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001. memo	Mail Link Monitor to Stephen C. Warnath; RE: Personally Identifiable Information and USSS [partial] (1 page)	02/28/1997	b(7)(C), b(7)(F), b(6)

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FOLDER TITLE:

Disability Guideline

2007-0143-F

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RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

TRANSMISSION RECORD

IMMIGRATION AND NATURALIZATION SERVICE
HEADQUARTERS
425 I STREET, N.W.
WASHINGTON, D.C. 20536

cc Steve W
Debra Bond

TO: <i>Diana Fortuna</i>	FROM: <i>Joel Ginsberg, for Allen Ehrenbaum</i>
ORGANIZATION: <i>DPC</i>	ORGANIZATION: <i>INS</i>
TELEPHONE:	TELEPHONE: <i>202-305-3250</i>
FAX TELEPHONE: <i>456-7028</i>	DATE: <i>1-30-97</i>

NUMBER OF PAGES (including cover sheet): <i>14</i>
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COMMENT/MESSAGE:
<i>- Plan is to send out tomorrow.</i>
<i>- "Previous drafts" referred to on 1st page are a</i>
<i>similar document used in HQ training 1-28 and 1-29.</i>
<i>- Last fl. p. 11, & I will be clarified: these</i>
<i>cases will be neither ^{approved} ~~granted~~ nor denied until further</i>
<i>guidance is received.</i>

Joel

DRAFT

Page 10

naturalization applicant's family member to accompany the applicant during the interview. For most adjudications, this suggestion is not practical. However, for many disabled applicants, the presence of a family member in the interview could have a distinct calming effect. DAOs must always remember that the naturalization interview can be a stressful experience for the non-disabled applicant. The stress factor of the interview for a person with disabilities could be even greater. Offices must be willing to make this particular accommodation and modification on a case by case basis. The family member, at the discretion of the Service, can in some instances assist 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.

DAOs are reminded again of the need for the utmost ~~compassion~~ discretion, and sensitivity in adjudicating cases where the applicant requests an exception to the section 312 requirements. Making acceptable accommodations or modifications to the testing and interview environment is our mandate under the Rehabilitation Act of 1973.

V. Oath of Allegiance

As offices are aware, Congress amended the Act at section 312 to provide persons with disabilities an exception to only the English and civics requirements. Therefore, many feel that while disabled applicants are being offered an exception to the requirements of section 312, we are in fact holding these same applicants to a double standard by requiring them to take the oath of allegiance required by section 337 of the Act. To hold these applicants to the requirements of section 337 requires them to have a limited knowledge of civics, some have stated.

As stated in the introduction to the regulation, Congress did not address the oath requirement when it passed the section 312 amendment concerning disabilities. Any change in this policy, whether from newly discovered court precedent or statutory amendment, will be related to all field offices as quickly as possible. Until such a time, the oath is still required for all applicants.

As noted in section IV of this document, offices are required to make reasonable accommodations and modifications to programs in order to accommodate the needs of disabled persons. The Service currently fulfills many of these accommodations via the provisions of section 337.3 of 8 CFR. While these provisions do not allow or authorize the waiving of the oath, offices are encouraged to becoming more accommodating in granting requests for expedited administration of the oath. However, applicants must be reminded that the provision of 8 CFR 337.3 only apply to the administration of the oath. No one granted an expedited administration of the oath under 8 CFR 337.3 has been waived this requirement, only the statutory requirement that the applicant participate in a public ceremony. Offices currently operating under an order of exclusive jurisdiction should forge a liaison with the local judiciary to facilitate requests for special ceremonies or for the authority to administratively administer the oath in 8 CFR 337.3 cases.

While it is not the role of the DAO to make a technical medical determination as to the existence of a disability, it is the responsibility of the DAO to be satisfied that the disabled

TO: Elena Kagan
Steve Warnath
Wendy White

FROM: Diana Fortuna

CC: Laura Oliven
Debra Bond

DATE: January 13, 1997

Attached is a memo from a disability advocacy organization that is suing the INS over its implementation of a 1994 law that required the INS to waive parts of the citizenship test for certain people with disabilities. This advocate (Pat Wright) apparently met with the new chief of staff as part of a larger group of civil rights leaders, and somehow this memo to Rahm emerged from it. I am not sure what he plans to do with it.

The group wants two things:

- (1) A waiver or "accommodation" of the oath of allegiance: INS says that the 1994 law clearly did not allow waiver of the oath. The second notion -- that of accommodation -- is based on Section 504 of the Rehab Act, which requires the government to provide accommodations for people with disabilities. This is an interesting argument and I imagine will be considered in the lawsuit.
- (2) They want a "tolling" or grace period that would allow SSI and other federal benefits to continue to be paid for legal immigrants who have pending citizenship applications at INS. Elena, I imagine you must have gone over this territory pretty carefully in August.... Am I right to assume that this option is not legally permissible?

faxed to Liz S

MEMORANDUM

TO: Erskine Bowles, Chief of Staff
THE WHITE HOUSE

FROM: Patrisha Wright ^{BW}
DISABILITY RIGHTS EDUCATION & DEFENSE FUND

RE: Citizenship For Immigrants w/ Disabilities

DATE: January 13, 1997

Thank you for meeting with me and other members of the Leadership Conference on Civil Rights on January 9. Attached is a copy of the memo that DREDF sent to Rahm Emanuel.

I need to emphasize that the Administration's response must be a "tolling" or "grace period" which allows the continued payment of SSI and other federal public benefits to affected legal immigrants with disabilities until their citizenship applications are approved by INS.

MEMORANDUM

TO: Rahm Emanuel, THE WHITE HOUSE

FROM: Patrisha Wright, Stephen Rosenbaum
DISABILITY RIGHTS EDUCATION & DEFENSE FUND

RE: Citizenship For Immigrants w/ Disabilities

DATE: January 10, 1997

This memo follows yesterday's meeting between the White House Chief of Staff and the Leadership Conference on Civil Rights.

Immigrants ("lawful permanent residents") who have lived in the U.S. for more than five years and are not "excludable" (e.g., for violating laws, evading the draft, failing to pay taxes, trafficking in narcotics, defrauding the INS) are eligible for citizenship or "naturalization." Applicants must pass tests in English literacy and in knowledge of American history and government; submit fingerprints and photos; and complete a personal INS interview which tracks the written application itself (personal data, marital and family status, employment history, organizational memberships, etc.).

In October 1994, Congress adopted technical amendments waiving the English literacy and civics tests for applicants unable to comply "because of physical or developmental disability or mental impairment..." 8 U.S.C. § 1423(b)(1). More than two years after passage of the amendments, the INS has yet to adopt final rules implementing the statute. Local immigration officers, relying on a 2-page internal memorandum and individual discretion, have not applied the 1994 statute consistently and have made it virtually impossible until the last few months to get a waiver. Moreover, once having granted a waiver, these officers have held up applications when they are not satisfied the would-be citizen has the capacity or willingness to take the oath of allegiance. In effect, naturalization involves 3 components: English/civics tests, interview and the "oath requirement."

This stonewalling means long-term legal immigrants who lack a sufficient work history and are not veterans will be cut off such federal benefits as SSI and Medicaid within a matter of months under the Personal Responsibility Act -- unless their citizenship applications can be approved by an already backlogged INS. The immigration service estimates there are 300,000 applicants nationwide who might seek a disability waiver.

The INS did not publish proposed regulations to implement the waiver until August 1996, following the filing of a class action lawsuit by Disability Rights Education & Defense Fund, Asian Law Caucus and others. *Chow v. Meissner*, No. C-96 2422 SI (N. Dist. Calif.). An interim rule is pending at OMB and is expected to be published by next month, notwithstanding the Government's litigation posture that the statute is not subject to notice-and-comment rulemaking.

INS and DoJ have refused to seriously discuss settlement until the Court rules on their pending motion to dismiss the lawsuit on the ground that plaintiffs have not suffered any harm because none of their applications had actually been denied -- only delayed. This motion was argued October 31, along with plaintiffs' motions for nationwide class certification and a preliminary injunction to insure compliance with the spirit of §504 of the Rehabilitation Act of 1973 and the technical amendments to the immigration act. Rather than talk compromise with plaintiffs' counsel, INS has punished witnesses whose affidavits have been submitted in support of the pending motions. These witnesses -- who are neither parties to the litigation nor counsel -- have been subjected to petty harassment by senior agency officials, which interferes with their ability to serve their clients and to freely give testimony.¹

The Government attorneys have also stated that they will not "make policy" in the context of settlement, even if the ad hoc and ambiguous policy they now defend is at odds with both the Attorney General and INS Commissioner's intensive campaign to promote citizenship and the Administration's articulated desire to soften the harsh effects of welfare reform. The victims of this policy are lawful immigrants who are disabled or elderly.

Even if the impending interim rule establishes a streamlined and uniform process for documenting a disability and determining who qualifies for a waiver, it is not expected to resolve an equally fundamental problem: Processing applicants with severe developmental disabilities, including interview questions about their capacity or willingness to take the oath. This would mean providing reasonable accommodations for the full range of disabilities and impairments or modification of the application and interview/examination process and reconciling the oath requirement with the liberalized purpose of Congress' waiver statute.

For more details, please call Stephen Rosenbaum or Arlene Mayerson of DREDF at 510-644-2555.

Attachments: Legal Background
§504 Applicability
Plaintiff Profiles
Text of Oath

¹ One attorney affiant was advised by the Los Angeles INS District Deputy Director, on the very afternoon of a court hearing on the pending motions, that she could no longer attend meetings of the Los Angeles Naturalization Advisory Committee. Similarly, the Chicago Acting INS District Director informed the Illinois immigrant and refugee coalition's citizenship task force that he would not attend the December meeting of that body if task force member affiants from the Polish American Association, Travelers and Immigrants Aid and World Relief were also present.

LEGAL BACKGROUND

1. The Immigration and Nationality Act, as amended prescribes the requirements for naturalization. 8 U.S.C. §§ 1401 et seq. Among other things, applicants are required to pass an English language test and an American history and government examination. 8 U.S.C. § 1423. Prior to becoming citizens, applicants must take an oath of allegiance and renunciation in a public or expedited ceremony. 8 U.S.C. § 1448.

2. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 is applied to the Department of Justice. It provides, in pertinent part, that:

No otherwise qualified individual with a disability in the United States, as defined in [29 U.S.C. § 706(8)], shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity . . . conducted by any Executive agency."

3. The Immigration and Nationality Technical Corrections Act of 1994 (§ 108(d)), 8 U.S.C. § 1423(b)(1) In 1994, creates a waiver of the tests for applicants with disabilities such that the English language and history and government requirements "shall not apply to any person who is unable because of physical or developmental disability or mental impairment to comply therewith." In adopting the Technical Corrections Act, Congress sought "to promote the acquisition of U.S. citizenship by relaxing or eliminating certain burdensome and unreasonable testing and residency requirements." Hse. Comm'ee on the Judiciary, Hse. Rep. No. 103-387 at 3-4.

4. The INS Associate Commissioner issues an intra-agency memorandum on November 21, 1995 to INS District Directors and other field directors and officers providing "preliminary guidance" on the agency's interpretation of the waiver. The guidance memo states that it was the intent of Congress to grant a "general waiver" of the testing requirements, but that applicants must still meet all other requirements of naturalization. The memo instructs adjudications officers to apply the waiver on a case-by-case basis.

5. The INS Commissioner and Attorney General are sued for not implementing the disability waiver. *Chow v. Meissner*, No. C-96 2422 SI (N. Dist. Calif.)

6. INS publishes a proposed rule on August 28, 1996 which focuses on the requirements for medical certifications and the professionals who should be designated to make the certifications. It makes broad, non-specific references to reasonable accommodations for applicants and is silent with regard to the oath of allegiance. 61 Fed. Reg. 44,222.

SECTION 504 REQUIRES REASONABLE ACCOMMODATIONS OR MODIFICATIONS

As a federal agency, the INS is bound by § 504 of the Rehabilitation Act of 1973, as amended, to provide modifications to enable persons with disabilities to benefit from its programs, including naturalization. Reasonable modifications may include, without limitation, wheelchair-accessible test sites, sign language interpreters, Braille material -- as well as modifications in the naturalization test format or test administration procedures. The principle of reasonable modification also is applicable to the administration of the oath of allegiance.

The accommodation or modification for applicants with developmental disabilities could include a facilitator for someone who is unable to express a willingness to take the oath (e.g., someone who knows a developmentally disabled person well and can assist that person in communication with others and with comprehension of a complex situation). See e.g., Technical Assistance Manual to Title II of the ADA, II-3.6100, Illus. 2 at p. 14 (Dept. of Justice 1993).

Similarly, if the Service were to determine that the applicant does not understand the "purpose and responsibilities of the naturalization procedures," 8 C.F.R. Pt. 316.12(a), an applicant's family members or professional contacts (social workers, teachers, or guardians) could attest through sworn statements that the applicant is unable to fully understand the oath, but would nonetheless be able to abide by it. An alternative accommodation would be for the applicant's family to establish a temporary or limited conservatorship, with the conservator attesting to the applicant's obligations set forth in the oath.

Modifications such as these could be accomplished by the INS without undue administrative burden or fundamental alteration of the naturalization process. See, 28 C.F.R. Pt. 39.150(a). Moreover, reasonable accommodation is necessary to ensure that applicants are able to participate in the naturalization process and enjoy the benefits and privileges that flow from citizenship.

PLAINTIFF PROFILES

M.C. immigrated from Hong Kong in 1969 and worked as a janitor. She is 85 years old and has been diagnosed with multi-infra dementia. M.C. applied for naturalization in April 1994 and almost one year later was scheduled for an INS interview, which she attended with her daughter. After showing the INS officer a letter from M.C.'s doctor and requesting a disability waiver, the daughter was told the waiver did not exist and was not allowed to accompany her mother into the interview room. M.C. was informed that she failed her interview because she could not communicate in English. In December 1995, however, M.C. received a written denial stating that she failed to satisfy the knowledge of history and government requirement. M.C. appealed the denial in January 1996 and appeared for a hearing in February 1996. She again requested a disability waiver and was told that the waiver did not exist and that she needed to satisfy the English literacy requirements. INS denied her appeal on the ground that she had failed to satisfy the English literacy requirements. M.C. was not aware that there was a procedure to reopen her case and was told that her appeal was the final step in her naturalization application. After she joined the lawsuit, M.C. received a letter stating her file would be reopened for reconsideration and that she would be requested to appear at another interview.

British national L.K.L. has mental retardation. She failed her first citizenship interview in October 1995 and was told by INS officers to return for an interview in February 1996. Between interviews, she received private tutoring to help her pass the tests. At the end of her second interview, L.K.L. came into the waiting room in tears. Her sister-in-law claims INS officers told her, "it looked like L-- K--'s whole family was trying to force her to become a citizen." L.K.L. was told not to contact INS in any way, but to await instructions on how to proceed. Her application was approved shortly after she and other plaintiffs filed suit.

M.H.C. of South Korea appeared for her May 1996 interview. Her caseworker had written to INS when she applied a year earlier describing her mental disability. She also presented a letter from her Stanford University neurologist. INS officers told M.H.C. she needed to return after two months with a letter from one of the agency's designated doctors. When her attorney asked to see this requirement in writing, he was told the "internal memo" could not be released. She was approved after the suit was filed.

M. R-B. of Mexico went to her INS interview in January 1996 and was told to return with a doctor's letter. No one advised her the letter had to be from a doctor on the INS' designated list. M. R.-B. provided a letter in March 1996 from a state agency physician stating that she had mental retardation and a seizure disorder, but has not been interviewed again.

OATH OF ALLEGIANCE

8 CFR § 237.1(a)

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.

TRANSMISSION RECORD

**IMMIGRATION AND NATURALIZATION SERVICE
HEADQUARTERS
425 I STREET, N.W.
WASHINGTON, D.C. 20536**

TO: Steve Wameth	FROM: Joel Ginsberg
ORGANIZATION:	ORGANIZATION:
TELEPHONE:	TELEPHONE:
FAX TELEPHONE: 456-7028	DATE: 2-3-97

NUMBER OF PAGES (including cover sheet): 13

[illegible]

Memorandum



HQ 70/33-P

Subject REQUEST FOR LEGAL OPINION:
Rehabilitation Act of 1973, 29 U.S.C. § 794, and the
naturalization oath, 8 U.S.C. § 1448

Date

JAN 8 1997

To
Dawn Johnsen
Acting Assistant Attorney General
Office of Legal Counsel

From
Office of the
General Counsel
INS

I. QUESTION PRESENTED

The Immigration and Naturalization Service ("INS") requests a formal legal opinion addressing the following question:

Does the Rehabilitation Act of 1973, 29 U.S.C. § 794, or the 1994 amendment to section 312(b) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1423(b), require the Service to grant a disabled person's naturalization application, notwithstanding the applicant's inability to understand or take the oath of allegiance required by INA § 337, 8 U.S.C. § 1448?

II. NEED FOR OPINION

Congress has authority to determine what an alien must do, in order to become a citizen. U.S. Const. art. I, § 8, cl. 4. Generally, an applicant must demonstrate, *inter alia*, a certain degree of competence in the English language, and in the history and government of the United States. INA § 312(a), 8 U.S.C. § 1423(a). In 1994, Congress amended the INA to provide for a waiver of the English and civics requirements, if the applicant is "unable because of physical or developmental disability or mental impairment to comply therewith." *Id.* § 312(b)(1), 8 U.S.C. § 1423(b)(1), *as amended by* Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, § 108(a), 108 Stat. 4305, 4308 (1994). The Service has published its

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proposed rule implementing INA § 312(b)(1), 61 *Fed. Reg.* 44,227 (1996), and is currently reviewing the comments submitted. We hope to issue the final rule in the very near future.

Several commenters have raised an issue not directly addressed by § 312(b)(1) itself. In order to obtain naturalization, an applicant must take the oath of allegiance prescribed by law. INA § 337(a), 8 U.S.C. § 1448(a). These commenters argue that, if an applicant qualifies under § 312(b)(1) for a waiver of the English and civics requirements, the Service must also relieve the applicant of the requirement to take the oath. They base this argument, in part, on 29 U.S.C. § 794(a). This section, the codification of § 504 of the Rehabilitation Act of 1973, provides that

[n]o *otherwise qualified individual* with a disability in the United States, as defined in section 706(8) of this title, shall, solely by reason of his or her disability, be excluded from 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) (emphasis added). We request your formal opinion in order to assist the Service in formulating our final rule and in addressing the comments concerning 29 U.S.C. § 794(a) and the naturalization oath.

III. ISSUES FOR CONSIDERATION

We believe that three issues are particularly relevant in formulating your opinion. The first is whether, in enacting § 312(b)(1), Congress implicitly waived other naturalization requirements, including administration of the oath, for applicants who are within the scope of § 312(b)(1). Secondly, can a disabled naturalization applicant properly be said to be within the scope of 29 U.S.C. § 794(a)? Finally, may the Service permit a guardian or conservator, or another duly authorized proxy, to file a naturalization application, or perform other elements of the naturalization process (including oath-taking), on behalf of a disabled person?

A. Implicit Waiver of the Naturalization Oath

It has been suggested to us that, in enacting § 312(b)(1), Congress must have intended that we should waive any other naturalization requirements that an applicant cannot satisfy because of "physical or developmental disability or mental impairment." INA § 312(b)(1), 8 U.S.C. § 1423(b)(1). The point of the argument is that § 312(b)(1) would have little practical effect if an

DELIBERATIVE PROCESS -- DO NOT RELEASE

Did Congress
intend to waive
in immigration
legislation?

applicant who was excused from the English and civics requirement can be denied naturalization on other grounds.¹

This argument carries some initial plausibility, but it does not fully address the kinds of cases Congress may have had in mind. In fact, there are many individuals who could benefit from the waiver of the English and civics requirements and yet would be capable of taking the naturalization oath, with or without some accommodation in the oath-taking ceremony. Congress may have been acting in response to the type of situation typified by a well-publicized case resolved through a private bill in 1992, two years before the amendments to section 312 were adopted. That case involved one Michael Wu, a 26-year-old with Down's Syndrome who had tried six times to pass the English and civics test; he was unsuccessful despite hundreds of hours of preparation. From the news accounts it is apparent that Mr. Wu understood the basic implications of changing his citizenship, eagerly wished to undertake allegiance to the United States, and had no significant difficulty in taking the oath, once the other barrier to citizenship was lifted by the private bill. See, e.g., *Man With Down's Syndrome Wins Citizenship*, Wash. Post, June 17, 1992, Sec. A; Keesling, *A Young Man Struggles for Citizenship*, L.A. Times, Apr. 25, 1991, Sec. B; Fontenay, *Bill May Help Disabled Man Become a Citizen*, L.A. Times, June 15, 1990, Sec. B. (These news accounts are attached.)

In amending INA § 312 and not § 337, which contains the oath requirement, Congress might well have wished to benefit a class of persons similarly stymied by the academic testing requirements, yet capable of indicating consent and attachment in the manner traditionally afforded by the oath. In any case, by its terms, section 312(b)(1) waives only the English and civics requirements of § 312(a). INA § 312(b)(1), 8 U.S.C. § 1423(b)(1). Moreover, nothing in the legislative history indicates that Congress considered the impact of § 312(b)(1) on the required taking of the naturalization oath, or on any other substantive requirements. H. Rep. No. 103-387, 103d Cong., 1st Sess. (1993); 140 *Cong. Rec.* H-9,272, H-9,277, H-11,291, H-11,294 (1994); 130 *Cong. Rec.* H-10,326-27 (1993). Other provisions of the INA demonstrate that Congress knows how to waive the oath requirement, when Congress believes it proper to do so. INA § 337(a), 8 U.S.C. § 1448(a).²

1. This issue is potentially involved in a pending case in California, *Low v. Meissner*, Case No. C-96 2422 SI (N.D.Cal. 1996), although plaintiffs have not squarely targeted it. The gravamen of the complaint is that INS has failed in its duty to issue regulations implementing the English and civics test waivers mandated by INA § 312(b) and to adjudicate certain naturalization applications filed by persons with physical or mental disabilities. In the course of addressing the core issues in the complaint, the Department's brief states that the oath requirement is not waivable.

2. "In the case of the naturalization of a child under the provisions of section 322 of this Act 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." INA § 337(a), 8 U.S.C. § 1448(a).

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DoJ brief filed
says oath is
not waivable.

B. Application of 29 U.S.C. § 794 to the Naturalization Process

In order to be protected by the Rehabilitation Act, 29 U.S.C. § 794(a), the person seeking this protection must be "otherwise qualified," 29 U.S.C. § 794(a), for what the person seeks. Under the Department's implementing regulations, an individual cannot meet this requirement if accommodating the individual's disability will "fundamental[ly] alter[] . . . the nature," 28 C.F.R. § 39.103 of the "program." Nor is an individual who cannot satisfy "essential eligibility requirements," *id.*, "otherwise qualified," 29 U.S.C. § 794(a). To decide whether the Rehabilitation Act mandates the waiving of the oath and related INA provisions for those who benefit from the statutory waivers of the English and civics tests therefore requires a determination of the fundamental nature of the oath requirement and of what are its essential elements.

Those who advocate the waiver of the oath requirement essentially argue that the oath of allegiance is a mere ceremony to be dispensed with if it cannot be accomplished. There are indications to the contrary, however, in the statute and the history of U.S. citizenship practices. Under this opposing view, the requirement of the oath embodies minimum cognitive and volitional elements as its core. INA § 337(a), 8 U.S.C. § 1448(a); 8 C.F.R. 337.9. An alien residing lawfully in the United States must, of course, obey our laws. But the alien owes no political allegiance to the United States. INA § 101(a)(3), (21) and (22), 8 U.S.C. § 101(a)(3), (21) and (22). By taking the oath, the applicant indicates that he or she is, in fact, "attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States," INA § 316(a)(3), 8 U.S.C. § 1427(a)(3), and willing to assume allegiance to the United States, *id.* § 337(a)(1) and (3), 8 U.S.C. § 1448(a)(1) and (3). A person who is an expert on the principles of the Constitution, but who does not believe in them, is not eligible for naturalization. *Id.* § 316(a)(3), 8 U.S.C. § 1427(a)(3). Moreover, the applicant must freely and completely renounce his or her current citizenship, and any title of nobility. *Id.* § 337(a)(2) and (b), 8 U.S.C. § 1448(a)(2) and (b). Thus, taking the oath of allegiance and becoming a United States citizen may well destroy any legal rights the applicant may have had as a citizen of his or her former country.

A change of citizenship works a fundamental change in the applicant's political status. The Supreme Court has held that loss of *United States* citizenship requires the person's free act, done with knowledge that expatriation will result and with the intent to expatriate. *Afroyim v. Rusk*, 387 U.S. 253 (1967). But citizenship in another country also vests that country's citizen with important rights and protections. We hesitate to say that the United States Government should take the position that *foreign* citizenship can be shed here without at least a basic indication of the sort of knowing choice required under *Afroyim*. *Cf. Vance v. Terrazas*, 444 U.S. 252, 260 (1980) ("In the last analysis expatriation depends on the will of the citizen . . ."). Under this view, if a naturalization applicant is unable to understand the basic nature of naturalization in the United States, and to make a deliberate choice to undertake citizenship here and leave behind his

DELIBERATIVE PROCESS -- DO NOT RELEASE

"otherwise qualified"
could be the pros

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In order to be protected by the Rehabilitation Act, 29 U.S.C. § 794(a), the person seeking this protection must be "otherwise qualified," 29 U.S.C. § 794(a), for what the person seeks. Under the Department's implementing regulations, an individual cannot meet this requirement if accommodating the individual's disability will "fundamental[ly] alter[] . . . the nature," 28 § 39.103 of the "program." Nor is an individual who cannot satisfy "essential eligibility requirements," *id.*, "otherwise qualified," 29 U.S.C. § 794(a). To decide whether the Rehabilitation Act mandates the waiving of the oath and related INA provisions for those who benefit from the statutory waivers of the English and civics tests therefore requires a determination of the fundamental nature of the oath requirement and of what are its essential elements.

"otherwise qualified" could be the tests

Those who advocate the waiver of the oath requirement essentially argue that the oath of allegiance is a mere ceremony to be dispensed with if it cannot be accomplished. There are indications to the contrary, however, in the statute and the history of U.S. citizenship practice. Under this opposing view, the requirement of the oath embodies minimum cognitive and volitional elements as its core. INA § 337(a), 8 U.S.C. § 1448(a); 8 C.F.R. 337.9. An alien residing lawfully in the United States must, of course, obey our laws. But the alien owes no political allegiance to the United States. INA § 101(a)(3), (21) and (22), 8 U.S.C. § 101(a)(3) (21) and (22). By taking the oath, the applicant indicates that he or she is, in fact, "attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States," INA § 316(a)(3), 8 U.S.C. § 1427(a)(3), and willing to assume allegiance to the United States, *id.* § 337(a)(1) and (3), 8 U.S.C. § 1448(a)(1) and (3). A person who is an expert on the principles of the Constitution, but who does not believe in them, is not eligible for naturalization. *Id.* § 316(a)(3), 8 U.S.C. § 1427(a)(3). Moreover, the applicant must freely and completely renounce his or her current citizenship, and any title of nobility. *Id.* § 337(a)(2) and (b), 8 U.S.C. § 1448(a)(2) and (b). Thus, taking the oath of allegiance and becoming a United States citizen may well destroy any legal rights the applicant may have had as a citizen of his or her former country.

A change of citizenship works a fundamental change in the applicant's political status. The Supreme Court has held that loss of *United States* citizenship requires the person's free act, done with knowledge that expatriation will result and with the intent to expatriate. *Afroyim v. Rusk*, 387 U.S. 253 (1967). But citizenship in another country also vests that country's citizen with important rights and protections. We hesitate to say that the United States Government should take the position that *foreign* citizenship can be shed here without at least a basic indication of the sort of knowing choice required under *Afroyim*. Cf. *Vance v. Terrazas*, 444 U.S. 252, 260 (1980) ("In the last analysis expatriation depends on the will of the citizen . . ."). Under this view, if a naturalization applicant is unable to understand the basic nature of naturalization in the United States, and to make a deliberate choice to undertake citizenship here and leave behind his

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or her earlier citizenship, then the applicant cannot be said to be "otherwise eligible," 29 U.S.C. § 794(a), for naturalization. Obviously the person's understanding need not be detailed or sophisticated, particularly in light of the waiver provision of INA section 312(b). Moreover, the person need not necessarily be capable of manifesting this choice at the time of the oath administration, as long as the intention was clearly manifested earlier (for example, in the case of a person rendered comatose through injury shortly before a scheduled oath ceremony). Under this reading, personally making a minimally knowing choice to take up U.S. citizenship is an "essential element," 28 C.F.R. § 39.103, of naturalization. If this essential element is satisfied, of course, accommodation would be required to enable the applicant to fulfill the ultimate requirement; for example, a mute person could manifest assent to the oath without voicing the words.

C. Proxies

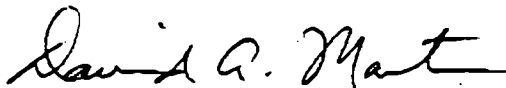
The traditional rule is that a guardian is not the ward's alter ego, and may not make decisions that require a high degree of personal discretion. *Hagen v. Rekow*, 253 Minn. 341, 345, 91 N.W. 2d 768, 771 (Minn. 1958); *Estate of Kroyer*, 385 N.W.2d 31, 34 (1986). For example, a guardian could not withdraw funds from an account that the ward held in joint tenancy with another, and deposit the funds in account in the ward's name alone. *Rekow*. Nor could a guardian revoke a Totten trust, *Kroyer*, or change the beneficiary on the ward's insurance, *Wainman's Estate*, 121 Misc. 318, 208 N.Y.S. 893 (Oneida Cty Surr. 1923). More recently, courts have permitted guardians to give or withhold consent to essential medical care. See, e.g., *Conservatorship of Foster*, 547 N.W. 2d 81 (Minn. 1996). Indeed, a guardian can, according to the Ninth Circuit, exercise on the ward's behalf the ward's right to assisted suicide. *Compassion in Dying v. Washington State*, 79 F.3d 790, 832 n. 120 (9th Cir. 1996), cert. granted, *Washington v. Glucksberg*, 117 S.Ct. 37 (1996). At least one court has held that a guardian or conservator can be authorized to give or withhold consent to the protected person's marriage. *Re Mikulanec*, 356 N.W. 2d 683 (Minn. 1984). It remains the majority rule among the States, however, that a guardian or conservator cannot sue for divorce on the protected person's behalf. *Nelson v. Nelson*, 118 N.M. 17, 19, 878 P.2d 335, 337 (N.M. App. 1994); *Ruvalcaba by Stubblefield v. Ruvalcaba*, 174 Ariz. 436, 441, 850 P.2d 674, 679 (Ariz. App. 1993); *Murray v. Murray*, 310 S.C. 336, 339, 426 S.E.2d 781, 783 (S.C. 1993).

Service regulations do permit a guardian to file immigration applications on behalf of an incompetent person. 8 C.F.R. § 103.2(a)(2). Nevertheless, it would be problematic to let the guardian act for an incompetent permanent resident by manifesting the core elements embodied in the oath requirement, when the resident himself or herself had not clearly indicated the choice required. (A guardian's taking the oath on the resident's behalf, however, if those core elements were otherwise satisfied, might be an acceptable accommodation in the case of certain forms of disability.) The guardian's political allegiance, surely, is not sufficient proof that the incompetent person is "attached to the principles of the Constitution of the United States and

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well disposed to the good order and happiness of the United States." INA § 316(a)(3), 8 U.S.C. § 1427(a)(3); *cf. id.* § 337(a)(1) and (3), 8 U.S.C. § 1448(a)(1) and (3). Nor does the guardian's choice, unsupported by any earlier manifestations of the incompetent's willing decision regarding the naturalization process, satisfy the "essential requirements" of INA sec. 337 if the reading described in the previous section of this memorandum is adopted. We would anticipate, also, possible adverse international consequences from extending to a guardian a right to expatriate the ward and to naturalize the ward here, without an adequate indication of the ward's personal will in the matter. Were we to do so, it would seem that the United States would also be constrained to recognize the authority of a guardian appointed by a foreign court or administrative official to expatriate an incompetent American citizen living abroad.

Because these questions may be reopened vigorously when the pending disability regulation is published in final form (expected by the end of January 1997), and also have a bearing on several issues arising under the welfare reform laws now taking effect, we would appreciate a response at your earliest convenience.



