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**Immigration - Disability
Regulations**

File -
Imm/Dis/abls
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TRANSMISSION RECORD

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

Thanks for your
patience
Steve, on this
50 yrs we all
have systems
failures!
past!
eve!
Hill

TO: STEVE WARNATH	FROM: ALICE SMITH
ORGANIZATION: DPC	ORGANIZATION: HQCOM
TELEPHONE: 456-5576	TELEPHONE: 616-2360
FAX TELEPHONE: 456-7028	DATE: 2/27/97

NUMBER OF PAGES (including cover sheet): 32

Fact sheet - 3 pgs
Qs & As
pt 1 - 5 pgs
pt 2 - 5 pgs

This will come in several installments

COMMENT/MESSAGE:

Per my call (or voice mail), attached are:

- 1) Revised Fact Sheet (3 pgs)
- 2) Revised Qs & As (10 pgs)
- 3) Revised Field Guidance (18 pgs)

We've incorporated DPC, DOJ, HHS, OMB Edits. See redlined sections of Field Guidance. The bracketed sections need to be changed now that OLC has decided the guardian-as-proxy issue. We'll inform you of changes just as soon as we have proposed consensus on how to handle the cases that were going to be held pending OLC's decision.

Field Guidance
Fax 1 - 5 pgs
Fax 2 - 5 pgs
Fax 3 - 6 pgs
Fax 4 - 4 pgs

DRAFT

2/27/97

Incorporates edits
From DOJ components, DPC,
OMB and HHS,

HQ 70/33.2-P

NOTE - Redlined portions
show incorporated edits.
Bracketed areas will need
to be changed. Those sections
were affected by OLC's
recent decision on
guardians-as-proxies

Office of Examinations

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

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

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 and Service Centers currently processing 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 March 7, 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, which was used as a basis for adjudicating section 312 disability exception requests shall no longer be used. Offices should move forward with the adjudication of all approvable cases that are now pending. Cases where the applicant cannot meet the requirements of the oath of allegiance should not be denied, but held until further guidance is provided to all field offices.

In order to be as accommodating as possible, offices with pending requests for a disability exception received prior to the publication of the final rule, should review the submitted certification prior to scheduling interviews. If the submitted certification fulfills the disability standards and definitions outlined in the final regulation, the office should accept the certification and not require the applicant to file the new form N-648, Medical Certification for Disability Exceptions. For cases where the existing certification does not meet the disability standards, offices should mail an N-648 to the applicant with instructions to have the form completed and to bring the form to the scheduled naturalization interview. 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 the effort 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 has 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 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.

Offices should note that the Service expects a sizable increase of naturalization filings with accompanying N-648s with the advent of welfare reform. The Social Security Administration is currently in the process of mailing close to one million notices to legal resident aliens who may be eligible for naturalization. These potential applicants are to be afforded the same level of compassion and professionalism as any other applicant for a benefit under the Act.

Since many disability-related cases will be emotionally charged, all INS offices and adjudication officers are directed to use compassion and sensitivity in adjudicating any request for a section 312 disability-based exception and in conducting all aspects of the naturalization process for persons with disabilities. 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 not all questions will be answered by this document. However, we plan to distribute regular updated supplemental policy guidance memoranda for policy and procedural issues not answered by this document. As a means to help ensure consistency, 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. We are also awaiting advice from the Office of Legal Counsel (OLC) at the Department of Justice regarding the role of guardians in the naturalization process. Offices will be notified if the opinion of OLC necessitates policy or procedural changes in the administration of the naturalization process.

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.

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Questions regarding the new form or the new training module may be directed to Staff Officer Jody Marten, HQ Naturalization Division. Both officers may be reached on 202/514-5014. Questions regarding quality assurance and reporting compliance may be directed to Mary Ellen McCarthy Elwood, HQ Field Operations. She may be reached on 202/514-0078.

Louis D. Crocetti
Associate Commissioner

Attachments

DRAFT

**§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 March 1, 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 legible photocopies of the N-648.
- The elimination of the proposed exclusive use of civil surgeons to make the disability determinations. In the place of using only the civil surgeons, the INS will allow only medical doctors or clinical psychologists licensed to practice in the United States 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. Offices should note that an exception means that the applicant is not required to meet the section 312 requirements. An accommodation or modification means that the applicant is able to demonstrate to the adjudicator that he or she can meet the requirement of section 312, but with a particular change to the standard interview procedure that allows such a demonstration. 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. It would be discriminatory to formulate policy which states that everyone with a particular disability is exempted from the section 312 requirements when some individuals with a disability could well take part in the testing requirements required by section 312 with reasonable accommodations or modifications. Therefore, all adjudications of a section 312 exception based on a disability will be made on a case-by-case basis.

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 offices.

