing and testing, or an extension of the time for the civics test to allow an applicant with a learning disability to complete the test. The disability exceptions implemented by this new regulation apply only to individuals whose disabilities are so significant that the applicants are unable to meet the English and civics requirements even with reasonable accommodations.

Q. Is it necessary for a person with one, or more, of these disabilities to document the existence of the disability?

A. Yes, but only if the individual is seeking an exception to the Section 312 requirements for English and/or civics based on his or her disability. Such applicants must submit the new Form N-648 (Medical Certification for Disability Exceptions). Applicants with disabilities who can take the tests, with reasonable accommodations if necessary, do not need to submit the Form N-648.

Q. What is the new form like?

A. The Form N-648, Medical Certification for Disability Exceptions, is two pages, accompanied by two pages of instructions. It provides space for the certifying professional to indicate his or her expertise in diagnosing disabilities. It requires the certifying professional to summarize his or her assessment of the applicant's disability and to attest that, in his or her professional opinion, the disability prevents the applicant from demonstrating the required level of English understanding and/or civics knowledge for naturalization. The form must be completed by the professional under penalty of perjury. The form also incorporates a release of any relevant

medical records which the INS may require to evaluate the certification. The release may be signed by the applicant or the applicant's legal guardian.

Q. Who fills out the form?

A. In addition to the applicant, the form must be completed by a qualified licensed medical doctor or licensed clinical psychologist. The professional must have expertise in diagnosing the type of physical or mental impairment which he or she is certifying.

Q. What kind of health professionals are eligible to prepare and sign the Medical Certification Form?

A. The categories of professionals who may certify an applicant's disability have been expanded and clarified from the proposed rule (issued in August 1996) to include licensed medical doctors (which includes medical doctors with specialties such as board certified psychiatrists) and licensed clinical psychologists, who are experienced in diagnosing disabilities. These professionals must be licensed to practice in the United States (including the U.S. territories of Guam, Puerto Rico, and the Virgin Islands). The proposed rule contained a near-exclusive dependence on civil surgeons. Civil surgeons who meet the current requirements may still certify an applicant's disability.

Q. When should the applicant submit the Form N-648, Medical Certification for Disability Exceptions?

A. The applicant should submit the medical certification form (Form N-648) as an attachment to his Form N-400, Application for Naturalization at the time of filing. Submission of the medical certification form at the time of filing the naturalization application will provide advance notice to INS of an individual's request for the English and civics exceptions, thereby enabling the Service to be better prepared to provide appropriate service and accommodations, as needed, for the applicant. (See also answer below on pending cases).

Q. Does a person who has an application for naturalization pending with the Service need to submit the new Form N-648, Medical Certification for Disability Exceptions?

A. If the person with a pending application has not previously submitted any medical documentation to support a request for the disability exceptions, he or she should obtain a medical certification form (N-648), have it completed by an authorized medical professional, and bring it to the interview. If, however, the applicant has provided supporting medical documentation in the past, as requested by INS, the INS officer will first consider that documentation to determine whether it contains the necessary information and is sufficient to grant the request for the exceptions based on the standards described in the final rule and in the N-648. If the information is not sufficient, the officer will request that the applicant submit an N-648 providing additional supporting information from an authorized medical

professional. For all other applicants who submit N-400 applications on or after publication of the final rule, the N-648 should be submitted with the N-400. This procedure for pending cases balances the Service's desire not to burden unduly applicants who have previously submitted sufficient medical documentation, albeit not on an N-648, with the Service's responsibility to adjudicate cases fairly based on the standards set forth in the final rule.

Q: May a person with a disability obtain a certification from his or her regular doctor?

A: Yes, if his or her doctor has expertise in diagnosing disabilities and meets the requirements as noted in the regulation and on the N-648. The doctor or clinical psychologist will have to certify the person's disability, under penalty of perjury.

Q: Why is a certification necessary at all if a person's disability is clearly visible?

A: INS Adjudication Officers are not doctors or psychologists, and should not be put in the position of making a medical determination for any type of benefit. Having the certification from a qualified professional provides the Service with the best documentation regarding the medical condition of the disabled naturalization applicant. Also, a standard form increases consistency in the adjudication of applications for the exceptions.

Q: Under what circumstances will INS require more information or a second certification?

A: The Service reserves the right to require the applicant to submit additional information in support of the original certification, or to submit a second certification form from another qualified professional. By obtaining an additional doctor's or psychologist's assessment, the Service is also better able to base its ultimate decision on eligibility for the disability exception on solid medical and/or psychological evidence. Adjudicators have been instructed to use restraint in such situations, and first to follow a set of steps designed to obtain any needed information or resolve unanswered questions regarding the legitimacy or sufficiency of the original certification. Officers who have a question about a certification or the certifying professional's credentials will consult with their supervisor, and may then contact the doctor or psychologist by telephone if deemed appropriate. In order to require a second certification form, the officer must document a legitimate basis for this determination in the applicant's file, and must receive approval from the supervisor. Officers are also encouraged to consult with another relevant federal or state agency, if that agency has determined the applicant's disability for its own purposes, before requiring a second certification. However, the fact that a person qualifies as disabled under another agency's rules does not automatically entitle the person to the English and civics exceptions for naturalization. When a second certification is required, the applicant should be given a new N-648. INS will not refer applicants to any specific doctor or psychologist. The Service may provide applicants with the name and telephone numbers of local medical societies and other appropriate referral sources.

Q: Who pays for the second medical certification?

- A. It is the responsibility of the applicant to pay for the second certification if the INS requires such additional documentation. Taking this burden on the applicant into account, INS officers have been instructed to use restraint in exercising this option, and should only exercise it when there is an unanswered question as to the disability determination rendered by the professional and when other attempts to obtain the needed information are unsuccessful. In addition, supervisory approval is necessary before an INS officer may request the second certification.
- Q. Why is INS reserving the right to require a second medical certification in instances where the Service has questions about the first certification?
- A. INS officers are not doctors or psychologists and should not place themselves in the position of making medical determinations for which they are not qualified. The procedures for requiring a second medical certification for questionable cases will help ensure that this does not occur. Reservation of this right also helps ensure that INS has all the information necessary to make an accurate and well documented decision on the request for a disability exception.
- Q. Will the INS keep an applicant's medical and mental health records confidential, if they are requested?
- A. As with other agencies, INS is required to protect applicants' personal, confidential records in accordance with the Privacy Act. The Service has long-standing procedures and practices for applicant records that ensure compliance with the Privacy Act's provisions, including procedures that protect medical records already required by law to be submitted when applicants apply for other immigration benefits. Applicants should take note of the Privacy Act Notice contained in the medical certification form which informs them that the principal use of the information submitted is to support an individual's application for naturalization. The Notice further informs the individual that submission of the information is voluntary and that it may, as a matter of routine use, be disclosed to other law enforcement entities. As with other applicant records, INS will make every effort to protect the confidentiality of the applicant's records within the requirements of the law.
- Q. How will INS protect against fraudulent efforts to get people naturalized through this disability regulation?
- A. The INS will use all the procedures currently in place to guard against fraud. Local Service officers have standard methods for ensuring the integrity of the naturalization process, including investigation of suspected unauthorized signatures on medical and other forms submitted in support of applications for immigration benefits. With regard to the disability determinations, the doctor's certification on the form, made under penalty of perjury, helps ensure the accuracy of the information being submitted. If an INS officer has reason to doubt

that the person signing the medical certification form is not a licensed medical professional as required by the regulation, the officer may verify the physician's status with state medical and psychological licensing boards or agencies. In addition, INS is conducting on-going outreach and education for members of the immigrant assistance and medical communities to inform them of the requirements of this new regulation.

Q. In making an assessment of an individual's disability or mental impairment, how will the medical professional know what level of English and civics knowledge the applicant will be expected to demonstrate during the naturalization interview?

A. INS fully recognizes that this will require an extensive and on-going effort to educate the many doctors and clinical psychologists who may be asked by applicants to complete medical certification forms. As part of its outreach efforts on this new regulation, INS will provide doctors and psychologists information on the naturalization requirements and process so that these professionals are better able to apply their medical knowledge of disabilities to the specific circumstances that will be faced by applicants for naturalization. The Service will continue to work with the Department of Health and Human Services, professional associations, immigrant assistance groups, and other organizations that work with people with mental and physical disabilities to develop methods of broadly disseminating this information.

Q. On August 28, 1996, INS issued a proposed rule regarding these disability-related exceptions. Since the final rule included substantial changes, is the public still able to comment?

A. INS received 228 comments on the proposed rule. After the comments were considered, it was clear that considerable changes would be made to the proposed rule. While the rule being issued is final, the INS is seeking additional comments on areas such as appeals of a denied naturalization case and various methods to ensure quality control.

Q. If naturalization applicants with disabilities are granted an exception to the civics knowledge provisions of Section 312, isn't it a double standard to hold these applicants responsible for taking and understanding the oath of allegiance required by section 337 of the INA?

A. This issue is of particular concern to the Service. INS is doing its utmost to interpret and administer Section 312 of the INA, and the subsequent technical amendment, in a sensitive and compassionate manner. We have sought assistance from the American public, as well as numerous governmental entities, including guidance from the Department of Justice's Office of Legal Counsel (OLC). We also carefully considered each of the comments on the oath and other issues that were submitted to INS during the comment period on the proposed rule. Following INS' request for legal guidance, OLC determined that INS does not have the authority to waive the requirement to take the statutorily prescribed oath of allegiance. INS will make reasonable accommodations for applicants with disabilities throughout the entire naturalization process pursuant to our mandate under the Rehabilitation Act of 1973. (See

answer below for INS accommodations to assist persons to meet naturalization requirements, including administration of the oath of allegiance).

Q. Will INS provide accommodations for persons with disabilities to enable them to meet the oath and other requirements for citizenship?

A. Yes. INS has and will continue to make reasonable accommodations and modifications for persons with disabilities that will enable them to participate in the naturalization process. Where necessary, such accommodation will include modifications to procedures officers use to determine whether an applicant has an understanding of the nature of the oath of allegiance. Each interview will be unique and each applicant's capabilities regarding the oath requirement will be assessed on a case-by-case basis. A family member or legal guardian, at the discretion of the Service, can in some instances assist with the interview by being allowed, in appropriate circumstances, to accompany an applicant with disabilities during the interview or by acting as the approved English language interpreter for those applicants whose disability prevents them from fulfilling the English language requirements of Section 312. The family member or guardian may only serve as the interpreter for the applicant, not as the proxy or surrogate for the applicant. Although an applicant with a disability need not understand every word of the oath at the interview, the adjudicating officer must conclude that the applicant has an understanding of the nature of the oath. INS officers will explain the oath in simplified terms to individuals who, because of their disability, have difficulty understanding it. In determining whether an applicant understands the oath, an INS officer may, for example, attempt to determine whether the applicant understands that he/she is becoming a United States citizen, is forswearing allegiance to his or her other country of nationality, and personally and voluntarily agrees to this change of his/her status. Officers can accept a wide variety of signals from an applicant that he/she understands the nature of the oath, including but not limited to a simple head nod, eye blinking, or other signals specific to the individual that clearly mean "yes" or "no." If the officer concludes that an applicant does understand the nature of the oath, the oath can be administered and similar signals of assent accepted. INS has instructed its field offices that accommodating applicants with disabilities in this manner should not be interpreted as imposing requirements on such applicants that are not required of other naturalization applicants. In addition, the Service currently expedites administration of the oath under the provisions of 8 CFR 337.3 which waives the statutory requirement of participation in a public oath ceremony for certain applicants with disabilities.

Q. Do these Section 312 exceptions constitute a blanket exemption for all the requirements for naturalization for persons with disabilities?

A. No. As described above, Congress did not authorize the Service to waive any of the other naturalization requirements outlined in the Immigration and Nationality Act (INA.) Applicants must, for example, be able to demonstrate their good moral character pursuant to the requirements of Section 316 of the INA, must meet the necessary residency requirements as a permanent resident (five years, or three years if married to a U.S. citizen), and must have

the ability to take the statutorily prescribed oath of allegiance (Section 337 of the INA). INS will continue to make reasonable accommodations, as described in the preceding answer, to enable persons with disabilities to demonstrate that they can meet these requirements, including administration of the oath.

Q. May a legal guardian take the oath on behalf of an applicant with disabilities if the applicant is not able to understand the nature of the oath?

A. No. The Department of Justice's Office of Legal Counsel has advised INS that current law does not permit a legal guardian to serve as a proxy for the applicant for purposes of taking the oath of allegiance.