David A. Martin
General Counsel

Attachments

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The Washington Post
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Wednesday, June 17, 1992

A SECTION

Man With Down's Syndrome Wins Citizenship; Bush Signs Bill Benefiting Taiwanese
Immigrant Unable to Pass Exam
Associated Press

President Bush has signed a private bill that will allow a man with Down's syndrome to become a U.S. citizen even though he has been unable to pass the naturalization exam.

Michael Wu, 26, made six attempts at the exam between 1985 and 1988 but failed each time despite hundreds of hours of preparation.

Down's syndrome, a congenital disease, causes mental disabilities that make Wu unable to memorize the answers to questions on U.S. history and politics on the exam.

Wu, who speaks English and Chinese, immigrated to the United States from Taiwan 12 years ago and has permanent resident status. But he longed to become a citizen like his parents and two brothers.

The bill was sponsored by Rep. Bill Lowery, a Republican from San Diego, who said he never knew anyone who wanted to be a citizen more than Wu.

"This is great," Lowery said in a statement from Washington after Bush signed the bill Monday. "It is one of the most personally rewarding experiences of being a legislator."

A special swearing-in ceremony is expected to take place in San Diego by the end of the month, a spokeswoman for Lowery said.

The bill exempts Wu from the exam by allowing him to be considered a child under the age of 18 for the purposes of citizenship. Children under age 18 can become citizens without taking the exam if their parents are citizens.

A private bill applies to singular circumstances. Only 58 were introduced during the last session of Congress, and only seven became law.

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Los Angeles Times

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Thursday, April 25, 1991

Metro; PART-B; Metro Desk

A Young Man Struggles for Citizenship

LESLIE KEESLING

TIMES STAFF WRITER

One of Michael Wu's fantasies is to join the Navy, perhaps because he is fascinated with fighter jets and the sharp Navy uniforms. But the 25-year-old Taiwanese native has Down's syndrome, a form of mental retardation that not only makes that impossible, but is keeping him from his biggest fantasy: becoming an American citizen.

Wu, of Mira Mesa, has lived in the United States since 1980, and has attempted the **naturalization exam** six times, becoming more depressed each time he **fails** it. During that time, he has watched his parents and two older brothers take the **exam** and become **naturalized** citizens.

This month brought Wu and his family a glimmer of hope when Rep. Bill Lowery introduced a private bill-one addressing an individual problem-in Congress that could finally secure Wu his citizenship.

The family had seen that glimmer before-aside from each time Wu took the exam-in July, 1989, when former Rep. Jim Bates sponsored a bill in hopes that Wu would become a citizen without passing the test. The House of Representatives approved the legislation, but the Senate did not act on it by the end of the 101st Congress.

When that bill languished, Wu went back to studying with his mother, Caroline Wu, each night after dinner, concentrating on the history and government portion of the exam. He first attempted the test in 1985, and he last took it in 1988.

But he keeps on studying.

"I've always tried to help him as much as I could," Wu's mother, who has written to government officials explaining her son's situation, said. "I give him support, and we study over and over and over."

Wu, a shy, quiet man, said it makes him feel bad when he **fails**

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the test and that becoming a citizen is important to him. Wu has permanent resident status but feels that something is missing from his life without his citizenship, Caroline Wu said.

Wu said he wants to become a citizen so he can vote.

"Michael knows he's not a citizen, and he tries so hard," Caroline Wu said. "He can answer the simple questions (on the exam) but not the hard ones. Each time I take him, and he fails, he feels so depressed. I just tell him next time he'll pass."

Caroline Wu has built on the skills her son learned at the special education Mission Beach School, where he received his high school diploma, and she has also taught him how to read and write Chinese. She said she always encourages him to learn more and will continue to teach him American history, whether he becomes a citizen or not.

Caroline Wu said she will never give up on her bilingual son and his quest to become a citizen, because she feels responsible for his condition. She was a registered nurse in Taiwan and, in 1966, the year she was pregnant with Michael, worked at the U.S. Navy Dispensary there. She said she constantly administered X-rays to patients at the nearby Chinese Army Hospital.

Even though doctors dismiss the possible connection, she thinks the radiation exposure she received during her pregnancy may have caused Michael's chromosomal abnormality.

"I feel I was exposed to too many X-rays," she said. "I feel so sorry to Michael, that's why I do what I do."

Lowery said the Wu story tugged at his heartstrings. Both Lowery and Bates said passing private bills is very difficult, but they feel that this case is most deserving.

"We're going to get this bill through," Lowery said from his Washington office. "We're fully prepared, and I am committed to make this bill a reality. It will become law."

Lowery said he is confident about Wu's case because he introduced a private bill early in his congressional career that become law.

But it will not be easy. In 1989, only two private bills were passed by Congress. In 1990, 14 private bills, usually concerning immigration and claims against the government, passed.

The Wu bill will have to pass every governmental hurdle and be signed by President Bush before it becomes a law.

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"We have to be patient, because this is not an easy case," Caroline Wu said. "I am so appreciative, because, since we've arrived in this country, so many people have helped me."

The support for Wu seems to come from far and wide—from his mother, father and brothers, the state-run Developmental Disabilities Board, politicians and his teachers at the North Shores Center in Mission Beach, where Wu has been learning social and communicative skills since 1988.

"Mike is an excellent student, very intelligent and communicative," said Roger Phelps, a program manager at the center. "He has good social skills and can do just about anything you give him. He is what we refer to as one of our 'higher functioning clients.' "

His teacher, Don Mudd, whom Wu has a framed picture of in his bedroom, said Wu is a productive student and can articulate the answers to most questions asked of him. Mudd said he believes Wu deserves to be an American citizen.

TABULAR OR GRAPHIC MATERIAL SET FORTH IN THIS DOCUMENT IS NOT DISPLAYABLE

PHOTO: Michael Wu, 25, who has Down's syndrome, works on his studies in hopes of passing the citizenship test.

/ MITSU YASUKAWA / Los Angeles Times

PHOTO: AMERICAN DREAM: The biggest fantasy for Michael Wu is to become an American citizen, but the 25-year-old Taiwanese man of Mira Mesa has Down's syndrome and can't pass the naturalization exam. But he has hope in the form of a special bill introduced in Congress.

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Los Angeles Times

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Friday, June 15, 1990

Metro; PART-B; Metro Desk

Bill May Help Disabled Man Become a Citizen

BLAKE FONTENAY

TIMES STAFF WRITER

Michael Wu is pretty agreeable about most things. Ask the 24-year-old Mira Mesa resident if he likes San Diego, swimming, hamburgers, his school or his teachers, and the answer each time is a soft, quiet "yes."

However, there's at least one thing Wu and his family find very disagreeable-the fact that Wu, a Taiwan native, has not been granted U.S. citizenship despite living here since 1980.

Wu has Down's syndrome, a form of mental retardation caused by chromosomal abnormality. Because of his condition, Wu has repeatedly failed a literacy and education test required of naturalized citizens.

But, thanks to the efforts of Wu's mother, Caroline, and several advocacy groups for the learning-disabled, Wu may become a citizen anyway.

Working together, the groups persuaded U.S. Rep. Jim Bates (D-San Diego) to file a bill that would exempt Wu from taking the test. On Wednesday, after almost a year in political limbo, a House subcommittee gave preliminary approval to Bates' bill.

Before then, Bates and others concerned with the case had held out little hope that the bill would ever get a hearing in Congress.

Leslie Bryant, area director of the state-run Developmental Disabilities Board, said she was encouraged to hear the bill had advanced from the House subcommittee.

"We had been told that the likelihood of passage was slim to none," Bryant said. "There are hundreds of bills like that that never get through."

Caroline Wu was also encouraged by the news from Washington. That bill, she says, is her youngest son's last hope of becoming a

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citizen.

"He tried six times, and he still couldn't pass," said Mrs. Wu, a registered nurse. "I kept teaching him over and over. He does better at home, but, when he takes the test, he gets nervous."

Mrs. Wu, her husband, and the couple's other three sons have all become naturalized U.S. citizens.

Milton Blackstone, the chairman of an advisory board that brought the situation to Bates' attention, said the repeated testing hasn't been easy for Wu.

"It's really been a terrible ordeal," Blackstone said. "He (Wu) was interrogated for more than two hours on more than one occasion."

Bates said he has been asked to file special relief bills "50 or 100 times" since he has been in office, but he rarely does.

However, he decided Wu's predicament was unusual.

"This kind of got to me a little," Bates said. "Here's a young man who wants to be a citizen and, through no fault of his own, probably will never pass the test."

Bates predicted that the bill will fare well when it appears before the full House Judiciary Committee.

"I think it's a critical step," Bates said of Wednesday's legislative action.

Although there's no timetable for passage, Bates said the bill might get final approval in three to four months.

Meanwhile, Wu continues to take special education classes at San Diego's North Shores Center. An administrator there described Wu as a quick learner and a hard worker.

"Mike is very much into the program," said Roger Phelps, the program manager at North Shores.

As part of his training, Wu helps prepare the center's newspapers for shipment to a recycling plant. Wu is paid \$6 to \$10 a day, at a rate of one nickel for every pound of newspapers he prepares, Phelps said.

"You usually just have to show Mike how to do something once, and he picks it up," Phelps said. "Once Mike is on a task, it's hard to get him to stop."

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DREDF

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Law, Public Policy, Training and Technical Assistance

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From:

STEPHEN A. ROSENBAUM, Attorney at Law

Message:

It was nice talking w/ you
finally - voice-to-voice,Here's a legal argument in support of what
I was saying re the vote, plus the
504 argument - Redux

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Revised 10/10/96

OATH REQUIREMENT

Although the proposed regulations are in response to the Technical Corrections Act of 1994, INA §312 (8 USC §1423), the provisions of that Act relating to persons with disabilities cannot be achieved without consideration of the oath requirement and appropriate rules with respect to that requirement.

A statutory construction that avoids inconsistency with the intent of Congress is preferred so long as it does not do violence to the plain words of the statute. United States v. Raynor, 302 U.S. 540, 547 (1938). See, e.g., In re Contreras, 100 F. Supp. 419, 420 (S.D. Cal. 1951). In adopting the §312 disability waiver, Congress sought the removal of barriers in the naturalization process, H.R. Rep. No. 387, Hse. Comm. on Jud. (1993) at 3-4, not the placement of more obstacles to citizenship for people it recognized may lack the cognitive ability to take the typical naturalization tests. Id. at 4.¹

The oath requirement should therefore be read consistently with the liberalization purpose of the 1994 amendments and within the full context of INA §337 (8 USC §1448) and §504 of the Rehabilitation Act of 1973 (including the Justice Department's 504 regulations at 28 CFR Pt. 39). Whole act interpretation of amended statutes dictates that the test waiver and oath provisions be construed harmoniously, see Blair v. City of Chicago, 201 U.S. 400 (1906), and in a manner that avoids an absurd result. See, Public Citizen v. U.S. Dept. of Justice, 491 U.S. 440 (1989). Congress' intent was to waive the competency test completely, not to move it elsewhere in the naturalization process.²

INA §337 provides the structure for regulations which take into account the reasonable modification of the oath requirement. Subsection (a) provides for the taking of an oath in a public

¹ The report states the purpose of the Act includes "promot[ing] the acquisition of U.S. citizenship by relaxing or eliminating certain burdensome and unreasonable testing and residency requirements," H.R. Rep. No. 387 at 3-4, and that the amendment "provides a general waiver of all testing requirements for persons of any age who, because of 'physical or developmental disability or mental impairment,' could not reasonably be expected to pass the test." Id. at 5. The report defines a developmental disability as one "resulting in intellectual functioning so impaired as to render the individual unable to participate in the normal testing procedures for naturalization." Id. at 3-4.

² The Constitutional attachment requirement was also meant to be flexibly applied. "By the very generality of the terms employed [in the attachment requirement] it is evident that Congress intended an elastic test" Schneiderman v. United States, 320 U.S. 118, 139 (1943).

ceremony. But subsection (c) recognizes that there are circumstances under which the oath may either be "expedited" based on "special circumstances" which includes serious illness, permanent disability, and developmental disability. The subsection further recognizes that "[i]f an expedited judicial oath administration ceremony is impracticable, the court shall refer such individual to the Attorney General who may provide for immediate administrative naturalization." (emphasis added). It is significant that the underlined words refer to administrative naturalization rather than taking of the oath before a representative of the Attorney General, the language used in subsection (a).

Since the INA recognizes "administrative naturalization" as an alternative to an oath in special circumstances, §504 and the accompanying regulations require that the Service issue regulations to facilitate the naturalization of the very persons Congress intended to assist in adopting the 1994 amendments.³

Current practices not only fail to take into account the agency's 504 obligations, but actually impose additional burdens on persons with disabilities not found in the statute. Ultimately, the oath is "designed to cast off all foreign allegiance and to undertake undivided loyalty to the United States." Gordon, Mailman & Yale-Loehr, 4 Immigration L. & Proc. §96.08[1] (1995).⁴ There is nothing in the statute, caselaw or commentary which definitively suggests that the articulation of the text of the oath or an expression of intent to take the oath is essential. Rather, if it can be determined by third party attestation that the would-be citizen renounces allegiance to her country of present citizenship and will be loyal to the laws and Constitution of the US (and bear arms or perform alternative service--where legally required), this attestation should be accepted in lieu of an explicit statement from the applicant.

³ An agency of the Justice Department may not utilize "criteria or methods of administration the purpose or effect of which would . . . (ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons." 28 CFR Pt. 39.130 (b)(3). INS must therefore adopt procedures which are necessary to allow persons to become citizens notwithstanding a disability which may interfere with the conventional taking of an oath.

⁴ To the extent there is any caselaw on the meaning or importance of the oath requirement, its focus is on the political ideology of the would-be citizen (and the compatibility of that ideology with U.S. Constitutional principles and form of government) and/or the applicant's willingness to bear arms. See, generally, Gordon, Mailman & Yale-Loehr, §96.08.

SECTION 504 REQUIRES REASONABLE ACCOMMODATIONS OR MODIFICATIONS

As a federal agency, the INS is bound by § 504 of the Rehabilitation Act of 1973, as amended, to provide modifications to enable persons with disabilities to benefit from its programs, including naturalization. Reasonable modifications may include, without limitation, wheelchair-accessible test sites, sign language interpreters, Braille material -- as well as modifications in the naturalization test format or test administration procedures. The principle of reasonable modification also is applicable to the administration of the oath of allegiance.

The accommodation or modification for applicants with developmental disabilities could include a facilitator for someone who is unable to express a willingness to take the oath (e.g., someone who knows a developmentally disabled person well and can assist that person in communication with others and with comprehension of a complex situation). See e.g., Technical Assistance Manual to Title II of the ADA, II-3.6100, Illus. 2 at p. 14 (Dept. of Justice 1993).

Similarly, if the Service were to determine that the applicant does not understand the "purpose and responsibilities of the naturalization procedures," 8 C.F.R. Pt. 316.12(a), an applicant's family members or professional contacts (social workers, teachers, or guardians) could attest through sworn statements that the applicant is unable to fully understand the oath, but would nonetheless be able to abide by it. An alternative accommodation would be for the applicant's family to establish a temporary or limited conservatorship, with the conservator attesting to the applicant's obligations set forth in the oath.

Modifications such as these could be accomplished by the INS without undue administrative burden or fundamental alteration of the naturalization process. See, 28 C.F.R. Pt. 39.150(a). Moreover, reasonable accommodation is necessary to ensure that applicants are able to participate in the naturalization process and enjoy the benefits and privileges that flow from citizenship.

court may, in the event of neglect a issued by any such employee so fore such employee so designated arson to appear before such em-levant books, papers, and docu-nd any failure to obey such order the court as a contempt thereof. uthorized by this subsection shall hearing conducted by an immigra-Any²⁵⁸ such employee shall, at icant of the remedies available to

tion upon any application for nat-on of the Attorney General, be eral and the determination with esignated to conduct such exam-transmitted to the Attorney Gen-

to conduct any such examination o whether the application should e therefor.

aturalization has been filed with at shall not be permitted to with-the consent of the Attorney Gen-eral does not consent to the application shall be determined termination made accordingly. In prosecute his application, the ap-merits unless the Attorney Gen-ition.

tion who moves from the district tes in which the application is ter, request the Service to tran-ct of the Service in the United ication. The transfer shall not be Attorney General. In the case of n the application shall continue ginally been filed in the district tion is transferred.

ACTIONS FOR NATURALIZATION²⁵⁹

) If, after an examination under turalization is denied, the appli-an immigration officer. ce a determination under section , period after the date on which der such section, the applicant district court for the district in earing on the matter. Such court

Immigration Act of 1990 (P.L. 101-649, Nov. r 29, 1990, under § 408(a)(3) of that Act, and

§ 407(c)(17) and 407(d)(14) of the Immigration tion officers for final hearings before judges.

has jurisdiction over the matter and may either determine the mat-ter or remand the matter, with appropriate instructions, to the Service to determine the matter.

(c) The Attorney General shall have the right to appear before any immigration officer in any naturalization proceedings for the purpose of cross-examining the applicant and the witnesses pro-duced in support of the application concerning any matter touching or in any way affecting the applicant's right to admission to citizen-ship, and shall have the right to call witnesses, including the appli-cant, produce evidence, and be heard in opposition to, or in favor of, the granting of any application in naturalization proceedings.

(d) The immigration officer shall, if the applicant requests it at the time of filing the request for the hearing, issue a subpoena for the witnesses named by such applicant to appear upon the day set for the hearing, but in case such witnesses cannot be produced upon the hearing other witnesses may be summoned upon notice to the Attorney General, in such manner and at such time as the Attorney General may by regulation prescribe. Such subpoenas may be enforced in the same manner as subpoenas under section 335(b) may be enforced.

(e) It shall be lawful at the time and as a part of the adminis-tration by a court of the oath of allegiance under section 337(a) for the court, in its discretion, upon the bona fide prayer of the appli-cant included in an appropriate petition to the court, to make a de-cree changing the name of said person, and the certificate of natu-ralization shall be issued in accordance therewith.

OATH OF RENUNCIATION AND ALLEGIANCE

SEC. 337. [8 U.S.C. 1448] (a) A person who has applied for naturalization shall, in order to be and before being admitted to citizenship, take in a public ceremony before the Attorney General or a court with jurisdiction under section 310(b) an oath²⁶⁰ (1) to support the Constitution of the United States; (2) to renounce and abjure absolutely and entirely all allegiance and fidelity to any for-ign prince, potentate, state, or sovereignty of whom or which the applicant was before a subject or citizen; (3) to support and defend the Constitution and the laws of the United States against all en-emies, foreign and domestic; (4) to bear true faith and allegiance to the same; and (5) (A) to bear arms on behalf of the United States when required by the law, or (B) to perform noncombatant service in the Armed Forces of the United States when required by the law, or (C) to perform work of national importance under civilian direction when required by the law. Any such person shall be re-quired to take an oath containing the substance of clauses (1) through (5) of the preceding sentence, except that a person who shows by clear and convincing evidence to the satisfaction of the Attorney General that he is opposed to the bearing of arms in the

²⁶⁰ Section 2 of the Act of Feb. 29, 1952 (36 U.S.C. 154) provides that "Either at the time of the rendition of the decree of naturalization or at such other time as the judge may fix, the judge or someone designated by him shall address the newly naturalized citizen upon the form and genius of our Government and the privileges and responsibilities of citizenship; it being the intent and purpose of this section to enlist the aid of the judiciary, in cooperation with civil and educational authorities, and patriotic organizations in a continuous effort to dignify and empha-size the significance of citizenship."

To: Bruce Reed
Elena Kagan

From: Stephen Warnath *SW*
Diana Fortuna *DF*

Subject: INS Disability Naturalization Guidelines

Date: January 31, 1997

This memo is a quick summary of events that led to a postponement in releasing INS guidelines (and regulations) on processing naturalization applications for persons with disabilities.

The document the INS planned to release Monday defines the circumstances under which a legal immigrant with a disability can become a citizen. The thorniest legal question the INS faces is how far to go in adjusting the oath of citizenship. (Accommodations are required by civil rights laws.) A consensus developed that the INS document had not been adequately vetted within DOJ or with OMB; and certainly we had not been given an opportunity to digest its contents.

The task facing us now is to ensure that the INS and DOJ have fully explored the options so that they further each of the Administration's three goals in this area: protecting the most vulnerable, such as the severely mentally retarded, from loss of SSI and Medicaid benefits; safeguarding the integrity of the citizenship process; and working to build support on the Hill for our broader legal immigrant "fix" legislation.

To recount the events leading to the postponement: Yesterday afternoon we received a draft of INS guidance to its field offices designed to assist in implementing recently finished regulations.¹ This was the first time we received anything about the content of these guidelines. We learned this morning for the first time that the INS planned to issue those guidelines today. In addition, we learned that the INS had arranged Congressional, press and outside group briefings starting Monday. Finally, HHS, SSA and other Administration entities with a substantial interest in disability, welfare and health issues with a significant interest in these guidelines would be briefed at the same time as the general briefings with no opportunity to put in place means to help respond to any questions or problems posed by the guidelines.

We raised questions with INS about how it drafted its document to try to make sure that INS had done everything possible to perfect its guidance. Instead, we learned that there appeared to be unresolved issues or concerns by some, including within OIRA and DOJ's Office of Civil Rights and Office of Legal Counsel. Moreover, the guidance seemed confusing: it made conclusory legal

¹The INS recently finished regulations addressing the naturalization process for disabled individuals, including issues of legally required accommodations and waivers of tests that are part of becoming a U.S. citizen. These regulations were initially called for by statute two years ago and are widely anticipated.

judgments that seemed to erect an insurmountable barrier to citizenship for seriously impaired individuals while, at the same time, calling that outcome into question by indicating that more legal analysis was ongoing and more guidance could be anticipated. As previously mentioned, other agencies that deal with health and welfare were not going to have any opportunity to be ready to help respond to this significant guidance because they were going to be briefed at the same time as Congress, the press and outside groups.

A further concern was whether we might inadvertently confuse the governors' consideration of welfare resolutions if this was released in the middle of their deliberations.

Unfortunately, invitations for briefings on Monday had to be rescinded and INS had to recall the regulations from the Federal Register. This is awkward and may be embarrassing, but we believe that it would be worse not to be fully confident that the guidelines are the Administration's best effort to protect America's most helpless individuals within what the laws allow.

We anticipate a very short postponement, perhaps to the end of next week or the following week.

Record Type: Record

To: Diana Fortuna/OPD/EOP, Laura Oliven Silberfarb/OMB/EOP, Jack A. Smalligan/OMB/EOP
cc: Daniel J. Chenok/OMB/EOP, Steven M. Mertens/OMB/EOP
Subject: INS Disability Rule

INS is prepared to go forward with their Disability rule. They made a couple of changes to the regulation since we cleared. The changes are outlined below. Please let me know by **3:00pm** today if you have any objections or comments. INS wants to send the rule to the Federal register tomorrow. If you have any questions please give me a call.

1. Page 12 (Preamble): Topic – Who can make the medical certification?

OLD Language: "The Service is proposing that only licensed medical doctors, which includes medical doctors with specialties such as board certified psychiatrists, and licensed clinical psychologists who are experienced in diagnosing disabilities, make the determinations that will be used by the Service."

NEW Language: "The Service is proposing that only ~~licensed~~ medical doctors **licensed to practice medicine in the United States (including the United States territories of Guam, Puerto Rico, and the Virgin Islands)**, which includes medical doctors with specialties such as board certified psychiatrists, and ~~licensed~~ clinical psychologists **licensed to practice psychology in the United States (including the United States territories of Guam, Puerto Rico, and the Virgin Islands)** who are experienced in diagnosing disabilities, make the determinations that will be used by the Service.

2. Page 18 (Preamble): Topic – Waiving the oath?

OLD Language: "Whether further accommodations or waivers of the oath requirement are possible within the existing statutory framework present difficult legal issues, which the Service will address through further guidance or regulations as soon as possible."

NEW Language: "Whether further accommodations ~~or waivers~~ of the oath requirement are possible within the existing statutory framework present difficult legal issues, which the Service will address **as needed** through further guidance or regulations ~~as soon as possible~~."

Reason for the change: OLC rendered their opinion that INS can not legally waive the oath.

3. Page 20 (Preamble): Topic – INS response to – Should a special procedure be created for disabled naturalization applicants?

NEW language: "Many separate decisions comprise the overall adjudication of an individual's application for naturalization. One part of the overall adjudication will be acceptance or rejection of the applicant's N-648. This will not be a separate adjudication, entitled to its own set of appeal rights and procedures, but a part of the entire N-400 approval or denial process."

4. Page 34 (Reg Text): Topic – who can make the determination?

OLD Language: "(2) Medical certification. All persons applying for naturalization and seeking an exception from the requirements of Section 312.1(a) and paragraph (a) of this section based on the disability exceptions must submit Form N-648, Medical Certification for Disability Exceptions, to be completed by a licensed medical doctor or a licensed clinical psychologist.

NEW Language: "(2) Medical certification. All persons applying for naturalization and seeking an

exception from the requirements of Section 312.1(a) and paragraph (a) of this section based on the disability exceptions must submit Form N-648, Medical Certification for Disability Exceptions, to be completed by a ~~licensed medical doctor or a licensed clinical psychologist~~ **medical doctor licensed to practice medicine in the United States or a clinical psychologist licensed to practice psychology in the United States (including the United States territories of Guam, Puerto Rico, and the Virgin Islands).**

Diana Fortuna 02/28/97 06:08:33 PM

Record Type: Record

To: Stephen C. Warnath/OPD/EOP
cc:
Subject: Jack's response

----- Forwarded by Diana Fortuna/OPD/EOP on 02/28/97 06:07 PM -----

Jack A. Smalligan
02/28/97 05:52:38 PM

Record Type: Record

To: Debra J. Bond/OMB/EOP
cc: Diana Fortuna/OPD/EOP, Laura Oliven Silberfarb/OMB/EOP
Subject: Re: INS Disability Rule

Looks okay to me since we can't do anything about OLC's decision on the oath -- looks like that shifts the issue to the legislative front. Sooner we get the reg out the better from our front.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Mail Link Monitor to Stephen C. Warnath; RE: Personally Identifiable Information and USSS [partial] (1 page)	02/28/1997	b(7)(C), b(7)(F), b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Stephen Warnath
OA/Box Number: 9587

FOLDER TITLE:

Disability Guideline

2007-0143-F

db4515

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

EXECUTIVE OFFICE OF THE PRESIDENT

28-Feb-1997 04:21pm

TO: Stephen C. Warnath

FROM: Mail Link Monitor
Office of Administration, IST

SUBJECT: CONFIRMATION: APPT. REQUEST FOR WARNATH

FROM: WAVES OPERATIONS CENTER - ACO: (b)(6), (b)(7)c, (b)(7)f [001]
Date: 02-28-1997
Time: 16:12:53

This message serves as confirmation of an appointment for the visitors listed below.

Appointment With: WARNATH
Appointment Date: 3/1/97
Appointment Time: 4:30:00 PM
Appointment Room: 224
Appointment Building: OEOB
Appointment Requested by: WARNATH
Phone Number of Requestor: 65576
Comments:

WAVES APPOINTMENT NUMBER: U02447

If you have any questions regarding this appointment, please call the WAVES Center at 456-6742 and have the appointment number listed above available to the Access Control Officer answering your call.

TOTAL NUMBER OF NAMES SUBMITTED FOR ENTRY : 1
TOTAL NUMBER OF NAMES OF CLEARED FOR ENTRY: 1

JONES, BARBARA

(b)(6)



ALAMEDA COUNTY HEALTH CARE SERVICES AGENCY
PUBLIC HEALTH DEPARTMENT

David Kears, Director
Arnold Perkins, Director

Family Health Services Division

Developmental Disabilities Council 160 Franklin Street, Suite 205 Oakland, CA 94607
(510) 268 - 2732 FAX (510) 268 - 9912

10/10/96

Director, Policy Directives
and Instructions Branch
Immigration and Naturalization Services
425 I Street, NW Room 5307
Washington, D.C. 20536
FAX (202) 514 - 0198

RE: NOTICE OF PROPOSED RULE INS NUMBER 1702-96

Dear Sir/Madam:

I am writing in behalf of the *Alameda County Developmental Disabilities Planning and Advisory Council*. The Council is a volunteer body of over 160 parents, people with disabilities, service providers, community leaders, and administrators. We advise the Alameda County Board of Supervisors and various governmental and non-governmental agencies in Alameda County concerning the needs of citizens with developmental disabilities. (Due to the pending deadline for responses this letter is being faxed, it will be followed by a hard copy.)

These comments are provided in response to the Notice of Proposed Rule related to the Exemptions to the Educational Requirements for Naturalization for Certain Applicants, published in the Federal Register on August 28, 1996.

The proposed rule requires that "all waiver eligibility determinations will be based on individual assessments by civil surgeons or qualified individuals or entities designated by the Attorney General .. It is the responsibility of the disabled person applying for naturalization to provide the documentation necessary to substantiate the claim." We urge the INS to broaden the pool of experts who may provide the necessary documentation of a person's disability.

Currently the civil surgeon's pool is too small for the additional number of people who would have to rely on it. We specifically recommend adding the following categories to the authorized professionals: board certified psychiatrists, licensed psychologists, public doctors and institutions and anyone licensed to provide medical treatments and services relevant to such disabilities. Such specialists should be considered "designated" without having to go through a special procedure. These professionals should be able to speak the primary language of the client(s) needing the service.

The proposed language rule notes that the "services MAY consult with other FEDERAL agencies" regarding a disability determination, and that this "consultation MAY be used in lieu of the individual's medical certification." (emphasis added) This statement implies that the examining officers have the discretion to ignore an official diagnosis from a qualified agency. This is unreasonable when the other agency is using a previously determined legal definition.

Once the existence of a qualifying disability has been determined by reference to another agency's determination, it is equally unnecessary to have a civil surgeon determine whether the applicant's particular disability or mental impairment renders him or her "unable... to comply" with the literacy and civics requirements.

We are also asking that the INS use the pre-existing federal statutory definition of developmental disability which was enacted in 1978 by Congress. The need for uniformity of interpretation is essential when the same term is used in various regulations.

We recommend that persons with disabilities be given reasonable modifications/accommodations when making application for their citizenship. These should include but not be limited to wheel-chair accessible sites, sign-language interpreters, brailled materials, modifications in test format, test administration and choice of locations. Reasonable modifications may be appropriate for persons with cognitive impairments or behavioral challenges. The modification should be based on the particular needs of the individual with a disability and not on a conventionalized idea as to what is needed by persons with a particular disability "label."

In 1994 Congress waived the oath requirement to ensure that persons with disabilities would not have to take it. This regulation should continue to reflect the intent of Congress which is also in accordance with Section 504 of the Rehabilitation Act. The oath is a "ceremonial" requirement at best. It does not attest to an applicant's obligatory behavior as a legal resident of the United States.

Lastly, we would like to emphasize that a finding or lack of finding of disability by the designated health professional or entity be contestable by the applicant. Unless the applicant elects to take the examinations (with or without modifications) or unless the Service presents evidence that definitely demonstrates the applicant is able to take the examination, the waiver must be granted. In addition, this request for waiver should be allowed to climb a ladder of appeal through identified hierachial levels.

The Alameda County Developmental Disabilities Council respectfully urges the INS to consider the preceding modifications to their proposed ruling. Could you please keep the Council informed of the progress on this issue?

Sincerely,



Barbara L. Garcia
Developmental Disabilities Coordinator

cc: Board of Supervisors - Alameda County
Ilona Bray - International Institute of the East Bay

Marge Deichman, Director of Family Health
✓ Steve Warnaths - United States Office of the
Domestic Policy Council

THE WHITE HOUSE
WASHINGTON

- ① If legal analysis
requiring personal
understanding ^{at time of oath} rather than
ability to show assent
through evidence of
life such as
had previously applied
for citizenship and taken
tests ^{then} hit by car and in
coma.