Service offices processing naturalization applications 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 pages 33-34 of the attached final rule. Offices should note that previous wording directly referencing blindness and deafness has been removed. Blind or deaf applicants desiring either a complete exception to the section 312 requirements, or only an exception to the English or civics portion of the requirement, must file an N-648 in the same manner as any other applicant with a disability.
- 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, will be the officers charged with the responsibility 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 processing 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. Service HQ will provide materials for public use in community briefings including fact sheets and questions & answers. HQ will also conduct similar educational briefings in Washington, DC for representatives of national medical, disability, and immigrant organizations.

All offices are reminded of the intense public scrutiny the INS will be placed under as this program moves forward. Officers must therefore remember to always use compassion and sensitivity in making adjudications involving persons with disabilities. The same level of compassion and consistency 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 and Processing Regularly Scheduled 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 a committee report 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 with the definitions used by the SSA in their regulations. As such, the wording of 8 CFR at parts 312.1(b)(3) and 312.2(b)(1) has been amended to refer to a medically determinable physical or mental impairment(s), that already has lasted or is expected to last at least 12 months. (See pages 32-34 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 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 medical doctors licensed to practice medicine in the United States or clinical psychologists licensed to practice psychology in the United States (including the United States territories of Guam, Puerto Rico, and the Virgin Islands) will be authorized to make a disability determination, utilizing the new form N-648. In addition, a civil surgeon will be able to make a disability determination, but based on the surgeon's expertise with diagnosing or treating particular disabilities, 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 practitioners, homeopathic practitioners, doctors of osteopathy, physician assistants, and medical center or nursing center administrators who are not licensed medical doctors with disability experience. As is the case with 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. Offices should also note that HQ Naturalization Division is developing educational materials on the basic requirements for naturalization aimed at the medical doctors and clinical psychologists authorized to complete the N-648.

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 qualifications or credentials, 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 meeting the section 312 requirements. Procedures for obtaining a second certification, 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 should remember, however, that the fact that a person has been declared disabled by another federal or state agency does not mean that the person will automatically be granted a section 312 exception. 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 are reminded that the Privacy Act protects personal information contained in government files and should 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. Offices should stress this need in all outreach efforts to immigrant and disability groups.) 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 and Service Centers should also not reject an N-400 if the applicant indicates somewhere on the form or in a cover letter that they are requesting a disability exception but fail to attach the N-648.

- Service Centers receiving disability exception requests without the N-648 shall include these cases on the separate lists they will tabulate for each district office they serve. The Service Center shall mail an N-648 to the applicant with instructions to bring the form to the interview. Service Centers shall also return to the applicant any N-648 received that is not attached to an N-400, with instructions for the applicant to bring the form to the naturalization interview.
- Local Offices receiving an N-400 with a disability request without the N-648 shall mail the form to the applicant with instructions to bring the completed form back at the time of the naturalization interview.

Offices should continue to exercise the same scheduling flexibility they employ now for situations where applicants appear with disability exception requests without first notifying the office. Offices should accept legible photocopies of the form.

C. Adjudicating Currently Pending Cases

For offices that have disability cases pending and that were received prior to the publication of the final rule, the final adjudication should be made based on the policy and guidelines noted below. For N-400 applications submitted on/or after publication of the rule, the N-648 is required.

- The officer should review the existing medical documentation to ensure that it is responsive to the questions contained in the N-648. If the officer determines the final adjudication can be granted, based on the existing medical documentation meeting the standards outlined in the final regulation, the applicant should not be required to complete and file the N-648.
- If the officer is not satisfied that the applicant's originally submitted medical certification is adequate, and a denial of the exception and N-400 would result, an N-648 should be mailed or given to the applicant with instructions to have the form completed by one of the authorized medical professional noted on the form. The form should then be submitted to the officer for review, for an additional interview if deemed necessary, and for the final adjudication.

The officer may also contact the original certifying doctor. After this consultation, if the officer is assured that the original doctor understands the requirements and certifies to the officer the existence of the disability warranting an exception, the officer should accept the disability determination and complete the processing of the case. A complete record of these actions must be noted in the applicant's alien file.

As previously noted, offices should hold any case which could be deniable due to the inability of the applicant to take the oath of allegiance until we have been provided with a complete legal analysis of this issue from the Department of Justice.

D. Processing Regularly Scheduled Cases

Each naturalization case involving a request for a disability-based exception should be processed on a case-by-case basis. In cases where the applicant has submitted the N-648 as an attachment to the N-400, officers should try to familiarize themselves as much as possible with the upcoming case prior to the actual interview. (This would include contacting the MD or clinical psychologist if there are questions, or contacting the local state medical or psychologist licensing agency to verify the standing of the professional if doubts exist.) This should give the office time to make arrangements for any physical accommodations or modifications that may be necessary for the applicant, to return incomplete applications for additional information, or to explore the possibility of going off-site to conduct the interview. DAOs should remember, however, that the actual decision on whether to accept the N-648 and thereby waive the section 312 requirements should not be made until the actual interview when the applicant is appearing before the DAO.