Q. If a person who qualifies for the disability exception is unable to meet the requirement of taking the oath of allegiance, even with reasonable accommodations, will INS be immediately denying these cases?

A. INS recognizes that these cases will be sensitive. In order to ensure that these cases have been decided fairly and consistently, INS offices will temporarily hold these cases pending supervisory review and further guidance from Headquarters.

Q. Will INS afford naturalization applicants with disabilities a special appeal procedure should their naturalization application be denied over a question of the existence of the disability?

A. The determination of a request for an exception to the English and/or civics requirements for naturalization is part of the overall naturalization adjudication. All naturalization applicants may take advantage of the re-hearing provisions of the INA if a naturalization application is denied for any reason. (See section 336 of the INA and 8 CFR Part 336.) Independent medical evidence may be presented by the disabled applicant at the time of the re-hearing to support the claim of eligibility for a disability-based exception. The public is welcome to comment for 60 days on appeal procedures.

Q. Why did the INS take two years to issue a proposed rule implementing the Technical Corrections Act of 1994?

A. INS issued preliminary policy guidance to its field offices on disability waivers prior to the publication of the proposed rule. These guidelines included definitions of the three categories of disabilities based on the Congressional guidance provided in the House Report. These guidelines were in effect while the proposed rule was under development. In developing the proposed and final rules, INS consulted extensively with other federal agencies with expertise in disabilities and civil rights law (notably the Social Security Administration and the Department of Health and Human Services) and other Department of Justice divisions, including the Civil Rights Division. Numerous complex and difficult issues were raised during this process, as reflected in the preamble to the final rule. Sufficient time for this consultation

and consideration of the public's comments was needed to ensure that the final rule accurately and fairly implements the statute.

Q. Is this regulation being proposed now in response to the Welfare Reform Bill recently signed into law?

A. No. The regulation has been under development since the Technical Corrections Act was signed in 1994. Publication of the rule is in fulfillment of the Service's responsibility to implement the law. The President did reiterate his commitment to naturalization when he signed the welfare legislation. Promulgation of the final rule reinforces that commitment.

Q. Does the public have an opportunity to comment on the changes noted in the final rule?

A. The public is welcome to comment on particular points discussed in the "Discussion of Comments" portion of the final rule. In particular, the Service desires further comments on possible appeal procedures and quality control methods. Anyone may submit comments during a 60-day period. All comments should be addressed to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 5307, Washington, D.C. 20536. Comments should reference INS number 1702-96 on your correspondence.

Q. How will INS conduct quality control and assurance for these disability exception determinations?

A. INS is committed to complete quality control and assurance for the entire naturalization program. Quality control and assurance is mandatory for all local INS offices. With regard to the disability determinations under this new regulation, the Service is implementing the action items described below that all offices must follow. These required actions are in addition to existing naturalization quality control measures substantially strengthened by the Service in recent months.

- Centralized training at INS Headquarters for officers who will be initially responsible for adjudicating disability exception requests in the field;
- Requirement that these HQ-trained officers handle all disability determinations after publication of the final rule until remaining adjudicators in their offices are trained;
- Requirements for supervisory consultation and approval before an adjudicator may seek additional documentation from an applicant, a second medical certification, and before other steps in the determination process on the request for the exception(s);
- Requirements for adjudicators to document carefully and fully in the applicant's alien file the reasons for requesting second certifications, and for the denials of any request

for a disability exception.

- Review of disability exception determinations as part of the existing audit process conducted on random samplings of all naturalization cases. As stated in the Supplementary Information in the regulation, INS will soon augment this overall naturalization audit process with supplemental random samplings of cases where the applicant has requested a disability-based exception. As indicated in the supplementary section to the regulation, the Service is also investigating the possibility of entering into a contract with a private entity to perform these random samplings.

The adjudicator's naturalization processing checklist for each case will also incorporate the disability regulation determination (where applicable). The regulation invites the public to comment for 60 days on these measures and additional quality control measures for disability cases.

[Morbidity Key - 3/25/99]

①

Tech World

Green ^{also Bork}
Jim Aron's policy - not done

① Disability
Background - New program - 2 yrs - Reg w/ standards of
Review to look at waiver form - but not detailed
guidance - ~~not~~ so they were rejecting despite
doctor forms.

Sued in Miami - class action - if ^{I.N.S.} ~~form had~~
anything to do old age they were rejecting it
Working w/ CBOs & ~~closely~~ closely
Decided ^{DAMAs,}

12/30 Memo - part was a good fix but for other
reasons good for litigation -

New Guidance that will
Supersede all other guidance - Waiting for CBO
CBOs are very happy - center today
Final mfr mem + TUA

Guidance

- Streamline Review

- Don't ask for another test but not question diagnosis

- Role ~~is~~ is only fraud - they can ~~not~~ ask for

- more info about disease but they can ask

- about ~~connections~~ connections about disease

+ why can't learn.

Attached to go to ORs.

to come in & turn in a form

Very clear what is missing for D/S.

~~the~~ Reevaluate ~~the~~ all the cases - settlement - volunteer

(2)

Alan

Rodgers beating up on her. , not a viable
Good meeting
late in the day.

Estimate how many people who
call him

DOJ guy saw my judge by FRC

Training Videos

maybe went associated w/ them

- Hire service centers

medical reviewers to look at forms there
to correct problems before the interview
+ stamp it OK

PHS helped = pilot

• Anti-fraud -

• Oath capacity to take oath - may be a little
harder on them

• Fertility

• ~~the~~ Coalition of ~~disabled~~ Disabled living

New York Adjudicators

(3)

③ Change of Address Initiative
1800.

Big Run Campaign - Event
Request ~~Letter~~ if denied.

July 1, 1999 - date

NY ^{Times} Article

Adjudicator - ask Director a plan to respond
to the article. Bill Yaker to follow.
Director of IUSA



U.S. Department of Justice
Immigration & Naturalization Service
Office of Field Operations
Immigration Services Division - HQISD
POLICY & PROCEDURES
Techworld Building II
801 I Street, NW, 9th Floor, Rm. 935
Washington, DC 20536-2001
Tele. No. (202) 305-0540 or 0539
Fax. No. (202) 305-0108

FAX COVER

(for 43 pages including this cover sheet)

TO: Irene Bueno
FAX #: 456-5581
FROM: Alison Morris
DATE: 4/16/99
RE: N648 Guidance

Per your requests of Cathy St. Denis
and Merril Ratliff, attached is the
new INS disability guidance. The
Summary is at the very end of Attachment
G.

IMMIGRATION SERVICES
DIVISION, FIELD OPERATIONS



POLICY MEMORANDUM NO. 47

SUBJECT: Section 312 Disability Naturalization
Adjudications



U.S. Department of Justice
Immigration and Naturalization Service

HQ 70/33-P

425 I Street NW
Washington, DC 20536

APR - 7 1999

MEMORANDUM FOR ALL REGIONAL DIRECTORS
ALL DISTRICT DIRECTORS (EXCEPT FOREIGN)
ALL OFFICERS IN CHARGE (EXCEPT FOREIGN)
ALL SERVICE CENTER DIRECTORS

FROM:

Michael A. Pearson
Executive Associate Commissioner
Office of Field Operations

SUBJECT:

Section 312 Disability Naturalization Adjudications

This memorandum provides comprehensive policy guidance for the review of all Forms N-648, Medical Certification for Disability Exceptions, and supercedes the following memoranda:

- (1) **March 12, 1997, Section 312 Disability Naturalization Adjudications: Supplemental Policy Guidance for Field Offices**
- (2) **March 16, 1998, Section 312 Disability Naturalization Adjudications: Supplemental Policy Guidance for Field Offices, Part II**
- (3) **August 11, 1998, Memorandum to Clarify INS Policy on the Processing of Form N-648 Medical Certifications for Disability Exceptions**
- (4) **December 30, 1998, Section 312 Disability Naturalization Adjudications**

This memorandum also has several other purposes. In the December 30, 1998 memorandum, we provided criteria for review of responses to Part II, Question 3 on the N-648. These criteria generated some confusion, and some offices interpreted the criteria as changing the standard of review of N-648s. This memorandum restates the review standard (see Section E) and provides new examples to demonstrate acceptable and unacceptable answers to Question 3

Memorandum for All Regional Directors
All District Directors (Except Foreign)
All Officers in Charge (Except Foreign)

Subject: Section 312 Disability Naturalization Adjudications

on the N-648 (see **Attachment A**). This review standard should be the standard that is applied to all currently pending N-648s.

This memorandum also addresses: (1) issues related to the validity, timeliness, and review of the N-648 at the interview; (2) the addition of doctors of osteopathy to the list of medical professionals authorized to complete the N-648; (3) the role of the District Adjudications Officer (DAO) in the current N-648 review process; (4) procedures for requesting additional information and handling of cases suspected of fraud; (5) procedures field offices must follow to evaluate certain N-648s reviewed since December 30th; and (6) future consolidation of N-648 reviews by medical professionals at the Service Centers. See **Attachment G** for a summary of information addressed in each section of this memorandum.

A. Disability Exceptions under Section 312

Each Supervisory District Adjudications Officer (SDAO) and DAO responsible for reviewing N-648s should be thoroughly familiar with the standard for the section 312(b) disability exception. The standard is clearly stated in the Immigration and Nationality Act (Act) as well as in the regulations at 8 CFR 312.2.

Section 312(b) provides that the English and civics requirements "shall not apply to any person who is unable because of **physical or developmental disability or mental impairment** to comply therewith." A doctor must establish that the applicant has a "**medically determinable**" physical or developmental disability or mental impairment in order for the applicant to qualify for the disability exception. "Medically determinable" means that the disability or impairment, or combination thereof "results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical or laboratory¹ diagnostic techniques to have resulted in functioning so impaired as to render an individual unable to demonstrate an understanding" of English and/or U.S. history and government.

In simple terms, this standard requires that the doctor establish that the applicant has a physical or mental abnormality that has impaired an individual's functioning so severely that the individual is unable to learn or demonstrate knowledge of English and/or U.S. history and government.

It is important to note that an exception from the section 312 requirements **does not** waive any other naturalization requirements. Thus, those applicants whose disability exception requests have been accepted must still establish good moral character, residence, assent to the oath, etc.

¹ The final rule published in the Federal Register at 64 FR 7990, effective March 22, 1999, changes "clinical and laboratory" to "clinical or laboratory".

Memorandum for All Regional Directors
All District Directors (Except Foreign)
All Officers in Charge (Except Foreign)

Subject: Section 312 Disability Naturalization Adjudications

B. Medical Professionals Authorized to Complete the N-648

Under 8 C.F.R. 312.2, the following medical professionals who are licensed to practice in the United States (including Guam, Puerto Rico, and the Virgin Islands) are authorized to complete an N-648 on behalf of an applicant: 1) medical doctors; 2) doctors of osteopathy²; and 3) clinical psychologists. Doctors must also certify, under penalty of perjury, that their statements are true and correct. In addition, doctors completing the form must attest either that their medical specialty or their experience and other qualifications permit them to make a disability assessment. An N-648 should be reviewed based on the standard of review outlined in Section E below, without regard to the type of authorized medical professional completing the form or the type of disability or impairment diagnosed. Therefore, diagnoses of mental impairments by general practitioners or family doctors are acceptable if the N-648 is otherwise sufficient.

C. Validity and Timeliness of the N-648

Questions also have been raised about the timeliness and expiration of the Form N-648 and whether it is valid only for a certain time period. The only time restriction on the filing of the Form N-648 is the requirement that it be submitted within six months of when it was completed by the doctor. Thus, if filed within the six month timeframe, the Form N-648 is valid and **never** expires.

If an applicant submits an N-648 for the first time either: (1) with the N-400; (2) at the initial interview; or (3) at reexamination the N-648 is valid as long as it was completed and signed by a certifying physician within six months of when it was submitted. Therefore, DAOs should not reject N-648s that were filed properly with the Form N-400 and submitted within six months of the date of filing, simply because the interview occurs more than six months after the N-400 was filed. For example, an N-648 completed and signed by the certifying doctor on October 1, 1998 must be submitted to the Service no later than April 1, 1999.

However, if the applicant's first N-648 was deemed insufficient and the applicant submits an amended or second N-648, the second or amended N-648 is valid, even if it is more than six months old, as long as it was completed and signed after the date of the applicant's first interview and was submitted by the date specified by the Service in the N-14.