THE WHITE HOUSE
WASHINGTON

- ② excluding comas
some Alzheimer
some Downs etc

~~Then~~ But no
HHS, SSA etc.
preparing to help
w/ explanation of what
we would do. Just
that would have to
wait a long time for Congress



United States Department of Justice
Immigration and Naturalization Service
425 I Street, N.W., Washington, D.C. 20536

Facsimile Transmission Cover Sheet

TO: Steve Warnath **Date:** _____

OFFICE: _____ **Room:** _____

Phone No.: _____

Fax No.: _____

FROM: B. Stack

**Office of the Executive Associate Commissioner,
Policy and Planning**

Room - 6038

Phone No.: (202) 514-3242

Fax No.: (202) 305-0134

No. of Pages: Cover + 9

SUBJECT: _____

DISCUSSION:

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JUL 22 5 55 PM '97

MARIA IZABEL SILVA by and through :
her mother and guardian, MARIA :
SILVA, and her father and guardian :
HERMINIO SILVA :

v. :

CASE NO. 3:93CV-2538(AVC)

DORIS MEISSNER, Commissioner of :
Immigration Naturalization Service, :
IMMIGRATION NATURALIZATION SERVICE, :
JANET RENO, Attorney General of the :
United States :

JUDGMENT

This action came before the Honorable Alfred V. Covello, United States District Judge, for consideration of the Petitioner's application for a de novo review of denial of naturalization benefits, and

At a hearing held on January 10, 1997, the court considered the petition and the applicable principles of law, and granted the Petitioner's application on the record in open court.

It is therefore, ORDERED, ADJUDGED AND DECREED that judgment be and is hereby entered in favor of the Petitioner and the Oath of Allegiance was immediately administered by the court to the Petitioner.

Dated at Hartford, Connecticut this 22nd day of January, 1997.

KEVIN F. ROWE, Clerk

By:

A handwritten signature in dark ink, appearing to read "R. D. Tabora", is written over a horizontal line.

Robin D. Tabora
Deputy in Charge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

COPY

SILVA

VS

MEISSNER

) Civil Action No.
) 3-93-cv-2538 (AVC)
)
) DATE: January 10, 1997
)
) Ruling by the Court
) _____

Federal Building
Hartford, Connecticut

BEFORE ALFRED V. COVELLO, U.S.D.J.

APPEARANCES:

OFFICE OF THE UNITED STATES ATTORNEY
450 Main Street
Hartford, CT 06103
By: Carl J. Schuman, AUSA

STATE OF CONNECTICUT,
FOR PERSONS WITH DISABILITIES
60B Weston Street
Hartford, CT
By: Catherine E. Cushman, Esq.

John C. Brandon, RPR
Official Court Reporter
11A Capitol Avenue
Hartford, CT 06106
(860) 541-6337

(Excerpt of Court Hearing)

THE COURT: Okay. I was going to make some predicate findings here, and going to administer the oath of citizenship here to your client.

But if you want to have some post-trial briefs on it, we can defer.

MS. CUSHMAN: No, that's all right.

THE COURT: First, the Court obviously thanks you both for these very educational presentations here this morning.

The record may reflect my earlier comment that this was an administrative appeal, seeking review of a determination of the Immigration and Naturalization Service in respect to the denial of this lady's application for naturalization.

And, the record may further reflect the Court's understanding that our jurisdiction here is pursuant to 8 U.S. Code section 1421(c).

As to your agreement that in circumstances such as these, a person is entitled to a de novo hearing before this Court, and although there were several issues raised, I believe the predicate or first issue was whether this petitioner is competent to take the oath of allegiance with respect to the principles of the United States Constitution. And,

1 secondarily, to swear to her application for citizenship.

2 And this, in this particular circumstance, this
3 causes us to deal with a little used area of the law, which I
4 can fully understand could create misunderstandings. For the
5 record may reflect that our petitioner, Sylvia, and I guess she
6 calls herself Bell, is that it, is a mildly retarded person.

7 As has been brought out here, there is not a great
8 deal of language with respect to retarded or mentally
9 incompetent people in the statutes, but there is some language
10 that is helpful. 8 USC section 1423, this having to do with
11 requirements with respect to understanding of the English
12 language, history, principles and form of government of the
13 United States, contains an exception with respect to
14 determining this in connection with an applicant if this is a
15 person who is unable, because of physical or developmental
16 disability or mental impairment, to comply therewith.

17 And, as the Immigration and Naturalization Service
18 has correctly pointed out, this statute and this exception are
19 limited to specifically these requirements having to do with
20 knowledge of the English language, history, principles of
21 government, and so forth.

22 But I think that what is also important with respect
23 to that statute, is the fact that Congress clearly contemplated
24 that there would be mentally impaired people who were
25 applicants for citizenship. And specifically, articulated that

1 in this section.

2 Further, you have been kind enough to point the
3 Court's attention to sections of the Code of Federal
4 Regulations having to do with section 316.12, having to do with
5 an applicant's legal income potential.

6 So there is not only in the statute itself, but also
7 in the regulations promulgated by the Immigration and
8 Naturalization Service, a contemplation that under certain
9 circumstances, and understandably they would be rare, that they
10 would be dealing with a mentally impaired person.

11 What creates the difficulty or problem in connection
12 with the instant case is that there is no specific enabling
13 statutory language, or regulatory language, having to do with
14 the matter of the person being able to swear, and also whether
15 or not the person can comport with the oath of allegiance and
16 the concepts that are reflected in it, and that these remain as
17 a separate and distinct requirement of citizenship.

18 It certainly is understandable how the Immigration
19 and Naturalization Service took the position that it did with
20 respect to the present application, because they were dealing,
21 simply -- not simply, but were dealing with a lady who did not
22 have the ability, because of her mental condition, to
23 articulate precisely what her circumstances were with respect
24 to her application for citizenship.

25 Let's deal with the two issues that it raises. First

1 is the question of being able to swear, or, i.e., take an
2 oath. There are legal principles that have been dealt with in
3 the past with respect to taking an oath, and it has been a
4 significant part of our law, and there is legal history to the
5 effect that the person has the ability to understand the
6 difference between right and wrong, and that a sanction would
7 follow the telling of a lie, or telling of an untruth.

8 And, based upon the professional testimony that was
9 elicited today, elicited today for the first time by someone
10 who was able to professionally evaluate this woman, the Court
11 is satisfied that this is a person who can distinguish the
12 difference between right and wrong, and would appreciate that a
13 sanction would follow the telling of an untruth.

14 That brings then the question of the second issue, as
15 to whether this person can swear the necessary allegiance that
16 is contemplated and specifically expressed in the oath that is
17 administered to citizens. And, again, based upon the
18 professional testimony that was adduced here today, the Court
19 is satisfied that this lady understands the principles of an
20 allegiance to a higher authority, which she takes by swearing
21 as a person does, in connection with becoming a citizen.

22 Now, I am now going to administer the oath of
23 allegiance to this lady. However, I do not want to frighten
24 her, and I will be guided by her mother. If I were to come
25 down there, madam, would she stand and raise her right hand?

1

MRS. SILVA: Sure.

2

THE COURT: Wonderful.

3

4

(Oath of citizenship administered by the Court)

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(Hearing concluded)

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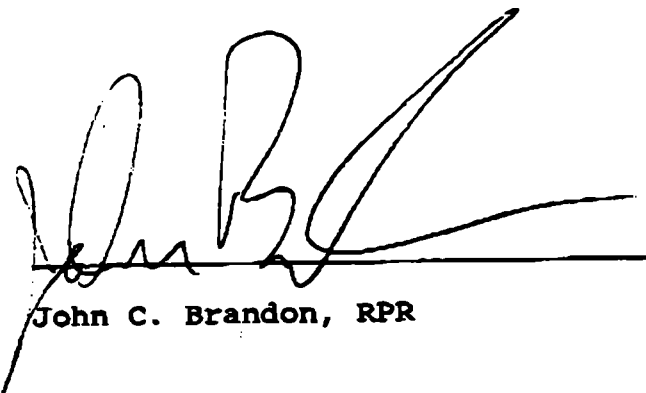
24

25

C E R T I F I C A T E

I, JOHN C. BRANDON, Registered Professional Reporter, do hereby certify that the foregoing testimony is a true and accurate transcription of my stenographic notes to the best of my knowledge and ability.

WITNESS MY HAND this 22nd day of January, 1997.



John C. Brandon, RPR

In Flux

UNCOMMON LAW

Citizenship, Slow and Fast

A COUPLE'S LONG and painful fight to get citizenship for their retarded daughter ended emotionally late last month when a federal judge found her competent to take an oath and swore her in on the spot.

It was up to U.S. District Judge **Alfred V. "Tim" Covello** to determine whether **Belle Silva**, 38, could understand and take a required oath of citizenship, he said.

Though Congress in 1994 made provisions for children and the mentally ill to skip a written test for citizenship, Judge Covello said, an oath is still mandatory.

The Immigration and Naturalization Service had been sympathetic to Ms. Silva's case, the judge said, but "they were up against the wall" with the oath requirement.

"It was very painful," said **Maria Silva**, Belle's mother. "We waited for so long for her to be granted citizenship. We always thought it was unfair."

Though Mrs. Silva, her husband and their other three children all became citizens in 1978, the INS refused to grant citizenship to Belle, who remained a resident alien.

"We never accepted that," said Mrs. Silva, who said her daughter works every day in a bottle recycling center and is "just a child, mentally."

At the de novo hearing, Judge Covello said, he listened closely and determined that Belle Silva understood the difference between right and wrong and the consequences of wrongdoing.

Based on that, the judge said, he found Ms. Silva capable of taking an oath.

Catherine Cushman, an attorney for the state Office of Protection and Advocacy for Persons With Disabilities, who filed the suit for the Silvas in 1993, said she was prepared to submit written arguments. She expected she would have to appeal the case.

But when Judge Covello suggested that he administer the oath of allegiance immediately, Ms. Cushman said, the fam-

ily was overwhelmed, and she was taken aback. "Judges can do that, but it made for a pretty dramatic moment," Ms. Cushman said.

Ms. Silva didn't say the customary "I do" after the judge read the oath, Ms. Cushman said. Instead, she just smiled.

Everyone applauded, and there were hugs all around—even from opposing counsel, Asst. U.S. Attorney **Carol Schuman**, who represented the INS.

—JACKIE MAJERUS

Hey, That's My Contract With America!

A MAN WHO SAYS he coined the phrase "Contract With America" wants House Speaker **Newt Gingrich** and other prominent Republicans to cough up some coinage for using it.

Rogers Hornsby Campbell, of St. Marys, Ohio, has filed a lawsuit in federal court in Cincinnati against U.S. Reps. **John Boehner**, R-Ohio; **Richard Armitage**, R-Texas, the majority leader of the House; an aide, **Kerry Knott**, who helped craft the legislative contract; Mr. Gingrich; the Republican National Committee; and former party Chairman **Haley Barbour**.

The suit says the harm to Mr. Campbell "cannot be fully calculated or adequately compensated in money damages" but says he would be willing to settle for \$50,000.

"This isn't the first time he's made the

You May Already B

SOMETIMES YOU WIN, sometimes you lose. Big. And sometimes you lose more than once.

Ask **Raymond Workmon**, of Flint, Mich., who won't collect the \$10 million "superprize" hyped in a Publishers Clearing House mailing.

While serving in the Air Force, Mr. Workmon received a sweepstakes mailing with his "unique Personal Superprize number" and a Jan. 6, 1989, deadline. He mailed back the entry on time, along with a renewal order for Time magazine—a subscription he claimed he renewed only on the belief that he had won the sweepstakes.

He got the magazine but not the prize. Publishers Clearing House told him his entry didn't match the preselected winning number, and even his congressman couldn't help. Then a federal judge in Detroit rejected his breach-of-contract and consumer protection suit.

So did the 6th U.S. Circuit Court of Ap-

peals. I parentl superp million, der the person sume h

His l Hills, M change got the knows

At P Washin is on a testant oner w him he suits in

Mr. blazone er cha Lowe. you wo



Whose Contract Is It, Anyway? An Ohio man says Rep. **Newt Gingrich**, above, owe him for their use of the p

accusation which is, of course, absolutely absurd," **Dave Schnitger**, Mr. Boehner's spokesman, said Jan. 16. "It's hard for me to believe that this is even being taken seriously."

Mr. (Boehne candid: In Aug titled "Coven aimed: Neit Campb to the r

N.I. Police Officer Gives Himself a Citation

Section 312 Disability Naturalization
Adjudications: Supplemental Policy
Guidance for Field Offices

DRAFT
1/30/97

All Regional Directors
All District Directors (except foreign)
All Officers-in-Charge (except foreign)
All Service Center Directors

Office of Examinations

This memorandum and accompanying attachments provide supplemental policy guidance on section 312 exceptions for persons with disabilities to all Immigration and Naturalization Service (INS) field offices currently adjudicating applications for naturalization.

A 1994 technical amendment to the Immigration and Nationality Act extended an exception to disabled applicants regarding all the section 312 requirements. The attached final rule, to be published in the Federal Register on February 4, outlines the background history of the amendment, the efforts of INS to implement this new policy, and the new regulatory text.

Effective upon publication in the Federal Register, offices shall immediately institute the policy outlined in the final regulation and in this document. Previously distributed drafts of this document and the previously distributed field guidance, dated November 21, 1995, used as a basis for adjudicating section 312 disability exception requests shall no longer be used. In order to ensure consistency, individuals with pending cases shall be required to submit the new form N-648, Medical Certification for Disability Exceptions, and shall have the principles outlined in this document applied to their final adjudication. It is expected that the policy and guidelines outlined in the attachments will be followed consistently by all adjudications officers. In addition, offices should conduct community outreach and education on this regulation as discussed in the attached policy guidance.

Changes to 8 CFR §§ 312.1 and 312.2 reflect our efforts to make the regulation consistent with the amended statute. In particular:

- The wording of § 312.1(b)(3) has been changed, with new language on disability-based exceptions found on page 32 of the attached final rule. Offices should note that previous wording directly referencing blindness and deafness have been removed.
- The current § 312.2(b) has been redesignated as paragraph (c) and a new paragraph has been added as paragraph (b)(1) to provide a disability-based exception to the civics requirements (page 33 of the attached rule).
- A new paragraph at 8 CFR 312.2(b)(2) has been added to explain the medical certification process for a disability exception.

The Service is committed to ensuring that the implementation of the procedures outlined in

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this document are followed. Since a primary mission of the INS is to provide service, applicants with a legitimate claim to the disability exception provisions should be facilitated through the adjudication process. At the same time, Service officers must also utilize credible approaches to deterring fraud and abuse that are applicable to all adjudications for benefits under the Act and must remember that what may seem like fraud may in reality be a lack of information about the naturalization process on the part of certain individuals with disabilities. Service officers must also continue to ensure that applicants who are granted section 312 exceptions continue to meet all other applicable eligibility requirements for naturalization.

Since many disability-related cases will be emotionally charged, all INS offices and adjudication officers are directed to use compassion, discretion, and sensitivity in adjudicating any request for a section 312 disability-based exception. The same level of discretion and sensitivity INS officers apply to orphan adoption cases should be replicated in all section 312 disability exception cases.

Many aspects of this regulatory revision are new and therefore we fully expect field offices to have many questions. We realize that all questions will not be answered within this document. However, we plan to distribute regular updated supplemental policy guidance memoranda for policy and procedural issues not answered by this document. Headquarters will also depend on all field offices to bring unique cases and situations to our attention in order that the experience may be shared with other offices.

Questions about the policy outlined in the attachment to this memorandum and in the Federal Register final rule may be directed to Staff Officer Craig Howie, HQ Naturalization Division. Questions regarding the new form, the new training module, or quality assurance compliance may be directed to Staff Officer Jody Marten, HQ Naturalization Division. Both officers may be reached on 202/514-5014.

Louis D. Crocetti
Associate Commissioner

Attachments

**§312 DISABILITY ADJUDICATIONS:
SUPPLEMENTAL FIELD POLICY GUIDANCE**

I. Introduction

The Immigration and Naturalization Technical Corrections Act of 1994 amended section 312 of the Immigration and Nationality Act (the Act) to afford naturalization applicants with physical or developmental disabilities or mental impairments an exception to English language proficiency and United States history and government (civics) knowledge requirements. This amendment augmented the pre-existing exception that persons with disabilities were afforded regarding only the English proficiency requirements of section 312.

On November 21, 1995 the INS issued preliminary guidance to all naturalization adjudicating offices on the section 312 disability exceptions. On August 28, 1996, a proposed rule was published in the Federal Register, proposing to amend the Service regulations at part 312 to accommodate these new disability exceptions. During the Fall of 1996, the Service reviewed and digested the 228 comments that were submitted by the public pursuant to the proposed rule. The resulting final rule, scheduled to be published in the Federal Register on February 4, 1997, contains substantial changes to the provisions of the proposed rule and the preliminary guidance. In particular:

- Direct reference to the three disability categories in the regulatory language of 8 CFR 312 has been replaced with language complementing the disability terminology used by the Social Security Administration (SSA) in their regulations (i.e., "medically determinable physical or mental impairment or combination of impairments").
- Creation of a new public use form, N-648, Medical Certification for Disability Exceptions, to be used by any applicant requesting an exception to the section 312 requirements based on a disability. A copy of the form is included with this document. Offices are advised to accept photocopies of the N-648 until the form has been placed in full circulation following printing by the Government Printing Office (a process which could take more than six months).
- The elimination of the proposed use of the civil surgeons to make the disability determinations. In the place of the civil surgeons, the INS will allow only licensed medical doctors or licensed clinical psychologists to complete the N-648.

As noted in the accompanying documentation, these exceptions for persons with disabilities are not blanket exemptions from the requirements mandated by section 312. With accommodations or modifications, certain applicants with disabilities will be able to meet the section 312 requirements, just as they are accommodated today in many instances. To institute a policy of blanket exemptions would play into the stereotypical concept that persons with disabilities are not able to participate in mainstream activities. Such a policy would be contrary to the provisions of section 504 of the Rehabilitation Act of 1973 with which all federal government agencies must comply. Therefore, all adjudications for a section 312 exception based on a disability will be made on a case by case basis. It would be discriminatory to formulate policy which states that everyone with a particular disability

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is exempted from the section 312 requirements when some individuals with the disability could well take part in the testing requirements imposed by section 312 with reasonable accommodations or modifications.

All offices must note that the provisions contained within the documents in this package are effective immediately upon publication of the final rule in the Federal Register and must be followed without exception. Due to the substantial changes the Service has made to the provisions of the proposed rule, the public is being allowed a 60 day comment period on the final rule. This will not affect the authority or responsibility of all local offices to proceed with these adjudications immediately and without delay. Any changes that may result from further public comments will be issued in writing to all field office.

Service offices adjudicating naturalization applicants should make note of the changes to the regulatory language of 8 CFR part 312. Of particular concern to officers should be these changes:

- The wording of § 312.1(b)(3) has been changed, with new language on disability-based exceptions found on page 32 of the attached final rule. Offices should note that previous wording directly referencing blindness and deafness have been removed.
- The current §312.2(b) has been redesignated as paragraph (c) and a new paragraph has been added as paragraph (b)(1) to provide a disability-based exception to the civics requirements (page 33 of the attached rule).
- A new paragraph at 8 CFR 312.2(b)(2) has been added to explain the medical certification process for a disability exception and an explanation of the new form, N-648, Medical Certification for Disability Exceptions.

Adjudication officers receiving the special two-day training at HQ during the week of January 27, 1997, should be the officers initially adjudicating disability-based applications for section 312 exceptions. This corps of officers will be responsible for ensuring the complete dissemination of the information and policies contained in this document to additional adjudications officers within each naturalization adjudicating office and shall ensure that these officers are familiar with these policies prior to the adjudication of disability-related exception cases. These trained officers should also work closely with the district director or officer-in-charge to ensure that full information about this regulation is provided to information officers, congressional, and public affairs officers and others within their office who will be answering questions from the public.

Each office is responsible for conducting local community outreach to inform and educate organizations that assist immigrants, persons with disabilities, the elderly, and others to whom this regulation may apply. Representatives of medical and psychological organizations and government agencies such as SSA and Health and Human Services (HHS) should be included in this outreach. Each office should endeavor to educate members of the medical and immigrant assistance communities about the naturalization process and the requirements of this regulation as soon as possible following publication in the Federal Register. Such information dissemination will improve the ability of the assistance groups and medical professionals to accurately apply the disability-based

exceptions in appropriate cases and will help deter abuse of the process.

All offices are reminded of the intense public scrutiny the INS will be placed under as this program moves forward. For many officers, this will be their first experience adjudicating cases involving applicants with disabilities. Officers are therefore reminded to always use discretion and compassion in making adjudications involving persons with disabilities. The same level of compassion and discretion that has in the past been applied to cases involving orphan adoptions is to be applied to any section 312 disability exception request.

II. Disability Definitions, Medical Professionals Authorized to Complete New Form N-648 & Adjudicating Currently Pending Cases

A. Disability Definitions

In the preliminary field guidance (issued in November, 1995) and the proposed rule, the Service offered exact definitions of the terms physical disability, developmental disability, and mental impairment designed to reflect the amendment Congress made to section 312 of the Act. Parts of the definitions were also based on the limited Congressional guidance, contained in the one committee report issued that related to the 1994 Technical Corrections Act.

As officers will note in reviewing the comments portion of the attached final rule, many commenters had concerns about the definitions we proposed. After reviewing the public comments, and after consultations with the SSA, the Service has chosen to drop the proposed definitions and rely on language that comports to the definitions used by the SSA in their regulations. As such, the wording of 8 CFR at part 312.1(b)(3) has been changed and at 312.2(b)(1) has been amended to refer to medically determinable physical or mental impairment(s), that already has or is expected to last at least 12 months. (See pages 32-33 of the attached final rule.) The phrase "medically determinable physical or mental impairments" encompasses the three disability categories noted in section 312 of the Act and refers to an impairment that has resulted from anatomical, physiological or psychological abnormalities. Using medically acceptable clinical and laboratory diagnostic techniques, these abnormalities can be shown to so limit or impair the individual as to render him or her unable to learn and demonstrate the information required by section 312. In addition, language is included in the regulation that prevents individuals whose disability resulted from the illegal use of drugs from being granted these exceptions. This was a particular concern of Congress.

B. Medical Professionals Authorized to Complete New Form N-648

Initially, the Service proposed using the corps of authorized civil surgeons to perform the disability determinations for naturalization applicants requesting an exception to the section 312 requirements. After long discussions with SSA, HHS, and the Centers for Disease Control (CDC), the decision was made not to rely on the civil surgeons to perform this function. The CDC noted that the majority of civil surgeons have expertise centered around diagnosing communicable diseases, not in making complex disability determinations. Therefore, the Service is amending 8 CFR part 312.2

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with the addition of a new paragraph (b)(2), which outlines the medical professionals authorized to make the disability determinations and complete the new public use form N-648, Medical Certification for Disability Exceptions (copy attached). A complete discussion of the rationale behind creating a new public use form is found in the Discussion of Comments section of the attached final rule.

Upon publication of the final rule, only licensed medical doctors or licensed clinical psychologists will be authorized to make a disability determination, utilizing the new form N-648. The term licensed medical doctor includes doctors who are specialists, such as board certified psychiatrists. In addition, any civil surgeon meeting these criteria will be able to make a disability determination, but based on the surgeon's expertise with a particular disability, not on the fact that he or she is a civil surgeon. These licensed medical professionals will be required to certify on the new form that their medical speciality, experience, and other qualifications permit them to make such a complex disability assessment. In addition, the medical doctor or licensed clinical psychologist must certify under penalty of perjury that his or her statements are true and correct. Service officers should note that medical professionals not authorized to complete the N-648 include nurse or homoeopathic practitioners, physician assistants, and medical center or nursing center administrators who are not licensed medical doctors with disability experience. As is the case with virtually all Service adjudications, the burden is on the applicant and the licensed medical professional to ensure that the N-648 is completed correctly and that the medical professional is authorized to make the certification.

District Adjudication Officers (DAOs) are reminded that it is the responsibility of the medical professional to make the medical determination. This responsibility is clearly delineated on form N-648 in questions three and six. Officers are not medical professionals, advocates, or social workers and should not place themselves in the position of attempting to second guess the medical evaluation of the qualified medical professional certifying a disability exception on the N-648. Nor should the officers place themselves in the position of being a medical professional and thereby denying the existence of a disability. However, DAOs should not hesitate to talk with the medical doctor or clinical psychologist, after consultation with the DAO's supervisor, if the officer has a question about the MD's or psychologist's type of certification or questions about the disability determination. This is particularly the case if the terminology is very general and does not explain how the particular medical condition prevents the applicants from learning the requirements of section 312 of the Act. For example, an N-648 noting the disability as only hypertension would need further explanation. The officer needs to know how or why hypertension prevents the applicant from learning the section 312 requirements. Procedures for obtaining a second medical opinion, where deemed necessary, are discussed below.

Beyond reviewing the N-648, officers may consult with officials of other federal or state agencies if the applicant has been declared disabled by another agency, and the DAO believes that such a consultation would assist with the disability determination process. DAOs also have the authority to request additional medical records on the applicant, but only in instances where there is a well founded belief that such documentation would allow the DAO to accurately adjudicate the request for a section 312 exception. (See Section III, Referrals for an Additional Medical Opinion.)

Such a request must be documented in the record, outlining the reasons for the request and the response of the medical professional holding said records. Officers should also take all necessary precautions to maintain the confidentiality of sensitive medical records.

All officers should familiarize themselves with the new form N-648 prior to adjudicating any disability-related case. The new language of 8 CFR 312.2 (b)(2) notes that the N-648 must be submitted as a supplement to the N-400 application when the N-400 is filed. (This will allow offices to pre-screen disability exception requests, to make any necessary modification in accessibility, or to consider the option of going on-site for the interview.) However, since the policy and form are new, offices for the foreseeable future should accept the N-648 if the applicant brings the form to the naturalization interview. Offices should accept legible photocopies of the form.

C. Adjudicating Currently Pending Cases

For offices that have cases pending related to a request for a disability exception, the final adjudication should be made based on the policy and guidelines noted in the final rule. In order to ensure consistency, all applicants with a currently pending request for an exception based on the preliminary guidance will be required to have the new form N-648 completed and submitted to the Service for review. Offices will need to mail applicants with pending requests for a disability exception, based on preliminary field guidance, an N-648 as soon as possible. This policy will avoid having two standards applied to the adjudication.

III. Requirements for Additional Evidence or Second Certification

In section 312.2(b)(2) of the final regulation, it is noted that the Service reserves the right to require an applicant to submit additional evidence supporting the N-648 or to submit a second N-648 from another authorized professional. Offices are instructed to use extreme restraint in exercising these options, and should only do so when doubts remain after the steps outlined below have been completed. DAOs should note that the burden is on the applicant to pay for any second certification, and should take this fact into consideration. Officers should always remember that they are responsible for determining the eligibility for naturalization, but not for making or rendering a medical determination.

Any officer who determines a second medical certification to be necessary must comply with the following procedures:

1. If questions exist regarding the disability or the actual completion of the N-648, the DAO should attempt to reach the medical professional for answers to the DAO's questions. If the officer's questions are answered by this contact, the referral will not be deemed necessary, and the adjudication of the naturalization case should continue.
2. If questions exist regarding the medical professional making the determination, the DAO should attempt to verify the license number noted on the N-648 by contacting the appropriate state medical or clinical psychologist licensing agency. An answer

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from this agency will provide evidence regarding the validity of the medical professional's license, or might expose the existence of a fraudulent practitioner. Evidence of fraud in this instance should be handled in the standard way the officer reports similar discoveries of document fraud. Documented evidence of an applicant knowingly using the services of a fraudulent medical source shall result in the exception and application for naturalization being denied.

3. If the applicant has been declared disabled by another state or federal government agency, the DAO should attempt to make contact with this agency to see if any information can be gained to clarify the questions the officer has about the certification.
4. If, after consultation with the medical certification provider, it is determined that a production of supplemental records from the applicant's medical file would satisfy the concerns of the DAO, such records shall be requested and reviewed. If these documents resolve all outstanding questions, the adjudication of the case shall continue without a second referral. Officers must take all precautions to preserve the privacy and confidentiality of private medical documents.
5. If any of these procedures fail to satisfy the DAO as to the accuracy of the determination or of the medical professional, the DAO shall consult with his or her supervisor and obtain authority to require the applicant to obtain a second disability certification.
6. Upon approval, the applicant shall be given another N-648, with instructions to have the form completed by an authorized medical professional other than the professional that completed the first certification. Until definitive guidance can be issued regarding who should perform these referrals, offices should contact the local medical board or society for information and contact points on referrals. In particular, offices should not refer applicants to commercial medical referral services listed in telephone directories or to any specific medical provider.
7. Supervisory consultation and approval must be obtained and noted in the record for all the steps and procedures outlined above.

An example of a situation where the DAO might feel compelled to require a second certification would be in a case where the medical evaluation, as noted on the N-648, is so vague that the officer cannot clearly discern what is the actual disability or combination of disabling impairments, how the impairments prevent the applicant from learning the section 312 information, and the efforts to obtain clarification from the medical profession making the certification fail. It is incumbent upon the DAO to keep an accurate account of these actions and contacts in the alien file. All offices should also establish a liaison with the local or state medical board or society. This liaison effort should help the office and officer when questions arise over particular medical professionals and the professional's certifications on the N-648.

As noted, HQ Naturalization and Field Operations are currently working on a standardized referral policy, and will notify field offices as soon as the policy is finalized.

IV. Accommodations & Modifications

All federal agencies are mandated to promote and adhere to policies that are non-discriminatory to persons with disabilities in the administration of all programs. The Rehabilitation Act of 1973 spells out these requirements. (The non-discriminatory provisions of the Rehab. Act served as the basis for the Americans with Disabilities Act, which bars discrimination against persons with disabilities in non-government areas.) All INS offices are required to adhere to the principles of the Rehabilitation Act.

The Rehabilitation Act requires the Service to make reasonable accommodations and modifications to program administration to accommodate the needs of persons with disabilities. All offices currently do make accommodations and modifications on a daily basis. For example, every time an office sends a DAO on-site to a nursing facility or hospital to interview or to administer the oath of allegiance, an accommodation and modification has been made.

Offices are reminded that making accommodations and modifications means that not all persons with disabilities will be exempted from the section 312 naturalization requirements. The final rule notes that only disabled persons whose disabilities are so severe that the person is rendered unable to participate in the testing procedures for naturalization will be granted an exception from the testing requirements. Certain individuals will be able to meet the requirements section 312 imposes, but with distinct modifications or accommodations. For example:

- Blind individuals may be supplied with materials in Braille, large print, or questioned orally, and perhaps in their native language, on section 312 civics questions.
- Hearing impaired persons may be given a written test on civics questions.
- A person with a learning disability might be given additional time to complete a written civics test.
- Persons with severe physical disabilities could respond to questions in a yes or no format, or through nodding their heads or blinking their eyes yes or no to particular questions.

This list is not all inclusive. Local offices should be creative in constructing additional accommodations and modifications to the testing procedures required by section 312. In many cases, offices currently have many modifications and accommodations already in use. Offices are encouraged to share these concepts with other offices and with their regional Examinations contact point. However, offices and DAOs should remember that disabled applicants attempting to gain an exception to the section 312 requirements are doing so because they view their particular disability as so impairing that they cannot meet the English and civics requirements.

Aside from the modifications that can be made to the actual test administration, offices must give consideration to modifications of the actual interview. As noted above, any time a DAO goes on-site to conduct a naturalization interview or to administer the oath of allegiance, a considerable modification has been made. Another modification that offices need to consider is allowing a disabled

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naturalization applicant's family member to accompany the applicant during the interview. For most adjudications, this suggestion is not practical. However, for many disabled applicants, the presence of a family member in the interview could have a distinct calming effect. DAOs must always remember that the naturalization interview can be a stressful experience for the non-disabled applicant. The stress factor of the interview for a person with disabilities could be even greater. Offices must be willing to make this particular accommodation and modification on a case by case basis. The family member, at the discretion of the Service, can in some instances assist 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.

DAOs are reminded again of the need for the utmost ~~compassion~~ discretion, and sensitivity in adjudicating cases where the applicant requests an exception to the section 312 requirements. Making acceptable accommodations or modifications to the testing and interview environment is our mandate under the Rehabilitation Act of 1973.

V. Oath of Allegiance

As offices are aware, Congress amended the Act at section 312 to provide persons with disabilities an exception to only the English and civics requirements. Therefore, many feel that while disabled applicants are being offered an exception to the requirements of section 312, we are in fact holding these same applicants to a double standard by requiring them to take the oath of allegiance required by section 337 of the Act. To hold these applicants to the requirements of section 337 requires them to have a limited knowledge of civics, some have stated.

As stated in the introduction to the regulation, Congress did not address the oath requirement when it passed the section 312 amendment concerning disabilities. Any change in this policy, whether from newly discovered court precedent or statutory amendment, will be related to all field offices as quickly as possible. Until such a time, the oath is still required for all applicants.