The decision on the N-648 should be made at the beginning of the interview, prior to the

review of any other naturalization requirements. If the DAO has reason to doubt the authenticity of the N-648, then the steps for seeking additional evidence or a second certification (as outlined in section III of this document) should be followed. If possible, the steps outlined in section III should be pursued prior to the interview. If the applicant has appeared for the interview and questions arise, the case shall be continued until the questions involving the certification are answered to the satisfaction of the DAO. Offices should note that disabled applicants are still required to meet the other requirements for naturalization, including residence and good moral character.

For cases where the N-648 cannot be approved, the applicant should be advised that the N-648 is not being approved and that should be offered the opportunity to be tested on the civics and the language requirements and the DAO should proceed with the interview in English (assuming the applicant is not exempt under either 50/20 or 55/15 for the English waiver). This should be considered the first interview. If the applicant is not able to meet the requirements of section 312, the applicant should be scheduled for a re-examination in accordance with 8 CFR § 312.5(a).

For applicants who claim to be disabled during the first interview, but who have not filed an N-648, DAOs should stop the interview, give the applicant an N-648, and schedule the person for another interview. If the N-648 is not acceptable at the follow-up interview, the policy outlined above shall be followed, i.e., the applicant should be tested on English and civics and given another opportunity to meet the section 312 requirements if they fail to meet the requirements at the follow-up interview.

III. Requirements for Additional Evidence or Second Certification

In section 312.2(b)(2) of the final regulation, 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, not for making or rendering a medical determination.

If questions exist regarding the medical professional making the determination, DAOs should attempt to verify the license number noted on the N-648 and standing by contacting the appropriate state medical or clinical psychologist licensing agency. An answer 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 application for naturalization and request for a disability-based exception being denied. Offices should also use the state licensing organization as the source for purchasing any available directory of medical doctors and clinical psychologists. These directories can be used as reference manuals in addition to the

contacts with the state licensing offices.

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 who completed the N-648 to answer any questions the DAO may have regarding the certification. 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 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.
3. 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 directly by the Service and reviewed. If these documents resolve all outstanding questions, the adjudication of the case shall continue without an additional certification. Officers must take all precautions to preserve the privacy and confidentiality of private medical documents.
4. If any of these procedures fail to satisfy the DAO as to the accuracy of the determination or of the validity of the credentials 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.
5. Upon the SDAO's 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. Offices should contact the local medical society or association for information and contact points. In particular, offices should not refer applicants to commercial medical referral services listed in telephone directories or to any specific medical provider. Headquarters will continue to monitor the issue of referrals and shall issue additional policy guidance, as needed.
6. Supervisory consultation and approval must be obtained and noted on the N-400 for all the steps and procedures outlined above.

The following example is a possible situation where the DAO would feel compelled to require a second certification:

An N-648 has been submitted, but the medical professional has been so vague in answering the questions that the DAO cannot clearly discern how the disability prevents the applicant from fulfilling the requirements of section 312 (i.e., "This individual has hypertension and is depressed."). While the state licensing board confirmed that the medical professional is licensed to practice medicine, efforts by the officer to obtain any type of clarification from the medical professional fail. The applicant may suffer from hypertension and be depressed, but this alone is not enough information

for an officer to approve the N-648.

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. This liaison should also assist the medical community in understanding the overall naturalization process and in particular the requirements of section 312.

As noted, HQ Naturalization and Field Operations are currently working on developing a standardized referral policy, and will notify field offices if it is discovered to be practical to institute such a policy.

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. For example, every time an office sends a DAO off-site to a nursing facility or hospital to interview or to administer the oath of allegiance, an accommodation and modification has been made. Therefore, this section serves only to remind offices of this responsibility and to stress the need for offices to continue making the accommodations and modifications that are currently made on a daily basis.

Offices are reminded that making accommodations and modifications means that not all persons with disabilities will be or will attempt to 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, and in many cases environmental modifications or accommodations. For example:

- Blind individuals not requesting an exception may be supplied with materials in Braille, large print, or questioned orally on section 312 civics questions.
- Hearing impaired persons may be offered a written test on civics questions, and must be provided with a sign language interpreter if one is requested.
- A person with a learning disability might be given a written civics test and granted additional time to complete the 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 Adjudications 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 which would accommodate persons with disabilities. As noted above, when a DAO goes off-site to conduct a naturalization interview or to administer the oath of allegiance, this is an important modification. Another modification that offices need to consider is allowing, in appropriate circumstances, a disabled naturalization applicant's family member or legal guardian 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 or guardian 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 or legal guardian, at the discretion of the Service, can in some instances assist with the interview by acting as the approved English language interpreter for those applicants whose disability prevents them from fulfilling the English proficiency requirements of section 312. However, prior to the start of the interview, the DAO should make clear to the family member or legal guardian the following guidelines:

- The interview is being conducted with the applicant, not the family member or legal guardian. The DAO should make clear that the family member's or guardian's role is as interpreter, not as the actual applicant.
- Attempt to clarify and understand from the family member or legal guardian any physical motions or signals that might be used as an answer to a question asked during the interview. Family members and legal guardians should be told that the DAO cannot expect to know what particular physical motions or signals mean and thus the meanings of these signals should be established in advance as much as possible.