D. Appropriate Role of Adjudicators in Reviewing N-648s

DAOs and SDAOs are responsible for determining whether the applicant meets the requirements of section 312. In reviewing the N-648, the DAO's role is to determine whether the N-648 contains sufficient information to establish that the applicant is eligible for a disability exception. The medical professional's role is to certify the applicant's diagnosis and how this

² The final rule also adds doctors of osteopathy to the list of medical professionals authorized to complete N-648s.

Memorandum for All Regional Directors
All District Directors (Except Foreign)
All Officers in Charge (Except Foreign)

Subject: Section 312 Disability Naturalization Adjudications

condition has affected the applicant's ability to learn or demonstrate knowledge of English and/or U.S. history and civics.

DAOs should not deny the existence of a disability or impairment by questioning the doctor's diagnosis. All SDAOs and DAOs are directed to use courtesy, respect, and sensitivity in reviewing N-648s and in conducting all aspects of the naturalization process for persons with disabilities. DAOs should not:

- (1) Direct or recommend that applicants undergo specific medical tests to establish their disability; or
- (2) Require that applicants or doctors provide the names or dosages of medications prescribed; or
- (3) Refer applicants to commercial medical referral services listed in telephone directories or to any specific medical provider.

E. Standard of Review of the N-648

SDAOs and DAOs are responsible for reviewing every N-648 (including instances where an applicant submits multiple N-648s at the same time) to ensure that the required identifying information is provided (e.g., applicant name and A number, certifying doctor's license number, etc.) and that the form contains the required signatures of the applicant and doctor. DAOs should allow applicants to complete missing identifying information at the time of the interview (e.g., applicant's signature or A number). DAOs also should ensure that all questions are legible and answered fully and completely. After reviewing an N-648 for sufficiency, DAOs may either accept the original, amended or second N-648 as sufficient, continue the case and request additional information because the first N-648 is incomplete or insufficient, or reject the second or amended N-648 as insufficient (see Section F below).

1. Clarification of Standard of Review

The most important question on the N-648 form is Part II, Question 3, which asks doctors to "describe any findings of a physical or mental disability or impairment" which, in their professional medical opinion, would prevent the applicant from demonstrating knowledge of English and/or U.S. history and civics. Doctors are asked to answer this question based on their examination of the applicant, and to describe their findings in detail. They are also asked to provide a Diagnostic Statistical Manual (DSM) code if appropriate.

In an attempt to provide DAOs and SDAOs with more specific guidance about the review process, the December 30, 1998 memorandum included criteria for reviewing answers to Question 3. Item two of the four-part response required the certifying doctor to provide:

Memorandum for All Regional Directors
All District Directors (Except Foreign)
All Officers in Charge (Except Foreign)

Subject: Section 312 Disability Naturalization Adjudications

“(2) a detailed explanation of how you reached the diagnosis, including clinical findings and/or confirmatory laboratory tests that you relied upon to make the diagnosis.”

Item two has generated some confusion and, in certain instances, N-648s may have been rejected or applicants may have been asked to resubmit N-648s because the certifying doctor failed to provide specific descriptions of the tests performed to support how he or she reached the diagnosis.

Unless and until instructed otherwise, DAOs should not require doctors to provide an explanation of how they reached their diagnosis, or provide a listing of clinical or laboratory techniques used to reach the diagnosis for an N-648 to be acceptable. However, doctors must provide a sufficiently thorough explanation of how the condition they diagnosed has impaired the functioning of the applicant so severely that the applicant is unable to learn or demonstrate knowledge of English and/or U.S. history and government.

Certifying doctors in all instances are required to provide the following three-part response to Question 3:

- (1) A full and complete description of the doctor's medical diagnosis, including, if applicable, the most recent DSM code;
- (2) An explanation of how the disability or impairment affects the applicant and prevents him or her from learning or demonstrating knowledge of English and/or U.S. history and government; and
- (3) The doctor's conclusion whether the applicant is able to learn or demonstrate knowledge of English and/or U.S. history and government.

The focal point of the DAO's review should be to determine if the doctor has clearly stated how the condition affects the applicant's ability to function, i.e., the **nexus** between the disability, impairment, or combination of impairments **and** the applicant's ability to learn or demonstrate knowledge of English and/or U.S. history and government. There are no key words, phrases, or tests that will indicate sufficiency of a nexus, nor is there a list of conditions, symptoms, or complications that will always be caused by or linked to certain disabilities or impairments. Rather, DAOs and SDAOs must evaluate each N-648 individually and determine, based on all the information provided in Question 3, whether the applicant has met the burden of showing that the anatomical, physiological, or psychological abnormality described has so impaired the applicant's functioning that he or she is unable to learn or demonstrate knowledge of English and/or U.S. history and government. See **Attachment A** for examples of insufficient and sufficient answers to question 3 on the N-648.

Memorandum for All Regional Directors
All District Directors (Except Foreign)
All Officers in Charge (Except Foreign)

Subject: Section 312 Disability Naturalization Adjudications

2. Old Age and Depression

The review standard is exactly the same for all N-648s, regardless of the type of condition described. Therefore, as discussed below, DAOs should review N-648s reflecting mental impairments such as depression, or disabilities related to, associated with, or caused by "old age" the same way they review all other medically determinable conditions that may qualify for a section 312 disability exception.

"Old age" in and of itself, is not a medically determinable physical or developmental disability or mental impairment. However, an individual with a disease or disability that is related to, associated with, or caused by old age (e.g., Alzheimer's, Parkinson's disease, senile dementia, etc.) can qualify for a disability exception. Like any other disease or disability, some diseases or disabilities that result from old age may qualify for a section 312 exception, while others may not.

The critical determination for SDAOs and DAOs adjudicating a Form N-648 that reflects a disability related to old age is **not** whether the disease or disability is solely the result of old age. **Rather**, the SDAO and DAO should assess whether the Form N-648 reflects that the impairment results in functioning so impaired that the applicant is unable to learn or demonstrate knowledge of English and/or U.S. history and government. In making that determination, the DAOs should again focus on whether the doctor has established a sufficient nexus between the condition and how that condition has resulted in the applicant's impaired functioning.

Similarly, the Service has not adopted a particular or special rule for adjudicating Form N-648s reflecting "depression" as the stated disability. Depression should be treated like any other disease or disability and evaluated based on the standard under section 312. Thus, again, SDAOs and DAOs should assess whether the Form N-648 reflects that the described condition results in functioning so impaired that the applicant is unable to meet the requirements of section 312, and should rely on the criteria above in making that determination.

F. Procedures for Review of and Action on N-648s

Under 8 CFR 312.2(b)(2), applicants are required to file the N-648 with their N-400. However, the Service has given applicants wide latitude in submitting N-648s during the interview process. Service policy is to allow applicants two opportunities to present a sufficient N-648. In addition, under 8 CFR 312.5, applicants should receive two opportunities to meet the requirements of section 312 of the INA. Some District Offices have requested clarification about the timing of N-648 submissions at the interview and testing applicants on English and/or U.S. history and government (hereinafter "English and civics").

The section below addresses the various stages of the interview process and what actions officers should take at each stage when an N-648 is involved. Attached to this memorandum are several documents related to the N-648 process. All district offices must use these attachments

Page 7

Memorandum for All Regional Directors
All District Directors (Except Foreign)
All Officers in Charge (Except Foreign)

Subject: Section 312 Disability Naturalization Adjudications

and discontinue use of any local or previous request for information sheets prepared for Form N-648s. The following documents are attached to this memorandum:

- (1) an Information Sheet that provides applicants with additional information about the N-648 and how to complete it properly (**Attachment B**);
- (2) a revised Notice of Incomplete N-648 ("Notice") (previously titled Request for Additional Information) (**Attachment C**);
- (3) a sample Notice that has been properly completed (**Attachment D**); and
- (4) several sample paragraphs for inclusion in the Form N-335, Decision on Application for Naturalization, that will advise applicants of the bases for rejection of an N-648 (**Attachment E**).

Most of the information SDAOs and DAOs need to determine the sufficiency of an N-648 should appear on the original N-648, amended N-648, or supplementary documentation (if any) provided by the certifying doctor. In general, DAOs are expected to make the initial determination on an N-648. The supervisory approval required under NQP4 prior to the final decision on the case is not required before the DAO can make an initial decision about whether to accept or reject the N-648. In keeping with normal procedures, DAOs should consult with SDAOs about cases with N-648s involving complex questions or issues that need to be resolved before making an initial decision on such N-648s. DAOs should also consult with SDAOs about cases where there is evidence of fraud in the N-648 process (see Section H below).

At all stages in the N-648 review process, DAOs should keep the applicant informed about the status of the N-648 review process, whether the applicant will be tested on English or civics, and in which language the interview will be conducted. For example, if an applicant's N-648 is deemed sufficient, DAOs should advise the applicant that the N-648 has been accepted and that the interview will proceed in his or her native language (if an interpreter is available). If an applicant's N-648 is insufficient, DAOs should advise the applicant that the N-648 has not been accepted, and that the applicant will be tested on English and civics. However, if the DAO is or was unable to swear in the applicant because of his or her inability to speak English, the DAO should explain that the applicant has not met the requirement of being able to speak English but will have another opportunity to meet the English and civics requirements. DAOs and SDAOs should comply with the following procedures when reviewing N-648s at the initial interview or on reexamination:

1. Initial or Preliminary Interview--No N-648 in A-File or Presented at Interview

If, at a preliminary interview, the A-file does not contain an N-648 and the applicant does not present one, the DAO should:

- (a) Proceed with the interview, including testing the applicant on English and civics;

Memorandum for All Regional Directors
All District Directors (Except Foreign)
All Officers in Charge (Except Foreign)

Subject: Section 312 Disability Naturalization Adjudications

- (b) If the applicant fails one or both, or the DAO is unable to begin the interview because of the applicant's inability to understand English, schedule the applicant for reexamination as provided under 8 CFR § 335.3(b), which will include retesting on English and civics under 8 CFR § 312.5.

2. Initial or Preliminary Interview--N-648 Included in A-File or Presented at Interview

If, at a preliminary interview, the A-file contains an N-648 or the applicant submits one, the DAO should:

- (a) Review the N-648 for sufficiency;
- (b) If the N-648 is sufficient, proceed with the interview without testing the applicant on English and civics;
- (c) If the DAO determines the N-648 is insufficient, the DAO should:

- (i) Complete a Notice of Incomplete N-648 as an Attachment to the N-14

DAOs should only check those items that are necessary to be completed in order for the N-648 to be sufficient. In addition, where a DAO determines that a certifying doctor failed to provide sufficient detail as to the nexus between the applicant's condition and his or her ability to learn, the DAO should also specify the exact nature of the deficiency in the space provided. (See **Attachment D**);

- (ii) Provide a copy of the Notice and the original Form N-648 to the applicant, requesting that the applicant resubmit the Form N-648 to the doctor for completion;
- (iii) Retain a copy of the original N-648 and the Notice in the applicant's A-file;
- (iv) Before proceeding with the interview, explain to the applicant that he or she is about to be tested on English and civics. However, also explain that the applicant has another opportunity not only to qualify for the disability exception but also, if he or she fails, to be tested again on English and civics.
- (v) Proceed with the interview, including testing the applicant on English and civics (if the applicant was able to be sworn in);
- (vi) If the applicant fails one or both, or the DAO is unable to begin the interview because of the applicant's inability to understand English,

Memorandum for All Regional Directors
All District Directors (Except Foreign)
All Officers in Charge (Except Foreign)

Subject: Section 312 Disability Naturalization Adjudications

schedule the applicant for reexamination as provided under 8 CFR § 335.3(b), which will include retesting on English and civics under 8 CFR § 312.5.

3. Reexamination--Applicant Fails to Appear or Fails to Submit an Amended or Second N-648

If an applicant fails to appear for reexamination, he or she must notify the Service of the reasons for non-appearance. If the applicant fails to establish good cause for the nonappearance, the applicant will be deemed to have failed the second examination pursuant to 8 CFR § 312.5(b) and the Service shall deny the application for naturalization pursuant to 8 CFR § 336.1.

If an applicant appears for reexamination but fails, **without good cause**, to submit an amended or second N-648, the DAO should:

- (a) Proceed with the reexamination, testing the applicant for the second time on English and civics;
- (b) If the applicant fails the English and civics tests for the second time, prepare denial of application for failure to satisfy the requirements of Section 312, including bases for rejection of the N-648 and any other applicable grounds (See Attachment E).