As noted in section IV of this document, offices are required to make reasonable accommodations and modifications to programs in order to accommodate the needs of disabled persons. The Service currently fulfills many of these accommodations via the provisions of section 337.3 of 8 CFR. While these provisions do not allow or authorize the waiving of the oath, offices are encouraged to becoming more accommodating in granting requests for expedited administration of the oath. However, applicants must be reminded that the provision of 8 CFR 337.3 only apply to the administration of the oath. No one granted an expedited administration of the oath under 8 CFR 337.3 has been waived this requirement, only the statutory requirement that the applicant participate in a public ceremony. Offices currently operating under an order of exclusive jurisdiction should forge a liaison with the local judiciary to facilitate requests for special ceremonies or for the authority to administratively administer the oath in 8 CFR 337.3 cases.

While it is not the role of the DAO to make a technical medical determination as to the existence of a disability, it is the responsibility of the DAO to be satisfied that the disabled

naturalization applicant understands the actions he or she is taking, and to some extent the actual provisions of the oath. The Service believes that many disabled applicants, while excepted from the civics knowledge requirements of section 312, will be able to have a limited understanding of the concepts of the oath, and therefore will be eligible to complete the naturalization process. For officers making these disability-based adjudications, this will most likely be the most difficult aspect of the adjudication.

As noted in the previous section of this document, family members may assist the DAO in understanding the responses of certain disabled applicants. However, prior to the start of the interview, the DAO should attempt to clarify and understand from the family member any physical motions or signals that might be used as an answer to a question asked during the interview.

DAOs cannot expect that interviews with many persons with disabilities will proceed or be conducted in the same way as with applicants without disabilities. Each interview will be unique and each applicant's capabilities regarding the oath requirements will need to be assessed on a case by case basis. However, the DAO conducting the interview with a disabled applicant must be assured that the core qualifications specified by the oath are in some form understood by the applicant. These core qualifications are that the applicant:

- Understands that he or she is becoming a United States citizen.
- Understands that he or she is renouncing his or her allegiance to their prior nation of citizenship.
- Personally and voluntarily agrees to this change in his or her status.

The DAO must be assured that the disabled applicant has some conceptual level of understanding of these core qualifications, but not necessarily every exact word of the oath.

Applicants who cannot satisfy the DAO of an understanding of these aforementioned qualifications, whether disabled and entitled to an exception to the section 312 requirements or non-disabled, cannot be naturalized under the current structure of the Act. A denial of an application for naturalization based on the inability to understand the concepts of the oath should be initially discussed with the DAOs supervisor, and the written denial must cite the failure to meet the statutory requirements of the Act at section 337. Offices are reminded of the extreme sensitivity of this issue with the public. As previously noted, any legal analysis or discoveries which might change this policy will be forwarded to all adjudicating field offices as quickly as possible.

Offices should note that the Service is seeking further legal guidance on the issue of the oath requirement. Offices should not deny any disability-related case, based on the applicant's inability to take the oath, until this further legal guidance is provided to all field offices.

VI. Denials & Appeals

In the discussion of comments of the final rule, many commenters suggested that the Service

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establish a special appeal procedure for applicants with disabilities in the event their applications for naturalization are denied. The Service determined that the current procedure for appealing a naturalization denial, as specified in the Act in section 336, is adequate and should not be altered. This decision is based on the fact that the acceptance or denial of an N-648 is not a separate adjudication, but a part of the overall N-400 adjudicative process.

As is specified in 8 CFR 336.2, any applicant whose application for naturalization is denied may submit additional independent evidence, including medical evidence, prior to the reconsideration hearing. This hearing should be conducted by a SAO. Offices are reminded that in the vast majority of cases involving disability-related denials, the denial will be based on the fact that the individual cannot meet one or more of the statutory requirements of naturalization, not the fact that the Service does or does not believe that a disability exists which prevents the applicant from fulfilling the requirements of section 312.

Offices should note that the Service has requested additional public comments on alternative appeal procedures for applicants with disabilities. Field offices will be notified of any change in the current appeal procedures. However, any such change will necessitate a separate regulatory change to the provision of 8 CFR 336, which would require an initial proposed rule and digest of public comments.

VII. Training, Quality Control & Quality Assurance

The need for supplemental training for DAOs responsible for adjudicating disability-related naturalization cases cannot be over emphasized. Adjudicators who receive the special disability training the week of January 27, 1997, are designated to be the DAO in his or her office to adjudicate disability exception cases for the first 60 days after the publication of the final rule in the Federal Register. These DAOs are also to share the concepts and materials gained at this session with fellow officers in their respective district. Service HQ is currently working to formulate a training module which will be part of all basic training given to entry level adjudicators. In addition, local offices should reinforce to all DAOs the responsibility each officer has in complying with the non-discriminatory provisions of Section 504 of the Rehabilitation Act of 1973.

Quality Control and Assurance must also play a prominent role in these adjudications. As noted in the Commissioner's memorandum of November 29, 1996 (Naturalization Quality Procedures), each office adjudicating applications for naturalization must ensure that quality assurance controls are in place at each step of the adjudicative process. In that these adjudications will be the first large-scale dealings some offices may have with applicants with disabilities, public scrutiny will be placed upon local offices. We must ensure that these applications are adjudicated fairly and correctly. Following the procedures previously outlined in this document will meet many quality control goals.

In compliance with the November 29, 1996 Quality Procedures Memorandum, supervisory review is necessary for cases with "applicants with complex cases involving other statutory eligibility

determinations." It should be noted that with disability exception cases, supervisors must review and approve all adjudicating officers' requests for a second medical certification, in addition to conducting a review of the case after the adjudicating officer has made a final decision on the entire application. Since not all supervisors have been made available for disability regulation training at HQ, but must still review these cases, it is requested that supervisors receive briefing from the officers with primary training at HQ by February 4, 1997 in order to ensure that any routine adjudication processes are not disrupted.

Offices have been advised that for the first 60 days after implementation of the disability regulation, officers who received training on the regulation at HQ must be solely responsible for the adjudication of these cases and the training of the other officers within their respective district. For the next 60-day period, these same officers are responsible for review of all disability cases. Currently, the disability cases are included as part of the File Review Attestation worksheet under both the "Checklist after Interview" section, and the "Continued Cases" section. On the N-400 Processing worksheet, the adjudicating officer checks "other eligibility requirements met" and the supervisor notes the officer correctly adjudicated a case where the issue was an "applicant with complex statutory eligibility issues." There is space in both sections for further comment. We are reviewing whether to expand the processing worksheet to allow for more detailed coverage of an N-400 application with an attached N-648, or whether the comments section is sufficient for more explanation.

As noted previously in this document, SAOs must specifically review disability cases to ensure proper processing and compliance by both the applicant and the adjudicating officer. Additional guidance concerning a mandatory tracking log for these disability-related cases may be found in the attached documentation.

The Service is investigating the use of a private organization, via contract, to assist with quality control by means of random samplings and reviews. We are giving the public an additional opportunity to comment on this concept, and will communicate with all field offices any decision made to implement such a policy. Offices must cooperate with any effort undertaken by HQ to ensure quality in this particular adjudicative process.

On Page 10, CRT proposes to add "or guardian" after "family member" each time it appears in the first incomplete paragraph.

On Page 11, substitute the following for all the full paragraphs:

DAOs cannot expect that interviews with many persons with disabilities will proceed or be conducted in the same way as with applicants without disabilities. Each interview will be unique and each applicant's capabilities regarding the oath requirements will need to be assessed on a case-by-case basis. Although a disabled applicant need not understand every word of the oath, the DAO must be assured that an applicant has an understanding of the nature of the oath. An inquiry by a DAO might include, for example, an attempt to determine whether the applicant understands that he or she is becoming a United States citizen, is giving up his or her prior citizenship, and [CRT proposes to delete "personally and"] voluntarily agrees to this change of his or her status.

If the DAO concludes that an applicant does not understand the nature of the oath, that applicant cannot be naturalized under current statute and regulations. A denial of an application for naturalization based on the inability to understand the nature of the oath should be initially discussed with the DAOs supervisor, and the written denial must cite the failure to meet the statutory requirements of the Act at section 337. Offices are reminded of the extreme sensitivity of this issue with the public. As previously noted, the Service is seeking further legal guidance on the issue of the oath requirement, and any legal analysis or discoveries which might change this policy will be forwarded to all adjudicating field offices as quickly as possible.

Armed Forces of the United States by reason of religious training and belief shall be required to take an oath containing the substance of clauses (1) through (4) and clauses (5)(B) and (5)(C), and a person who shows by clear and convincing evidence to the satisfaction of the Attorney General that he is opposed to any type of service in the Armed Forces of the United States by reason of religious training and belief shall be required to take an oath containing the substance of clauses (1) through (4) and clause (5)(C). The term "religious training and belief" as used in this section shall mean an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. In the case of the naturalization of a child under the provisions of section 322 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.

(b) In case the person applying for naturalization has borne any hereditary title, or has been of any of the orders of nobility in any foreign state, the applicant shall in addition to complying with the requirements of subsection (a) of this section, make under oath in the same public ceremony in which the oath of allegiance is administered, an express renunciation of such title or order of nobility, and such renunciation shall be recorded as a part of such proceedings.

(c)²⁶¹ Notwithstanding section 310(b), an individual may be granted an expedited judicial oath administration ceremony or administrative naturalization by the Attorney General upon demonstrating sufficient cause. In determining whether to grant an expedited judicial oath administration ceremony, a court shall consider special circumstances (such as serious illness of the applicant or a member of the applicant's immediate family, permanent disability sufficiently incapacitating as to prevent the applicant's personal appearance at the scheduled ceremony, developmental disability or advanced age, or exigent circumstances relating to travel or employment). If an expedited judicial oath administration ceremony is impracticable, the court shall refer such individual to the Attorney General who may provide for immediate administrative naturalization.

(d) The Attorney General shall prescribe rules and procedures to ensure that the ceremonies conducted by the Attorney General for the administration of oaths of allegiance under this section are public, conducted frequently and at regular intervals, and are in keeping with the dignity of the occasion.

CERTIFICATE OF NATURALIZATION; CONTENTS

SEC. 338. [8 U.S.C. 1449] A person admitted to citizenship in conformity with the provisions of this title shall be entitled upon such admission to receive from the Attorney General a certificate of naturalization, which shall contain substantially the following

²⁶¹ Section (c) was amended in its entirety by § 102(b)(2) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (P.L. 102-232, Dec. 12, 1991, 105 Stat. 1736), effective as of January 11, 1992.

er discretion, conduct a full *de novo* hearing or may utilize a less formal review procedure, as he or she deems reasonable and in the interest of justice.

(c) *Improperly filed request for hearing*—(1) *Request for hearing filed by a person or entity not entitled to file.*

(i) *Rejection without refund of filing fee.* A request for hearing filed by a person or entity who is not entitled to file such a request must be rejected as improperly filed. In such a case, any filing fee that the Service has accepted will not be refunded.

(ii) *Request for hearing by attorney or representative without proper Form G-28.* A request for hearing is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitling that person to file the request for hearing, the application will be considered as improperly filed. In such a case, any filing fee that the Service has accepted will not be refunded regardless of the action taken. The reviewing official shall ask the attorney or representative to submit Form G-28 to the official's office within 15 days of the request. If Form G-28 is not submitted within the time allowed, the official may, on his or her motion, under §103.5(a)(5)(i) of this chapter, make a new decision favorable to the affected party without notifying the attorney or representative. The request for hearing may be considered as properly filed as of its original filing if the attorney or representative submits a properly executed Form G-28 entitling that person to file the request for hearing.

(iii) *Untimely request for hearing.*

Rejection without refund of filing fee. A request for hearing which is not filed within the time period allowed must be rejected as improperly filed. In such a case, any filing fee that the Service has accepted will not be refunded.

(iv) *Untimely request for hearing treated as motion.* If an untimely request for hearing meets the requirements of a motion to reopen as described in §5(a)(2) of this chapter or a motion to reconsider as described in §103.5(a)(3) of this chapter, the request for hearing must be treated as a motion, and a de-

cision must be made on the merits of the case.

[56 FR 50499, Oct. 7, 1991, as amended at 58 FR 49914, Sept. 24, 1993]

§§ 336.3—336.8 [Reserved]

§ 336.9 Judicial review of denial determinations on applications for naturalization.

(a) *General.* The provisions in part 310 of this chapter shall provide the sole and exclusive procedures for requesting judicial review of final determinations on applications for naturalization made pursuant to section 336(a) of the Act and the provisions of this chapter by the Service on or after October 1, 1991.

(b) *Filing a petition.* Under these procedures an applicant shall file a petition for review in the United States District Court having jurisdiction over his or her place of residence, in accordance with chapter 7 of title 5, United States Code, within a period of not more than 120 days after the Service's final determination. The petition for review shall be brought against the Immigration and Naturalization Service, and service of the petition for review shall be made upon the Attorney General of the United States, and upon the official in charge of the Service office where the hearing was held pursuant to §336.2.

(c) *Standard of review.* The review will be *de novo*, and the court will make its own findings of fact and conclusions of law. The court may also conduct, at the request of the petitioner, a hearing *de novo* on the application for naturalization.

(d) *Exhaustion of remedies.* A Service determination denying an application for naturalization under section 335(a) of the Act shall not be subject to judicial review until the applicant has exhausted those administrative remedies available to the applicant under section 336 of the Act. Every petition for judicial review shall state whether the validity of the final determination to deny an application for naturalization has been upheld in any prior administrative proceeding and, if so, the nature and date of such proceeding and the forum in which such proceeding took place.

PART 337—OATH OF ALLEGIANCE

Sec.

337.1 Oath of allegiance.

337.2 Oath administered by the Immigration and Naturalization Service or an Immigration Judge.

337.3 Expedited administration of oath of allegiance.

337.4 When requests for change of name granted.

337.5—337.6 [Reserved]

337.7 Information and assignment of individuals under exclusive jurisdiction.

337.8 Oath administered by the courts.

337.9 Effective date of naturalization.

337.10 Failure to appear for oath administration ceremony.

AUTHORITY: 8 U.S.C. 1103, 1443, 1448.

§ 337.1 Oath of allegiance.

(a) *Form of oath.* Except as otherwise provided in the Act and after receiving notice from the district director that such applicant is eligible for naturalization pursuant to §335.3 of this chapter, an applicant for naturalization shall, before being admitted to citizenship, take in a public ceremony held within the United States the following oath of allegiance, to a copy of which the applicant shall affix his or her signature:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.

(b) *Alteration of form of oath; affirmation in lieu of oath.* In those cases in which a petitioner or applicant for naturalization is exempt from taking the oath prescribed in paragraph (a) of this section in its entirety, the inapplicable clauses shall be deleted and the oath shall be taken in such altered form. When a petitioner or applicant for nat-

uralization, by reason of religious training and belief (or individual interpretation thereof), or for other reasons of good conscience, cannot take the oath prescribed in paragraph (a) of this section with the words "on oath" and "so help me God" included, the words "and solemnly affirm" shall be substituted for the words "on oath," the words "so help me God" shall be deleted, and the oath shall be taken in such modified form. Any reference to 'oath of allegiance' in this chapter is understood to mean equally 'affirmation of allegiance' as described in this paragraph.

(c) *Obligations of oath.* A petitioner or applicant for naturalization shall, before being naturalized, 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 and laws of the United States renders him or her capable of fulfilling the obligations of such oath.

(d) *Renunciation of title or order of nobility.* A petitioner or applicant for naturalization who has borne any hereditary title or has been of any of the orders of nobility in any foreign state shall, in addition to taking the oath of allegiance prescribed in paragraph (a) of this section, make under oath or affirmation in public an express renunciation of such title or order of nobility, in the following form:

(1) I further renounce the title of (give title or titles) which I have heretofore held; or

(2) I further renounce the order of nobility (give the order of nobility) to which I have heretofore belonged.

[22 FR 9824, Dec. 6, 1957, as amended at 24 FR 2584, Apr. 3, 1959; 32 FR 13756, Oct. 3, 1967; 56 FR 50499, Oct. 7, 1991]

§337.2 Oath administered by the Immigration and Naturalization Service or an Immigration Judge.

(a) *Public ceremony.* An applicant for naturalization who has elected to have his or her oath of allegiance administered by the Service or an Immigration Judge and is not subject to the exclusive oath administration authority of an eligible court pursuant to section 310(b) of the Act shall appear in person in a public ceremony, unless such ap-

pearance is specifically excused under the terms and conditions set forth in this part. Such ceremony shall be held at a time and place designated by the Service or the Executive Office for Immigration Review within the United States and within the jurisdiction where the application for naturalization was filed, or into which the application for naturalization was transferred pursuant to §335.9 of this chapter. Such ceremonies shall be conducted at regular intervals as frequently as necessary to ensure timely naturalization, but in all events at least once monthly where it is required to minimize unreasonable delays. Such ceremonies shall be presented in such a manner as to preserve the dignity and significance of the occasion. District directors shall ensure that ceremonies conducted by the Service in their districts, inclusive of those held by suboffice managers, are in keeping with the Model Plan for Naturalization Ceremonies. Organizations traditionally involved in activities surrounding the ceremony should be encouraged to participate in Service-administered ceremonies by local arrangement.

(b) *Authority to administer oath of allegiance.* The authority of the Attorney General to administer the oath of allegiance shall be delegated to Immigration Judges and to the following officers of the Service: The Commissioner; district directors; deputy district directors; officers-in-charge; assistant officers-in-charge; or persons acting in behalf of such officers due to their absence or because their positions are vacant. In exceptional cases where the district director or officer-in-charge determines that it is appropriate for employees of a different rank to conduct ceremonies, the district director or officer-in-charge may make a request through the Commissioner to the Assistant Commissioner, Adjudications, for permission to delegate such authority. The request shall furnish the reasons for seeking exemption from the requirements of this paragraph. The Commissioner may delegate such authority to such other officers of the Service or the Department of Justice as he or she may deem appropriate.

(c) *Execution of questionnaire.* Immediately prior to being administered the

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nance is specifically excused under terms and conditions set forth in part. Such ceremony shall be held at time and place designated by the court or the Executive Office for Immigration Review within the United States and within the jurisdiction of the application for naturalization was filed, or into which the application for naturalization was transferred pursuant to §335.9 of this chapter. Such ceremonies shall be conducted at regular intervals as frequently as necessary to ensure timely naturalization, but in all events at once monthly where it is required to minimize unreasonable delays. Such ceremonies shall be presented in such a manner as to preserve the dignity and importance of the occasion. District directors shall ensure that ceremonies conducted by the Service in their districts, inclusive of those held by Service managers, are in keeping with the Model Plan for Naturalization Ceremonies. Organizations traditionally involved in activities surrounding the ceremony should be encouraged to participate in Service-administered ceremonies by local arrangement.

Authority to administer oath of allegiance. The authority of the Attorney General to administer the oath of allegiance shall be delegated to Immigration Judges and to the following officials of the Service: The Commissioner; district directors; deputy district directors; officers-in-charge; assistant officers-in-charge; or persons acting in place of such officers due to their absence or because their positions are vacant. In exceptional cases where the district director or officer-in-charge determines that it is appropriate for employees of a different rank to conduct ceremonies, the district director or officer-in-charge may make a request through the Commissioner to the Assistant Commissioner, Adjudicator General, for permission to delegate such authority. The request shall furnish reasons for seeking exemption from the requirements of this paragraph. The Commissioner may delegate such authority to such other officers of the Service or the Department of Justice as he or she may deem appropriate.

Execution of questionnaire. Immediately prior to being administered the

oath of allegiance, each applicant shall complete the questionnaire on Form N-445. Each completed Form N-445 shall be reviewed by an officer of the Service who may question the applicant regarding the information thereon. If derogatory information is revealed, the applicant's name shall be removed from the list of eligible persons as provided in §335.5 of this chapter and he or she shall not be administered the oath.

[60 FR 37803, July 24, 1995]

§337.3 Expedited administration of oath of allegiance.

(a) An applicant may be granted an expedited oath administration ceremony by either the court or the Service upon demonstrating sufficient cause. In determining whether to grant an expedited oath administration ceremony, the court or the district director shall consider special circumstances of a compelling or humanitarian nature. Special circumstances may include but are not limited to:

(1) The serious illness of the applicant or a member of the applicant's family;

(2) Permanent disability of the applicant sufficiently incapacitating as to prevent the applicant's personal appearance at a scheduled ceremony;

(3) The developmental disability or advanced age of the applicant which would make appearance at a scheduled ceremony inappropriate; or

(4) Urgent or compelling circumstances relating to travel or employment determined by the court or the Service to be sufficiently meritorious to warrant special consideration.

(b) Courts exercising exclusive authority may either hold an expedited oath administration ceremony or refer the applicant to the Service in order for either the Immigration Judge or the Service to conduct an oath administration ceremony, if an expedited judicial oath administration ceremony is impractical. The court shall inform the district director in writing of its decision to grant the applicant an expedited oath administration ceremony and that the court has relinquished exclusive jurisdiction as to that applicant.

(c) All requests for expedited administration of the oath of allegiance shall

be made in writing to either the court or the Service. Such requests shall contain sufficient information to substantiate the claim of special circumstances to permit either the court or the Service to properly exercise the discretionary authority to grant the relief sought. The court or the Service may seek verification of the validity of the information provided in the request. If the applicant submits a written request to the Service, but is awaiting an oath administration ceremony by a court pursuant to §337.8, the Service promptly shall provide the court with a copy of the request without reaching a decision on whether to grant or deny the request.

[60 FR 37804, July 24, 1995]

§337.4 When requests for change of name granted.

When the court has granted the petitioner's change of name request, the petitioner shall subscribe his or her new name to the written oath of allegiance.

[66 FR 50500, Oct. 7, 1991]

§§337.5—337.6 [Reserved]

§337.7 Information and assignment of individuals under exclusive jurisdiction.

(a) No later than at the time of the examination on the application pursuant to §335.2 of this chapter, an employee of the Service shall advise the applicant of his or her right to elect the site for the administration of the oath of allegiance, subject to the exclusive jurisdiction provision of §310.3(d) of this chapter. In order to assist the applicant in making an informed decision, the Service shall advise the applicant of the upcoming Immigration Judge or Service conducted and judicial ceremonies at which the applicant may appear, if found eligible for naturalization.

(b) An applicant whose application has been approved by the Service who is subject to the exclusive jurisdiction of a court pursuant to §310.2(d) of this chapter, shall be advised of the next available court ceremony and provided with a written notice to appear at that ceremony. If the applicant is subject to the exclusive jurisdiction of more than

one court exercising exclusive jurisdiction, the applicant will be informed of the upcoming ceremonies in each affected court. The applicant shall decide which court he or she wishes to administer the oath of allegiance.

[58 FR 49915, Sept. 24, 1993, as amended at 60 FR 37804, July 24, 1995]

§337.8 Oath administered by the courts.

(a) *Notification of election.* An applicant for naturalization not subject to the exclusive jurisdiction of §310.2(d) of this chapter shall notify the Service at the time of the filing of, or no later than at the examination on, the application of his or her election to have the oath of allegiance administered in an appropriate court having jurisdiction over the applicant's place of residence.

(b) *Certification of eligibility—(1) Exclusive jurisdiction.* In those instances falling within the exclusive jurisdiction provision of section 310(b)(1)(B) of the Act, the Service shall notify the court of the applicant's eligibility for admission to United States citizenship by submitting to the clerk of court Form N-646 within ten (10) days of the approval of the application.

(2) *Non-exclusive jurisdiction.* In those instances in which the applicant has elected to have the oath administered in a court ceremony, the Service shall notify the clerk of court, in writing, using Form N-646, that the applicant has been determined by the Attorney General to be eligible for admission to United States citizenship upon taking the requisite oath of allegiance and renunciation in a public ceremony. If a scheduled hearing date is not available at the time of the notification, Form N-646 shall indicate that the applicant has not been scheduled for a ceremony and the applicant shall be informed in writing that the application has been approved but no ceremony date is yet available.

(c) *Preparation of lists.* (1) At or prior to the oath administration ceremony the representative attending the ceremony shall submit to the court on Form N-647, in duplicate, lists of persons to be administered the oath of allegiance and renunciation. After the ceremony, and after any required amendments and notations have been

made therein, the clerk of court shall sign the lists.

(2) The originals of all court lists specified in this section shall be filed permanently in the court, and the duplicates returned by the clerk of court to the appropriate Service office for retention by such office. The same disposition shall be made of any list presented to, but not approved by, the court.

(d) *Personal representation of the government at oath administration ceremonies.* An oath administration ceremony shall be attended by a representative of the Service, who shall review each applicant's completed questionnaire Form N-445. If necessary, the Service representative shall question the applicant regarding the information thereon. If the questioning reveals derogatory information, the applicant's name shall be removed from the list of eligible persons as provided in §335.5 of this chapter and the court shall not administer the oath to such applicant.

(e) *Written report in lieu of personal representation.* If it is impracticable for a Service representative to be present at a judicial oath administration ceremony, written notice of that fact shall be given by the Service to the court. The applicants to be administered the oath shall be listed on the appropriate forms prescribed in paragraph (d) of this section. The forms, memoranda, and certificates of naturalization shall be transmitted to the clerk of court, who shall submit the appropriate lists to the court.

(f) *Withdrawal from court.* An applicant for naturalization not subject to the exclusive jurisdiction of §310.3(d) of this chapter, who has elected to have the oath administered in a court oath ceremony, may, for good cause shown, request that his or her name be removed from the list of persons eligible to be administered the oath at a court oath ceremony and request that the oath be administered in a ceremony conducted by an Immigration Judge or the Service. Such request shall be in writing to the Service office which granted the application and shall cite the reasons for the request. The district director or officer-in-charge shall consider the good cause shown and the

best interests of the applicant in making a decision. If the applicant shall withdraw his or her election to have the oath administered in a court ceremony, written notice to the Service shall be scheduled. The applicant's withdrawal shall be scheduled for the next available oath ceremony. Immigration Judge or she had no ceremony.

[58 FR 49915, Sept. 24, 1993, as amended at 60 FR 37804, July 24, 1995]

§337.9 Effective

(a) An applicant shall be deemed a citizen of the United States as of the date the applicant takes the oath of allegiance, administered by the Service or an Immigration Judge in a court ceremony conducted by the court under §337.8.

(b) When the oath is waived for a child of this chapter, the child shall be deemed a citizen as of the date the child was granted by the parent(s) at an oath ceremony. No appearance of the parent(s) at an oath ceremony is required. No appearance of the child at an oath ceremony is required.

[58 FR 50500, Oct. 7, 1993, as amended at 60 FR 37804, July 24, 1995]

§337.10 Failure of administration

An applicant without good cause shall be deemed to have failed to appear for an oath administration ceremony which he or she has elected to have. It shall be presumed to be the intent of the applicant to be administered the oath that the applicant's failure to appear shall be deemed a failure to appear. The procedures in this chapter shall apply.

[58 FR 49916, Sept. 24, 1993, as amended at 60 FR 37804, July 24, 1995]

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PART 338—CERTIFICATE OF NATURALIZATION

best interests of the applicant in mak-
ing a decision. If it is determined that
the applicant shall be permitted to
withdraw his or her name from the
court ceremony, the Service shall give
written notice to the court of the ap-
plicant's withdrawal, and the applicant
shall be scheduled for the next avail-
able oath ceremony, conducted by an
Immigration Judge or the Service, as if
he or she had never elected the court
ceremony.

[58 FR 49915, Sept. 24, 1993, as amended at 60
FR 37804, July 24, 1995]

§337.9 Effective date of naturalization.

(a) An applicant for naturalization
shall be deemed a citizen of the United
States as of the date on which the ap-
plicant takes the prescribed oath of al-
legiance, administered either by the
Service or an Immigration Judge in an
administrative ceremony or in a cere-
mony conducted by an appropriate
court under §337.8 of this chapter.

(b) When the taking of the oath is
waived for a child pursuant to part 322
of this chapter, the child shall be
deemed a citizen of the United States
as of the date upon which the waiver
was granted by the Service. The ap-
pearance of the child and the child's
parent(s) at an oath ceremony, if the
oath is waived under this paragraph, is
not required. Nothing in this paragraph
is to be construed as preventing the ap-
pearance of the child and parent(s) at
an oath ceremony.

[56 FR 50500, Oct. 7, 1991, as amended at 60 FR
37804, July 24, 1995]

§337.10 Failure to appear for oath ad- ministration ceremony.

An applicant who fails to appear
without good cause for more than one
oath administration ceremony for
which he or she was duly notified shall
be presumed to have abandoned his or
her intent to be naturalized. Such pre-
sumption shall be regarded as the re-
ceipt of derogatory information, and
the procedures contained in §335.5 of
this chapter shall be followed.

[58 FR 49916, Sept. 24, 1993]

Sec.

- 338.1 Execution and issuance of certificate.
- 338.2 Execution in case name is changed.
- 338.3 Delivery of certificates.
- 338.4 Signing of certificate.
- 338.5 Correction of certificates.
- 338.6—338.10 [Reserved]
- 338.11 Execution and Issuance of Certificate
of Naturalization by clerk of court.
- 338.12 Endorsement by clerk of court in case
name is changed.
- 338.13 Spoiled certificate.

AUTHORITY: 8 U.S.C. 1103, 1443.

§338.1 Execution and issuance of cer- tificate.

(a) *Issuance.* When an applicant for
naturalization has taken and sub-
scribed to the oath of allegiance in ac-
cordance with §§337.1, 337.2 and 337.3 of
this chapter, a Certificate of Natu-
ralization, Form N-550, shall be issued
by the Service at the conclusion of the
oath administration ceremony. For
each applicant appearing at a judicial
oath administration ceremony pursu-
ant to §337.8, the Service shall prepare
the Certificate of Naturalization and
forward it to the clerk of court suffi-
ciently in advance of the ceremony to
ensure the timely delivery on the date
the oath administration ceremony is
conducted.

(b) *Execution of certificate.* The certifi-
cate shall be issued to the applicant in
his or her true, full, and correct name
as it exists at the time of the adminis-
tration of the oath of allegiance. The
certificate shall show, under "former
nationality," the name of the appli-
cant's last country of citizenship, as
shown in the application and Service
records, even though the applicant may
be stateless at the time of admission to
citizenship. Photographs shall be af-
fixed to the certificate in the manner
provided in part 333 of this chapter.
The certificate shall be signed by the
applicant. The Commissioner's signa-
ture shall be affixed to the certificate.

[58 FR 49916, Sept. 24, 1993]

14. Questions for court

District court had statutory duty to determine whether Department of Labor unreasonably delayed resolution of employment discrimination complaint asserted by employee of alleged public contractor and, if so, to determine appropriate remedy, even though administrative complaint had finally been filed seven years after employee initiated complaint with Department. *Thompson v. U.S. Dept. of Labor*, C.A.3 (Pa.) 1987, 813 F.2d 48.

14a. Moot questions

Requests for declaratory and injunctive relief under Administrative Procedure Act and for mandamus, seeking relief from hold which Office of Federal Contract Compliance Programs placed on administrative complaint, pending resolution of appeal in similar case, were rendered moot by Office's reactivation of administrative complaint. *Thompson v. U.S. Dept. of Labor*, C.A.3 (Pa.) 1987, 813 F.2d 48.

15. Third-party beneficiary action

Terminated worker, who suffered from acrophobia, could not maintain third-party beneficiary action against government contractor on basis of affirmative action clauses in contract between government and contractor, which clauses were required by section of Rehabilitation Act of 1973 governing employment under federal contracts; Congress intended that administrative scheme be sole avenue of redress for the handicapped. *D'Amato v. Wisconsin Gas Co.*, C.A.7 (Wis.) 1985, 760 F.2d 1474.

16. Jurisdiction

Provision of Rehabilitation Act providing for enforcement by Department of Labor set no substantive priorities or otherwise limited Department of Labor's discretion in choosing which claims to prosecute and instead committed decision of whether to prosecute handicapped discrimination claim solely to Department, and thus Department of Labor's decision whether to prosecute handicapped discrimination claim was not subject to judicial review. *Andrews v. Consolidated Rail Corp.*, C.A.7 (Ind.) 1987, 831 F.2d 678.

Advertisements placed in newspaper by United States Air Force Reserve did not make newspaper a "government contractor" within mean-

ing of Rehabilitation Act so as to provide Office of Federal Contract Compliance Programs with jurisdiction to prosecute claim of handicap employment discrimination by newspaper's former employee, where none of the advertisements included date on which employee was terminated, and no master contract or subcontract existed between government and newspaper. *Burnett v. Brock*, C.A.11 (Ga.) 1986, 806 F.2d 265.

17. Employees within section

Rehabilitation Act, as originally enacted, did not apply to Library of Congress employees, and thus, Library of Congress employee asserting that discharge from Library of Congress violated Rehabilitation Act because employee was alcoholic failed to state claim. *Judd v. Billington*, C.A.D.C.1988, 863 F.2d 103, 274 U.S.App.D.C. 197.