A family member or person holding legal guardian status for a naturalization applicant with disabilities may also sign the N-648 on behalf of the applicant. The necessary signature of the N-648 relates to authorizing the release of additional medical records to the Service.

DAOs are reminded again of the need for the utmost compassion and sensitivity in adjudicating cases where the applicant requests an exception to the section 312 requirements. Making acceptable accommodations or modifications to the entire naturalization process 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 waive the English and civics requirements for certain persons with disabilities. Many commenters felt that while disabled applicants are being offered an exception to the requirements of section 312, this exception is undermined by requiring them to take the oath of allegiance required by section 337 of the Act. Some commenters also stated that to hold these applicants to the requirements of section 337 requires them to have some limited knowledge of civics. However, Congress did not expressly waive the oath requirement when it passed the section 312 amendment concerning disabilities. As such, 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 pursuant to the Rehabilitation Act of 1973 to programs in order to accommodate the needs of disabled persons. The Service currently fulfills many of these accommodations via the provisions of section of 8 CFR 337.3 (expedited administration of the oath). While these provisions do not allow or authorize the waiving of the oath, offices are encouraged to be as accommodating as possible in granting requests for expedited administration of the oath. However, applicants must be reminded that the provisions of 8 CFR 337.3 only apply to the administration of the oath. Persons granted an expedited administration of the oath under 8 CFR 337.3 have not been granted a waiver of the oath requirement, but have only been relieved of the statutory requirement that they 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 at the time of the interview to be satisfied that the disabled naturalization applicant understands the nature of the actions he or she will be 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 but sufficient understanding of the concepts of the oath, and therefore will be eligible to complete the naturalization process. For officers making these adjudications in cases involving applicants with disabilities, this will most likely be the most difficult aspect of the adjudication. However, Service adjudicators have been effectively processing compassionate and other sensitive cases for years.

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 requirement will need to be assessed on a case-by-case basis. Although a disabled applicant need not understand every word of the oath at the interview, the DAO must conclude that an applicant has an understanding of the nature of the oath. The Service will explain the oath in simplified terms to individuals who, because of their disability, have difficulty understanding it. If the DAO concludes that an applicant does understand the nature of the oath, the oath can be administered. 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 personally and voluntarily agrees to this change of his or her status. Nothing in this Field Guidance should be interpreted as imposing requirements on applicants with disabilities that are not required of other naturalization applicants.

If the DAO concludes that an applicant does not understand the nature of the oath, that applicant cannot at present be approved for naturalization. A preliminary decision not to approve the application on these grounds must be discussed with the DAO's supervisor. If the supervisor agrees that the applicant cannot be approved based on the inability to understand the nature of the oath, note this disposition in the file and hold the application pending final resolution by the Department of Justice of certain further legal questions. The Department is considering whether the Rehabilitation Act and the INA permit further accommodation for persons otherwise prevented from naturalizing on these grounds. Further guidance on this issue will be forwarded to all adjudicating field offices as quickly as possible.

VI. Denials & Appeals

In the discussion of comments of the final rule, many commenters suggested that the Service 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 a new N-648 with supplemental documentation, including medical evidence, prior to the reconsideration hearing. This hearing should be conducted by a SDAO. 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. As noted above, if an applicant cannot be approved based on the inability to understand the nature of the oath, the application should be held pending further guidance from the Department of Justice.

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 require a separate regulatory change to

the provision of 8 CFR 336. This procedure would require an initial proposed rule and digest of public comments.

VII. Training, Quality Control and Assurance & Reporting Requirements

A. Training

The need for supplemental training for DAOs responsible for adjudicating disability-related naturalization cases cannot be overemphasized. Adjudicators who received the special disability training the week of January 27, 1997, are designated as the DAO in his or her office responsible for fully informing and training additional officers on adjudicating disability exception cases. 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.

B. Quality Control & Assurance and Reporting

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 all 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 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 a briefing from the officers with primary training at HQ in order to ensure that any routine adjudication processes are not disrupted.