If an applicant appears for reexamination and can demonstrate **good cause** for failure to submit an amended or second N-648, the DAO should:

- (a) Stop the reexamination and do not test the applicant for a second time on English and civics;
- (b) Schedule the applicant for a reexamination at a later date under 8 CFR § 335.3(b).

4. Reexamination--Applicant Submits Amended or Second N-648

If, at the reexamination, the applicant submits an amended or second N-648, the DAO should:

- (a) Review the original N-648, the Notice, and the amended or second N-648;
- (b) If the amended or second N-648 is now sufficient, proceed with the interview without testing the applicant on English and civics;
- (c) If the amended or second N-648 is still insufficient, test the applicant for a second time on English and civics;
- (d) If the applicant fails the English and civics tests for the second time, prepare denial of application for failure to satisfy the requirements of Section 312,

Memorandum for All Regional Directors
All District Directors (Except Foreign)
All Officers in Charge (Except Foreign)

Subject: Section 312 Disability Naturalization Adjudications

including the bases for rejection of the N-648 and any other applicable grounds.
(See **Attachment E**).

5. Reexamination--Applicant Submits N-648 for the First Time

If, at the beginning of the reexamination the applicant submits an N-648 for the first time, the DAO should:

- (a) Review the N-648 for sufficiency;
- (b) If the N-648 is sufficient, proceed with the interview without retesting the applicant on English and civics;
- (c) If the N-648 is insufficient, the DAO should:
 - (i) Complete a Notice of Incomplete N-648 as an Attachment to the N-14 (See **Attachment D**) and provide a copy of the Notice and the original Form N-648 to the applicant, requesting that the applicant resubmit the Form N-648 to the doctor for proper completion;
 - (ii) Retain a copy of the original N-648 and the completed Notice in the applicant's A file;
 - (iii) Stop the reexamination and do not test the applicant for a second time on English and civics;
 - (iv) Schedule the applicant for a reexamination at a later date under 8 CFR § 335.3(b).

If, at the reexamination, the applicant presents an N-648 after he or she has been retested and failed a second time, the DAO should:

- (a) Review the N-648 for sufficiency;
- (b) If the N-648 is sufficient, proceed with the interview;
- (c) If the N-648 is insufficient, the DAO should:
 - (i) Complete a Notice of Incomplete N-648 as an Attachment to the N-14 (See **Attachment D**) and provide a copy of the Notice and the original Form N-648 to the applicant, requesting that the applicant resubmit the Form N-648 to the doctor for proper completion;
 - (ii) Retain a copy of the original N-648 and the completed Notice in the applicant's A file;

Memorandum for All Regional Directors
All District Directors (Except Foreign)
All Officers in Charge (Except Foreign)

Subject: Section 312 Disability Naturalization Adjudications

- (iii) Hold issuance of the decision on the application until an amended or second N-648 is submitted as requested or the time for submission has expired.

Once the second or amended N-648 is received, the DAO should:

- (a) Review the original N-648, the Notice, and the amended or second N-648;
- (b) If the amended or second N-648 is now sufficient, continue with the reexamination (or if the response was through the mail, call the applicant in to complete the interview);
- (c) If the amended or second N-648 is still insufficient, issue the denial of the application for failure to satisfy the requirements of Section 312, including the bases for rejection of the N-648 and any other applicable grounds. (See **Attachment E**).

6. Postponed Reexamination for Good Cause

If an applicant appears for a reexamination that was previously postponed for good cause and submits an amended or second N-648, the DAO should:

- (a) Review the original N-648, the Notice, and the amended or second N-648;
- (b) If the amended or second N-648 is now sufficient, proceed with the interview (without retesting the applicant on English and civics);
- (c) If the amended or second N-648 is still insufficient, proceed with the interview, testing the applicant for a second time on English and civics;
- (d) If the applicant fails the English and civics tests for the second time, prepare the denial of application for failure to satisfy the requirements of Section 312, including the bases for rejection of the N-648 and any other applicable grounds. (See **Attachment E**).

If an applicant appears for an examination that was previously postponed for good cause but fails to submit an amended or second N-648, the DAO should:

- (a) Proceed with the reexamination, testing the applicant for the second time on English and civics;
- (b) If the applicant fails the English and civics exams for the second time, prepare a denial of the application for failure to satisfy the requirements of Section 312, including bases for rejection of the N-648 and any other applicable grounds (See **Attachment E**).

G. Final Denials of N-400s with N-648s

The Service has determined that the current procedures for a hearing on a naturalization denial under section 336 of the Act is adequate to address N-648-related cases. A denial of an

Memorandum for All Regional Directors
All District Directors (Except Foreign)
All Officers in Charge (Except Foreign)

Subject: Section 312 Disability Naturalization Adjudications

N-400 is always based on a failure to meet one or more statutory requirements for naturalization. The N-648 is a request for an exception from the section 312 requirements. Therefore, if the Service determines that an applicant is not eligible for a disability exception and the applicant fails to pass the English and civics tests, the Service will deny the N-400 for failure to meet the section 312 requirements. Thus, the N-648 review is part of the overall adjudication of the N-400 and does not have a separate appeal process.

Under 8 CFR 336.2, SDAOs or DAOs conducting a section 336 hearing may conduct a de novo hearing or review the decision of the original adjudicator. An applicant may submit additional documentation for review at the hearing, including a new N-648. If the applicant does not submit a new N-648, the SDAO or DAO should review the N-648s in the A-file for sufficiency. An applicant may not submit an N-648 for the first time at the hearing. Further, if the N-648(s) reviewed at the hearing is deemed insufficient on review, the applicant does not receive another opportunity to submit an N-648.

To ensure consistency in preparation of N-400 denials in disability cases, officers should include the bases for rejection of an N-648 in the attachment to the Form N-335. See **Attachment E** for sample language which will advise the applicant of the bases for rejection of the N-648.

H. Procedures for Cases of Suspected Fraud

The Service is concerned about allegations of fraud in the N-648 program and is committed to developing anti-fraud measures that target individuals who abuse the system or attempt to gain an immigration benefit through submission of fraudulent N-648s. The Service is currently working with several INS components and outside agencies to develop credible fraud approaches.

The Service anticipates issuing field guidance in the near future that will detail our fraud initiative and instruct SDAOs and DAOs on: (1) identifying potentially fraudulent submissions; (2) researching and documenting cases, including contacting state licensing boards for additional information; and (3) taking appropriate actions on N-400s, e.g., continuation pending completion of investigation, denial, approval, and referral of cases to Investigations.

In the interim, District Offices should utilize current local procedures for benefit fraud referral and investigation. In general, DAOs should use the Notice of Incomplete N-648 to request the applicant and/or certifying physician clarify any questions or issues. Where there is evidence of fraud, DAOs should discuss the case with the SDAOs. After consultation, the SDAO should determine whether the case is referred to Investigations and whether the DAO should request that a second N-648 be completed by a different authorized medical professional.

Memorandum for All Regional Directors
All District Directors (Except Foreign)
All Officers in Charge (Except Foreign)

Subject: Section 312 Disability Naturalization Adjudications

I. Second Review of N-648s Based on December 30, 1998 Memorandum

As stated in Section E, the December 30th memorandum may have inadvertently caused a number of N-648s to be rejected or sent back for revision because the certifying doctor failed to provide specific descriptions of how he or she reached the diagnosis, i.e., the laboratory or clinical tests performed. The Service has made a commitment to reevaluate N-648s reviewed and rejected since December 30th to ensure that the sufficiency determination is based on the current standard for disability exceptions as restated in this memorandum. Thus, all N-648s reviewed since the December 30th memorandum that were deemed insufficient solely because the certifying doctor failed to provide specific descriptions of how he or she reached the diagnosis should be reevaluated based on the current standard for N-648 review, as restated in this memorandum.

We will issue further guidance shortly as to when to begin the review, how the review will be conducted, the timeframes for completion, and the reporting requirements. We anticipate the number of cases that will need to be reevaluated will be small and should fall into the following categories:

1. Cases Continued Based on December 30th Guidance

For cases where applicants were continued for reexamination, the applicant will be providing an amended or second N-648. Upon submission of the amended or second N-648, SDAOs and DAOs should review the N-648 for sufficiency based on the standard in this memorandum and follow the procedures outlined in section F above for further action on the case.

2. N-400s Denied On or After December 31st Based Solely on Rejection of N-648 and Applicant's Failure of the English and Civics Tests

All District Offices must identify for review N-400s denied on or after December 31st based exclusively on failure to meet section 312 requirements and where an N-648 was rejected solely because the certifying doctor failed to provide specific descriptions of how he or she reached the diagnosis. SDAOs and DAOs will need to reevaluate these N-648s for sufficiency based on the standard in this memorandum and follow the procedures outlined in section F for further action on the case.

J. Denials of Naturalization Applications Based on Failure to Assent to the Provisions of the Oath of Allegiance

Congress did not waive the oath of allegiance requirement for persons with disabilities when it passed the section 312 exception amendment. Therefore, the oath of allegiance is still

Memorandum for All Regional Directors
All District Directors (Except Foreign)
All Officers in Charge (Except Foreign)

Subject: Section 312 Disability Naturalization Adjudications

required for all naturalization applicants. This position has been confirmed by the Office of Legal Counsel at the Department of Justice.

Decisions made on cases where the applicant has a significant cognitive impairment will be difficult. DAOs may be under intense pressure from family members and advocates to naturalize these individuals. If possible, DAOs should attempt to explain to family members the requirements of section 337 of the Act, and how, as the law is currently written, the oath cannot be waived for adult naturalization applicants.

DAOs must determine that the applicant: (1) understands he or she is becoming a United States citizen; (2) is foreswearing allegiance to his or her country of nationality; and (3) is personally and voluntarily agreeing to a change in status to that of a United States citizen. DAOs must make reasonable accommodations, such as simplifying questions to allow for "yes" or "no" answers to determine whether the applicant understands the requirements for the oath of allegiance. DAOs must also make reasonable accommodations to allow applicants with disabilities to demonstrate their assent to the requirements of the oath of allegiance, such as allowing the applicant to establish assent through predetermined physical motions or signals that the applicant uses to communicate certain meanings.

For naturalization applicants who are unable to assent to the provisions of the oath (even with reasonable accommodations or modifications), offices should prepare standard Form N-335 as they do with any other denial and use the attached template (**Attachment F**) which advises the applicant that the basis of the denial will be the failure to meet the requirements of section 337 of the Immigration and Nationality Act and 8 CFR 337.1(c).

K. Reasonable Accommodations and Modifications under the Rehabilitation Act

With accommodations or modifications, many applicants with disabilities will be able to meet the section 312 requirements. Section 504 of the Rehabilitation Act of 1973 requires all Federal agencies to make reasonable accommodations for persons with disabilities. Applicants are not required to file an N-648 or present a letter or other documentation from their doctor to request an accommodation or modification to the naturalization process because of a disability.

1. Reasonable Accommodations for Signatures on Naturalization Forms

(a) Form N-648

All applicants for naturalization submitting a N-648 are required to sign the form. However, in certain instances, applicants with disabilities may not be able to provide a full signature or are completely unable to sign the required forms. As a reasonable accommodation, DAOs should permit a legal guardian (including a family member holding legal guardian status) to sign the N-648 on behalf of the disabled applicant. Alternatively, the DAO should accept a mark as the applicant's signature.

Memorandum for All Regional Directors
All District Directors (Except Foreign)
All Officers in Charge (Except Foreign)

Subject: Section 312 Disability Naturalization Adjudications

(b) Form N-400

In general, at the conclusion of the interview, an applicant is required to sign the N-400 under penalty of perjury (jurat section). While a legal guardian may sign the preparer's box on the N-400 (Part 12 on the current N-400), the legal guardian may not sign the N-400 on behalf of the applicant at the conclusion of the interview. However, where the applicant can make some kind of mark, the DAO should accept such mark as a reasonable accommodation for the signature. In cases where the applicant is unable to make any type of mark but has indicated assent to the requirements for naturalization, the DAO should note in the jurat section that he or she has determined that the applicant has assented and responded to the questions on the N-400. No actual signature will thus be noted.

(c) Form N-550

In cases where the applicant is unable to make any type of mark, the DAO should note on the signature line of the Form N-550, Certificate for Naturalization: Person's Disability Prevents Signature. A legal guardian may not sign the certificate on behalf of a naturalization applicant with a disability.

2. Other Modifications to the Naturalization Process

Not all applicants with disabilities will want or require a complete exception to the testing requirements. In such instances, DAOs are expected to make accommodations to allow applicants with disabilities to take the English and civics tests. For example, individuals who are blind or visually impaired should be tested orally; hearing impaired individuals should be offered a written test or provided with a sign language interpreter upon their request; and those with limited or no use of their hands should not be required to demonstrate their writing abilities.