18. No remedy for statutory violation by DOL

No remedy existed for failure by Department of Labor (DOL) to meet its obligation to commence and complete prompt investigation of employee's claim that government contractor violated Rehabilitation Act, where investigation was ultimately performed and DOL, within its discretion, decided that no violation had occurred and that no enforcement action was appropriate. *Giacobbi v. Biermann*, D.D.C.1992, 780 F.Supp. 33, affirmed, rehearing denied.

19. Remand

Office of Federal Contract Compliance Programs (OFCCP) could reopen proceedings to take new evidence on whether work on a federal contract was actually done at one of employer's plants and whether an epileptic job applicant would have been employed to "carry out" such work, for purposes of determining whether there was a violation of Rehabilitation Act when employer failed to hire epileptic after regulation upon which OFCCP had relied was determined by reviewing court to be invalid; accordingly, it was improper for district court to refuse to remand action to the Department of Labor on the ground that it would have been unfair to the employer. *PPG Industries, Inc. v. U.S.*, C.A.D.C.1995, 52 F.3d 363, 311 U.S.App.D.C. 214.

§ 794. Nondiscrimination under Federal grants and programs

(a) Promulgation of rules and regulations

No otherwise qualified individual with a disability in the United States, as defined in section 706(8) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

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(b) "Program or activity" defined

For the purposes of this section, the term "program or activity" means all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 8801 of Title 20) system of vocational education; or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

(c) Significant structural alterations by small providers; exception

Small providers are not required by subsection (a) of this section to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on March 22, 1988.

(d) Standards used in determining violation of section

The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201–12204 and 12210), as such sections relate to employment.

(As amended Pub.L. 99-506, Title I, § 103(d)(2)(B), Title X, § 1002(e)(4), Oct. 21, 1986, 100 Stat. 1810, 1844; Pub.L. 100-259, § 4, Mar. 22, 1988, 102 Stat. 29; Pub.L. 100-630, Title II, § 206(d), Nov. 7, 1988, 102 Stat. 3312; Pub.L. 102-569, Title I, § 102(p)(32), Title V, § 506, Oct. 29, 1992, 106 Stat. 4360, 4428; Pub.L. 103-382, Title III, § 394(i)(2), Oct. 20, 1994, 108 Stat. 4029.)

HISTORICAL AND STATUTORY NOTES

References in Text

The amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978, referred to in subsec. (a), mean the amendments made by Pub.L. 95-602. See 1978 Amendments note under this section.

The Americans with Disabilities Act of 1990, referred to in subsec. (d), is Pub.L. 101-336, July 26, 1990, 104 Stat. 327, which is classified principally to chapter 126 (section 12101 et seq.) of Title 42, The Public Health and Welfare. Title I of this Act is classified generally to subchapter I (section 12111 et seq.) of chapter 126 of Title 42. Sections 501 through 504, and 510, of this Act are classified to sections 12201

through 12204, and 12210, of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of Title 42 and Tables.

1994 Amendments

Subsec. (b)(2)(B). Pub.L. 103-382, § 394(i)(2), substituted "section 8801" for "section 2891(12)".

1992 Amendments

Subsec. (a). Pub.L. 102-569, § 102(p)(32), substituted "a disability" for "handicaps" and "disability" for "handicap".

Subsec. (d). Pub.L. 102-569, § 506, added subsec. (d).

§39.101

understanding providing for the investigation and processing of complaints dual filed under both section 504 and title I of the ADA by the section 504 agency.

PART 39—ENFORCEMENT OF NON-DISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF JUSTICE

- Sec.
39.101 Purpose.
39.102 Application.
39.103 Definitions.
39.104—39.109 [Reserved]
39.110 Self-evaluation.
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39.150 Program accessibility: Existing facilities.
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39.170 Compliance procedures.

AUTHORITY: 29 U.S.C. 794.

SOURCE: Order No. 1065-84, 49 FR 35734, Sept. 11, 1984, unless otherwise noted.

§39.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the U.S. Postal Service.

§39.102 Application.

This part applies to all programs or activities conducted by the agency.

§39.103 Definitions.

For purposes of this part, the term—
Agency means the Department of Justice.

Assistant Attorney General means the Assistant Attorney General, Civil

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Rights Division, U.S. Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complaint Adjudication Officer means the Complaint Adjudication Officer appointed by the Assistant Attorney General for Civil Rights.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Handicapped person means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitorurinary; hemic and lymphatic; skin; and endocrine; or

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(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

Official or Responsible Official means the Director of Equal Employment Opportunity for the Department of Justice or his or her designee.

Qualified handicapped person means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person 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; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

Respondent means the organizational unit in which a complainant alleges that discrimination occurred.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 39.104—39.109 [Reserved]

§39.110 Self-evaluation.

(a) The agency shall, by October 11, 1985, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until October 11, 1987, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§39.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program or activities conducted by the agency, and make such information available to them in such

manner as the Attorney General finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 39.112—39.129 [Reserved]

§ 39.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or dif-

ferent, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

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(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 39.131—39.139 [Reserved]

§ 39.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 39.141—39.148 [Reserved]

§ 39.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 39.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 39.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 39.150(a) would result in such alter-

ations or burdens. The decision that compliance would result in such alteration or burdens must be made by the Attorney General or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by December 10, 1984, except that where structural changes in facilities are undertaken, such changes shall be made by October 11, 1987, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be

undertaken to achieve program accessibility, the agency shall develop, by April 11, 1985, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§39.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ 39.152-39.159 [Reserved]

§39.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §39.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Attorney General or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons

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§§ 39.161—39.169 [Reserved]

§ 39.170 Compliance procedures.

(a) *Applicability.* Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) *Employment complaints.* The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) *Responsible Official.* The Responsible Official shall coordinate implementation of this section.

(d) *Filing a complaint.*—(1) *Who may file.* (i) Any person who believes that he or she has been subjected to discrimination prohibited by this part may by him or herself or by his or her authorized representative file a complaint with the Official. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or the authorized representative of a member of that class may file a complaint with the Official.

(ii) Before filing a complaint under this section, an inmate of a Federal penal institution must exhaust the Bureau of Prisons Administrative Remedy Procedure as set forth in 28 CFR part 542.

(2) *Confidentiality.* The Official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise, and except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or proceeding under this part.

(3) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination, except that complaints by inmates of Federal penal institutions shall be filed within 180 days of the final administrative decision of

the Bureau of Prisons under 28 CFR part 542. The Official may extend this time limit for good cause shown. For purposes of determining when a complaint is timely filed under this subparagraph, a complaint mailed to the agency shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the agency.

(4) *How to file.* Complaints may be delivered or mailed to the Attorney General, the Responsible Official, or agency officials. Complaints should be sent to the Director for Equal Employment Opportunity, U.S. Department of Justice, 10th and Pennsylvania Avenue, NW., Room 1232, Washington, DC 20530. If any agency official other than the Official receives a complaint, he or she shall forward the complaint to the Official immediately.

(e) *Notification to the Architectural and Transportation Barriers Compliance Board.* The agency shall promptly send to the Architectural and Transportation Barriers Compliance Board a copy of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), or section 502 of the Rehabilitation Act, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons. The agency shall delete the identity of the complainant from the copy of the complaint.

(f) *Acceptance of complaint.* (1) The Official shall accept a complete complaint that is filed in accordance with paragraph (d) of this section and over which the agency has jurisdiction. The Official shall notify the complainant and the respondent of receipt and acceptance of the complaint.

(2) If the Official receives a complaint that is not complete, he or she shall notify the complainant, within 30 days of receipt of the incomplete complaint, that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the Official shall dismiss the complaint without prejudice.

(3) If the Official receives a complaint over which the agency does not have jurisdiction, the Official shall promptly notify the complainant and

shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(g) *Investigation/conciliation.* (1) Within 180 days of the receipt of a complete complaint, the Official shall complete the investigation of the complaint, attempt informal resolution, and, if no informal resolution is achieved, issue a letter of findings.

(2) The Official may require agency employees to cooperate in the investigation and attempted resolution of complaints. Employees who are required by the Official to participate in any investigation under this section shall do so as part of their official duties and during the course of regular duty hours.

(3) The Official shall furnish the complainant and the respondent a copy of the investigative report promptly after receiving it from the investigator and provide the complainant and respondent with an opportunity for informal resolution of the complaint.

(4) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and made part of the complaint file, with a copy of the agreement provided to the complainant and respondent. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant and respondent have agreed.

(h) *Letter of findings.* If an informal resolution of the complaint is not reached, the Official shall, within 180 days of receipt of the complete complaint, notify the complainant and the respondent of the results of the investigation in a letter sent by certified mail, return receipt requested, containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found;

(3) A notice of the right of the complainant and respondent to appeal to the Complaint Adjudication Officer; and

(4) A notice of the right of the complainant and respondent to request a hearing.

(i) *Filing an appeal.* (1) Notice of appeal to the Complaint Adjudication Of-

ficer, with or without a request for hearing, shall be filed by the complainant or the respondent with the Responsible Official within 30 days of receipt from the Official of the letter required by paragraph (h) of this section.

(2) If a timely appeal without a request for hearing is filed by a party, any other party may file a written request for hearing within the time limit specified in paragraph (1)(1) of this section or within 10 days of the date on which the first timely appeal without a request for hearing was filed, whichever is later.

(3) If no party requests a hearing, the Responsible Official shall promptly transmit the notice of appeal and investigative record to the Complaint Adjudication Officer.

(4) If neither party files an appeal within the time prescribed in paragraph (1)(1) of this section, the Responsible Official shall certify that the letter of findings is the final agency decision on the complaint at the expiration of that time.

(j) *Acceptance of appeal.* The Responsible Official shall accept and process any timely appeal. A party may appeal to the Complaint Adjudication Officer from a decision of the Official that an appeal is untimely. This appeal shall be filed within 15 days of receipt of the decision from the Official.

(k) *Hearing.* (1) Upon a timely request for a hearing, the Responsible Official shall appoint an administrative law judge to conduct the hearing. The administrative law judge shall issue a notice to all parties specifying the date, time, and place of the scheduled hearing. The hearing shall be commenced no earlier than 15 days after the notice is issued and no later than 60 days after the request for a hearing is filed, unless all parties agree to a different date.

(2) The complainant and respondent shall be parties to the hearing. Any interested person or organization may petition to become a party or amicus curiae. The administrative law judge may, in his or her discretion, grant such a petition if, in his or her opinion, the petitioner has a legitimate interest in the proceedings and the participation will not unduly delay the outcome and may contribute materially to the proper disposition of the proceedings.

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(3) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554-557 (sections 5-8 of the Administrative Procedure Act). The administrative law judge shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He or she shall have all powers necessary to these ends, including (but not limited to) the power to—

(i) Arrange and change the date, time, and place of hearings and pre-hearing conferences and issue notice thereof;

(ii) Hold conferences to settle, simplify, or determine the issues in a hearing, or to consider other matters that may aid in the expeditious disposition of the hearing;

(iii) Require parties to state their position in writing with respect to the various issues in the hearing and to exchange such statements with all other parties;

(iv) Examine witnesses and direct witnesses to testify;

(v) Receive, rule on, exclude, or limit evidence;

(vi) Rule on procedural items pending before him or her; and

(vii) Take any action permitted to the administrative law judge as authorized by this part or by the provisions of the Administrative Procedure Act (5 U.S.C. 551-559).

(4) Technical rules of evidence shall not apply to hearings conducted pursuant to this paragraph, but rules or principles designed to assure production of credible evidence and to subject testimony to cross-examination shall be applied by the administrative law judge whenever reasonably necessary. The administrative law judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record.

(5) The costs and expenses for the conduct of a hearing shall be allocated as follows:

(i) Persons employed by the agency, shall, upon request to the agency by the administrative law judge, be made available to participate in the hearing and shall be on official duty status for this purpose. They shall not receive witness fees.

(ii) Employees of other Federal agencies called to testify at a hearing shall, at the request of the administrative law judge and with the approval of the employing agency, be on official duty status during any period of absence from normal duties caused by their testimony, and shall not receive witness fees.

(iii) The fees and expenses of other persons called to testify at a hearing shall be paid by the party requesting their appearance.

(iv) The administrative law judge may require the agency to pay travel expenses necessary for the complainant to attend the hearing.

(v) The respondent shall pay the required expenses and charges for the administrative law judge and court reporter.

(vi) All other expenses shall be paid by the party, the intervening party, or amicus curiae incurring them.

(6) The administrative law judge shall submit in writing recommended findings of fact, conclusions of law, and remedies to all parties and the Complaint Adjudication Officer within 30 days after receipt of the hearing transcripts, or within 30 days after the conclusion of the hearing if no transcript is made. This time limit may be extended with the permission of the Complaint Adjudication Officer.

(7) Within 15 days after receipt of the recommended decision of the administrative law judge, any party may file exceptions to the decision with the Complaint Adjudication Officer. Thereafter, each party will have ten days to file reply exceptions with the Officer.

(1) *Decision.* (1) The Complaint Adjudication Officer shall make the decision of the agency based on information in the investigative record and, if a hearing is held, on the hearing record. The decision shall be made

within 60 days of receipt of the transmittal of the notice of appeal and investigative record pursuant to § 39.170(i)(3) or after the period for filing exceptions ends, whichever is applicable. If the Complaint Adjudication Officer determines that he or she needs additional information from any party, he or she shall request the information and provide the other party or parties an opportunity to respond to that information. The Complaint Adjudication Officer shall have 60 days from receipt of the additional information to render the decision on the appeal. The Complaint Adjudication Officer shall transmit his or her decision by letter to the parties. The decision shall set forth the findings, remedial action required, and reasons for the decision. If the decision is based on a hearing record, the Complaint Adjudication Officer shall consider the recommended decision of the administrative law judge and render a final decision based on the entire record. The Complaint Adjudication Officer may also remand the hearing record to the administrative law judge for a fuller development of the record.

(2) Any respondent required to take action under the terms of the decision of the agency shall do so promptly. The Official may require periodic compliance reports specifying—

(i) The manner in which compliance with the provisions of the decision has been achieved;

(ii) The reasons any action required by the final decision has not yet been taken; and

(iii) The steps being taken to ensure full compliance.

The Complaint Adjudication Officer may retain responsibility for resolving disagreements that arise between the parties over interpretation of the final agency decision, or for specific adjudicatory decisions arising out of implementation.

EDITORIAL NOTE: For the convenience of the user, the "Supplementary Information"

portion of the document published at 49 FR 35724, Sept. 11, 1984, is set forth below:

SUPPLEMENTARY INFORMATION: On December 16, 1983, the Department of Justice published a Notice of Proposed Rulemaking (NPRM) for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs and activities conducted by the Department of Justice. 48 FR 55996. Shortly after the NPRM was published, the Department received a number of preliminary comments from handicapped individuals and from organizations representing handicapped individuals. The tone and nature of these comments indicated to the Department that some of the regulatory provisions of the NPRM were being misunderstood. As a result, the Department, on March 1, 1984, published a Supplementary Notice further explaining the NPRM and requesting comments on possible revisions to the original NPRM. 49 FR 7792.

By April 16, 1984, close of the comment period, the Department received 1,194 comments. Two hundred and six of these comments also addressed the supplemental notice. Over 90% of the comments that the Department received came from individuals (908), most frequently handicapped persons, and from organizations representing the interests of handicapped persons (180). The Department received comments from all fifty states, the District of Columbia, Puerto Rico, Canada, and Denmark. Most of the comments that the Department received were general in nature. The Department received 721 comments based on a form letter. This form letter, written before issuance of the Supplemental Notice, expressed dismay at the inclusion of the regulation's "undue financial and administrative burdens" language, asserted that the Department was imposing a lesser requirement on the Federal government than on recipients of Federal assistance, and requested that the regulation be withdrawn. This form letter did not contain any substantive or detailed analysis. In fact, only 55 of the 1,194 comments contained specific, detailed analysis of the Department's proposal.

The Department read and analyzed each comment. Each comment was then subdivided according to one or more of over 90 issue categories. Because comments often addressed, even in general terms, more than one issue, the 1,194 comments were translated into 4,256 issue-specific comments. The decisions that the Department made in response to these comments, however, were not made on the basis of the number of commenters addressing any one point but on a

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thorough consideration of the merits of the points of view expressed in the comments. Copies of the written comments will remain available for public inspection in Room 854 of the HOLC Building, 320 First Street, NW., Washington, DC from 9:00 a.m. to 5:30 p.m., Monday through Friday, except for legal holidays, until November 13, 1984.

Section 504 requires that regulations that apply to the programs and activities of Federal executive agencies shall be submitted to the appropriate authorizing committees of Congress and that such regulations may take effect no earlier than the thirtieth day after they have been so submitted. The Department has today submitted this regulation to the Senate Committee on Labor and Human Resources and its Subcommittee on the Handicapped and the House Committee on Education and Labor and its Subcommittee on Select Education pursuant to the terms of section 504. The regulation will become effective on October 11, 1984.

This rule applies to all programs and activities conducted by the Department of Justice. Thus, this rule regulates the activities of over 30 separate subunits in the Department, including, for example, the Federal Bureau of Investigation, the Drug Enforcement Administration, the Immigration and Naturalization Service, the Bureau of Prisons, Federal Prison Industries, and the United States Attorneys.

BACKGROUND

The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Department of Justice (DOJ). As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95-602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 states that:

No otherwise qualified handicapped individual in the United States, . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(29 U.S.C. 794) (amendment italicized).

The substantive nondiscrimination obligations of the agency, as set forth in this rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. See 28 CFR part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1984) *id.*, 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

Nine hundred and two comments that the Department received agreed that the obligations of section 504 for federally conducted programs should be identical to those developed by the Federal agencies over the past seven years for federally assisted programs. These commenters, however, objected to any language differences between the Department's proposed rule for federally conducted programs and the Department's section 504 coordination regulation for federally assisted programs (28 CFR part 41). The commenters asserted that a number of language differences that the Department had proposed created less stringent standards for the Federal government than those applied to recipients of Federal assistance under section 504. They wrote that such a result could not be justified by Executive Order 12250, by the wording of the statute itself, nor by the legislative history of the 1978 amendments.

The commenters appear to have misunderstood the basis for inclusion of the new language in the DOJ regulation. The changes in this regulation are based on the Supreme Court's decision in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. See *Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis*, 655 F.2d 1272 (D.C. Cir. 1981) (APTA); see also *Rhode Island Handicapped Action Committee v. Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983).

Some commenters questioned the use of *Davis* as justification for the inclusion of the new provisions in the federally conducted regulation. They noted that the Department had not included these changes when, subsequent to the *Davis* decision, it issued a regulation implementing section 504 in programs receiving Federal financial assistance from this Department. The Department's section 504 federally assisted regulation, however, was issued prior to the D.C. circuit's decision in APTA. In APTA, the Department had argued a position similar to that advocated by

HQ 70/33.2-P

Section 312 Disability Naturalization
Adjudications: Supplemental Policy
Guidance for Field Offices

DRAFT
1/30/97

All Regional Directors
All District Directors (except foreign)
All Officers-in-Charge (except foreign)
All Service Center Directors

Office of Examinations

This memorandum and accompanying attachments provide supplemental policy guidance on section 312 exceptions for persons with disabilities to all Immigration and Naturalization Service (INS) field offices currently adjudicating applications for naturalization.

A 1994 technical amendment to the Immigration and Nationality Act extended an exception to disabled applicants regarding all the section 312 requirements. The attached final rule, to be published in the Federal Register on February 4, outlines the background history of the amendment, the efforts of INS to implement this new policy, and the new regulatory text.

Effective upon publication in the Federal Register, offices shall immediately institute the policy outlined in the final regulation and in this document. Previously distributed drafts of this document and the previously distributed field guidance, dated November 21, 1995, used as a basis for adjudicating section 312 disability exception requests shall no longer be used. In order to ensure consistency, individuals with pending cases shall be required to submit the new form N-648, Medical Certification for Disability Exceptions, and shall have the principles outlined in this document applied to their final adjudication. It is expected that the policy and guidelines outlined in the attachments will be followed consistently by all adjudications officers. In addition, offices should conduct community outreach and education on this regulation as discussed in the attached policy guidance.

Changes to 8 CFR §§ 312.1 and 312.2 reflect our efforts to make the regulation consistent with the amended statute. In particular:

- The wording of § 312.1(b)(3) has been changed, with new language on disability-based exceptions found on page 32 of the attached final rule. Offices should note that previous wording directly referencing blindness and deafness have been removed.
- The current §312.2(b) has been redesignated as paragraph (c) and a new paragraph has been added as paragraph (b)(1) to provide a disability-based exception to the civics requirements (page 33 of the attached rule).
- A new paragraph at 8 CFR 312.2(b)(2) has been added to explain the medical certification process for a disability exception.

The Service is committed to ensuring that the implementation of the procedures outlined in

TRANSMISSION RECORD

IMMIGRATION AND NATURALIZATION SERVICE
HEADQUARTERS
425 I STREET, N.W.
WASHINGTON, D.C. 20536

cc Steve W
Debra Bond

TO: Diana Fortuna	FROM: Joel Ginsberg, for Allen Freibaum
ORGANIZATION: OPC	ORGANIZATION: INS
TELEPHONE:	TELEPHONE: 202-305-3250
FAX TELEPHONE: 456-7028	DATE: 1-30-97

NUMBER OF PAGES (including cover sheet):

14

COMMENT/MESSAGE:

- Plan is to send out tomorrow.
- "Previous drafts" referred to on 1st page are a similar document used in HQ training 1-28 and 1-29.
- Last fl. p. 11, E & I will be clarified: these cases will be neither ^{approved} ~~granted~~ nor denied until further guidance is received.

Joel

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this document are followed. Since a primary mission of the INS is to provide service, applicants with a legitimate claim to the disability exception provisions should be facilitated through the adjudication process. At the same time, Service officers must also utilize credible approaches to deterring fraud and abuse that are applicable to all adjudications for benefits under the Act and must remember that what may seem like fraud may in reality be a lack of information about the naturalization process on the part of certain individuals with disabilities. Service officers must also continue to ensure that applicants who are granted section 312 exceptions continue to meet all other applicable eligibility requirements for naturalization.

Since many disability-related cases will be emotionally charged, all INS offices and adjudication officers are directed to use compassion, discretion, and sensitivity in adjudicating any request for a section 312 disability-based exception. The same level of discretion and sensitivity INS officers apply to orphan adoption cases should be replicated in all section 312 disability exception cases.

Many aspects of this regulatory revision are new and therefore we fully expect field offices to have many questions. We realize that all questions will not be answered within this document. However, we plan to distribute regular updated supplemental policy guidance memoranda for policy and procedural issues not answered by this document. Headquarters will also depend on all field offices to bring unique cases and situations to our attention in order that the experience may be shared with other offices.

Questions about the policy outlined in the attachment to this memorandum and in the Federal Register final rule may be directed to Staff Officer Craig Howie, HQ Naturalization Division. Questions regarding the new form, the new training module, or quality assurance compliance may be directed to Staff Officer Jody Marten, HQ Naturalization Division. Both officers may be reached on 202/514-5014.

Louis D. Crocetti
Associate Commissioner

Attachments

§312 DISABILITY ADJUDICATIONS: SUPPLEMENTAL FIELD POLICY GUIDANCE

I. Introduction

The Immigration and Naturalization Technical Corrections Act of 1994 amended section 312 of the Immigration and Nationality Act (the Act) to afford naturalization applicants with physical or developmental disabilities or mental impairments an exception to English language proficiency and United States history and government (civics) knowledge requirements. This amendment augmented the pre-existing exception that persons with disabilities were afforded regarding only the English proficiency requirements of section 312.

On November 21, 1995 the INS issued preliminary guidance to all naturalization adjudicating offices on the section 312 disability exceptions. On August 28, 1996, a proposed rule was published in the Federal Register, proposing to amend the Service regulations at part 312 to accommodate these new disability exceptions. During the Fall of 1996, the Service reviewed and digested the 228 comments that were submitted by the public pursuant to the proposed rule. The resulting final rule, scheduled to be published in the Federal Register on February 4, 1997, contains substantial changes to the provisions of the proposed rule and the preliminary guidance. In particular:

- Direct reference to the three disability categories in the regulatory language of 8 CFR 312 has been replaced with language complementing the disability terminology used by the Social Security Administration (SSA) in their regulations (i.e., "medically determinable physical or mental impairment or combination of impairments").
- Creation of a new public use form, N-648, Medical Certification for Disability Exceptions, to be used by any applicant requesting an exception to the section 312 requirements based on a disability. A copy of the form is included with this document. Offices are advised to accept photocopies of the N-648 until the form has been placed in full circulation following printing by the Government Printing Office (a process which could take more than six months).
- The elimination of the proposed use of the civil surgeons to make the disability determinations. In the place of the civil surgeons, the INS will allow only licensed medical doctors or licensed clinical psychologists to complete the N-648.

As noted in the accompanying documentation, these exceptions for persons with disabilities are not blanket exemptions from the requirements mandated by section 312. With accommodations or modifications, certain applicants with disabilities will be able to meet the section 312 requirements, just as they are accommodated today in many instances. To institute a policy of blanket exemptions would play into the stereotypical concept that persons with disabilities are not able to participate in mainstream activities. Such a policy would be contrary to the provisions of section 504 of the Rehabilitation Act of 1973 with which all federal government agencies must comply. Therefore, all adjudications for a section 312 exception based on a disability will be made on a case by case basis. It would be discriminatory to formulate policy which states that everyone with a particular disability

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is exempted from the section 312 requirements when some individuals with the disability could well take part in the testing requirements imposed by section 312 with reasonable accommodations or modifications.

All offices must note that the provisions contained within the documents in this package are effective immediately upon publication of the final rule in the Federal Register and must be followed without exception. Due to the substantial changes the Service has made to the provisions of the proposed rule, the public is being allowed a 60 day comment period on the final rule. This will not affect the authority or responsibility of all local offices to proceed with these adjudications immediately and without delay. Any changes that may result from further public comments will be issued in writing to all field office.

Service offices adjudicating naturalization applicants should make note of the changes to the regulatory language of 8 CFR part 312. Of particular concern to officers should be these changes:

- The wording of § 312.1(b)(3) has been changed, with new language on disability-based exceptions found on page 32 of the attached final rule. Offices should note that previous wording directly referencing blindness and deafness have been removed.
- The current §312.2(b) has been redesignated as paragraph (c) and a new paragraph has been added as paragraph (b)(1) to provide a disability-based exception to the civics requirements (page 33 of the attached rule).
- A new paragraph at 8 CFR 312.2(b)(2) has been added to explain the medical certification process for a disability exception and an explanation of the new form, N-648, Medical Certification for Disability Exceptions.

Adjudication officers receiving the special two-day training at HQ during the week of January 27, 1997, should be the officers initially adjudicating disability-based applications for section 312 exceptions. This corps of officers will be responsible for ensuring the complete dissemination of the information and policies contained in this document to additional adjudications officers within each naturalization adjudicating office and shall ensure that these officers are familiar with these policies prior to the adjudication of disability-related exception cases. These trained officers should also work closely with the district director or officer-in-charge to ensure that full information about this regulation is provided to information officers, congressional, and public affairs officers and others within their office who will be answering questions from the public.

Each office is responsible for conducting local community outreach to inform and educate organizations that assist immigrants, persons with disabilities, the elderly, and others to whom this regulation may apply. Representatives of medical and psychological organizations and government agencies such as SSA and Health and Human Services (HHS) should be included in this outreach. Each office should endeavor to educate members of the medical and immigrant assistance communities about the naturalization process and the requirements of this regulation as soon as possible following publication in the Federal Register. Such information dissemination will improve the ability of the assistance groups and medical professionals to accurately apply the disability-based

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exceptions in appropriate cases and will help deter abuse of the process.

All offices are reminded of the intense public scrutiny the INS will be placed under as this program moves forward. For many officers, this will be their first experience adjudicating cases involving applicants with disabilities. Officers are therefore reminded to always use discretion and compassion in making adjudications involving persons with disabilities. The same level of compassion and discretion that has in the past been applied to cases involving orphan adoptions is to be applied to any section 312 disability exception request.

II. Disability Definitions, Medical Professionals Authorized to Complete New Form N-648 & Adjudicating Currently Pending Cases

A. Disability Definitions

In the preliminary field guidance (issued in November, 1995) and the proposed rule, the Service offered exact definitions of the terms physical disability, developmental disability, and mental impairment designed to reflect the amendment Congress made to section 312 of the Act. Parts of the definitions were also based on the limited Congressional guidance, contained in the one committee report issued that related to the 1994 Technical Corrections Act.

As officers will note in reviewing the comments portion of the attached final rule, many commenters had concerns about the definitions we proposed. After reviewing the public comments, and after consultations with the SSA, the Service has chosen to drop the proposed definitions and rely on language that comports to the definitions used by the SSA in their regulations. As such, the wording of 8 CFR at part 312.1(b)(3) has been changed and at 312.2(b)(1) has been amended to refer to medically determinable physical or mental impairment(s), that already has or is expected to last at least 12 months. (See pages 32-33 of the attached final rule.) The phrase "medically determinable physical or mental impairments" encompasses the three disability categories noted in section 312 of the Act and refers to an impairment that has resulted from anatomical, physiological or psychological abnormalities. Using medically acceptable clinical and laboratory diagnostic techniques, these abnormalities can be shown to so limit or impair the individual as to render him or her unable to learn and demonstrate the information required by section 312. In addition, language is included in the regulation that prevents individuals whose disability resulted from the illegal use of drugs from being granted these exceptions. This was a particular concern of Congress.

B. Medical Professionals Authorized to Complete New Form N-648

Initially, the Service proposed using the corps of authorized civil surgeons to perform the disability determinations for naturalization applicants requesting an exception to the section 312 requirements. After long discussions with SSA, HHS, and the Centers for Disease Control (CDC), the decision was made not to rely on the civil surgeons to perform this function. The CDC noted that the majority of civil surgeons have expertise centered around diagnosing communicable diseases, not in making complex disability determinations. Therefore, the Service is amending 8 CFR part 312.2

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with the addition of a new paragraph (b)(2), which outlines the medical professionals authorized to make the disability determinations and complete the new public use form N-648, Medical Certification for Disability Exceptions (copy attached). A complete discussion of the rationale behind creating a new public use form is found in the Discussion of Comments section of the attached final rule.

Upon publication of the final rule, only licensed medical doctors or licensed clinical psychologists will be authorized to make a disability determination, utilizing the new form N-648. The term licensed medical doctor includes doctors who are specialists, such as board certified psychiatrists. In addition, any civil surgeon meeting these criteria will be able to make a disability determination, but based on the surgeon's expertise with a particular disability, not on the fact that he or she is a civil surgeon. These licensed medical professionals will be required to certify on the new form that their medical speciality, experience, and other qualifications permit them to make such a complex disability assessment. In addition, the medical doctor or licensed clinical psychologist must certify under penalty of perjury that his or her statements are true and correct. Service officers should note that medical professionals not authorized to complete the N-648 include nurse or homoeopathic practitioners, physician assistants, and medical center or nursing center administrators who are not licensed medical doctors with disability experience. As is the case with virtually all Service adjudications, the burden is on the applicant and the licensed medical professional to ensure that the N-648 is completed correctly and that the medical professional is authorized to make the certification.

District Adjudication Officers (DAOs) are reminded that it is the responsibility of the medical professional to make the medical determination. This responsibility is clearly delineated on form N-648 in questions three and six. Officers are not medical professionals, advocates, or social workers and should not place themselves in the position of attempting to second guess the medical evaluation of the qualified medical professional certifying a disability exception on the N-648. Nor should the officers place themselves in the position of being a medical professional and thereby denying the existence of a disability. However, DAOs should not hesitate to talk with the medical doctor or clinical psychologist, after consultation with the DAO's supervisor, if the officer has a question about the MD's or psychologist's type of certification or questions about the disability determination. This is particularly the case if the terminology is very general and does not explain how the particular medical condition prevents the applicants from learning the requirements of section 312 of the Act. For example, an N-648 noting the disability as only hypertension would need further explanation. The officer needs to know how or why hypertension prevents the applicant from learning the section 312 requirements. Procedures for obtaining a second medical opinion, where deemed necessary, are discussed below.

Beyond reviewing the N-648, officers may consult with officials of other federal or state agencies if the applicant has been declared disabled by another agency, and the DAO believes that such a consultation would assist with the disability determination process. DAOs also have the authority to request additional medical records on the applicant, but only in instances where there is a well founded belief that such documentation would allow the DAO to accurately adjudicate the request for a section 312 exception. (See Section III, Referrals for an Additional Medical Opinion.)