Offices have been advised that after implementation of the disability regulation, officers who received training on the regulation at HQ will begin training all Naturalization Adjudicators (including supervisors) and clerical staff processing N-400s and begin migrating disability exception adjudications to trained DAOs. The officers who received the training at HQ will review all disability cases for the first 60 days and as adjudicators demonstrate proficiency in disability adjudications, the HQ trained staff will cease reviewing that officer's disability adjudications. However, all disability cases will continue to be reviewed by a supervisor to ensure proper processing and compliance by

both the applicant and the adjudicating officer

Currently, the disability cases are included as part of the N-400 Quality Assurance checklist under the "Checklist after Interview for all cases" section ("If Sec. 312 exemption granted, verify eligibility - 50/20, 55/15; 65/20; or disability). The Quality Assurance Review Officer should note in the "comments" section that the disability exception was granted based on the attached Form N-648. On the N-400 Processing Worksheet, the adjudicating officer checks "other eligibility requirements met," annotating in the "comments" section that an N-648 was accepted. The supervisor will likewise note on the N-400 Processing Worksheet under the "applicant with complex statutory eligibility issues" section that the officer correctly adjudicated the case involving the acceptance of the N-648. There is space in both sections for further comment.

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.

In addition to the N-400 Quality Assurance checklist, offices will be required to complete the attached Disability Exceptions Log for N-648 cases. Each office shall keep a separate log, separated by month. The worksheet is self-explanatory, and will serve as the information foundation of any request the Service may receive for supplemental data about disability cases, workloads, or an audit. This will be an initial six month requirement for all offices. After this initial six month period, an evaluation will be made to determine whether to continue or eliminate this reporting requirement.

In addition to completing the Disability Exceptions Log, all offices will need to report N-648 statistics on the G-22 commencing with the March 1997 report.

FACT SHEET

(to be put on INS letterhead)

Final INS Rule:

Exceptions from English and Civics Testing Requirements
For Disabled Naturalization Applicants

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Incorporated
edits from DOJ, OMB,
PC and INS

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

BACKGROUND

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

THE FINAL RULE

Definitions

- The Service has modified the definitions of qualifying disabilities contained in the proposed rule in response to many public comments that the definitions were too narrow and inconsistent with existing definitions in other federal statutes.
- The rule now provides that an exception shall be granted to any person "who is unable because of a medically determinable physical or mental impairment or combination of impairments which has lasted or is expected to last at least 12 months, to demonstrate an understanding of the English language..." or who is unable for any of the same reasons "to demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States."

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- “The term medically determinable means an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual unable to demonstrate an understanding of the English language, as required by [Section 312], or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications to the methods of determining English proficiency...” The definition of “medically determinable” is the same with regards to the exception from the civics knowledge requirement. Loss of cognitive abilities based on the direct effect of the illegal use of drugs is not covered as a disability.
- This interpretation of the disability and mental impairment terms in the Technical Corrections Act comports more closely with existing federal policies (such as Social Security Administration definitions) and regulations for implementing the nondiscrimination requirements of Section 504 of the Rehabilitation Act of 1973.

Procedures for Obtaining the Exceptions

- In order to base its adjudications of requests for the disability exceptions on solid medical evidence, the INS requires all persons seeking an exception to submit a new Form N-648, Medical Certification for Disability Exceptions, to be completed by a licensed medical doctor (which includes psychiatrists) or a licensed clinical psychologist. These certifying professionals must be licensed to practice in the United States (including the U.S. territories of Guam, Puerto Rico or the Virgin Islands). They must also be experienced in diagnosing persons with physical disabilities or mental impairments. They must attest to the origin, nature, and extent of the medical condition as it relates to the exceptions for English and civics. A person who qualifies as disabled for other government benefit programs is not necessarily unable to demonstrate the level of English proficiency or civics knowledge required for naturalization.
- The categories of health professionals who may certify an applicant’s disability were expanded and clarified in response to comments that the proposed rule was too narrow in its near-exclusive dependence on civil surgeons. Civil surgeons who meet the current requirements may still certify an applicant’s disability.
- The medical certification form may be submitted in support of requests for both the English proficiency and civics knowledge exceptions. Form N-648 may be photocopied. Forms may be obtained from local INS district offices, by calling the INS Forms Center at 1-800-870-3676, or by ordering it through the Internet at [get web site]. By the end of March, applicants may also call 1-800-755-0777 for information about the disability exceptions.
- Under penalty of perjury, both the applicant (or his or her legal guardian) and the medical professional must attest that all information submitted is accurate.
- The Service reserves the right to request an applicant to submit additional supporting evidence or a second certification from another qualified professional in cases where the Service has credible doubts about the veracity of a medical certification that has been initially presented.

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- Persons with disabilities who are not seeking exceptions to the English and civics requirements do not need to submit Form N-648.
- In conformance with Section 504 of the Rehabilitation Act of 1973, INS will continue to provide reasonable modifications in its testing procedures to enable naturalization applicants who have disabilities to participate in the process. Examples of such modifications may include providing sign language interpreters, wheelchair-accessible test sites, or modifications in test format or administration procedures, among others.