Aside from the modifications that can be made to the test administration, DAOs must give consideration to modifications to the actual interview that would accommodate persons with disabilities. DAOs may continue to permit, under appropriate circumstances, a disabled naturalization applicant's family member or legal guardian to accompany the applicant during the interview. In addition, at the discretion of the Service, a family member or legal guardian can in some instances assist with the interview by acting as the approved English language interpreter for those applicants whose disability prevents them from fulfilling the English proficiency requirements of section 312. However, prior to the start of the interview, the DAO should ensure that the family member or legal guardian understands that the interview is being conducted with the applicant, not the family member or legal guardian. The DAO should make clear that the role of the family member or guardian is to be an interpreter and not to assist the applicant in answering questions or to answer questions for the applicant. In addition, for applicants who cannot speak, family members and legal guardians should be asked about which particular

Page 16

Memorandum for All Regional Directors
All District Directors (Except Foreign)
All Officers in Charge (Except Foreign)

Subject: Section 312 Disability Naturalization Adjudications

physical motions or signals the applicant uses to communicate certain meanings, so the DAO knows how to interpret such signals during the interview process.

DAOs are reminded again of the need for the utmost courtesy, respect and sensitivity in adjudicating cases where the applicant requests an accommodation for the section 312 requirements. Making acceptable accommodations or modifications to the entire naturalization process is our mandate under the Rehabilitation Act of 1973.

L. Future Consolidation of N-648 Reviews by Medical Professionals at the Service Centers

With the implementation of Direct Mail and Complete File Review, the Service is planning to transfer the review of the N-648s from the District Offices to the Service Centers, where medical professionals will review the forms. At this time, the Service does not have a specific timeframe for such transfer. However, consolidation of the N-648 review process at the Service Centers will:

- further standardize the N-648 review process;
- provide for review of the N-648s by medical professionals; and
- help ensure that files with N-648s are interview ready when shipped to District Offices.

We anticipate that the transfer of N-648 reviews to the Service Centers will also coincide with a revision to the Form N-648. The Immigration Services Division will be working in the coming months to develop a revised Form N-648 as well as transition procedures and procedures to govern the review of the forms at the Service Centers.

Questions about this guidance should be directed through the Regional Offices to Alison Morris, Immigration Services Division, Office of Field Operations, on (202) 616-7759.

Attachments (7)

ATTACHMENT A

SUBJECT: Examples of Insufficient and Sufficient Responses
to Question 3 on the N-648

EXAMPLES OF INSUFFICIENT AND SUFFICIENT RESPONSES TO QUESTION 3 ON THE N-648

The following examples help illustrate the parameters for acceptable and unacceptable N-648s based on answers to Question 3 on the form. Please note that the examples below provide only some of many possibilities for both acceptable and unacceptable responses to Question 3. Where an N-648 is insufficient, it is generally because the doctor has failed to establish a nexus between the patient's condition and his or her inability to learn or demonstrate knowledge of English and/or U.S. history and government. For instance, a common problem is a conclusory statement by a doctor that the applicant cannot learn, without an accompanying explanation of how the diagnosed condition(s) affect the applicant's ability to learn. Similarly, doctors sometimes list many conditions that the applicant suffers, but provide little to no explanation about how the conditions prevent the applicant from learning or demonstrating knowledge. The number of diagnoses or conditions listed is irrelevant to the determination about the sufficiency of the disability exception. What is important is that the doctor sufficiently describes the linkage between the diagnosed conditions and the effect of those conditions on the applicant's ability to take the tests.

Example 1

Insufficient Answer:

The patient is a 75-year-old female who has hypertension and heart disease. She has suffered at least 2 heart attacks, once in 1996 and in 1997. Last year, she had a stroke with paralysis on the left side. She is unable to learn English and basic U.S. history and civics. *(Note: The doctor failed to articulate how any of the conditions listed affects, for example, the patient's memory, ability to learn new tasks, ability to concentrate, or ability to perform basic mental activities, and therefore failed to show that the applicant's condition has so impaired her functioning that she is unable to learn or demonstrate knowledge of English and/or U.S. history and government.)*

Sufficient Answer:

The patient is a 75-year-old female who has hypertension and heart disease. She has suffered at least 2 heart attacks, once in 1996 and in 1997. Last year, she had a stroke with paralysis on the left side. The patient's stroke caused significant cerebral infarction (i.e., death of brain tissue), and has left her with severe and irreversible neurological damage. Because of the widespread damage to the brain tissue, she has suffered markedly decreased cerebral function and is incapable of remembering, articulating, or learning. Because of the patient's condition, she is unable to learn a new language and U.S. history and civics. *(Note: The doctor adequately addressed how the stroke impaired the applicant's mental functioning, including her ability to learn or demonstrate knowledge of English and/or U.S. history and government.)*

Example 2

Insufficient Answer:

The patient suffers from Down's Syndrome. He should be exempted from the English language and U.S. civics requirements for citizenship. *(Note: The doctor made a conclusory statement but failed to explain how the applicant's condition would prevent the applicant from learning or demonstrating knowledge of English and/or U.S. history and government.)*

Sufficient Answer:

The patient suffers from Down's Syndrome, with an IQ of 50. The patient's condition is a global impairment that affects cognition, language, and motor skills. Because of the patient's global impairment, he cannot learn new skills and is not capable of reasoning. His memory is deficient, and he is only capable of performing simple daily activities. Because of the patient's mental disability, he is incapable of learning a new language (even basic words of a new language) and U.S. history and civics. *(Note: The doctor adequately addressed the nexus between the condition and how the condition affected the applicant's functioning and ability to learn or demonstrate knowledge of English and/or U.S. history and government.)*

Example 3:

Insufficient Answer:

Vascular Dementia with Depression (DSM 290.43) and Psychosis
Essential Hypertension, Coronary Artery Disease, Degenerative Joint Disease, Hyperlipidemia, Congestive Heart Failure, Prostatism, Bilateral Hearing Loss

This 68-year-old man has had long standing hypertension of 7-8 years duration and disease of the cerebral blood vessels due to arteriosclerosis, including a stroke 5 years ago. He also has an extremely severe depression, accompanied by excessive anxiety. The extent of his cognitive deficits would most definitely preclude his being able to pass basic English and Civics tests. *(Note: The doctor failed to sufficiently address how the applicant's cognitive deficits are related to the applicant's ability to learn and demonstrate knowledge of English and/or U.S. history and government.)*

Sufficient Answer:

Vascular Dementia with Depression (DSM 290.43) and Psychosis
Essential Hypertension, Coronary Artery Disease, Degenerative Joint Disease, Hyperlipidemia, Congestive Heart Failure, Prostatism, Bilateral Hearing Loss

This 68-year-old man has had a marked, progressive loss of memory and intellectual functioning over the past 5-6 years, related to long-standing hypertension of 7-8 years duration and disease of the cerebral blood vessels due to arteriosclerosis, including a stroke 5 years ago. His immediate recall, recent memory and remote memory are all profoundly impaired as a result of the stroke. His abstracting abilities, calculations and judgment are also severely impaired. He also has an extremely severe depression, accompanied by excessive anxiety. The extent of his cognitive deficits, especially in memory functioning and concentration, in addition to his depression and anxiety, would most definitely preclude his being able to retain new words, language skills and

information well enough to pass basic English and Civics tests. (Note: *The doctor sufficiently explained how the applicant's conditions affected his ability to learn and demonstrate knowledge of English and/or U.S. history and government.*)

Example 4

Insufficient Answer:

DSM Diagnosis: 290.0 Dementia, Alzheimer's type
331.0 Alzheimer's Disease

The patient suffers from Alzheimer's Disease. He needs help taking his medications and is no longer able to prepare meals for himself, relying on family members to help him. His impairments prevent her from demonstrating knowledge of basic English and/or U.S. history and civics. (Note: *The doctor failed to sufficiently address how the applicant's condition is related to the applicant's ability to learn and demonstrate knowledge of English and/or U.S. history and government.*)

Sufficient Answer:

DSM Diagnosis: 290.0 Dementia, Alzheimer's type
332.0 Alzheimer's Disease

The patient suffers from memory loss and cognitive difficulties caused by Alzheimer's Disease. Examination reveals the patient has impaired memory, orientation, language skills, and other cognitive functions. For example, the patient is disoriented as to person, place and time and cannot recognize, or recall the names of, family members. He also needs help taking his medications and is no longer able to prepare meals for himself, relying on family members to help her. He cannot learn and retain new information. As a result, his impairments prevent him from demonstrating knowledge of basic English and/or U.S. history and civics. (Note: *The doctor sufficiently addressed how the applicant's condition caused problems that affect the applicant's ability to learn and demonstrate knowledge of English and/or U.S. history and government.*)

Example 5

Insufficient Answer:

(DSM 294.1) Dementia due to Hypertension and Mediterranean fever; (DSM 296.32) Major depression, recurrent, moderate. The patient is a 64 year old widowed female who presents numerous medical problems including a history of diabetes, joint disease, Mediterranean fever, hypertension, and gastro-intestinal distress. The patient also presents memory impairments, headaches, depressed mood, insomnia, poor appetite, impaired social and occupational functioning, poor concentration, dizziness and fatigue.

The cognitive deficits and neurological symptoms cause significant impairment in her daily living skills and represent a significant decline from a previous level of functioning. The above described cognitive and emotional impairments would preclude the patient from being able to take the citizenship tests. (Note: *The doctor failed to adequately describe the nexus between the*

applicant's symptoms, her dementia and depression, and how the applicant's cognitive and emotional impairments affects her ability to learn and demonstrate knowledge of English and/or civics.)

Sufficient Answer:

(DSM 294.1) Dementia due to Hypertension and Mediterranean fever; (DSM 296.32) Major depression, recurrent, moderate. The patient is a 64 year old widowed female who presents numerous medical problems including a history of diabetes, joint disease, Mediterranean fever, hypertension, and gastro-intestinal distress. The patient also presents memory impairment, headaches, depressed mood, insomnia, poor appetite, impaired social and occupational functioning, poor concentration, dizziness and fatigue.

The patient's dementia and depression have resulted in cognitive deficits and neurological symptoms that cause significant impairment in her daily living skills and represent a significant decline from a previous level of functioning. She displays deficits in both recent and remote memory. Due to the patient's severe cognitive, emotional, and physical impairment she is unable to perform daily living skills, and therefore she has to depend on the help of the family.

The above described cognitive and emotional impairments would preclude the patient from being able to learn and assimilate new skills, including language and information, and she is therefore unable to take the citizenship tests. (Note: *The doctor adequately addressed how the applicant's dementia and depression are related to the cognitive and emotional impairments that affect her ability to learn and demonstrate knowledge of English and/or civics.*)

Example 6**Insufficient Answer:**

The patient is a 60 year-old male with Schizophrenia Chronic Paranoid Type (DSM-IV 295.32) and Dependent Personality (DSM-IV 301.6). Due to his severe mental illness, the patient's cognitive functions are impaired. The patient will have difficulties learning English, history, and/or civics. For this reason the patient is unable to take the test to become a U.S. citizen. (Note: *The doctor failed to adequately describe in what way the mental illness affected the patient's cognitive functions and did not provide an opinion that the patient is unable to learn or demonstrate English and/or civics.*)

Sufficient Answer:

The patient is a 60 year-old male with Schizophrenia Chronic Paranoid Type (DSM-IV 295.32) and Dependent Personality (DSM-IV 301.6). Due to his severe mental illness, the patient's cognitive functions are impaired. For example, the patient has marked memory loss, poor concentration, and short attention span, resulting in an inability to learn or retain new information, including English, history, and/or civics. For this reason the patient is unable to take the test to become a U.S. citizen. (Note: *The doctor adequately described the effect of the mental illness on the patient's cognitive functions and provided a definitive opinion that the patient is unable to learn or demonstrate English and/or civics as a result.*)

Example 7**Insufficient Answer:**

Diagnosis of mental impairment:
Dementia, Late Onset, Vascular (DSM 290.0)

Diagnosis of Physical Disability:

Hypertension for 10 years, Cardiac Arrhythmia, Angina Pectoris
Chronic Dizziness, Insomnia, Headache, Bilateral Cataract, Poor Vision
Right Ear Deafness, Peptic Ulcer Disease, Hyperlipidemia
Osteoarthritis for 16 years with Chronic Low Back Pain

This 80-year-old woman has been my patient since August 1994. Her conditions are extensive and progressively deteriorating. She cannot initiate new tasks, such as studying from audio tapes at home. The combination of physical weakness and fear of getting lost prevent her from leaving home by herself to attend classes to learn English, U.S. history and civics. As a result of her mental impairments and physical disabilities, this applicant cannot reasonably be expected to pass a test of English proficiency or a test on U.S. history and civics. (Note: *The doctor failed to adequately explain the nexus between the applicant's conditions and how those conditions affect her ability to learn and demonstrate knowledge of English and/or civics.*)

Sufficient Answer:

Diagnosis of mental impairment:

Dementia, Late Onset, Vascular (DSM 290.0)

Diagnosis of Physical Disability:

Hypertension for 10 years, Cardiac Arrhythmia, Angina Pectoris

Chronic Dizziness, Insomnia, Headache, Bilateral Cataract, Poor Vision

Right Ear Deafness, Peptic Ulcer Disease, Hyperlipidemia

Osteoarthritis for 16 years with Chronic Low Back Pain

This 80-year-old woman has been my patient since August 11, 1994. She suffers from a dementia characterized by marked progressive loss of memory and intellectual functioning over the last several years. She is disoriented as to the year, season, day, day of the week. Her immediate recall, recent memory and remote memory are also profoundly impaired. Her abstracting abilities, calculations and judgment are also impoverished. Her vision is also severely impaired.