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Such a request must be documented in the record, outlining the reasons for the request and the response of the medical professional holding said records. Officers should also take all necessary precautions to maintain the confidentiality of sensitive medical records.

All officers should familiarize themselves with the new form N-648 prior to adjudicating any disability-related case. The new language of 8 CFR 312.2 (b)(2) notes that the N-648 must be submitted as a supplement to the N-400 application when the N-400 is filed. (This will allow offices to pre-screen disability exception requests, to make any necessary modification in accessibility, or to consider the option of going on-site for the interview.) However, since the policy and form are new, offices for the foreseeable future should accept the N-648 if the applicant brings the form to the naturalization interview. Offices should accept legible photocopies of the form.

C. Adjudicating Currently Pending Cases

For offices that have cases pending related to a request for a disability exception, the final adjudication should be made based on the policy and guidelines noted in the final rule. In order to ensure consistency, all applicants with a currently pending request for an exception based on the preliminary guidance will be required to have the new form N-648 completed and submitted to the Service for review. Offices will need to mail applicants with pending requests for a disability exception, based on preliminary field guidance, an N-648 as soon as possible. This policy will avoid having two standards applied to the adjudication.

III. Requirements for Additional Evidence or Second Certification

In section 312.2(b)(2) of the final regulation, it is noted that the Service reserves the right to require an applicant to submit additional evidence supporting the N-648 or to submit a second N-648 from another authorized professional. Offices are instructed to use extreme restraint in exercising these options, and should only do so when doubts remain after the steps outlined below have been completed. DAOs should note that the burden is on the applicant to pay for any second certification, and should take this fact into consideration. Officers should always remember that they are responsible for determining the eligibility for naturalization, but not for making or rendering a medical determination.

Any officer who determines a second medical certification to be necessary must comply with the following procedures:

1. If questions exist regarding the disability or the actual completion of the N-648, the DAO should attempt to reach the medical professional for answers to the DAO's questions. If the officer's questions are answered by this contact, the referral will not be deemed necessary, and the adjudication of the naturalization case should continue.
2. If questions exist regarding the medical professional making the determination, the DAO should attempt to verify the license number noted on the N-648 by contacting the appropriate state medical or clinical psychologist licensing agency. An answer

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- from this agency will provide evidence regarding the validity of the medical professional's license, or might expose the existence of a fraudulent practitioner. Evidence of fraud in this instance should be handled in the standard way the officer reports similar discoveries of document fraud. Documented evidence of an applicant knowingly using the services of a fraudulent medical source shall result in the exception and application for naturalization being denied.
3. If the applicant has been declared disabled by another state or federal government agency, the DAO should attempt to make contact with this agency to see if any information can be gained to clarify the questions the officer has about the certification.
 4. If, after consultation with the medical certification provider, it is determined that a production of supplemental records from the applicant's medical file would satisfy the concerns of the DAO, such records shall be requested and reviewed. If these documents resolve all outstanding questions, the adjudication of the case shall continue without a second referral. Officers must take all precautions to preserve the privacy and confidentiality of private medical documents.
 5. If any of these procedures fail to satisfy the DAO as to the accuracy of the determination or of the medical professional, the DAO shall consult with his or her supervisor and obtain authority to require the applicant to obtain a second disability certification.
 6. Upon approval, the applicant shall be given another N-648, with instructions to have the form completed by an authorized medical professional other than the professional that completed the first certification. Until definitive guidance can be issued regarding who should perform these referrals, offices should contact the local medical board or society for information and contact points on referrals. In particular, offices should not refer applicants to commercial medical referral services listed in telephone directories or to any specific medical provider.
 7. Supervisory consultation and approval must be obtained and noted in the record for all the steps and procedures outlined above.

An example of a situation where the DAO might feel compelled to require a second certification would be in a case where the medical evaluation, as noted on the N-648, is so vague that the officer cannot clearly discern what is the actual disability or combination of disabling impairments, how the impairments prevent the applicant from learning the section 312 information, and the efforts to obtain clarification from the medical profession making the certification fail. It is incumbent upon the DAO to keep an accurate account of these actions and contacts in the alien file. All offices should also establish a liaison with the local or state medical board or society. This liaison effort should help the office and officer when questions arise over particular medical professionals and the professional's certifications on the N-648.

As noted, HQ Naturalization and Field Operations are currently working on a standardized referral policy, and will notify field offices as soon as the policy is finalized.

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IV. Accommodations & Modifications

All federal agencies are mandated to promote and adhere to policies that are non-discriminatory to persons with disabilities in the administration of all programs. The Rehabilitation Act of 1973 spells out these requirements. (The non-discriminatory provisions of the Rehab. Act served as the basis for the Americans with Disabilities Act, which bars discrimination against persons with disabilities in non-government areas.) All INS offices are required to adhere to the principles of the Rehabilitation Act.

The Rehabilitation Act requires the Service to make reasonable accommodations and modifications to program administration to accommodate the needs of persons with disabilities. All offices currently do make accommodations and modifications on a daily basis. For example, every time an office sends a DAO on-site to a nursing facility or hospital to interview or to administer the oath of allegiance, an accommodation and modification has been made.

Offices are reminded that making accommodations and modifications means that not all persons with disabilities will be exempted from the section 312 naturalization requirements. The final rule notes that only disabled persons whose disabilities are so severe that the person is rendered unable to participate in the testing procedures for naturalization will be granted an exception from the testing requirements. Certain individuals will be able to meet the requirements section 312 imposes, but with distinct modifications or accommodations. For example:

- Blind individuals may be supplied with materials in Braille, large print, or questioned orally, and perhaps in their native language, on section 312 civics questions.
- Hearing impaired persons may be given a written test on civics questions.
- A person with a learning disability might be given additional time to complete a written civics test.
- Persons with severe physical disabilities could respond to questions in a yes or no format, or through nodding their heads or blinking their eyes yes or no to particular questions.

This list is not all inclusive. Local offices should be creative in constructing additional accommodations and modifications to the testing procedures required by section 312. In many cases, offices currently have many modifications and accommodations already in use. Offices are encouraged to share these concepts with other offices and with their regional Examinations contact point. However, offices and DAOs should remember that disabled applicants attempting to gain an exception to the section 312 requirements are doing so because they view their particular disability as so impairing that they cannot meet the English and civics requirements.

Aside from the modifications that can be made to the actual test administration, offices must give consideration to modifications of the actual interview. As noted above, any time a DAO goes on-site to conduct a naturalization interview or to administer the oath of allegiance, a considerable modification has been made. Another modification that offices need to consider is allowing a disabled

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naturalization applicant's family member to accompany the applicant during the interview. For most adjudications, this suggestion is not practical. However, for many disabled applicants, the presence of a family member in the interview could have a distinct calming effect. DAOs must always remember that the naturalization interview can be a stressful experience for the non-disabled applicant. The stress factor of the interview for a person with disabilities could be even greater. Offices must be willing to make this particular accommodation and modification on a case by case basis. The family member, at the discretion of the Service, can in some instances assist 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.

DAOs are reminded again of the need for the utmost ~~compassion~~ discretion, and sensitivity in adjudicating cases where the applicant requests an exception to the section 312 requirements. Making acceptable accommodations or modifications to the testing and interview environment is our mandate under the Rehabilitation Act of 1973.

V. Oath of Allegiance

As offices are aware, Congress amended the Act at section 312 to provide persons with disabilities an exception to only the English and civics requirements. Therefore, many feel that while disabled applicants are being offered an exception to the requirements of section 312, we are in fact holding these same applicants to a double standard by requiring them to take the oath of allegiance required by section 337 of the Act. To hold these applicants to the requirements of section 337 requires them to have a limited knowledge of civics, some have stated.

As stated in the introduction to the regulation, Congress did not address the oath requirement when it passed the section 312 amendment concerning disabilities. Any change in this policy, whether from newly discovered court precedent or statutory amendment, will be related to all field offices as quickly as possible. Until such a time, the oath is still required for all applicants.

As noted in section IV of this document, offices are required to make reasonable accommodations and modifications to programs in order to accommodate the needs of disabled persons. The Service currently fulfills many of these accommodations via the provisions of section 337.3 of 8 CFR. While these provisions do not allow or authorize the waiving of the oath, offices are encouraged to becoming more accommodating in granting requests for expedited administration of the oath. However, applicants must be reminded that the provision of 8 CFR 337.3 only apply to the administration of the oath. No one granted an expedited administration of the oath under 8 CFR 337.3 has been waived this requirement, only the statutory requirement that the applicant participate in a public ceremony. Offices currently operating under an order of exclusive jurisdiction should forge a liaison with the local judiciary to facilitate requests for special ceremonies or for the authority to administratively administer the oath in 8 CFR 337.3 cases.

While it is not the role of the DAO to make a technical medical determination as to the existence of a disability, it is the responsibility of the DAO to be satisfied that the disabled

naturalization applicant understands the actions he or she is taking, and to some extent the actual provisions of the oath. The Service believes that many disabled applicants, while excepted from the civics knowledge requirements of section 312, will be able to have a limited understanding of the concepts of the oath, and therefore will be eligible to complete the naturalization process. For officers making these disability-based adjudications, this will most likely be the most difficult aspect of the adjudication.

As noted in the previous section of this document, family members may assist the DAO in understanding the responses of certain disabled applicants. However, prior to the start of the interview, the DAO should attempt to clarify and understand from the family member any physical motions or signals that might be used as an answer to a question asked during the interview.

DAOs cannot expect that interviews with many persons with disabilities will proceed or be conducted in the same way as with applicants without disabilities. Each interview will be unique and each applicant's capabilities regarding the oath requirements will need to be assessed on a case by case basis. However, the DAO conducting the interview with a disabled applicant must be assured that the core qualifications specified by the oath are in some form understood by the applicant. These core qualifications are that the applicant:

- Understands that he or she is becoming a United States citizen.
- Understands that he or she is renouncing his or her allegiance to their prior nation of citizenship.
- Personally and voluntarily agrees to this change in his or her status.

The DAO must be assured that the disabled applicant has some conceptual level of understanding of these core qualifications, but not necessarily every exact word of the oath.

Applicants who cannot satisfy the DAO of an understanding of these aforementioned qualifications, whether disabled and entitled to an exception to the section 312 requirements or non-disabled, cannot be naturalized under the current structure of the Act. A denial of an application for naturalization based on the inability to understand the concepts of the oath should be initially discussed with the DAOs supervisor, and the written denial must cite the failure to meet the statutory requirements of the Act at section 337. Offices are reminded of the extreme sensitivity of this issue with the public. As previously noted, any legal analysis or discoveries which might change this policy will be forwarded to all adjudicating field offices as quickly as possible.

Offices should note that the Service is seeking further legal guidance on the issue of the oath requirement. Offices should not deny any disability-related case, based on the applicant's inability to take the oath, until this further legal guidance is provided to all field offices.

VI. Denials & Appeals

In the discussion of comments of the final rule, many commenters suggested that the Service

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establish a special appeal procedure for applicants with disabilities in the event their applications for naturalization are denied. The Service determined that the current procedure for appealing a naturalization denial, as specified in the Act in section 336, is adequate and should not be altered. This decision is based on the fact that the acceptance or denial of an N-648 is not a separate adjudication, but a part of the overall N-400 adjudicative process.

As is specified in 8 CFR 336.2, any applicant whose application for naturalization is denied may submit additional independent evidence, including medical evidence, prior to the reconsideration hearing. This hearing should be conducted by a SAO. Offices are reminded that in the vast majority of cases involving disability-related denials, the denial will be based on the fact that the individual cannot meet one or more of the statutory requirements of naturalization, not the fact that the Service does or does not believe that a disability exists which prevents the applicant from fulfilling the requirements of section 312.

Offices should note that the Service has requested additional public comments on alternative appeal procedures for applicants with disabilities. Field offices will be notified of any change in the current appeal procedures. However, any such change will necessitate a separate regulatory change to the provision of 8 CFR 336, which would require an initial proposed rule and digest of public comments.

VII. Training, Quality Control & Quality Assurance

The need for supplemental training for DAOs responsible for adjudicating disability-related naturalization cases cannot be over emphasized. Adjudicators who receive the special disability training the week of January 27, 1997, are designated to be the DAO in his or her office to adjudicate disability exception cases for the first 60 days after the publication of the final rule in the Federal Register. These DAOs are also to share the concepts and materials gained at this session with fellow officers in their respective district. Service HQ is currently working to formulate a training module which will be part of all basic training given to entry level adjudicators. In addition, local offices should reinforce to all DAOs the responsibility each officer has in complying with the non-discriminatory provisions of Section 504 of the Rehabilitation Act of 1973.

Quality Control and Assurance must also play a prominent role in these adjudications. As noted in the Commissioner's memorandum of November 29, 1996 (Naturalization Quality Procedures), each office adjudicating applications for naturalization must ensure that quality assurance controls are in place at each step of the adjudicative process. In that these adjudications will be the first large-scale dealings some offices may have with applicants with disabilities, public scrutiny will be placed upon local offices. We must ensure that these applications are adjudicated fairly and correctly. Following the procedures previously outlined in this document will meet many quality control goals.

In compliance with the November 29, 1996 Quality Procedures Memorandum, supervisory review is necessary for cases with "applicants with complex cases involving other statutory eligibility

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determinations." It should be noted that with disability exception cases, supervisors must review and approve all adjudicating officers' requests for a second medical certification, in addition to conducting a review of the case after the adjudicating officer has made a final decision on the entire application. Since not all supervisors have been made available for disability regulation training at HQ, but must still review these cases, it is requested that supervisors receive briefing from the officers with primary training at HQ by February 4, 1997 in order to ensure that any routine adjudication processes are not disrupted.

Offices have been advised that for the first 60 days after implementation of the disability regulation, officers who received training on the regulation at HQ must be solely responsible for the adjudication of these cases and the training of the other officers within their respective district. For the next 60-day period, these same officers are responsible for review of all disability cases. Currently, the disability cases are included as part of the File Review Attestation worksheet under both the "Checklist after Interview" section, and the "Continued Cases" section. On the N-400 Processing worksheet, the adjudicating officer checks "other eligibility requirements met" and the supervisor notes the officer correctly adjudicated a case where the issue was an "applicant with complex statutory eligibility issues." There is space in both sections for further comment. We are reviewing whether to expand the processing worksheet to allow for more detailed coverage of an N-400 application with an attached N-648, or whether the comments section is sufficient for more explanation.

As noted previously in this document, SAOs must specifically review disability cases to ensure proper processing and compliance by both the applicant and the adjudicating officer. Additional guidance concerning a mandatory tracking log for these disability-related cases may be found in the attached documentation.

The Service is investigating the use of a private organization, via contract, to assist with quality control by means of random samplings and reviews. We are giving the public an additional opportunity to comment on this concept, and will communicate with all field offices any decision made to implement such a policy. Offices must cooperate with any effort undertaken by HQ to ensure quality in this particular adjudicative process.

ALEXIS M. HERMAN

Born: Mobile, Ala.

Age: 49

Education: Bachelor's degree, 1969, Xavier University

Work history:

■ Director, Women's Bureau, Department of Labor, during the Carter administration.

■ President and founder, A.M. Herman & Associates in Washington, a marketing and management firm, 1980-91.

■ Chief of staff and vice chairman, Democratic National Committee, 1988.

■ Deputy chairman, Democratic National Committee, 1990-93.

■ Chief executive, Democratic National Convention Committee, 1991-92.

■ White House director of public liaison, 1993-present. Worked closely with then-DNC Chairman Ron Brown on the Clinton campaign.

president's support among African Americans.

Senate Majority Leader Trent Lott (R-Miss.) said Tuesday that plan comes "awfully close to the edge of violating the Hatch Act."

The Hatch Act is the federal law prohibiting certain political activities by government employees.

White House officials yesterday defended Herman against possible Hatch Act charges. Under guidelines issued by the White House counsel, political appointees may do political work, even during their normal work day, as long as they put in a 40-hour workweek on their government job.

McCurry, in his defense of Herman, gave a sample of just how the fight would go if the Republicans decide to block Herman's confirmation because of her role in developing the White House campaign tactics for attracting African American support.

"I can't believe that the majority leader would suggest that she's disqualified from serving as secretary of labor because she attempted to encourage African Americans to participate in the political process of this nation," McCurry said.

In raising questions about the Hatch Act on Tuesday, Lott appeared untroubled by other queries that have been raised by both Republican and Democratic critics of Herman's role in what have become known as the "midnight contracts" at the Labor Department during the final days of the Carter administration. In the days after the election of Ronald Reagan, the Labor Depart-

ment awarded millions of dollars in contracts under the Comprehensive Employment and Training Program (CETA), much of it to groups including Jesse Jackson's Rainbow Coalition and the Martin Luther King Center.

A subsequent hearing by Senate Republicans cleared the department of any wrongdoing, but the controversy has resurfaced since Herman's nomination.

Lott told a press conference Tuesday that he was satisfied with answers Herman gave him about the contracts and her role at the department. "I feel like there's no problem there," Lott said.

FOR MORE INFORMATION

To read a month's worth of Post articles on the DNC campaign funds controversy, click on the above symbol on the front page of The Post's site on the Web at <http://www.washingtonpost.com>

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Fund-Raisers' Use of White House Database Reported

■ **Politics:** Law prohibits providing information from computer system, established at Clintons' behest, for nongovernment use. Spokesman denies illegality.

By GLENN F. BUNTING, TIMES STAFF WRITER

WASHINGTON—The Clinton administration, acting at the direction of the president and first lady, created a massive computer data system with federal funds in 1994 to keep tabs on as many as 350,000 people, including large political donors, Democratic campaign workers and visitors to the White House.

Internal documents reveal that the White House issued guidelines and legal opinions advising that the system could be used only for official government purposes. But the White House staff frequently retrieved data on large political contributors and turned it over to the Democratic National Committee to help raise money for the president's reelection, interviews show.

The use of the computer, dubbed "WhoDB" for White House Office Data Base, provides further indications that aspects of the Democratic Party's \$125-million fund-raising effort were carried out in the White House and that some of its components were based there.

Also, the records reflect the assortment of perquisites beyond private coffee klatches with the president that the administration made available for prospective donors: seats aboard Air Force One, personal notes from Clinton, lunch in the White House mess and invitations to watch a movie in the East Wing.

It is entirely legal and customary for the White House to gather information from a variety of sources to help the president in his "official" capacity. But federal laws prohibit the administration from providing such data to a nongovernment organization, particularly a political committee such as the Democratic Party, for partisan purposes.

White House spokesman Barry Toiv said that the computer system serves as an electronic social calendar by storing lists of people who have been invited to presidential events or received holiday cards from the first family.

"The database is not a tool for tracking contributors," Toiv said. "Nobody outside the White House was given access to it." He said that the program logging perks was developed for the computer but never actually used.

However, a former top Democratic official said in an interview that he and his staff routinely used WhoDB to identify likely candidates for increased donations. For example, he said, the staff found out how many White House invitations certain donors were receiving, so they could arrange more events for prospective contributors.

This began in 1995 when the party was striving to raise money early for Clinton's reelection in the wake of the Republican landslide the year before.

"I started checking back with the White House just as a routine matter," said Truman Arnold, a Texas oil executive who served at Clinton's request as finance chairman of the DNC during most of 1995. "It didn't seem to be very privileged to me. It was open to a lot of people."

Experts in campaign finance said that the national committee's use of the information stored in WhoDB raises questions about whether the administration went over the line in using government equipment and personnel for political purposes.

"This is a very sophisticated, state of the art information file that is of great use internally to the White House staff and the president," said Herbert E. Alexander, a USC political science professor and director of the Citizens' Research Foundation. "But using that file for political purposes with an outside agency like the DNC is beyond the law and ought to be the subject of an investigation."

Since July, a House Government Reform and Oversight subcommittee has been investigating WhoDB. The subcommittee is at odds with the White House over the release of computer records and is threatening to issue subpoenas for more material.

Democratic officials said they were not able to confirm Wednesday whether the DNC had used the White House computer for fund-raising purposes. "We are looking at this internally right now," said spokeswoman Amy Weiss Tobe.

Internal memos obtained by The Times reveal that the administration took steps to keep the White House database secret.

In a Jan. 26, 1994, memo marked "confidential" to the first lady and top presidential aide Bruce Lindsey, deputy assistant to the president Marsha Scott wrote that all WhoDB equipment and records were in a locked room in the Old Executive Office Building next door to the White House and that she had taken extra precautions to ensure that the project was not subject to disclosure under the federal Freedom of Information Act.

Moreover, Scott notified Mrs. Clinton and Lindsey that she was not seeking competitive bids from various software vendors because the process would "be open to public scrutiny and inquiry."

According to a report filed by "The WhoDB Team," the president and first lady requested in late 1993 that the White House staff start a resource database that would track official correspondence by the president and certain White House employees. It would allow staff members to plan future events and meetings as well as to compile a list for holiday cards.

At the time, the Clintons were frustrated with the archaic state of computers in the White House left by the George Bush administration. Information collected from a total of 22 different data bases were used to construct WhoDB.

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The cost of the project is in dispute. Last July, White House officials said that the three-year cost for software, hardware and technical support was \$545,000. Toiv said Wednesday that the cost through September had climbed to approximately \$638,000. But a White

House internal estimate, submitted to the House subcommittee last summer, put the amount—including staff costs for development of the system—at \$1.7 million. Toiv called that figure “highly inflated.”

The White House provided the subcommittee with a count of 355,211 individuals listed in the system. Toiv, however, said that the system contains the names of about 200,000 people. They include members of Congress, mayors, governors, community leaders, business leaders and reporters. Private information such as addresses, home telephones, Social Security numbers and dates of birth also are included, in part to expedite clearance into the White House by the Secret Service.

The system specified persons who were known to be active in “ethnicity” and “gay/lesbian” issues but those labels are “are no longer operative,” Toiv said.

Documents show descriptions entered in a “Political Participation” field include “DNC Latino 1000,” “Early Supporter—Financial,” “1992 General Election Fundraiser” and “DNC Trustee.” The latter designation identified party donors who gave more than \$100,000 a year.

These labels, according to administration officials, were used to help identify the backgrounds of visitors invited to attend White House functions or meet with the president and others.

“To the extent there are contributors in there, the vast majority of them [have] no indications of how much they gave or when they gave,” Toiv said. “The database ~~was not used in any way~~ to solicit campaign contributions.”

Nor were WhoDB files used to select guests to be invited to the 103 coffee klatches at the White House in the last two years, Toiv said. “That would be an inappropriate use of the database.”

Those private gatherings, which included many large donors, business executives and community leaders, already have been cited by critics as an example of excessive use of the White House for political and fund-raising purposes. The Times reported this week that guests who attended the series of hour-long White House

coffee receptions with Clinton gave \$27 million to the Democrats. Clinton has defended his hosting of such groups vigorously, saying that they helped keep him in touch with the concerns of constituents.

The WhoDB manual and memos from the White House legal counsel make clear that the database may be used only for “official purposes.” In July, then-White House Counsel Jack Quinn said in a memo that providing information to “any outside source, including any campaign committees, for unofficial purposes is an impermissible use” of the database.

However, people familiar with the system said that during the last two years DNC workers routinely used the database as a fund-raising

tool to recruit prospective donors and to solicit large contributions.

Arnold, the former party finance chairman, said that he was given a fund-raising goal of \$42 million when he joined the national committee in March 1995. Arnold said he focused on reconnecting the party with contributors who had given in 1992 but who had “fallen from the fold.”

To do this, Arnold said, party staff members tapped the White House computer base, usually calling for the information. Arnold said that the national committee occasionally dealt with Ann Stock, head

of the White House social office. Stock could not be reached for comment.

“It was most helpful to us because we were looking to the disaffected,” Arnold said. “The database helped us to see who had been invited to what.”

In some cases, Arnold said, the party discovered through the computer that donors who had given \$25,000 had received numerous invitations to the White House, while supporters who had given \$100,000 or more received nothing.

Arnold said he saw to it that the national committee focused

attention on big donors who had been ignored by showering them with invitations that included movies at the White House theater, state dinners, seats aboard Air Force One, White House coffees and rounds of golf with Clinton.

“This was the way we reconnected to people. . . .” Arnold said. “And when you started having fund-raisers . . . they would be the first people to show up and work for you.”

However, Toiv said, the computer was not used to aid fund-raising. “That is not the way it was used,” he said. “The DNC would

only be calling in response to the White House wanting to know what names they would want to submit to an official event.”

Rep. David M. McIntosh (R-Ind.), who is leading the House investigation into the database, said it is evident that the White House was doing more than organizing social events and planning holiday greeting cards.

“It looks like the Democrats set up their donor-tracking software at the White House rather than the DNC,” he said. “We have to get to the bottom of this.”

AP Associated Press

GOP used White House, too, but Clinton breaks new ground

By JOHN KING

AP Political Writer

WASHINGTON (AP) - For \$100,000 contributors, there were receptions at the White House, invitations to state dinners and briefings with senior officials. Maybe even a ride on Air Force One with baseball greats Ted Williams and Joe DiMaggio and the president.

President Bush, that is.

The White House and the perks that come with it, it seems, were an irresistible instrument of political fund-raising long before Bill Clinton came to Washington.

President Reagan, for example, greeted big Republican donors at the White House. He even attended a Roosevelt Room reception for major contributors to a group that was providing military aid to Nicaragua's Contra rebels - despite a congressional ban on such aid.

And long before Rep. Newt Gingrich was a household name - or House speaker - the Georgia Republican rewarded big contributors to his GOPAC political organization with invitations to a special White House reception with Bush.

"Prior to the reception, we will go to the Old Executive Office Building for briefings with Cabinet members and other White House officials," Gingrich said in an October 1989 letter to major GOPAC donors.

So as Republicans accuse Clinton of selling access to the White House - and administration policymakers - for giant contributions to the Democratic National Committee, Clinton and many allies are crying foul, on grounds prior Republican administrations did much the same.

"They raise more foreign money," Clinton, with obvious bitterness, said of Republicans in a speech last week. "They raise more money in big contributions and we take all the heat. It's a free ride."

Federal election records prove part of Clinton's point: Republicans do have a perennial advantage in fund raising, including collections of the large, unregulated "soft money" donations at the core of Justice Department and congressional investigations of Democratic fund-raising in last year's campaign.

In the 1995-96 cycle, national Republican committees raised \$141 million in soft money, compared with \$122 million for Democratic committees.

And, like Democrats, Republicans have marketed access.

Early last year, for example, the Republican National Committee promised meetings with Speaker Gingrich, other GOP congressional leaders and the party's presidential nominee - who had not yet been selected - for a \$250,000 contribution.

But Republicans involved in prior administrations argue that Clinton has crossed the line when it comes to using the White House itself as an instrument of fund raising.

They also argue that Republicans had a meticulous system of checking that contributions came from legal sources; since coming under scrutiny, the Democratic National Committee has returned nearly \$1.5 million in questionable contributions, much of it from individuals or corporations with foreign roots.

"We would have major donors to the White House to meet with the president, but it was long after the checks were in the bank," said Bush White House political aide David Carney. "These guys

were blatantly bringing people in as a way of getting them to give money."

Clinton and Democratic National Committee officials vehemently deny that any fund-raising solicitations were made at the White House. Such overtures would be a violation of federal law prohibiting fund-raising in official government buildings.

But critics note that prominent Democratic fund-raisers were on hand for most of the 70 political receptions held by Clinton over a 19-month period, and they point to records showing that many of those invited made contributions on the same day as the reception, or within a few days after.

While highly critical of past GOP practices, campaign watchdog groups echo Republicans in asserting that Clinton has broken new ground.

"There has been for some time a pattern of using the White House for political fund raising," said Don Simon, general counsel of the public interest group Common Cause. "But I think the Clinton administration has taken the game to a new level both in the amount of money that is being raised and in the aggressive use of the president and the White House as a key part of the fund raising. The image that is created is one of the White House being for sale."

Clinton is hardly the only president to face this allegation. Senate Watergate hearings were replete with evidence that President Nixon's operatives solicited contributions of \$100,000 or more from wealthy Americans, most of them corporate officials who did business with the federal government, and promised access to administration policy-makers in return.

Post-Watergate reforms banned such giant contributions to federal candidates, but by the 1980s both parties were taking advantage of a loophole that allowed unlimited contributions to party organizations.

In the Reagan and Bush years, Team 100 was the exclusive Republican National Committee fund-raising club, open to those who gave \$100,000 a year to the party. Like major Democratic donors during the Clinton administration, many of these big contributors were named to administration advisory boards and given coveted spots on Commerce Department trade missions.

In a 1992 study, Common Cause complained that Bush was doling out government favors to big donors and detailed several cases in which administration decisions benefited Team 100 members and their companies.

"The Bush administration's actions on behalf of \$100,000 donors raise striking parallels to the Watergate scandal," Common Cause said in April 1992.

Five years later, the organization is lodging similar complaints against Clinton.

Democrats Are Asked to Return \$15,000

French Company Seeks Refund After Invitation Was Withdrawn

By LESLIE WAYNE

WASHINGTON, Feb. 29 — Reacting to the Democratic National Committee's decision to bar contributions from United States-based corporations with a foreign-owned parent, at least one international corporation has asked the Democratic Party to refund its campaign contribution and other companies are joining together to oppose the ban.

Pasteur Merieux Connaught, the French-owned maker of vaccines that has a manufacturing plant in Swiftwater, Pa., has asked the Democrats to give back a \$15,000 donation. This came after the company was asked not to attend a Democratic fund-raising dinner held here on Tuesday night with President Clinton and 50 business leaders.

The event was sponsored by the Democratic Business Council, and corporations paid \$15,000 to attend. But Pasteur Merieux Connaught, which had been invited and accepted, was called the day before the event and asked not to come.

"When I was told I was disinvented to the Clinton dinner, I said, 'Fine, we want our money back,'" said Geoffrey Peterson, director of government affairs for the company, which has 800 employees.

Mr. Peterson said he was particularly disappointed by the Democrats' action since he had been an early supporter of President Clinton and had served on the President's steering committees in 1991 and 1992 as a fund-raiser.

Companies as diverse — and as large — as Philips Electronics, Shell Oil Company, ICI Americas and Glaxo Wellcome, have joined to lobby against a decision made last week by the Democratic National Committee not to accept campaign contributions from United States subsidiaries of foreign corporations.

The group will lobby members of Congress in an effort to prevent the ban from spreading and becoming part of any overall campaign finance reform package. The group fears that the ban could extend to the Re-

publicans and go beyond the Democratic National Committee to other Democratic fund-raising committees. The Democratic National Committee raises money primarily for the Presidential race.

"We want to remind members of Congress that we operate our political action committees and our soft dollar donations in a legal fashion," said Randy Moorhead, a spokesman for Philips Electronics North America, a company with \$8 billion in U.S. sales and the maker of such products as Norelco shavers and Magnavox televisions.

"We do not want to be confused

A foreign subsidiary retaliates after being 'disinvited.'

with Mr. Huang and the others and the problems that developed," said Mr. Moorhead. "What this ban does is relegate all those American citizens who work for Philips Electronics to second-class citizenship." He added that he expected that "many" other U.S. subsidiaries of foreign corporations will also ask for their donations to be returned.

"And even if they didn't ask for the money back, the Democrats should give it back, if they want to remain true to their publicly-stated policies," Mr. Moorhead said.

Amy Weiss Tobe, a spokeswoman for the Democratic National Committee, said yesterday, "We knew that this would be a difficult step and that people would feel unhappy and disenfranchised but it was important for the D.N.C. to put its money where its mouth was in campaign finance reform. But certainly we will still accept individual donations by people who work for these companies and they should feel free to participate with a donation."

In a letter to the Democratic Business Council, Mr. Peterson of Pasteur Merieux Connaught, said: "It is with great sadness that I request that the \$15,000 paid by my company for me to join the Democratic Business Council be returned immediately. My company will be celebrating its 100th anniversary in the United States. We are located in the Pocono Mountains and our employees, numbering around 800 are Americans.

"Because we happen to be owned by a French company, the Democratic National Committee has decided that our contributions are somehow 'tainted.' Somehow our contributions are now less 'American,'" said Mr. Peterson.

Among those companies that are based in the United States but with a foreign owner are many leading Democratic donors. Among them are Seagram & Sons, the Canadian distiller that gave the Democrats at least \$1.2 million; MCA Inc., an entertainment company and a Seagram subsidiary; Northern Telecom, based in Canada and ICI Americas, a British chemical company.