Other Naturalization Requirements

- The disability exceptions are not blanket exemptions from all naturalization requirements. Congress did not authorize the Service to waive any of the other naturalization requirements outlined in the INA for applicants with disabilities.
- Applicants must, for example, be able to demonstrate their good moral character, have the necessary residency as a permanent resident (five years, or three years if married to a U.S. citizen), and have the ability to take the statutorily prescribed oath of allegiance. INS will continue to make reasonable accommodations to enable persons with disabilities to demonstrate that they can meet these requirements.
- When necessary, INS will accommodate applicants with disabilities by modifying procedures used to determine whether an applicant meets the requirements for naturalization, including those related to administration of the oath of allegiance. The Service believes that many applicants with disabilities, while excepted from the English and civics requirements, will be able to have a limited but sufficient understanding of the concepts of the oath.
- Each applicant's capabilities regarding the oath requirement will be assessed on a case-by-case basis. Although a disabled applicant need not understand every word of the oath at the interview, the INS officer must conclude that an applicant has an understanding of the nature of the oath. The Service will explain the oath in simplified terms to individuals who, because of their disability, have difficulty understanding it. If the officer concludes that an applicant does understand the nature of the oath, the oath can be administered. For example, an inquiry by an officer at the interview might include an attempt to determine whether the applicant understands that he or she is becoming a U.S. citizen, is giving up his or her prior citizenship, and personally and voluntarily agrees to this change of status. No requirements will be imposed on applicants with disabilities that are not required of other naturalization applicants.
- INS officers will also accept a wide variety of signals from an applicant with a disability that indicate that the applicant understands the nature of the oath, including, but not limited to, a simple head nod, eye blinking, or other signals specific to the individual that mean "yes" or "no".

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{This is 2/27/97 DRAFT with edits from INS, DOJ, DPC, OMB, HHS incorporated}

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

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

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

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

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

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

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

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

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

Q. What is the new form like?

A. The Form N-648, Medical Certification for Disability Exceptions, is two pages, accompanied by two pages of instructions. It provides space for the certifying professional to indicate his or her expertise in diagnosing disabilities. It requires the certifying professional to summarize his or her assessment of the applicant's disability and to attest that, in his or her professional opinion, the disability prevents the applicant from demonstrating the required level of English understanding and/or

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civics knowledge for naturalization. The form must be completed by the professional under penalty of perjury. The form also incorporates a release of any relevant medical records which the INS may require to evaluate the certification. The release may be signed by the applicant or the applicant's legal guardian.

Q. Who fills out the form?

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

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

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

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

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

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

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

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

*Added
Q/A*

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

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

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

*Conforms to
Field Guidance
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Q. Under what circumstances will INS require more information or a second certification?

A. The Service reserves the right to require the applicant to submit additional information in support of the original certification, or to submit a second certification form from another qualified professional. By obtaining an additional doctor's or psychologist's assessment, the Service is also better able to base its ultimate decision on eligibility for the disability exception on solid medical and/or psychological evidence. Adjudicators have been instructed to use restraint in such situations, and first to follow a set of steps designed to obtain any needed information or resolve unanswered questions regarding the legitimacy or sufficiency of the original certification. Officers who have a question about a certification or the certifying professional's credentials will consult with their supervisor, and may then contact the doctor or psychologist by telephone if deemed appropriate. In order to require a second certification form, the officer must document a legitimate basis for this determination in the applicant's file, and must receive approval from the supervisor. Officers are also encouraged to consult with another relevant federal or state agency, if that agency has determined the applicant's disability for its own

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purposes, before requiring a second certification. However, the fact that a person qualifies as disabled under another agency's rules does not automatically entitle the person to the English and civics exceptions for naturalization. When a second certification is required, the applicant should be given a new N-648. INS will not refer applicants to any specific doctor or psychologist. The Service may provide applicants with the name and telephone numbers of local medical societies and other appropriate referral sources.

Q. Who pays for the second medical certification?

A. It is the responsibility of the applicant to pay for the second certification if the INS requires such additional documentation. Taking this burden on the applicant into account, INS officers have been instructed to use restraint in exercising this option, and should only exercise it when there is an unanswered question as to the disability determination rendered by the professional and when other attempts to obtain the needed information are unsuccessful. In addition, supervisory approval is necessary before an INS officer may request the second certification.

Q. Why is INS reserving the right to require a second medical certification in instances where the Service has questions about the first certification?

A. INS officers are not doctors or psychologists and should not place themselves in the position of making medical determinations for which they are not qualified. The procedures for requiring a second medical certification for questionable cases will help ensure that this does not occur. Reservation of this right also helps ensure that INS has all the information necessary to make an accurate and well documented decision on the request for a disability exception.