Her conditions are extensive and progressively deteriorating. The cognitive disturbance associated with her dementia makes it impossible for her to learn new language and retain new information. As a result of these mental impairments and physical disabilities, this applicant cannot reasonably be expected to pass a test of English proficiency or a test on U.S. history and civics. (Note: *The doctor adequately addressed the connection between the applicant's condition, and how it affects her ability to learn and demonstrate knowledge of English and/or civics.*)

Example 8

Insufficient Answer:

The patient is a 70-year-old male who has been under my care since 4/23/92. Patient has a long history of chronic hypertension, uncontrollable for a long time. This vascular problem has been complicated by a stroke, first in 1982, and a second stroke in March of 1992. Patient has been hospitalized at St. Elizabeth's Hospital with residual left leg weakness and speech impairment. It is my opinion that the patient is unable to learn English as well as U.S. history and civics. (Note: *The doctor failed to describe the nexus between the diagnosis and the applicant's impaired functioning, including his ability to learn or demonstrate knowledge of English and/or civics.*)

Sufficient Answer:

The patient is a 70 year old male who has been under my care since 4/23/92. Patient has a long history of chronic hypertension, uncontrollable for a long time. This vascular problem has been complicated by a stroke, first in 1982, and a second stroke in March of 1992. Patient has been hospitalized at St.Elizabeth's Hospital with residual left leg weakness and speech impairment.

Patient has severe memory loss and demonstrates disturbances of memory, judgment and reasoning. This memory loss is part of his progressive vascular dementia and secondary to his chronic hypertension, as well as cerebral vascular disease with cognitive impairment due to his

strokes. It is my opinion that he is unable to learn English as well as U.S. history and civics. He can't acquire new knowledge required for participation in the normal testing procedure for naturalization. (Note: *The doctor adequately addressed how the disturbances of memory, judgment and reasoning are related to the applicant's diagnosed conditions, and how they have impaired the applicant's functioning, including his ability to learn or demonstrate knowledge of English and/or civics.*)

Example 9

Insufficient Answer:

The patient is a 69-year-old female who has been under my psychiatric care since 10/96. DSM-IV diagnosis: Dementia due to Multiple Medical Problems, Parkinson Disease, Cerebral Arteriosclerosis, Severe Congestive Heart Failure with ascites, Cancer of the right ear, Dizziness, Arthritis, Insomnia. She shows moderate cognitive impairment and her cognitive functioning is also declined due to her multiple medical problems. As a result of these illnesses the patient is unable to learn English and U.S. History to participate in normal testing procedure. (Note: *The doctor provided failed to provide enough information about the nexus between the diagnosis and how it impaired the applicant's functioning so as to affect her ability to learn or demonstrate knowledge of English and/or civics.*)

Sufficient Answer:

The patient is a 69-year-old female who has been under my psychiatric care since 10/96. DSM-IV diagnosis (294.1): Dementia due to Multiple Medical Problems, Parkinson's Disease, Cerebral Arteriosclerosis, Severe Congestive Heart Failure with ascites, Cancer of the right ear, Dizziness, Arthritis, Insomnia. As a result of her dementia and Parkinson's Disease, she shows cognitive impairment, including attention and orientation deficit, difficulties with naming and repetition, decreased construction abilities and significant memory loss. Her cognitive functioning is also declined due to her other medical problems. As a result of the reduction in mental capacity brought about by her multiple conditions, the learning and memorization of new information is impossible. She is therefore unable to learn English and U.S. History to participate in the normal testing procedure. (Note: *The doctor provided enough information about the nexus between the diagnosis and the applicant's impaired functioning by describing the effect of her conditions on her cognitive functioning and on her ability to learn English and/or civics.*)

ATTACHMENT B

SUBJECT: Information About the Form N-648 (Form N-648A)

U.S. Department of Justice
Immigration and Naturalization Service

Information About the Form N-648 Medical Certification For Disability Exceptions

For a permanent resident to take the oath of allegiance and become a naturalized citizen, he or she must demonstrate knowledge of English and U.S. history and government. The Immigration and Nationality Act authorizes an exception to this requirement for individuals who are unable to learn or demonstrate knowledge of English or U.S. history and government because of a physical or developmental disability or mental impairment. This exception is known as a "disability exception."

This form is intended to provide information about the disability exception to applicants for naturalization and to answer the most frequently asked questions relating to disability exceptions. This form must be read together with the instructions on the Form N-648, Medical Certification for Disability Exceptions, and should be given to the applicant's doctor if the applicant believes that he or she might be eligible for the disability exception.

Who Qualifies for a Disability Exception?

An applicant for naturalization can qualify for a disability exception by demonstrating that he or she suffers from a medically determinable disability or impairment or combination of impairments that result(s) in functioning so impaired that it prevents him or her from learning or demonstrating knowledge of English and/or U.S. history and government. The authorized medical profession must therefore provide: 1) a full and complete description of the applicant's diagnosis; 2) a thorough explanation of how the condition diagnosed has impaired the functioning of the applicant so severely that the applicant is unable to learn or demonstrate knowledge of English and/or U.S. history and government; and 3) his or her conclusion about whether or not the applicant is able to learn or demonstrate knowledge of English and/or U.S. history and government. The impairment must not be temporary (i.e., less than 12 months).

! NOTE: An applicant will not qualify for a disability exception if the sole basis for the request is that he or she cannot learn or demonstrate knowledge of English and/or U.S. history and government because of old age, or if the impairment is the sole result of the illegal use of drugs.

How Does One Apply for a Disability Exception?

An applicant for naturalization may apply for a disability exception by submitting a Form N-648, Medical Certification for Disability Exceptions, along with the N-400, Application for Naturalization. The Form N-648 should be submitted with the N-400 within six months of when it was completed and signed by the authorized medical professional. The Form N-648 may be presented to the INS officer conducting the naturalization interview in limited circumstances, such as if the applicant developed a disability after submitting the N-400 application. In such cases, the N-648 must have been completed within six months of the interview date and applicants requesting a disability exception should present the N-648 to the INS officer at the beginning of the interview. Applicants will be given two opportunities to present a sufficient Form N-648 to INS and to pass the English and U.S. history and government (civics) tests.

Which Medical Professionals Are Authorized to Complete the Form?

Medical and osteopathic doctors and clinical psychologists who are licensed to practice in the United States are authorized to complete the form N-648.

What Information Does the Doctor Need to Provide on the Form N-648?

The certifying doctor must answer completely and legibly all the questions in Part II of the Form N-648. The certifying doctor is not limited to the space provided on the N-648 and should attach additional sheets of paper if necessary. The most important question in Part II is question 3. The certifying doctor must provide the following three-part response to question 3.

- (1) A full and complete description of the doctor's diagnosis, including, if applicable, the most recent DSM code.
- (2) An explanation of how the disability or impairment affects the applicant and prevents him or her from learning or demonstrating knowledge of English and/or U.S. history and government.
- (3) The doctor's conclusion about whether the applicant is able to learn or demonstrate knowledge of English and/or U.S. history and government.

What if the Form N-648 is Insufficient?

If the applicant's first request for a disability exception is deemed insufficient, he or she will be provided with a Notice of Incomplete N-648 that explains why the N-648 was not accepted and given another opportunity to submit a sufficient N-648. The applicant will also be tested on English and U.S. history and government. However, if the applicant fails the tests the first time, the applicant will have another opportunity to be tested.

If the applicant does not submit a sufficient N-648 within the time period specified by the Service, and cannot pass the English and U.S. history and government tests for the second time, the application for naturalization will be denied.

The applicant may seek administrative review of the denied application for naturalization by filing a request for a hearing along with the required fee. This request must be filed within 30 days of receiving the denial of the application for naturalization. In seeking administrative review, the applicant may seek reconsideration of the rejected request for the disability exception (Form N-648). The applicant may rely on the Form N-648 previously submitted or may file a new or amended Form N-648 but may not submit a Form N-648 for the first time at this hearing. An INS supervisory officer will schedule a review hearing, review all information included in the record (including any new information submitted as part of the hearing process), and make a final decision on the Form N-648 and the application for naturalization. If the application for naturalization is denied after the administrative review, the applicant may seek review of the denied application in district court.

ATTACHMENT C

SUBJECT: Notice of Incomplete N-648 (Form N-648B)

U.S. Department of Justice
Immigration and Naturalization Service

Notice of Incomplete N-648 Medical Certification For Disability Exceptions

Applicant's Name _____

A Number _____

Name of INS Officer _____

For Official Use Only

NOTICE TO APPLICANT: The Form N-648, Medical Certification for Disability Exceptions that you have submitted is **incomplete**. Identified below in the boxes marked with an "X" is the information that your doctor needs to provide. Please return this letter to your doctor, along with the Form N-648, as soon as possible. Your doctor should complete the Form N-648 with the requested information, and you should return the completed N-648 as instructed by the Service. **! NOTE:** If your doctor does not provide all requested information, your N-648 will be rejected.

NOTICE TO CERTIFYING DOCTOR: The Form N-648, Medical Certification for Disability Exceptions that you filled out on behalf of the above-named applicant is **incomplete**. The deficient information is identified below. Please read this Notice carefully, complete the Form N-648 with the requested information, and return the completed Form N-648 to the applicant. You may use additional sheets of paper to detail your responses if necessary. **! NOTE:** If you do not provide all of the information requested below, in a clear and legible fashion, the applicant's request for a medical exception will be rejected.

Physical And Mental Health Information: To qualify for a disability exception, the applicant must show that he or she suffers from a medically determinable disability or impairment or combination thereof that results in functioning so impaired that it prevents him or her from learning or demonstrating knowledge of English and/or civics. The impairment must not be temporary (i.e., less than 12 months). An applicant will not qualify for the exception if the sole basis for the request is that he or she cannot learn or demonstrate knowledge of English and/or civics because of old age.

_____ Please provide a full and complete medical diagnosis of the applicant's disability or impairment, including, if applicable, the most recent DSM Code (Question #3 on the Form N-648). *Note: INS will not consider vague terms such as "organic brain syndrome" or "chronic brain syndrome" unless you identify the etiology.* Specific problem noted: _____

_____ Please explain how the disability or impairment prevents the applicant from learning or demonstrating knowledge of English and/or U.S. history and government (Question #3 of the Form N-648). Specific problem noted: _____

_____ Please provide your conclusion about whether the applicant is able to learn or demonstrate knowledge of English and/or U.S. history and government because of his or her condition (Question #3 on the Form N-648).

_____ Please state whether or not the applicant's condition resulted from the illegal use of drugs (Question #4 on the Form N-648).

_____ Please state whether or not the applicant's developmental disability first manifested itself before age 22 (Question #4 on the Form N-648).

_____ Please state whether the applicant's condition is temporary (less than 12 months) or permanent (Question #5 on the Form N-648).

_____ Other _____

Background Information: You did not provide the requested background information or the background information was not legible.