Other companies, like MCI Telecommunications Corporation, can give now to the Democratic National Committee. But, MCI is in the process of being acquired by British Telecom, based in England. When that merger is completed, MCI, a large Democratic donor, will no longer have its donations accepted.

Todd M. Malan, executive director of the Organization for International Investment, a trade group representing U.S. subsidiaries of foreign companies, said yesterday: "Our membership feels that they have been lumped together with companies that are mere letter box companies. Some of our companies have been here for more than 100 years.

"They have billions invested in the U.S. and have thousands of employees and a significant number of U.S. shareholders," Mr. Malan said. "They think that they have as much right to participate in the political process as anyone else."

Huang received top-secret clearance after move to DNC

By Jerry Seper
THE WASHINGTON TIMES

John Huang was issued a "consultant top-secret" security clearance after he resigned as a Commerce Department official to take over as a fund-raiser at the Democratic National Committee, department records show.

The clearance means the former Lippo Group executive, now the focus of an FBI probe into possible economic-espionage and national-security concerns, held top-secret clearances for three years, although he worked at Commerce for only 18 months.

"We'd certainly like to know how that happened and why," said one congressional investigator looking into Mr. Huang's ties to a growing scandal over foreign-linked campaign contributions. "It is very curious, and perhaps even unprecedented."

The top-secret clearance, requested by Commerce Department executives, was issued by the Defense Industrial Security Clearance Office (DISCO) on Dec. 12, 1995 — after Mr. Huang left the department as deputy assistant secretary for international economic policy and before he reported to work at the DNC.

It remained in effect until Dec. 9, 1996, DISCO records show, although it is not clear how he used the clearance as a top DNC fund-raiser. It could have gained him access to classified meetings and documents.

Mr. Huang initially was issued a top-secret security clearance in January 1994, five months before he resigned as a top executive at the Indonesia-based Lippo Group, a multibillion-dollar investment conglomerate, to go to Commerce. He was a vice president at Lippo Bank in Los Angeles and resigned in July 1994 to take over as deputy assistant secretary at Commerce.

Commerce and DNC records are not clear as to when Mr. Huang actually left the government and began as a fund-raiser. The DNC said he started work on Dec. 4, 1995. Commerce said he left the department on Jan. 17, 1996.

A Commerce memo dated Jan. 31, 1994, said Mr. Huang was granted an interim top-secret clearance before his arrival at Commerce "due to the critical need for his expertise in the new administration for Secretary [Ronald H.] Brown."

The same reasoning was used in December 1995, when the assistant commerce secretary, Charles F. Meissner, asked in a "request for

personnel action" that Mr. Huang be retained as a consultant despite his pending departure to the DNC.

Mr. Meissner said Mr. Huang would help in the transition period in finding a replacement and his "expertise" on the Asia-Pacific region would be vital to the department's commercial policy planning there. Records show the consultancy eventually was not approved, but the top-secret clearance was granted and remained valid for a year.

Congressional investigators want to know if there was concern at Commerce of a possible conflict of interest regarding Mr. Huang's role as a DNC fund-raiser while serving as a department consultant with a top-secret clearance.

They also are trying to determine if Mr. Huang was given classified information that may have been leaked to Lippo. Telephone records show that while at Commerce, he made and received dozens of calls from Lippo lobbyists and executives while he worked on sensitive trade missions.

Mr. Meissner was among 34 persons, including Mr. Brown, killed in an April plane crash in Croatia.

Mr. Huang, who became a U.S. citizen in 1976, is believed to have returned to California. He previously has denied any wrongdoing. As a DNC fund-raiser, he solicited \$2.5 million from contributors with Asian business links, \$1.5 million of which has been returned.

Meanwhile, Rep. Gerald B.H. Solomon, New York Republican and chairman of the House Rules Committee, yesterday asked Secretary of State Madeleine K. Albright for copies of letters written by Clinton supporters Ernest G. Green and Charles Yah Lin Trie to help a Chinese arms dealer, Wang Jun, get a visa to visit the United States.

Mr. Green, managing director at Lehman Brothers Inc. in Washington and a former Little Rock resident, and Mr. Trie, an Arkansas businessman, made significant contributions to the DNC and to Mr. Clinton after Mr. Wang met with the president in the Oval Office on Feb. 6, 1996.

According to Federal Election Commission records, Mr. Green gave \$50,000 to the DNC on Feb. 7, 1996. Mr. Trie delivered \$640,000 to Mr. Clinton's legal-defense fund within a month of the visit. The two men wrote letters of endorsement for the Wang visa, issued by the U.S. Embassy in Beijing.

At the time of the White House visit, Mr. Wang headed a Chinese arms company known as Poly Technologies Inc., which makes weapons for the Chinese military. The firm was under investigation by the U.S. Customs Service in a major smuggling operation, and it had been identified by agents as a supplier of 2,000 AK-47s to drug dealers and street gangs in the United States.

'Republicans Question DNC Dinner

Fund-Raiser Follows Clinton Disclaimer

By Peter Baker
Washington Post Staff Writer

President Clinton said he saw no contradiction in pledging to "clean up the system" of campaign finance in the afternoon and then headlining a \$1 million Democratic fund-raiser in the evening. After all, he declared, the group hosting the event would be "quite consistent" with the new rules he hopes to enact.

As it turns out, the group may be consistent. But its event was not.

Most of the money collected by the Democratic National Committee's business council at its Tuesday night dinner at the Sheraton Carlton Hotel came in the form of \$15,000 corporate "soft money" donations that are considered annual membership dues. Under current federal law, such gifts are unrestricted, but they would be outlawed under the bipartisan legislation Clinton has promised to push through Congress.

"The business council, the group that is having this fund-raiser tonight, is one that would be quite consistent with the McCain-Feingold bill, were it to pass," Clinton had said during a news conference earlier in the day, referring to a proposal sponsored by Sens. John McCain (R-Ariz.) and Russell D. Feingold (D-Wis.).

Republicans were quick to call attention to the apparent contradiction between the president's words and deeds yesterday, issuing a statement juxtaposing his quote with the provisions of the Clinton-backed bill.

White House press secretary Michael McCurry yesterday offered a lawyerly distinction, saying Clinton meant only that the party's business council would still be raising money even if the legislation passes.

"Some of the giving from last night's event wouldn't occur because it would be corporate money . . . but you'd still have events in which individuals could contribute pursuant to the party contribution limits," McCurry said. "And I suspect that they would want to continue to have something like the business council, which has been around the national committee for a long time."

The fund-raiser was the first by the DNC since the November election and came at a time when the party and Clinton are under pressure to explain a variety of improprieties involving huge foreign-generated donations.

The DNC last week voluntarily imposed some limits on its fund-raising, including a ban on gifts from noncitizens and a \$100,000-per-year cap on "soft money," actions that Republicans have declined to match. Clinton used his nationally televised news conference Tuesday to concede that in the past "mistakes were made" and to press the case for the McCain-Feingold bill, which would limit special-interest money and prescribe voluntary spending limits.

About 70 financial benefactors heard Clinton speak later that night. Seats cost \$10,000 apiece for individuals or \$15,000 in corporate contributions and the DNC reported that about 60 percent of the proceeds came from the corporate checks.

Fund-Raiser, Reform Bill at Odds, White House Says

By ELIZABETH SHOGREN
TIMES STAFF WRITER

WASHINGTON—The White House conceded Wednesday that a million-dollar political fund-raising event attended by President Clinton this week would violate the requirements of a campaign finance reform bill he is prodding Congress to enact.

More than 60% of the funds raised at Tuesday night's \$10,000-a-person dinner, sponsored by the Democratic Business Council, was in the form of corporate "soft money" contributions to support Democratic Party political activities, according to organizers of the event.

Such donations, which are not subject to the limits imposed on contributions to candidates, would be made illegal under campaign finance reform legislation endorsed by Clinton. Indeed, the president touted the need for such reforms at a news conference just hours before the fund-raiser.

White House Press Secretary Mike McCurry acknowledged that if the proposal were law, the fund-raiser would have included "either fewer people or people contributing only pursuant to the contribution limits in the bill."

He reiterated, however, that the Business Council, the Democratic National Committee's donor program for businesses and corporations, could and would continue to exist under the proposed new rules.

On another issue in the growing controversy over campaign fund-raising, McCurry stressed that the White House stands firmly behind its nomination of Alexis Herman to be Labor secretary, despite criticism of some of her political activities during the recent

campaign.

Herman, until recently a White House staff member, worked on her own time doing political "outreach" for Clinton in the minority community, administration officials have said. She participated in political gatherings at the White House for donors and supporters. And her office invited Edward Ludwig, a federal banking regulator, to a political gathering at the White House in May for banking executives to meet with the president.

"We think that as people work through these issues, and as she has an opportunity to see individual senators, answer their concerns... she'll be able to address these matters in a way that will be to the satisfaction of the Senate," McCurry said. "The president is certainly willing to work very hard on behalf of a nominee that he considers exceptionally well qualified."

A spokesman for Sen. James M. Jeffords (R-Vt.), chairman of the Senate Labor and Human Resources Committee, which will conduct Herman's confirmation hearings, said the senator has "a lot of questions" about Herman's activities. "The [committee] staff is going through those White House documents about her involvement in fund-raising. He has not said her nomination is in any trouble, but he wants answers."

Ever since the controversy over Democratic Party fund-raising practices surfaced toward the end of the 1996 campaign—a furor that has resulted in the party returning about \$1.5 million in questionable contributions—Clinton has responded by stressing his support for reforming the system. But at the same time he has continued to actively raise money for his party, noting that the realities of the

political system demand it.

Tuesday's exclusive event took place at the Sheraton Carlton, a posh hotel favored by the Capitol's lobbying crowd. It was attended by about 70 guests, many of them CEOs and partners in law firms, according to Todd Glass, a Democratic Party spokesman. Individuals paid \$10,000 to attend, and corporations paid \$15,000 per seat.

Before the event, Clinton was asked at his news conference about the image he was projecting by attending such an affair at the same time he is publicly pushing for reform.

Clinton dodged the question, saying only that the business council would be "quite consistent" with the proposed legislation.

During the fund-raiser, Clinton referred to the question asked earlier in the day.

"They said, well, does it set a good example that you're going to this fund-raiser tonight," Clinton told the contributors. "And I said, yes, I think it does, because there is no system which has been offered which is completely publicly funded... so we have to depend upon people to help us."

DNC spokeswoman Amy Weiss Tobe defended the event, arguing that Democrats unilaterally reformed their own campaign finance rules last week by capping donations at \$100,000 per person and restricting donations to U.S. citizens only. But Democrats cannot stop taking soft money until Republicans agree to do the same, she said.

"We'd be committing political suicide," Tobe said. "We want a level playing field... We need to raise money to get out the vote for elections this year and in 1998. We're going to keep raising money, and we're not going to apologize for it."

The Washington Times

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Democrats call for limits on Senate inquiry

By Brian Blomquist
THE WASHINGTON TIMES

Democrats yesterday stalled a Senate investigation of their party's fund raising, saying they will not agree to the \$6.5 million needed to mount the inquiry until Republicans agree to put strict limits on it.

Democrats on the Senate Governmental Affairs Committee want Republicans to narrowly describe — in writing — the goals of the investigation. They also want more influence in the inquiry, and they want the subsequent hearings to end by next January.

"You are initiating an investigation and you are not sure what you are looking for," Sen. Richard J. Durbin, Illinois Democrat, said during a con-

tentious three-hour committee meeting.

Sen. Fred Thompson, Tennessee Republican and chairman of the committee, asked the panel to approve a \$6.5 million request to hire 80 persons for the investigation, in addition to the 64 workers already on staff. The request includes \$365,000 for travel, \$100,000 for consultants and \$225,000 for contingencies.

Mr. Thompson called the request "very conservative." The Democratic National Committee, which helped finance the Clinton campaign, already has admitted accepting millions of dollars in illegal and questionable foreign contributions, which it returned after a string of critical newspaper stories in the final weeks of the 1996 campaign.

"We're talking about another Watergate," said Sen. Ted Stevens, Alaska Republican, who noted that the Senate Watergate Committee spent the equivalent of about \$7 million in today's dollars investigating President Nixon in 1973 and 1974.

The \$6.5 million request — on top of the committee's regular budget of \$4.5 million — is more than three times the amount that has been spent investigating Whitewater.

The committee's Democrats, with the backing of the Senate Democratic leadership, objected. Mr. Thompson directed the panel's aides to meet last night to try to reach an agreement on the scope of the investigation. He has scheduled another meeting for this morning.

Committee Republicans, with a 9-7 advantage, could simply override the Democrats' concerns and vote for the budget request — and that might end up happening. But Mr. Thompson, who was GOP counsel to the Senate Watergate Committee, has stressed that he wants to pursue the campaign probe in a bipartisan way.

He said the panel's Democrats would be allowed to call their own witnesses and pursue their own inquiries if they found the GOP-led inquiry unacceptable.

Once approved by the committee, the budget request goes to the Senate Rules Committee and to the full Senate, where Democrats have the votes to sustain a filibuster. Top Democrats have hinted that they might block the request.

"We will be more than ready to support that funding resolution once we've had the opportunity to resolve these matters," Senate Minority Leader Tom Daschle of South Dakota said Tuesday. "But they have to be resolved to our satisfaction."

Mr. Stevens' comparison of the DNC fund-raising troubles to Watergate drew protests from Democrats, who said the president has done nothing illegal. They also demanded that the probe include Republican campaign finances from last year and previous elections.

"If there's something of that nature, then I am certainly unaware of it," Sen. John Glenn of Ohio, the committee's ranking Democrat, said in response to Mr. Stevens' remark. "If you have evidence, give it to me now."

Mr. Thompson has said the committee would indeed look at Republican campaign practices but the focus would be the large

contributions funneled through Asian-Americans to the DNC from foreigners and foreign businesses.

The FBI has assigned a 25-agent task force to look into economic and national-security issues related to the DNC matter. The Federal Election Commission also is investigating it, and the House has its own inquiries.

Mr. Thompson said he is willing to speak further with committee Democrats about the scope of the investigation. He added that he would not agree to a deadline for hearings to end.

Chairman Wants \$6.5 Million For Campaign Finance Probe

By Helen Dewar
Washington Post Staff Writer

The Senate's probe into campaign financing abuses got off to a shaky start yesterday as Democrats complained about the ground rules and balked at a \$6.5 million funding plan for the investigation, forcing new efforts to reach a compromise.

While both sides struggled to maintain an aura of cordiality, the sparring—including a clenched-jaw Democratic response to a Republican's suggestion that the probe could produce "another Watergate"—showed how taut the nerves are, even before the investigation gets underway.

By the end of their two hours of haggling, Republicans and Democrats on the Senate Governmental Affairs Committee, which will conduct the campaign financing probe, indicated they wanted to work out their differences without provoking more partisan rancor.

Committee Chairman Fred D. Thompson (R-Tenn.) had hoped to win quick approval of a committee budget for this year, including \$4.5 million for regular business and \$6.5 million for the campaign financing probe, for which Thompson said he wants to hire 80 investigators and support personnel.

But Democrats complained that the investigation budget was too high and argued that Democrats would be put at a disadvantage from the start because of rules allowing the majority party twice as much money and staff as the minority party.

They also wanted specific assurances that the inquiry would target campaign financing corruption of all kinds rather than focusing exclusively on last year's presidential campaign and, by implication, on the mounting allegations of Democratic fund-raising excesses on behalf of President Clinton's reelection campaign. Several said they wanted the scope to be broad enough to include inquiries into congressional campaign abuses. They also wanted specific assurances about rules for Democratic participation in the inquiry.

Thompson repeatedly assured Democrats that he would not limit the panel's focus to the 1996 presidential cam-

paign, disputing Democratic arguments that he had previously characterized the probe as limited in this fashion. But he offered few other guarantees and rejected the Democrats' request for a termination date for the investigation and hearings.

Although he could have pushed the budget through on a party-line vote, Thompson said he did not want to start out the investigation on a "divisive note." Instead, he delayed a vote and scheduled another meeting for today so the committee's Republican and Democratic staffs could work in the meantime to iron out problems dealing with the investigation's scope and rules for Democratic participation.

When a colleague suggested that Democrats should trust Thompson to protect their interests, Thompson laughed and, paraphrasing President Ronald Reagan's comment about arms control practices of the Soviet Union, said, "Trust but verify, I think they're saying."

The proceedings hit their roughest patch when Sen. Ted Stevens (R-Alaska) said "we're dealing with another Watergate" and noted that Republicans did not seek to broaden the probe of President Richard M. Nixon to include allegations against former president Lyndon B. Johnson.

Democrats seethed, but within a few minutes Sen. Arlen Specter (R-Pa.) moved to calm things down by saying it would be "a big mistake" to start the inquiry by comparing Clinton's problems to Watergate. Thompson also tried to calm the waters, saying he thought Stevens was talking about the scope of the inquiry, not the nature of alleged offenses.

While Democrats complained that the proposed budget for the committee's inquiry was two or three times the cost of the Whitewater investigation in the last Congress, Republicans said it would be in line with the Watergate and Iran-contra probes. A Congressional Research Service study listed the costs as \$6.9 million for Watergate, \$6 million for Iran-contra (in both houses) and \$1.8 million for Whitewater, all in inflation-adjusted terms.

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Fund-raising probe seeks \$6.5 million

By Judi Hasson
USA TODAY

A Senate committee is asking taxpayers to pay at least \$6.5 million to look into alleged 1996 campaign finance abuses — a sum nearly equal to that of the entire Senate Watergate investigation two decades ago.

The \$6.5 million budget request, along with money that House committees may request for their own investigation of fund-raising practices, could break records for congressional review of the executive branch activities.

Sen. Richard Durbin, D-Ill., said the campaign investigation could become the "most expensive investigation in the history of Congress."

The request by Sen. Fred Thompson, R-Tenn., head of the Governmental Affairs Committee, so angered Democrats that a final vote on it was delayed Wednesday.

Thompson said he did not want to start the investigation "on a divisive note," but Republicans hold a 9-7 majority on the committee and could force the budget through in a vote scheduled today.

The new investigation is to cover fund-raising abuses in both parties, but its focus is the Clinton presidential campaign.

The panel's budget must go through the Senate Rules Committee and the Senate.

Wednesday's debate took a partisan tone when Sen. Ted Stevens, R-Alaska, said, "We're talking about another Watergate," the scandal that forced President Nixon's resignation.

"If you have evidence of that, give it to me right now," said Sen. John Glenn, D-Ohio.

Sen. Arien Specter, R-Pa., also took issue with the Watergate comparison.

The \$6.5 million budget calls for hiring 80 staffers, many of them lawyers, and travel to question foreign donors.

The Democratic National Committee (DNC) already has returned \$1.5 million in questionable foreign donations.

The Senate Watergate probe cost \$6.8 million in '96 dollars.

Meanwhile, White House spokesman Mike McCurry acknowledged that President Clinton would not have been able to attend a \$1 million DNC fund-raiser Tuesday if campaign finance reforms he endorses had been enacted.

Finance probe's cost could grow

Travel, time, legal costs are difficult to estimate

By Tom Squitieri
USA TODAY

Early Wednesday, Sen. Fred Thompson said he needed \$6.5 million to conduct the Senate Governmental Affairs Committee's investigation into alleged campaign finance abuses during the 1996 election.

By the end of the day, Thompson was warning he may need more.

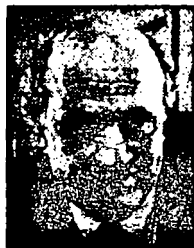
"Clearly we don't know exactly what we're going to need," Thompson said. "We have to decide sooner or later whether we're looking for a broader investigation or a narrower investigation."

Thompson says his committee will look into fund-raising activities by both Democrats and Republicans in 1996. The probe's genesis, however, lies in allegations that Democratic fund-raisers collected millions from foreigners and foreign corporations.

Both would be violations of campaign finance laws if the money didn't come from individuals legally residing in the USA or from U.S. subsidiaries of foreign corporations.

Three areas are the key unknown costs in the budget:

- Extensive foreign travel required for investigators, primarily in trips to Asia. Democrats have already returned \$1.5 million in contributions, primarily from Asian-Americans representing Asian business interests.



Thompson: Plans year-long probe

- The length of the probe and which individuals, political and governmental entities will be scrutinized.

- Hiring of outside lawyers, primarily because Thompson expects that the committee will have to go to court to force some individuals he may call as witnesses to testify.

Temporary employees will also be hired to handle a wide range of tasks from translation

Early estimate: \$6.5M

The budget the Senate Governmental Affairs Committee has proposed for its investigation into allegations of campaign finance irregularities:

Salaries (80 full-time employees)	\$4,956,621
Consultants	\$300,000
Administrative	
Hearings expenses	\$600,000
Travel	\$375,000
Computer hardware, software	\$37,500
Other equipment	\$37,500
Communications	\$30,000
Office supplies	\$18,000
Publications (books, newspapers, magazines)	\$15,000
Mailing, delivery	\$15,000
Senate services (travel, recording)	\$7,500
Contingency funds	\$225,000
Total	\$1,280,500
Total proposed budget	\$6,517,121

Source: Senate Governmental Affairs Committee

to filing thousands of pages of documents.

None of those tasks can be done by existing personnel on the Governmental Affairs Committee. Those staffers will be involved with the committee's other work this year.

Also possibly adding to the investigation's cost: Sen. John Glenn's suggestion to increase the probe's scope to include campaign funding impropr-

eties prior to the 1996 election.

The last highly public congressional probe, the Senate Banking Committee's 13-month Whitewater investigation during 1995 and 1996, cost \$1.2 million. That was beyond its initial approved budget of \$950,000.

An earlier Senate Banking Committee investigation into Whitewater during 1993 cost \$400,000. The House Banking Committee probe into White-

water lasted just four days and had nine witnesses. It cost less than \$50,000.

The costs of congressional investigations are separate and distinct from costs of special prosecutors who investigate the same areas. Whitewater special prosecutors Robert Fiske and Kenneth Starr have spent a total of \$23.3 million through March 31, 1996. That is in addition to what the committee investigations cost.

Some other congressional investigations for which separate funding figures are available:

- ▶ The 1973-74 Senate Watergate Committee, about \$2 million, equal to \$6.9 million in 1996 dollars.

- ▶ The 1987 Iran-contra investigation, about \$3.6 million, or \$5 million in 1996 dollars.

- ▶ The 1950-51 Kefauver Committee investigation into organized crime, \$215,000, or \$1.4 million in 1996 dollars.

- ▶ The 1957-59 McClellan Committee investigation into racketeering and labor, \$2,050,000, or \$11.5 million in 1996 dollars.

- ▶ The 1976-78 special Assassinations Committee investigation into the deaths of President John Kennedy and the Rev. Martin Luther King Jr., \$5,954,400, or \$15.3 million in 1996 dollars.

AP Associated Press

New questions about finances of CIA director-designate

By JOHN DIAMOND

Associated Press Writer

WASHINGTON (AP) - The Senate Intelligence Committee is examining a new White House disclosure about stock dealings by a broker representing Anthony Lake, President Clinton's choice to head the CIA.

Committee members met in closed session Wednesday to discuss the Lake nomination and other matters. A committee staffer, who spoke on condition of anonymity, said lawmakers were examining Lake's failure to sell energy stocks after being advised to do so by the White House counsel. They are also examining a new admission that his stock broker made at least \$2,500 for Lake buying and then selling stock in a natural gas company.

The transaction appears in Lake's financial disclosure form filed with the Office of Government Ethics and being examined by the committee. White House officials, who also spoke on condition of anonymity, said the broker bought the stock without Lake's knowledge. Upon realizing his error after being reminded of the White House counsel's guidance, the broker sold the stock and wrote a letter of apology to Lake.

Lake's confirmation hearing is scheduled for Feb. 11. Committee members have indicated they are concerned not only about Lake's stock transactions but also about his role in the tacit U.S. approval for Iranian arms shipments to Bosnia, and his ability to provide unbiased intelligence on policies he helped frame as national security adviser.

The financial disclosure form was signed by Lake on Jan. 9. The Wall Street Journal obtained a copy and reported on its contents Wednesday.

The counsel had advised Lake to divest in energy stocks apparently because of the potential for conflict of interest in Lake's role as national security adviser to Clinton. That post, among other things, would give Lake considerable influence over U.S. policy in the Mideast which, in turn, can have an effect on the value of energy stocks.

Late last year, Lake acknowledged that he had inadvertently delayed selling four energy stocks for two years after being advised to divest. Those stocks increased in value in the intervening time. The Justice Department is reviewing the delay in the sale of the stocks.

The latest disclosure involves stock in Williams Cos., a company based in Tulsa, Okla.

According to the disclosure form, Lake made between \$2,501 and \$5,000 in capital gains and dividends on the stock. A spokesman for Lake did not return calls Wednesday seeking comment.

Clinton Calls Amendment Risky Move

*Budget Measure Imperils
Social Security, He Says*

By Eric Pianin and John F. Harris
Washington Post Staff Writers

On the eve of the opening skirmish in Congress over a proposed balanced budget amendment to the Constitution, President Clinton yesterday warned that approval of the measure could pose "grave risks" to the Social Security system.

The Senate Judiciary Committee is scheduled to meet today to approve and send to the floor an amendment requiring the budget to be balanced by 2002 and every year after that unless the Senate and the House vote by three-fifths majorities to waive the requirement.

In a letter to the Senate Democratic leader, Clinton said: "In the event of an impasse in which the budget requirements can neither be waived nor met, disbursement of Social Security checks could cease or unelected judges could reduce benefits to comply with this constitutional mandate."

The administration's hope is that invoking a threat to Social Security, a hugely popular program, will strengthen lawmakers who agree with Clinton that the amendment is bad policy but need some political cover.

Clinton and Democratic leaders used a similar strategy in 1995 and 1996 to frustrate GOP efforts to pass the amendment. Senate Minority Leader Thomas A. Daschle (S.D.) and other Senate Democrats are raising the issue by pressing for a substitute bill that would exempt surpluses in the Social Security trust fund from balanced budget calculations.

Republicans have complained that Democrats are using Social Security scare tactics to incite seniors groups and others to oppose the constitutional amendment. They note that the White House as well as the GOP has proposed plans for balancing the budget by 2002 that take advantage of the Social Security surpluses. Without using those surpluses, budget writers would have to make hundreds of billions of dollars of additional cuts in domestic programs and defense or raise taxes.

"The only way you effectively protect Social Security is to get a balanced budget" to stabilize spending, Sen. Larry E. Craig (R-Idaho), a leading proponent of the amendment, said yesterday. "The most important thing is that we do not create loopholes in a constitutional amendment."

Senate Judiciary Committee Chairman Orrin G. Hatch (R-Utah) and other GOP leaders say they are confident they will pass the amendment in the Senate, after narrowly failing twice in the 104th Congress. But they are still two or three votes short, while passage in the House could be more difficult this time than in 1995 because of turnover in membership.

Clinton's own nerve regarding the balanced budget amendment has seemed to waver. Last November, he publicly outlined a list of changes he said would make the amendment less objectionable. On Capitol Hill, that was interpreted as a signal that he was resigned to its passage and was not going to aggressively fight it.

In a recent interview with The Washington Post, Clinton said his assessment of whether the amendment can be stopped has changed since November, and he vowed that "I'm going to do my best to defeat it."

The latest White House count, according to a senior administration official, has the vote "too close to call" in both the House and Senate.

Senior officials at the Treasury Department, Office of Management and Budget, and National Economic Council have been making phone calls and visiting with legislators to encourage them to vote no.

In addition, other agency officials have been targeting lawmakers to warn against the possible consequences for favorite federal programs if the amendment passes. It is part of a broader case Clinton is making that the amendment, however appealing in the abstract, would be much less so in its real-world application.

Clinton plans to speak out against the amendment in appearances in February in which he will say his balanced budget plan will make the amendment unnecessary. "This is a full-court press," one administration official said. "We're real serious about that."

Yesterday, several Senate Democrats who are supporting the balanced budget amendment conceded that a full court press by Clinton potentially could derail their efforts. "I'm acknowledging that the vote is uncertain," said Sen. Charles S. Robb (D-Va.).

Sen. Bob Graham (D-Fla.), another supporter, said, "I think the president lobbies from a position of strength, given the fact that he has actually presided over a significant reduction in our annual deficit." Graham added, however, that he expects Democrats will join Republicans "in increasing numbers" to pass the amendment to lock in future gains in the war on the deficit.

Jack A. Smalligan
02/21/97 06:27:10 PM

Record Type: Record

To: Kenneth S. Apfel/OMB/EOP, Diana Fortuna/OPD/EOP
cc: See the distribution list at the bottom of this message
Subject: Re: More on disability naturalization regulation

Yes, our policy has always been disabled after entry. For the exemption for children the legislation that is being drafted would exempt all children, regardless of the timing of a disability, and allow a child that enters the SSI program to continue on the program even after they become an adult. In other words, a mentally retarded immigrant child can stay in the SSI program.

Also, Stacy and I are skeptical that there are that many adult immigrants entering the country with disabilities of sufficient severity to qualify for SSI.

----- Forwarded by Jack A. Smalligan/OMB/EOP on 02/21/97 06:10 PM -----

From: Kenneth S. Apfel on 02/21/97 05:11:52 PM

Record Type: Record

To: Diana Fortuna/OPD/EOP
cc: Elena Kagan/OPD/EOP, Stephen C. Warnath/OPD/EOP, Jack A. Smalligan/OMB/EOP
Subject: Re: More on disability naturalization regulation

our proposal was always disabled after entry - - for adults. But our proposal is different for kids. Kids are not subject to the "after entry" notion. Isn't that correct, Jack?

Message Copied To:

Barry White/OMB/EOP
Keith J. Fontenot/OMB/EOP
Stacy L. Dean/OMB/EOP
Elena Kagan/OPD/EOP
Stephen C. Warnath/OPD/EOP
Cynthia M. Smith/OMB/EOP

HQ 70/33.2-P

Section 312 Disability Naturalization
Adjudications: Supplemental Policy
Guidance for Field Offices

DRAFT
1/30/97

All Regional Directors
All District Directors (except foreign)
All Officers-in-Charge (except foreign)
All Service Center Directors

Office of Examinations

This memorandum and accompanying attachments provide supplemental policy guidance on section 312 exceptions for persons with disabilities to all Immigration and Naturalization Service (INS) field offices currently adjudicating applications for naturalization.

A 1994 technical amendment to the Immigration and Nationality Act extended an exception to disabled applicants regarding all the section 312 requirements. The attached final rule, to be published in the Federal Register on February 4, outlines the background history of the amendment, the efforts of INS to implement this new policy, and the new regulatory text.

Effective upon publication in the Federal Register, offices shall immediately institute the policy outlined in the final regulation and in this document. Previously distributed drafts of this document and the previously distributed field guidance, dated November 21, 1995, used as a basis for adjudicating section 312 disability exception requests shall no longer be used. In order to ensure consistency, individuals with pending cases shall be required to submit the new form N-648, Medical Certification for Disability Exceptions, and shall have the principles outlined in this document applied to their final adjudication. It is expected that the policy and guidelines outlined in the attachments will be followed consistently by all adjudications officers. In addition, offices should conduct community outreach and education on this regulation as discussed in the attached policy guidance.

Changes to 8 CFR §§ 312.1 and 312.2 reflect our efforts to make the regulation consistent with the amended statute. In particular:

- The wording of § 312.1(b)(3) has been changed, with new language on disability-based exceptions found on page 32 of the attached final rule. Offices should note that previous wording directly referencing blindness and deafness have been removed.
- The current §312.2(b) has been redesignated as paragraph (c) and a new paragraph has been added as paragraph (b)(1) to provide a disability-based exception to the civics requirements (page 33 of the attached rule).
- A new paragraph at 8 CFR 312.2(b)(2) has been added to explain the medical certification process for a disability exception.

The Service is committed to ensuring that the implementation of the procedures outlined in

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this document are followed. Since a primary mission of the INS is to provide service, applicants with a legitimate claim to the disability exception provisions should be facilitated through the adjudication process. At the same time, Service officers must also utilize credible approaches to deterring fraud and abuse that are applicable to all adjudications for benefits under the Act and must remember that what may seem like fraud may in reality be a lack of information about the naturalization process on the part of certain individuals with disabilities. Service officers must also continue to ensure that applicants who are granted section 312 exceptions continue to meet all other applicable eligibility requirements for naturalization.

Since many disability-related cases will be emotionally charged, all INS offices and adjudication officers are directed to use compassion, discretion, and sensitivity in adjudicating any request for a section 312 disability-based exception. The same level of discretion and sensitivity INS officers apply to orphan adoption cases should be replicated in all section 312 disability exception cases.