Q. Will the INS keep an applicant's medical and mental health records confidential, if they are requested?

A. As with other agencies, INS is required to protect applicants' personal, confidential records in accordance with the Privacy Act. The Service has long-standing procedures and practices for applicant records that ensure compliance with the Privacy Act's provisions, including procedures that protect medical records already required by law to be submitted when applicants apply for other immigration benefits. Applicants should take note of the Privacy Act Notice contained in the medical certification form which informs them that the principal use of the information submitted is to support an individual's application for naturalization. The Notice further informs the individual that submission of the information is voluntary and that it may, as a matter of routine use, be disclosed to other law enforcement entities. As with other applicant records, INS will make every effort to

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protect the confidentiality of the applicant's records within the requirements of the law.

Q: How will INS protect against fraudulent efforts to get people naturalized through this disability regulation?

A: The INS will use all the procedures currently in place to guard against fraud. Local Service officers have standard methods for ensuring the integrity of the naturalization process, including investigation of suspected unauthorized signatures on medical and other forms submitted in support of applications for immigration benefits. With regard to the disability determinations, the doctor's certification on the form, made under penalty of perjury, helps ensure the accuracy of the information being submitted. If an INS officer has reason to doubt that the person signing the medical certification form is not a licensed medical professional as required by the regulation, the officer may verify the physician's status with state medical and psychological licensing boards or agencies. In addition, INS is conducting on-going outreach and education for members of the immigrant assistance and medical communities to inform them of the requirements of this new regulation.

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

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

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

A: INS received 228 comments on the proposed rule. After the comments were considered, it was clear that considerable changes would be made to the proposed rule. While the rule being issued is final, the INS is seeking additional comments

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on areas such as appeals of a denied naturalization case and various methods to ensure quality control.

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

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

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

A: Yes. INS has and will continue to make reasonable accommodations and modifications for persons with disabilities that will enable them to participate in the naturalization process. Where necessary, such accommodation will include modifications to procedures officers use to determine whether an applicant has an understanding of the nature of the oath of allegiance. Each interview will be unique and each applicant's capabilities regarding the oath requirement will be assessed on a case-by-case basis. Although an applicant with a disability need not understand every word of the oath at the interview, the adjudicating officer must conclude that the applicant has an understanding of the nature of the oath. INS officers will explain the oath in simplified terms to individuals who, because of their disability, have difficulty understanding it. In determining whether an applicant understands the oath, an INS officer may, for example, attempt to determine whether the applicant understands that he/she is becoming a United States citizen, is giving up his/her prior citizenship, and personally and voluntarily agrees to this change of his/her status. Officers can accept a wide variety of signals from an applicant that he/she understands the nature of the oath, including but not limited to a simple head nod, eye blinking, or other signals specific to the individual that

Revised per edits from all readers.

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clearly mean "yes" or "no." If the officer concludes that an applicant does understand the nature of the oath, the oath can be administered and similar signals of assent accepted. INS has instructed its field offices that accommodating applicants with disabilities in this manner should not be interpreted as imposing requirements on such applicants that are not required of other naturalization applicants. In addition, the Service currently expedites administration of the oath under the provisions of 8 CFR 337.3 which waives the statutory requirement of participation in a public oath ceremony for certain applicants with disabilities.

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

A: No. As described above, Congress did not authorize the Service to waive any of the other naturalization requirements outlined in the Immigration and Nationality Act (INA.) Applicants must, for example, be able to demonstrate their good moral character pursuant to the requirements of Section 316 of the INA, must meet the necessary residency requirements as a permanent resident (five years, or three years if married to a U.S. citizen), and must have the ability to take the statutorily prescribed oath of allegiance (Section 337 of the INA). INS will continue to make reasonable accommodations, as described in the preceding answer, to enable persons with disabilities to demonstrate that they can meet these requirements, including administration of the oath.

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

A: The Department of Justice's Office of Legal Counsel has advised INS that it may not take administrative action to permit a legal guardian to serve as a proxy for the applicant for purposes of taking the oath of allegiance. **[Need a sentence about supporting reasoning from OLC].** OLC has further determined that the Rehabilitation Act of 1973 does not require that a disabled applicant must be accommodated in the naturalization process by allowing a guardian to take the oath on the applicant's behalf. **[This answer may require more depending on pending policy decisions.]**

New ✓
Q: What action will INS take with regard to applicants with disabilities who cannot satisfy the oath requirement, even with reasonable accommodation?