- ☐ Please identify the date of your last examination of the applicant (Question #1 on the Form N-648).
- ☐ Please identify if this was your first examination of the applicant and, if it was, the name of the regular attending doctor (Question #2 on the Form N-648).
- ☐ Please identify your medical specialty or the qualifications and experience that permit you to make the assessment on the Form N-648 (Question #6 on the Form N-648).
- ☐ Please sign under penalty of perjury the Form N-648, and identify the date of signing. *Note: You may not use a stamp in place of your original signature.*
- ☐ Please type or print your last name, first name, and middle name on the bottom of page 2 of the Form N-648.
- ☐ Please type or print your business address and telephone number on the bottom of page 2 of the Form N-648.
- ☐ Please type or print your license number and licensing state on the bottom of page 2 of the Form N-648.
- ☐ Other _____
- _____
- _____
- _____

The following are examples of incomplete responses to question # 3 --

(a) The patient is a 75-year-old female who has hypertension and heart disease. She has suffered at least 2 heart attacks, once in 1996 and in 1997. Last year, she had a cerebral vascular accident (i.e. stroke) with paralysis on the left side. She is unable to learn English and basic U.S. history and civics. *(Note: The doctor failed to articulate how any of the conditions listed affect, for example, the patient's memory, ability to learn new tasks, ability to concentrate, or ability to perform basic mental activities, and therefore failed to show that the applicant's condition has so impaired her functioning that she is unable to learn or demonstrate knowledge of English and/or U.S. history and government.)*

(b) The patient suffers from Down's Syndrome. He should be exempted from the English language and U.S. civics requirements for civics. *(Note: The certifying doctor failed to identify the DSM Code, explain how the condition affects the applicant's ability to learn, and give an ultimate opinion on whether the condition diagnosed prevents the applicant from learning or demonstrating knowledge of English and/or civics.)*

The following are examples of complete responses to question # 3 --

(a) The patient is a 75-year-old female who has hypertension and heart disease. She has suffered at least 2 heart attacks, once in 1996 and in 1997. Last year, she had a cerebral vascular accident (i.e. stroke) with paralysis on the left side. The patient's stroke has left her with severe and irreversible neurological damage. Because of the widespread damage to the brain tissue, she has suffered markedly decreased cerebral function and is incapable of remembering, articulating, or learning. In my professional medical opinion, the patient is unable to learn basic English and U.S. history and civics because of her mental and physical condition. *(Note: The certifying doctor identified the diagnosis, explained the effect the condition has on the applicant's ability to learn, and attested that the diagnosed condition prevents the applicant from learning or demonstrating knowledge of English and civics.)*

(b) The patient suffers from Down's Syndrome, DSM Code 318.1, which is a global impairment that affects the patient's cognition, language, and motor skills. Because of the patient's global impairment, he cannot learn new skills and is not capable of reasoning. His memory is deficient, and he is only capable of performing simple daily activities. In my professional medical opinion, the patient is incapable of learning a new language (even basic new words of a new language) and U.S. history and civics because of his mental disability. *(Note: The certifying doctor provided the mental impairment, including the DSM Code, an explanation for how the condition affects the applicant's ability to learn, and a conclusion that the impairment prevents the applicant from learning or demonstrating knowledge of English and civics.)*

ATTACHMENT D

SUBJECT: Sample Notice of Incomplete N-648

U.S. Department of Justice

Immigration and Naturalization Service

--SAMPLE--**Notice of Incomplete N-648****Medical Certification For Disability Exceptions**Applicant's Name JOHN SMITHA Number A12-345-657Name of INS Officer DAO JOHNSON

For Official Use Only

NOTICE TO APPLICANT: The Form N-648, Medical Certification for Disability Exceptions that you have submitted is **incomplete**. Identified below in the boxes marked with an "X" is the information that your doctor needs to provide. Please return this letter to your doctor, along with the Form N-648, as soon as possible. Your doctor should complete the Form N-648 with the requested information, and you should return the completed N-648 as instructed by the Service. ! **NOTE:** If your doctor does not provide all requested information, your N-648 will be rejected.

NOTICE TO CERTIFYING DOCTOR: The Form N-648, Medical Certification for Disability Exceptions that you filled out on behalf of the above-named applicant is **incomplete**. The deficient information is identified below. Please read this Notice carefully, complete the Form N-648 with the requested information, and return the completed Form N-648 to the applicant. You may use additional sheets of paper to detail your responses if necessary. ! **NOTE:** If you do not provide all of the information requested below, in a clear and legible fashion, the applicant's request for a medical exception will be rejected.

X

Physical And Mental Health Information: *To qualify for a disability exception, the applicant must show that he or she suffers from a medically determinable disability or impairment or combination thereof that results in functioning so impaired that it prevents him or her from learning or demonstrating knowledge of English and/or civics. The impairment must not be temporary (i.e., less than 12 months). An applicant will not qualify for the exception if the sole basis for the request is that he or she cannot learn or demonstrate knowledge of English and/or civics because of old age.*

X Please provide a full and complete medical diagnosis of the applicant's disability or impairment, including, if applicable, the most recent DSM Code (Question #3 on the Form N-648). *Note: INS will not consider vague terms such as "organic brain syndrome" or "chronic brain syndrome" unless you identify the etiology. Specific problem noted:*

The N-648 states that you have hypertension, heart disease, and vascular dementia and should not be required to take the English and Civics tests. The N-648, however, does not contain any description or statement of how these diagnoses specifically affect your current functioning and ability to learn and/or demonstrate knowledge of the English language and civics.

____ Please explain how the disability or impairment prevents the applicant from learning or demonstrating knowledge of English and/or U.S. history and government (Question #3 of the Form N-648). Specific problem noted:

____ Please provide your conclusion about whether the applicant is able to learn or demonstrate knowledge of English and/or U.S. history and government because of his or her condition (Question #3 on the Form N-648).

____ Please state whether or not the applicant's condition resulted from the illegal use of drugs (Question #4 on the Form N-648).

____ Please state whether or not the applicant's developmental disability first manifested itself before age 22 (Question #4 on the Form N-648).

____ Please state whether the applicant's condition is temporary (less than 12 months) or permanent (Question #5 on the Form N-648).

☒

Background Information: *You did not provide the requested background information or the background information was not legible.*

____ Please identify the date of your last examination of the applicant (Question #1 on the Form N-648).

____ Please identify if this was your first examination of the applicant and, if it was, the name of the regular attending doctor (Question #2 on the Form N-648).

____ Please identify your medical specialty or the qualifications and experience that permit you to make the assessment on the Form N-648 (Question #6 on the Form N-648).

____ Please sign under penalty of perjury the Form N-648, and identify the date of signing. *Note: You may not use a stamp in place of your original signature.*

____ Please type or print your last name, first name, and middle name on the bottom of page 2 of the Form N-648.

____ Please type or print your business address and telephone number on the bottom of page 2 of the Form N-648.

☒ Please type or print your license number and licensing state on the bottom of page 2 of the Form N-648.

Other _____

• **The following are examples of incomplete responses to question # 3 --**

(a) The patient is a 75-year-old female who has hypertension and heart disease. She has suffered at least 2 heart attacks, once in 1996 and in 1997. Last year, she had a cerebral vascular accident (i.e. stroke) with paralysis on the left side. She is unable to learn English and basic U.S. history and civics. *(Note: The doctor failed to articulate how any of the conditions listed affect, for example, the patient's memory, ability to learn new tasks, ability to concentrate, or ability to perform basic mental activities, and therefore failed to show that the applicant's condition has so impaired her functioning that she is unable to learn or demonstrate knowledge of English and/or U.S. history and government.)*

(b) The patient suffers from Down's Syndrome. He should be exempted from the English language and U.S. civics requirements for civics. *(Note: The certifying doctor failed to identify the DSM Code, explain how the condition affects the applicant's ability to learn, and give an ultimate opinion on whether the condition diagnosed prevents the applicant from learning or demonstrating knowledge of English and/or civics.)*

• **The following are examples of complete responses to question # 3 --**

(a) The patient is a 75-year-old female who has hypertension and heart disease. She has suffered at least 2 heart attacks, once in 1996 and in 1997. Last year, she had a cerebral vascular accident (i.e. stroke) with paralysis on the left side. The patient's stroke has left her with severe and irreversible neurological damage. Because of the widespread damage to the brain tissue, she has suffered markedly decreased cerebral function and is incapable of remembering, articulating, or learning. In my professional medical opinion, the patient is unable to learn basic English and U.S. history and civics because of her mental and physical condition. *(Note: The certifying doctor identified the diagnosis, explained the effect the condition has on the applicant's ability to learn, and attested that the diagnosed condition prevents the applicant from learning or demonstrating knowledge of English and civics.)*

(b) The patient suffers from Down's Syndrome, DSM Code 318.1, which is a global impairment that affects the patient's cognition, language, and motor skills. Because of the patient's global impairment, he cannot learn new skills and is not capable of reasoning. His memory is deficient, and he is only capable of performing simple daily activities. In my professional medical opinion, the patient is incapable of learning a new language (even basic new words of a new language) and U.S. history and civics because of his mental disability. *(Note: The certifying doctor provided the mental impairment, including the DSM Code, an explanation for how the condition affects the applicant's ability to learn, and a conclusion that the impairment prevents the applicant from learning or demonstrating knowledge of English and civics.)*

ATTACHMENT E

SUBJECT: Sample Language for § 312 Denials Including Results of N-648 Review

**ATTACHMENT TO N-335 WITH SAMPLE LANGUAGE
FOR RESULTS OF N-648 REVIEW**

Reference is made to your Application for Naturalization, Form N-400, which you filed on _____, pursuant to Section 316(a) (INSERT APPLICABLE SECTION OF LAW) of the Immigration and Nationality Act (INA).

(INSERT NORMAL CITATIONS, LANGUAGE, AND PARAGRAPHS FOR OTHER GROUNDS OF INELIGIBILITY)

Under section 312 of the Immigration and Nationality Act (INA), and Title 8 of the Code of Federal Regulations (CFR), Part 312, an applicant for naturalization must demonstrate knowledge and understanding of the English language and United States history and government. However, section 312(b) of the INA provides that the English and civics requirements "shall not apply to any person who is unable because of physical or developmental disability or mental impairment to comply therewith." To qualify for an exception under section 312(b), an applicant must establish that he or she has a "medically determinable" physical or developmental disability or mental impairment. "Medically determinable" means that the disability or impairment, or combination thereof "results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical or laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual unable to demonstrate an understanding" of English and/or U.S. history and government.

Example # 1 – Original N-648 Insufficient; No Subsequent N-648 Submitted

The record reflects that you submitted a Form N-648, Medical Certification for Disability Exception on _____ (INSERT DATE). On _____, (INSERT DATE) the adjudicating officer reviewed your N-648 and determined that the information contained therein was insufficient to establish that you were eligible for an exception from the section 312 requirements. Specifically, the adjudicating officer noted that _____ (INSERT REASONS BASED ON SAMPLE LANGUAGE BELOW OR PROVIDE SIMILARLY DETAILED EXPLANATIONS FOR AS MANY DEFICIENCIES AS WERE NOTED:

- (1) "the N-648 did not reflect the date of your last examination",
- (2) "the N-648 did not contain a description of the certifying doctor's medical specialty or experience and other qualifications in Part II, Question 3 or 6, which permits him or her to make an assessment of your stated diagnosis/disability",
- (3) "the N-648 did not contain the certifying doctor's license number and licensing state",
- (4) "the N-648 did not contain an explanation of how the applicant's [insert diagnoses] specifically prevented the applicant from learning or demonstrating knowledge of English and/or civics.")

On _____, the adjudicating officer requested, as an attachment to Form N-14, that you submit by _____ (INSERT DATE) an amended or second N-648 correcting the noted deficiencies. You failed to respond within the time period noted. Your N-648, therefore, was rejected as insufficient and you were deemed ineligible for an exception from the section 312 requirements based on the section 312(b) disability exception.

On _____ and _____ (INSERT DATES) you were tested on your knowledge of English and U.S. history and government. You failed to pass these tests. As a result, you have failed to meet the requirements of Section 312 and are ineligible for naturalization.

Example # 2 - Original N-648 Insufficient; Subsequent N-648 Also Insufficient

The record reflects that you submitted a Form N-648, Medical Certification for Disability Exception on _____ (INSERT DATE). On _____, (INSERT DATE) the adjudicating officer reviewed your N-648 and determined that the information contained therein was insufficient to establish that you were eligible for an exception from the section 312 requirements. Specifically, the adjudicating officer noted that _____ (INSERT REASONS BASED ON SAMPLE LANGUAGE BELOW OR PROVIDE SIMILARLY DETAILED EXPLANATIONS FOR AS MANY DEFICIENCIES AS WERE NOTED:

- (1) "the N-648 did not reflect the date of your last examination",
- (2) "the N-648 did not contain a description of the certifying doctor's medical specialty or experience and other qualifications in Part II, Question 3 or 6, which permits him or her to make an assessment of your stated diagnosis/disability"
- (3) "the N-648 did not contain the certifying doctor's license number and licensing state",
- (4) "the N-648 did not contain an explanation of how the applicant's [insert diagnoses] specifically affects the applicant and how it prevents [him/her] from learning or demonstrating knowledge of English and/or civics.")