Many aspects of this regulatory revision are new and therefore we fully expect field offices to have many questions. We realize that all questions will not be answered within this document. However, we plan to distribute regular updated supplemental policy guidance memoranda for policy and procedural issues not answered by this document. Headquarters will also depend on all field offices to bring unique cases and situations to our attention in order that the experience may be shared with other offices.

Questions about the policy outlined in the attachment to this memorandum and in the Federal Register final rule may be directed to Staff Officer Craig Howie, HQ Naturalization Division. Questions regarding the new form, the new training module, or quality assurance compliance may be directed to Staff Officer Jody Marten, HQ Naturalization Division. Both officers may be reached on 202/514-5014.

Louis D. Crocetti
Associate Commissioner

Attachments

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**§312 DISABILITY ADJUDICATIONS:
SUPPLEMENTAL FIELD POLICY GUIDANCE****I. Introduction**

The Immigration and Naturalization Technical Corrections Act of 1994 amended section 312 of the Immigration and Nationality Act (the Act) to afford naturalization applicants with physical or developmental disabilities or mental impairments an exception to English language proficiency and United States history and government (civics) knowledge requirements. This amendment augmented the pre-existing exception that persons with disabilities were afforded regarding only the English proficiency requirements of section 312.

On November 21, 1995 the INS issued preliminary guidance to all naturalization adjudicating offices on the section 312 disability exceptions. On August 28, 1996, a proposed rule was published in the Federal Register, proposing to amend the Service regulations at part 312 to accommodate these new disability exceptions. During the Fall of 1996, the Service reviewed and digested the 228 comments that were submitted by the public pursuant to the proposed rule. The resulting final rule, scheduled to be published in the Federal Register on February 4, 1997, contains substantial changes to the provisions of the proposed rule and the preliminary guidance. In particular:

- Direct reference to the three disability categories in the regulatory language of 8 CFR 312 has been replaced with language complementing the disability terminology used by the Social Security Administration (SSA) in their regulations (i.e., "medically determinable physical or mental impairment or combination of impairments").
- Creation of a new public use form, N-648, Medical Certification for Disability Exceptions, to be used by any applicant requesting an exception to the section 312 requirements based on a disability. A copy of the form is included with this document. Offices are advised to accept photocopies of the N-648 until the form has been placed in full circulation following printing by the Government Printing Office (a process which could take more than six months).
- The elimination of the proposed use of the civil surgeons to make the disability determinations. In the place of the civil surgeons, the INS will allow only licensed medical doctors or licensed clinical psychologists to complete the N-648.

As noted in the accompanying documentation, these exceptions for persons with disabilities are not blanket exemptions from the requirements mandated by section 312. With accommodations or modifications, certain applicants with disabilities will be able to meet the section 312 requirements, just as they are accommodated today in many instances. To institute a policy of blanket exemptions would play into the stereotypical concept that persons with disabilities are not able to participate in mainstream activities. Such a policy would be contrary to the provisions of section 504 of the Rehabilitation Act of 1973 with which all federal government agencies must comply. Therefore, all adjudications for a section 312 exception based on a disability will be made on a case by case basis. It would be discriminatory to formulate policy which states that everyone with a particular disability

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is exempted from the section 312 requirements when some individuals with the disability could well take part in the testing requirements imposed by section 312 with reasonable accommodations or modifications.

All offices must note that the provisions contained within the documents in this package are effective immediately upon publication of the final rule in the Federal Register and must be followed without exception. Due to the substantial changes the Service has made to the provisions of the proposed rule, the public is being allowed a 60 day comment period on the final rule. This will not affect the authority or responsibility of all local offices to proceed with these adjudications immediately and without delay. Any changes that may result from further public comments will be issued in writing to all field office.

Service offices adjudicating naturalization applicants should make note of the changes to the regulatory language of 8 CFR part 312. Of particular concern to officers should be these changes:

- The wording of § 312.1(b)(3) has been changed, with new language on disability-based exceptions found on page 32 of the attached final rule. Offices should note that previous wording directly referencing blindness and deafness have been removed.
- The current §312.2(b) has been redesignated as paragraph (c) and a new paragraph has been added as paragraph (b)(1) to provide a disability-based exception to the civics requirements (page 33 of the attached rule).
- A new paragraph at 8 CFR 312.2(b)(2) has been added to explain the medical certification process for a disability exception and an explanation of the new form, N-648, Medical Certification for Disability Exceptions.

Adjudication officers receiving the special two-day training at HQ during the week of January 27, 1997, should be the officers initially adjudicating disability-based applications for section 312 exceptions. This corps of officers will be responsible for ensuring the complete dissemination of the information and policies contained in this document to additional adjudications officers within each naturalization adjudicating office and shall ensure that these officers are familiar with these policies prior to the adjudication of disability-related exception cases. These trained officers should also work closely with the district director or officer-in-charge to ensure that full information about this regulation is provided to information officers, congressional, and public affairs officers and others within their office who will be answering questions from the public.

Each office is responsible for conducting local community outreach to inform and educate organizations that assist immigrants, persons with disabilities, the elderly, and others to whom this regulation may apply. Representatives of medical and psychological organizations and government agencies such as SSA and Health and Human Services (HHS) should be included in this outreach. Each office should endeavor to educate members of the medical and immigrant assistance communities about the naturalization process and the requirements of this regulation as soon as possible following publication in the Federal Register. Such information dissemination will improve the ability of the assistance groups and medical professionals to accurately apply the disability-based

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exceptions in appropriate cases and will help deter abuse of the process.

All offices are reminded of the intense public scrutiny the INS will be placed under as this program moves forward. For many officers, this will be their first experience adjudicating cases involving applicants with disabilities. Officers are therefore reminded to always use discretion and compassion in making adjudications involving persons with disabilities. The same level of compassion and discretion that has in the past been applied to cases involving orphan adoptions is to be applied to any section 312 disability exception request.

II. Disability Definitions, Medical Professionals Authorized to Complete New Form N-648 & Adjudicating Currently Pending Cases

A. Disability Definitions

In the preliminary field guidance (issued in November, 1995) and the proposed rule, the Service offered exact definitions of the terms physical disability, developmental disability, and mental impairment designed to reflect the amendment Congress made to section 312 of the Act. Parts of the definitions were also based on the limited Congressional guidance, contained in the one committee report issued that related to the 1994 Technical Corrections Act.

As officers will note in reviewing the comments portion of the attached final rule, many commenters had concerns about the definitions we proposed. After reviewing the public comments, and after consultations with the SSA, the Service has chosen to drop the proposed definitions and rely on language that comports to the definitions used by the SSA in their regulations. As such, the wording of 8 CFR at part 312.1(b)(3) has been changed and at 312.2(b)(1) has been amended to refer to medically determinable physical or mental impairment(s), that already has or is expected to last at least 12 months. (See pages 32-33 of the attached final rule.) The phrase "medically determinable physical or mental impairments" encompasses the three disability categories noted in section 312 of the Act and refers to an impairment that has resulted from anatomical, physiological or psychological abnormalities. Using medically acceptable clinical and laboratory diagnostic techniques, these abnormalities can be shown to so limit or impair the individual as to render him or her unable to learn and demonstrate the information required by section 312. In addition, language is included in the regulation that prevents individuals whose disability resulted from the illegal use of drugs from being granted these exceptions. This was a particular concern of Congress.

B. Medical Professionals Authorized to Complete New Form N-648

Initially, the Service proposed using the corps of authorized civil surgeons to perform the disability determinations for naturalization applicants requesting an exception to the section 312 requirements. After long discussions with SSA, HHS, and the Centers for Disease Control (CDC), the decision was made not to rely on the civil surgeons to perform this function. The CDC noted that the majority of civil surgeons have expertise centered around diagnosing communicable diseases, not in making complex disability determinations. Therefore, the Service is amending 8 CFR part 312.2

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with the addition of a new paragraph (b)(2), which outlines the medical professionals authorized to make the disability determinations and complete the new public use form N-648, Medical Certification for Disability Exceptions (copy attached). A complete discussion of the rationale behind creating a new public use form is found in the Discussion of Comments section of the attached final rule.

Upon publication of the final rule, only licensed medical doctors or licensed clinical psychologists will be authorized to make a disability determination, utilizing the new form N-648. The term licensed medical doctor includes doctors who are specialists, such as board certified psychiatrists. In addition, any civil surgeon meeting these criteria will be able to make a disability determination, but based on the surgeon's expertise with a particular disability, not on the fact that he or she is a civil surgeon. These licensed medical professionals will be required to certify on the new form that their medical speciality, experience, and other qualifications permit them to make such a complex disability assessment. In addition, the medical doctor or licensed clinical psychologist must certify under penalty of perjury that his or her statements are true and correct. Service officers should note that medical professionals not authorized to complete the N-648 include nurse or homoeopathic practitioners, physician assistants, and medical center or nursing center administrators who are not licensed medical doctors with disability experience. As is the case with virtually all Service adjudications, the burden is on the applicant and the licensed medical professional to ensure that the N-648 is completed correctly and that the medical professional is authorized to make the certification.

District Adjudication Officers (DAOs) are reminded that it is the responsibility of the medical professional to make the medical determination. This responsibility is clearly delineated on form N-648 in questions three and six. Officers are not medical professionals, advocates, or social workers and should not place themselves in the position of attempting to second guess the medical evaluation of the qualified medical professional certifying a disability exception on the N-648. Nor should the officers place themselves in the position of being a medical professional and thereby denying the existence of a disability. However, DAOs should not hesitate to talk with the medical doctor or clinical psychologist, after consultation with the DAO's supervisor, if the officer has a question about the MD's or psychologist's type of certification or questions about the disability determination. This is particularly the case if the terminology is very general and does not explain how the particular medical condition prevents the applicants from learning the requirements of section 312 of the Act. For example, an N-648 noting the disability as only hypertension would need further explanation. The officer needs to know how or why hypertension prevents the applicant from learning the section 312 requirements. Procedures for obtaining a second medical opinion, where deemed necessary, are discussed below.

Beyond reviewing the N-648, officers may consult with officials of other federal or state agencies if the applicant has been declared disabled by another agency, and the DAO believes that such a consultation would assist with the disability determination process. DAOs also have the authority to request additional medical records on the applicant, but only in instances where there is a well founded belief that such documentation would allow the DAO to accurately adjudicate the request for a section 312 exception. (See Section III, Referrals for an Additional Medical Opinion.)

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Such a request must be documented in the record, outlining the reasons for the request and the response of the medical professional holding said records. Officers should also take all necessary precautions to maintain the confidentiality of sensitive medical records.

All officers should familiarize themselves with the new form N-648 prior to adjudicating any disability-related case. The new language of 8 CFR 312.2 (b)(2) notes that the N-648 must be submitted as a supplement to the N-400 application when the N-400 is filed. (This will allow offices to pre-screen disability exception requests, to make any necessary modification in accessibility, or to consider the option of going on-site for the interview.) However, since the policy and form are new, offices for the foreseeable future should accept the N-648 if the applicant brings the form to the naturalization interview. Offices should accept legible photocopies of the form.

C. Adjudicating Currently Pending Cases

For offices that have cases pending related to a request for a disability exception, the final adjudication should be made based on the policy and guidelines noted in the final rule. In order to ensure consistency, all applicants with a currently pending request for an exception based on the preliminary guidance will be required to have the new form N-648 completed and submitted to the Service for review. Offices will need to mail applicants with pending requests for a disability exception, based on preliminary field guidance, an N-648 as soon as possible. This policy will avoid having two standards applied to the adjudication.

III. Requirements for Additional Evidence or Second Certification

In section 312.2(b)(2) of the final regulation, it is noted that the Service reserves the right to require an applicant to submit additional evidence supporting the N-648 or to submit a second N-648 from another authorized professional. Offices are instructed to use extreme restraint in exercising these options, and should only do so when doubts remain after the steps outlined below have been completed. DAOs should note that the burden is on the applicant to pay for any second certification, and should take this fact into consideration. Officers should always remember that they are responsible for determining the eligibility for naturalization, but not for making or rendering a medical determination.

Any officer who determines a second medical certification to be necessary must comply with the following procedures:

1. If questions exist regarding the disability or the actual completion of the N-648, the DAO should attempt to reach the medical professional for answers to the DAO's questions. If the officer's questions are answered by this contact, the referral will not be deemed necessary, and the adjudication of the naturalization case should continue.
2. If questions exist regarding the medical professional making the determination, the DAO should attempt to verify the license number noted on the N-648 by contacting the appropriate state medical or clinical psychologist licensing agency. An answer

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from this agency will provide evidence regarding the validity of the medical professional's license, or might expose the existence of a fraudulent practitioner. Evidence of fraud in this instance should be handled in the standard way the officer reports similar discoveries of document fraud. Documented evidence of an applicant knowingly using the services of a fraudulent medical source shall result in the exception and application for naturalization being denied.

3. If the applicant has been declared disabled by another state or federal government agency, the DAO should attempt to make contact with this agency to see if any information can be gained to clarify the questions the officer has about the certification.
4. If, after consultation with the medical certification provider, it is determined that a production of supplemental records from the applicant's medical file would satisfy the concerns of the DAO, such records shall be requested and reviewed. If these documents resolve all outstanding questions, the adjudication of the case shall continue without a second referral. Officers must take all precautions to preserve the privacy and confidentiality of private medical documents.
5. If any of these procedures fail to satisfy the DAO as to the accuracy of the determination or of the medical professional, the DAO shall consult with his or her supervisor and obtain authority to require the applicant to obtain a second disability certification.
6. Upon approval, the applicant shall be given another N-648, with instructions to have the form completed by an authorized medical professional other than the professional that completed the first certification. Until definitive guidance can be issued regarding who should perform these referrals, offices should contact the local medical board or society for information and contact points on referrals. In particular, offices should not refer applicants to commercial medical referral services listed in telephone directories or to any specific medical provider.
7. Supervisory consultation and approval must be obtained and noted in the record for all the steps and procedures outlined above.

An example of a situation where the DAO might feel compelled to require a second certification would be in a case where the medical evaluation, as noted on the N-648, is so vague that the officer cannot clearly discern what is the actual disability or combination of disabling impairments, how the impairments prevent the applicant from learning the section 312 information, and the efforts to obtain clarification from the medical profession making the certification fail. It is incumbent upon the DAO to keep an accurate account of these actions and contacts in the alien file. All offices should also establish a liaison with the local or state medical board or society. This liaison effort should help the office and officer when questions arise over particular medical professionals and the professional's certifications on the N-648.

As noted, HQ Naturalization and Field Operations are currently working on a standardized referral policy, and will notify field offices as soon as the policy is finalized.

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IV. Accommodations & Modifications

All federal agencies are mandated to promote and adhere to policies that are non-discriminatory to persons with disabilities in the administration of all programs. The Rehabilitation Act of 1973 spells out these requirements. (The non-discriminatory provisions of the Rehab. Act served as the basis for the Americans with Disabilities Act, which bars discrimination against persons with disabilities in non-government areas.) All INS offices are required to adhere to the principles of the Rehabilitation Act.

The Rehabilitation Act requires the Service to make reasonable accommodations and modifications to program administration to accommodate the needs of persons with disabilities. All offices currently do make accommodations and modifications on a daily basis. For example, every time an office sends a DAO on-site to a nursing facility or hospital to interview or to administer the oath of allegiance, an accommodation and modification has been made.

Offices are reminded that making accommodations and modifications means that not all persons with disabilities will be exempted from the section 312 naturalization requirements. The final rule notes that only disabled persons whose disabilities are so severe that the person is rendered unable to participate in the testing procedures for naturalization will be granted an exception from the testing requirements. Certain individuals will be able to meet the requirements section 312 imposes, but with distinct modifications or accommodations. For example:

- Blind individuals may be supplied with materials in Braille, large print, or questioned orally, and perhaps in their native language, on section 312 civics questions.
- Hearing impaired persons may be given a written test on civics questions.
- A person with a learning disability might be given additional time to complete a written civics test.
- Persons with severe physical disabilities could respond to questions in a yes or no format, or through nodding their heads or blinking their eyes yes or no to particular questions.

This list is not all inclusive. Local offices should be creative in constructing additional accommodations and modifications to the testing procedures required by section 312. In many cases, offices currently have many modifications and accommodations already in use. Offices are encouraged to share these concepts with other offices and with their regional Examinations contact point. However, offices and DAOs should remember that disabled applicants attempting to gain an exception to the section 312 requirements are doing so because they view their particular disability as so impairing that they cannot meet the English and civics requirements.

Aside from the modifications that can be made to the actual test administration, offices must give consideration to modifications of the actual interview. As noted above, any time a DAO goes on-site to conduct a naturalization interview or to administer the oath of allegiance, a considerable modification has been made. Another modification that offices need to consider is allowing a disabled

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naturalization applicant understands the actions he or she is taking, and to some extent the actual provisions of the oath. The Service believes that many disabled applicants, while excepted from the civics knowledge requirements of section 312, will be able to have a limited understanding of the concepts of the oath, and therefore will be eligible to complete the naturalization process. For officers making these disability-based adjudications, this will most likely be the most difficult aspect of the adjudication.

As noted in the previous section of this document, family members may assist the DAO in understanding the responses of certain disabled applicants. However, prior to the start of the interview, the DAO should attempt to clarify and understand from the family member any physical motions or signals that might be used as an answer to a question asked during the interview.

DAOs cannot expect that interviews with many persons with disabilities will proceed or be conducted in the same way as with applicants without disabilities. Each interview will be unique and each applicant's capabilities regarding the oath requirements will need to be assessed on a case by case basis. However, the DAO conducting the interview with a disabled applicant must be assured that the core qualifications specified by the oath are in some form understood by the applicant. These core qualifications are that the applicant:

- Understands that he or she is becoming a United States citizen.
- Understands that he or she is renouncing his or her allegiance to their prior nation of citizenship.
- Personally and voluntarily agrees to this change in his or her status.

The DAO must be assured that the disabled applicant has some conceptual level of understanding of these core qualifications, but not necessarily every exact word of the oath.

Applicants who cannot satisfy the DAO of an understanding of these aforementioned qualifications, whether disabled and entitled to an exception to the section 312 requirements or non-disabled, cannot be naturalized under the current structure of the Act. A denial of an application for naturalization based on the inability to understand the concepts of the oath should be initially discussed with the DAOs supervisor, and the written denial must cite the failure to meet the statutory requirements of the Act at section 337. Offices are reminded of the extreme sensitivity of this issue with the public. As previously noted, any legal analysis or discoveries which might change this policy will be forwarded to all adjudicating field offices as quickly as possible.

Offices should note that the Service is seeking further legal guidance on the issue of the oath requirement. Offices should not deny any disability-related case, based on the applicant's inability to take the oath, until this further legal guidance is provided to all field offices.

VI. Denials & Appeals

In the discussion of comments of the final rule, many commenters suggested that the Service

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establish a special appeal procedure for applicants with disabilities in the event their applications for naturalization are denied. The Service determined that the current procedure for appealing a naturalization denial, as specified in the Act in section 336, is adequate and should not be altered. This decision is based on the fact that the acceptance or denial of an N-648 is not a separate adjudication, but a part of the overall N-400 adjudicative process.

As is specified in 8 CFR 336.2, any applicant whose application for naturalization is denied may submit additional independent evidence, including medical evidence, prior to the reconsideration hearing. This hearing should be conducted by a SAO. Offices are reminded that in the vast majority of cases involving disability-related denials, the denial will be based on the fact that the individual cannot meet one or more of the statutory requirements of naturalization, not the fact that the Service does or does not believe that a disability exists which prevents the applicant from fulfilling the requirements of section 312.

Offices should note that the Service has requested additional public comments on alternative appeal procedures for applicants with disabilities. Field offices will be notified of any change in the current appeal procedures. However, any such change will necessitate a separate regulatory change to the provision of 8 CFR 336, which would require an initial proposed rule and digest of public comments.

VII. Training, Quality Control & Quality Assurance

The need for supplemental training for DAOs responsible for adjudicating disability-related naturalization cases cannot be over emphasized. Adjudicators who receive the special disability training the week of January 27, 1997, are designated to be the DAO in his or her office to adjudicate disability exception cases for the first 60 days after the publication of the final rule in the Federal Register. These DAOs are also to share the concepts and materials gained at this session with fellow officers in their respective district. Service HQ is currently working to formulate a training module which will be part of all basic training given to entry level adjudicators. In addition, local offices should reinforce to all DAOs the responsibility each officer has in complying with the non-discriminatory provisions of Section 504 of the Rehabilitation Act of 1973.

Quality Control and Assurance must also play a prominent role in these adjudications. As noted in the Commissioner's memorandum of November 29, 1996 (Naturalization Quality Procedures), each office adjudicating applications for naturalization must ensure that quality assurance controls are in place at each step of the adjudicative process. In that these adjudications will be the first large-scale dealings some offices may have with applicants with disabilities, public scrutiny will be placed upon local offices. We must ensure that these applications are adjudicated fairly and correctly. Following the procedures previously outlined in this document will meet many quality control goals.

In compliance with the November 29, 1996 Quality Procedures Memorandum, supervisory review is necessary for cases with "applicants with complex cases involving other statutory eligibility

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determinations." It should be noted that with disability exception cases, supervisors must review and approve all adjudicating officers' requests for a second medical certification, in addition to conducting a review of the case after the adjudicating officer has made a final decision on the entire application. Since not all supervisors have been made available for disability regulation training at HQ, but must still review these cases, it is requested that supervisors receive briefing from the officers with primary training at HQ by February 4, 1997 in order to ensure that any routine adjudication processes are not disrupted.

Offices have been advised that for the first 60 days after implementation of the disability regulation, officers who received training on the regulation at HQ must be solely responsible for the adjudication of these cases and the training of the other officers within their respective district. For the next 60-day period, these same officers are responsible for review of all disability cases. Currently, the disability cases are included as part of the File Review Attestation worksheet under both the "Checklist after Interview" section, and the "Continued Cases" section. On the N-400 Processing worksheet, the adjudicating officer checks "other eligibility requirements met" and the supervisor notes the officer correctly adjudicated a case where the issue was an "applicant with complex statutory eligibility issues." There is space in both sections for further comment. We are reviewing whether to expand the processing worksheet to allow for more detailed coverage of an N-400 application with an attached N-648, or whether the comments section is sufficient for more explanation.

As noted previously in this document, SAOs must specifically review disability cases to ensure proper processing and compliance by both the applicant and the adjudicating officer. Additional guidance concerning a mandatory tracking log for these disability-related cases may be found in the attached documentation.

The Service is investigating the use of a private organization, via contract, to assist with quality control by means of random samplings and reviews. We are giving the public an additional opportunity to comment on this concept, and will communicate with all field offices any decision made to implement such a policy. Offices must cooperate with any effort undertaken by HQ to ensure quality in this particular adjudicative process.

On Page 10, CRT proposes to add "or guardian" after "family member" each time it appears in the first incomplete paragraph.

On Page 11, substitute the following for all the full paragraphs:

DAOs cannot expect that interviews with many persons with disabilities will proceed or be conducted in the same way as with applicants without disabilities. Each interview will be unique and each applicant's capabilities regarding the oath requirements will need to be assessed on a case-by-case basis. Although a disabled applicant need not understand every word of the oath, the DAO must be assured that an applicant has an understanding of the nature of the oath. An inquiry by a DAO might include, for example, an attempt to determine whether the applicant understands that he or she is becoming a United States citizen, is giving up his or her prior citizenship, and [CRT proposes to delete "personally and"] voluntarily agrees to this change of his or her status.

If the DAO concludes that an applicant does not understand the nature of the oath, that applicant cannot be naturalized under current statute and regulations. A denial of an application for naturalization based on the inability to understand the nature of the oath should be initially discussed with the DAOs supervisor, and the written denial must cite the failure to meet the statutory requirements of the Act at section 337. Offices are reminded of the extreme sensitivity of this issue with the public. As previously noted, the Service is seeking further legal guidance on the issue of the oath requirement, and any legal analysis or discoveries which might change this policy will be forwarded to all adjudicating field offices as quickly as possible.

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naturalization applicant's family member to accompany the applicant during the interview. For most adjudications, this suggestion is not practical. However, for many disabled applicants, the presence of a family member in the interview could have a distinct calming effect. DAOs must always remember that the naturalization interview can be a stressful experience for the non-disabled applicant. The stress factor of the interview for a person with disabilities could be even greater. Offices must be willing to make this particular accommodation and modification on a case by case basis. The family member, at the discretion of the Service, can in some instances assist 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.

DAOs are reminded again of the need for the utmost compassion, discretion, and sensitivity in adjudicating cases where the applicant requests an exception to the section 312 requirements. Making acceptable accommodations or modifications to the testing and interview environment is our mandate under the Rehabilitation Act of 1973.

V. Oath of Allegiance

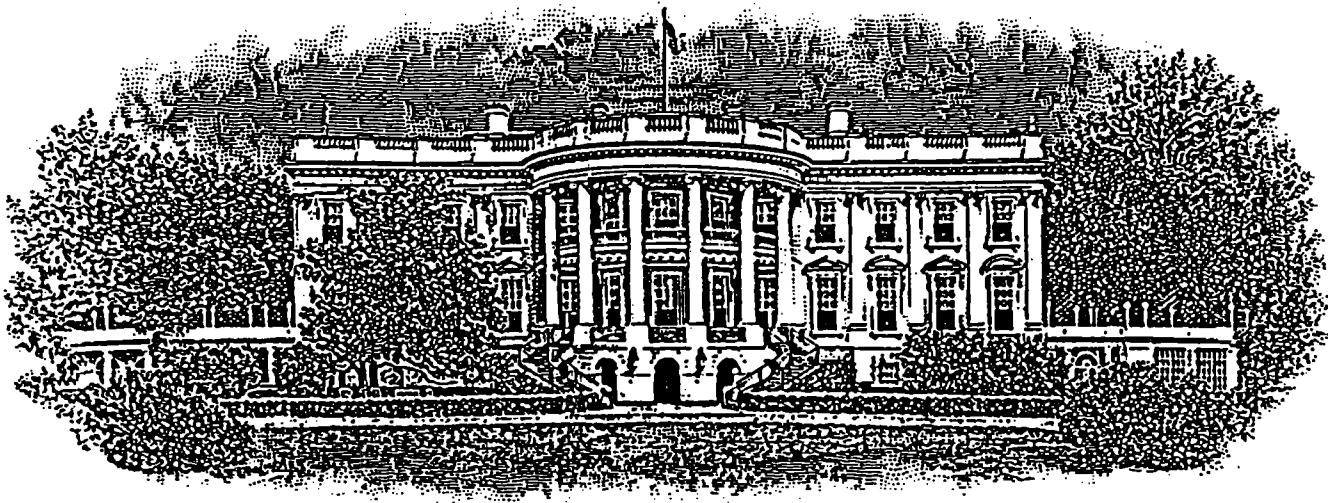
As offices are aware, Congress amended the Act at section 312 to provide persons with disabilities an exception to only the English and civics requirements. Therefore, many feel that while disabled applicants are being offered an exception to the requirements of section 312, we are in fact holding these same applicants to a double standard by requiring them to take the oath of allegiance required by section 337 of the Act. To hold these applicants to the requirements of section 337 requires them to have a limited knowledge of civics, some have stated.

As stated in the introduction to the regulation, Congress ^{18.} did not address the oath requirement when it passed the section 312 amendment concerning disabilities. Any change in this policy, whether from newly discovered court precedent or statutory amendment, will be related to all field offices as quickly as possible. Until such a time, the oath is still required for all applicants.

As noted in section IV of this document, offices are required to make reasonable accommodations and modifications to programs in order to accommodate the needs of disabled persons. The Service currently fulfills many of these accommodations via the provisions of section 337.3 of 8 CFR. While these provisions do not allow or authorize the waiving of the oath, offices are encouraged to becoming more accommodating in granting requests for expedited administration of the oath. However, applicants must be reminded that the provision of 8 CFR 337.3 only apply to the administration of the oath. No one granted an expedited administration of the oath under 8 CFR 337.3 has been waived this requirement, only the statutory requirement that the applicant participate in a public ceremony. Offices currently operating under an order of exclusive jurisdiction should forge a liaison with the local judiciary to facilitate requests for special ceremonies or for the authority to administratively administer the oath in 8 CFR 337.3 cases.

While it is not the role of the DAO to make a technical medical determination as to the existence of a disability, it is the responsibility of the DAO to be satisfied that the disabled

The White House



DOMESTIC POLICY

FACSIMILE TRANSMISSION COVER SHEET

TO: (1) DENNIS HAYASHI

FAX NUMBER: _____

TELEPHONE NUMBER: _____

FROM: SCWARNATH

TELEPHONE NUMBER: _____

PAGES (INCLUDING COVER): 4

COMMENTS: _____

TRANSMISSION RECORD

IMMIGRATION AND NATURALIZATION SERVICE
HEADQUARTERS
425 I STREET, N.W.
WASHINGTON, D.C. 20536

c.c. Steve W
Debra Bond

TO: Diana Fortuna	FROM: Joel Ginsberg, for Allen Ehrenbaum
ORGANIZATION: OPC	ORGANIZATION: INS
TELEPHONE:	TELEPHONE: 202-305-3250
FAX TELEPHONE: 456-7028	DATE: 1-30-97

NUMBER OF PAGES (including cover sheet): 14

COMMENT/MESSAGE:

Plan is to send out tomorrow. 11- personally
- "Previous drafts" referred to on 1st page are a similar document used in HQ training 1-28 and 1-29. 514-5000
- Last 91 p. 11, E & I will be clarified: these cases will be neither ^{approved} ~~granted~~ nor denied until further guidance is received.

Joel

To: Bruce Reed
Elena Kagan

From: Stephen Warnath *SW*
Diana Fortuna *DF*

Subject: INS Disability Naturalization Guidelines

Date: January 31, 1997

DISABILITY

REG/GUIDELINES

This memo is a quick summary of events that led to a postponement in releasing INS guidelines (and regulations) on processing naturalization applications for persons with disabilities.

The document the INS planned to release Monday defines the circumstances under which a legal immigrant with a disability can become a citizen. The thorniest legal question the INS faces is how far to go in adjusting the oath of citizenship. (Accommodations are required by civil rights laws.) A consensus developed that the INS document had not been adequately vetted within DOJ or with OMB; and certainly we had not been given an opportunity to digest its contents.

The task facing us now is to ensure that the INS and DOJ have fully explored the options so that they further each of the Administration's three goals in this area: protecting the most vulnerable, such as the severely mentally retarded, from loss of SSI and Medicaid benefits; safeguarding the integrity of the citizenship process; and working to build support on the Hill for our broader legal immigrant "fix" legislation.

To recount the events leading to the postponement: Yesterday afternoon we received a draft of INS guidance to its field offices designed to assist in implementing recently finished regulations.¹ This was the first time we received anything about the content of these guidelines. We learned this morning for the first time that the INS planned to issue those guidelines today. In addition, we learned that the INS had arranged Congressional, press and outside group briefings starting Monday. Finally, HHS, SSA and other Administration entities with a substantial interest in disability, welfare and health issues with a significant interest in these guidelines would be briefed at the same time as the general briefings with no opportunity to put in place means to help respond to any questions or problems posed by the guidelines.

We raised questions with INS about how it drafted its document to try to make sure that INS had done everything possible to perfect its guidance. Instead, we learned that there appeared to be unresolved issues or concerns by some, including within OIRA and DOJ's Office of Civil Rights and Office of Legal Counsel. Moreover, the guidance seemed confusing: it made conclusory legal

¹The INS recently finished regulations addressing the naturalization process for disabled individuals, including issues of legally required accommodations and waivers of tests that are part of becoming a U.S. citizen. These regulations were initially called for by statute two years ago and are widely anticipated.

judgments that seemed to erect an insurmountable barrier to citizenship for seriously impaired individuals while, at the same time, calling that outcome into question by indicating that more legal analysis was ongoing and more guidance could be anticipated. As previously mentioned, other agencies that deal with health and welfare were not going to have any opportunity to be ready to help respond to this significant guidance because they were going to be briefed at the same time as Congress, the press and outside groups.

A further concern was whether we might inadvertently confuse the governors' consideration of welfare resolutions if this was released in the middle of their deliberations.

Unfortunately, invitations for briefings on Monday had to be rescinded and INS had to recall the regulations from the Federal Register. This is awkward and may be embarrassing, but we believe that it would be worse not to be fully confident that the guidelines are the Administration's best effort to protect America's most helpless individuals within what the laws allow.

We anticipate a very short postponement, perhaps to the end of next week or the following week.