On _____, (INSERT DATE) the adjudicating officer requested, as an attachment to Form N-14, that you submit by _____ (INSERT DATE) an amended or second N-648 correcting the noted deficiencies. On _____ (INSERT DATE), you submitted an amended N-648. On _____ (INSERT DATE), the adjudicating officer again reviewed the N-648 and determined that the information contained therein was still insufficient to establish that you were eligible for a disability exception. Specifically, _____ (INSERT REASONS BASED ON SAMPLE LANGUAGE BELOW OR PROVIDE SIMILARLY DETAILED EXPLANATIONS FOR AS MANY DEFICIENCIES AS WERE NOTED:

- (1) "the N-648 still did not contain the requested date of your last examination",
- (2) "the N-648 still did not contain the requested description of the certifying doctor's medical specialty or experience and other qualifications in Part II, Question 3 or 6, which permits him or her to make an assessment of your stated diagnosis/disability",
- (3) "the N-648 still did not contain the requested license number and licensing state",
- (4) "the certifying doctor now states that _____ (DESCRIBE DOCTOR'S REVISED RESPONSE, FOR EXAMPLE: some patients who have dementia can sometimes exhibit

various symptoms including impaired motor skills, affected speech, and memory loss. The certifying doctor further states that some patients with hypertension can exhibit confusion and poor eyesight). (DESCRIBE REMAINING DEFICIENCY. FOR EXAMPLE: None of these descriptions, however, specifically address whether you actually have experienced these symptoms and, if so, whether these symptoms currently impair your ability to learn and/or demonstrate knowledge of the English language and civics)",

- (5) "you submitted a photocopy of the N-648 previously submitted",
- (6) "the certifying doctor again states that _____ (DESCRIBE DOCTOR'S RESPONSE. FOR EXAMPLE: because of your stroke you are unable to take the English and civics tests.) However, the certifying doctor _____ (DESCRIBE REMAINING DEFICIENCY. FOR EXAMPLE: does not thoroughly explain how your stroke affects your functioning and your ability to learn and/or demonstrate English and civics."))

Your N-648, therefore, was rejected as insufficient and you were deemed ineligible for an exception from the section 312 requirements based on the section 312(b) disability exception.

On _____ and _____ (INSERT DATES) you were tested on your knowledge of English and U.S. History and Government. You failed to pass these examinations. As a result, you have failed to meet the requirements of Section 312 and are ineligible for naturalization.

ATTACHMENT F

SUBJECT: Language for Use with § 337 Denials

**ATTACHMENT TO FORM N-335 WITH LANGUAGE
FOR DENIALS BASED ON FAILURE TO MEET THE REQUIREMENTS OF § 337**

Reference is made to your Application for Naturalization, Form N-400, which you filed on _____, pursuant to Section 316(a) (INSERT APPLICABLE SECTION OF LAW) of the Immigration and Nationality Act (INA).

(INSERT NORMAL CITATIONS, LANGUAGE, AND PARAGRAPHS FOR OTHER GROUNDS OF INELIGIBILITY)

Under section 335 of the Immigration and Nationality Act (INA), and Title 8 of the Code of Federal Regulations (CFR), Part 335.2(a), an applicant for naturalization must appear before a Service officer for examination on his or her application. During such examination, the applicant is questioned, under oath or affirmation, about his or her responses on the N-400. If necessary, the examining officer shall repeat such questions on the application in a simplified, different or more elaborate manner until the officer is satisfied that the applicant fully understands the questions being asked or is unable to understand English. 8 C.F.R. § 335.2(b).

The Service officer must make a determination on an application for naturalization. INA 335(d). Such naturalization application shall only be granted when the adjudicating officer is satisfied that the applicant has complied with all requirements for naturalization. 8 C.F.R. § 335.3(a). Further, before an applicant may be naturalized, he or she must take an oath of allegiance (INA 337(a)) and establish that it is his or her intention, in good faith, to assume and discharge the obligations of the oath of allegiance, and that his or her attitude toward the Constitution renders him or her capable of fulfilling the obligations of such oath. 8 C.F.R. § 337.1(c).

The records reflect that you appeared before an officer of the Service on _____, (INSERT DATE) regarding your Application for Naturalization. At that time, the adjudicating officer attempted to review your application with you and determined that you were unable to answer questions regarding the information contained on your N-400 or to provide responses which would demonstrate to the satisfaction of the adjudicating officer that you have complied with the statutory requirements for naturalization.

(In particularly difficult cases, the DAO may wish to provide specific examples for clarity on review and for a better record. For example: "Specifically, DAO _____ asked you on three different occasions "What is your name?" However, you were unable to respond [through the assistance of your Service interpreter] or [through reasonable physical accommodations which would permit you to print a response] or [through the recognized method as established by your legal guardian prior to the interview, i.e. through two blinks for a "yes" response] which would indicate to the officer that you understood the nature of the questions being posed.)

[INSERT THIS ADDITIONAL PARAGRAPH IF APPLICABLE]

In addition, the Service officer requested responses to questions regarding your understanding of the requirements for attaining United States citizenship and of the oath of allegiance. The adjudicating officer determined that you were unable to demonstrate that you understood you were becoming a United States citizen, that you were forswearing allegiance to your country of nationality, and that you were personally and voluntarily agreeing to a change in your status to that of a United States citizen.

(In particularly difficult cases, the office may wish to provide specific examples for clarity on review and for a better record. For example: "Specifically, DAO _____ asked you on three different occasions "Do you understand what it means to give allegiance to a country? or Do you understand what it means to be loyal to the United States?" However, you were unable to respond [through the assistance of your Service interpreter] or [through reasonable physical accommodations which would permit you to print a response] or [through the recognized method as established by your legal guardian prior to the interview, i.e. through two blinks for a "yes" response] which would indicate to the officer that you understood the nature of the questions being posed.)

Accordingly, for the reasons set forth above, the application may not be approved and hereby is denied. No appeal lies from this decision. However, in accordance with 8 C.F.R. § 336.2(a), you may request a hearing before an immigration officer within thirty (30) days of the date of this notice. To do so, you must file with the Service the attached Form N-336 along with the correct fee.

ATTACHMENT G

SUBJECT: Summary of Section 312 Disability Naturalization
Adjudications Memorandum

**SUMMARY OF APRIL 6, 1999 MEMORANDUM ON
SECTION 312 DISABILITY NATURALIZATION ADJUDICATIONS**

The memorandum described in this summary provides comprehensive policy guidance for the review of all Forms N-648, Medical Certification for Disability Exceptions and supercedes all previous memoranda on the subject. This summary is intended to provide the highlights of the information included in the memorandum. However, Supervisory District Adjudications Officers (SDAOs) should ensure that all District Adjudications Officers (DAOs) on their staff are thoroughly familiar with the memorandum in full.

- A. Disability Exceptions under Section 312 (page 2):** This section reiterates the standard requiring doctors who complete N-648s to establish that the applicant has a physical or mental abnormality that has impaired an individual's functioning so severely that the individual is unable to learn or demonstrate knowledge of English and/or U.S. history and government. Applicants whose disability exception requests have been accepted must still establish good moral character, residence, assent to the oath, etc.
- B. Medical Professionals Authorized to Complete the N-648 (page 3):** As of March 22, doctors of osteopathy are authorized to complete N-648s along with medical doctors and clinical psychologists. All N-648s should be reviewed based on the standard of review outlined in Section E below, without regard to the type of authorized medical professional completing the form or the type of disability or impairment diagnosed. Therefore, diagnoses of mental impairments by general practitioners or family doctors are acceptable if the N-648 is otherwise sufficient.
- C. Validity and Timeliness of the N-648 (page 3):** The first time an applicant submits an N-648, it is valid as long as it was completed and signed by a certifying physician within six months of when it was submitted. However, if the applicant's first N-648 was deemed insufficient and the applicant submits an amended or second N-648, the second or amended N-648 is valid, even if it is more than six months old, as long as it was completed and signed after the date of the applicant's first interview and was submitted by the date specified by the Service in the N-14.
- D. Appropriate Role of Adjudicators in Reviewing N-648s (page 3):** DAOs should not deny the existence of a disability or impairment by questioning the doctor's diagnosis and should not: (1) direct or recommend that applicants undergo specific medical tests to establish their disability; (2) require that applicants or doctors provide the names or dosages of medications prescribed; or (3) refer applicants to commercial medical referral services listed in telephone directories or to any specific medical provider.
- E. Standard of Review of the N-648 (page 4):** This section provides that DAOs should allow applicants to complete missing identifying information at the time of the interview (e.g., applicant's signature or A number) and that **DAOs should not require doctors to provide an explanation of how they reached their diagnosis, or provide a listing of clinical or laboratory techniques used to reach the diagnosis.** However, doctors must provide a sufficiently thorough explanation of how the condition they diagnosed has impaired the

functioning of the applicant so severely that the applicant is unable to learn or demonstrate knowledge of English and/or U.S. history and government. The three-part review standard described in this section focuses on the nexus between the condition and the applicant's inability to learn, and is exactly the same for all N-648s, regardless of the type of condition described, including diagnoses of depression or conditions related to old age. See **Attachment A** for examples of insufficient and sufficient responses to Question 3 on the N-648.

F. Procedures for Review of and Action on N-648s (page 6): Section F addresses what actions officers should take at each stage of the interview process when an N-648 is involved, including when the applicant should be tested on English and civics and what information should be included in denials based on section 312 when an N-648 has been rejected. For instance, all applicants appearing for an initial interview should be tested for the first time on English and civics, unless an N-648 has been presented and accepted. However, if the applicant is unable to be sworn in because of an inability to understand English, the DAO should not test the applicant on written English or civics and should explain that the applicant has not met the requirement of being able to understand English but will have another opportunity to meet the English and civics requirements. At all stages in the N-648 review process, DAOs should keep the applicant informed about the status of the N-648 review process, whether the applicant will be tested on English or civics, and in which language the interview will be conducted. **All district offices must use the following attachments related to the N-648 process and discontinue use of any local or previous request for information sheets prepared for Form N-648s:**

- (1) an Information Sheet that provides applicants with additional information about the N-648 and how to complete it properly (**Attachment B**);
- (2) a revised Notice of Incomplete N-648 ("Notice") (previously titled Request for Additional Information) (**Attachment C**);
- (3) A sample Notice that has been properly completed (**Attachment D**); and several sample paragraphs for inclusion in the Form N-335, Decision on Application for Naturalization, that will advise applicants of the bases for rejection of an N-648 (**Attachment E**).

G. Final Denials of N-400s with N-648s (page 11): To ensure consistency in preparation of N-400 denials in disability cases, officers should include the bases for rejection of an N-648 in the attachment to the Form N-335. See **Attachment E** for sample language that will advise the applicant of the bases for rejection of the N-648.

J. Denials of Naturalization Applications Based on Failure to Assent to the Provisions of the Oath of Allegiance (page 13): Congress has not waived the oath of allegiance requirement for persons with disabilities. DAOs must determine that the applicant: (1) understands he or she is becoming a United States citizen; (2) is forswearing allegiance to his or her country of nationality; and (3) is personally and voluntarily agreeing to a change in status to that of a United States citizen. DAOs must make reasonable accommodations to allow the applicant to establish assent to the oath such as by allowing the applicant to answer questions with "yes" or "no" answers. DAOs must also make reasonable accommodations to allow applicants with disabilities to demonstrate their assent to the requirements of the oath of allegiance, such as allowing the applicant to establish assent through predetermined physical

motions or signals that the applicant uses to communicate certain meanings. For naturalization applicants who are unable to assent to the provisions of the oath (even with reasonable accommodations or modifications), offices should prepare standard Form N-335 and use the attached template (**Attachment F**).

K. Reasonable Accommodations and Modifications under the Rehabilitation Act (page 14): Applicants are not required to file an N-648 or present a letter or other documentation from their doctor to request an accommodation or modification to the naturalization process because of a disability. See this section for additional information about how to make reasonable accommodations in different stages of the naturalization process.