A: **[To be determined]**

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

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Made clearer
per OMB
suggestion

- A: The determination of a request for an exception to the English and/or civics requirements for naturalization is part of the overall naturalization adjudication. All naturalization applicants may take advantage of the re-hearing provisions of the INA if a naturalization application is denied for any reason. (See section 336 of the INA and 8 CFR Part 336.) Independent medical evidence may be presented by the disabled applicant at the time of the re-hearing to support the claim of eligibility for a disability-based exception. The public is welcome to comment for 60 days on appeal procedures.
- Q. Why did the INS take two years to issue a proposed rule implementing the Technical Corrections Act of 1994?
- A. INS issued preliminary policy guidance to its field offices on disability waivers prior to the publication of the proposed rule. These guidelines included definitions of the three categories of disabilities based on the Congressional guidance provided in the House Report. These guidelines were in effect while the proposed rule was under development. In developing the proposed and final rules, INS consulted extensively with other federal agencies with expertise in disabilities and civil rights law (notably the Social Security Administration and the Department of Health and Human Services) and other Department of Justice divisions, including the Civil Rights Division. Numerous complex and difficult issues were raised during this process, as reflected in the preamble to the final rule. Sufficient time for this consultation and consideration of the public's comments was needed to ensure that the final rule accurately and fairly implements the statute.
- Q. Is this regulation being proposed now in response to the Welfare Reform Bill recently signed into law?
- A. The regulation has been under development since the Technical Corrections Act was signed in 1994. Publication of the rule is in fulfillment of the Service's responsibility to implement the law. The President did reiterate his commitment to naturalization when he signed the welfare legislation. Promulgation of the final rule reinforces that commitment.
- Q. Does the public have an opportunity to comment on the changes noted in the final rule?
- A. The public is welcome to comment on particular points discussed in the "Discussion of Comments" portion of the final rule. In particular, the Service desires further comments on possible appeal procedures and quality control methods. Anyone may submit comments during a 60-day period. All comments should be addressed to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 5307, Washington, D.C. 20536.

DRAFT

Comments should reference INS number 1702-96 on your correspondence.

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

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

- Centralized training at INS Headquarters for officers who will be initially responsible for adjudicating disability exception requests in the field;
- Requirement that these HQ-trained officers handle all disability determinations after publication of the final rule until remaining adjudicators in their offices are trained;
- Requirements for supervisory consultation and approval before an adjudicator may seek additional documentation from an applicant, a second medical certification, and before other steps in the determination process on the request for the exception(s);
- Requirements for adjudicators to document carefully and fully in the applicant's alien file the reasons for requesting second certifications, and for the denials of any request for a disability exception.
- Review of disability exception determinations as part of the existing audit process conducted on random samplings of all naturalization cases. As stated in the Supplementary Information in the regulation, INS will soon augment this overall naturalization audit process with supplemental random samplings of cases where the applicant has requested a disability-based exception. As indicated in the supplementary section to the regulation, the Service is also investigating the possibility of entering into a contract with a private entity to perform these random samplings.

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



FORTUNA_D @ A1
01/09/97 12:03:00 PM

Record Type: Record

To: Elena Kagan, William H. White Jr., WARNATH_S @ A1@CD@LNGTWY

cc:

Subject: Civil rights group visit today?

I just heard fyi from Liz Savage of Deval Patrick's office at Justice that a gang of civil rights groups is meeting with Erskine today. She said the disability rights group (DREDF) will raise disability and naturalization.... I assume he'll just listen, unless someone has briefed him.

Immig-Disabil reg

Stephen C. Warnath

03/17/97 06:45:04

PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Michelle Crisci/WHO/EOP

cc:

Subject: TOMORROW: naturalization regulations & welfare reform

FYI, INS is holding briefings tomorrow for the media (and for Congress and community groups, I believe) on the new regulations that waive English & civics tests for some disabled individuals. The regulations also address matters of accomodation during the naturalization process for those who need it. Because some field offices held the cases of disabled applicants pending the issuance of these regulations, the result will be that a sizeable backlog of cases will have their cases processed for citizenship.

As you recall, DOJ determined that the oath could not be waived, so there will be some of the severely disabled who will not be able to be naturalized. My understanding is that Commissioner Meissner therefore will note that naturalization cannot be the answer for addressing all of the problems for disabled legal immigrants under the Welfare Reform Act and that the President's legislative proposal is therefore needed.

Thanks.

immig-diabol ng

From: Kenneth S. Apfel on 03/17/97 05:18:36 PM

Record Type: Record

To: Stephen C. Warnath/OPD/EOP

cc: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP, Diana Fortuna/OPD/EOP

Subject: Re: naturalization regulations & welfare reform 

I'm with you - - my recommendation is to have INS pitch the Administration's proposals but have no White House statement. Also, don't we now have a finalized summary of the Administration's immigration proposals that we could have INS hand out?

File - Immig - disability by neg

Stephen C. Warnath

03/17/97 03:30:17

PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP, Diana Fortuna/OPD/EOP, Kenneth S. Apfel/OMB/EOP

cc:

Subject: naturalization regulations & welfare reform

Tomorrow the INS will have its media briefing on the new guidelines for naturalizing individuals with disabilities. As you know, DOJ concluded that the present law will not allow all disabled individuals to satisfy the oath requirement and become citizens. The INS wants to know whether Commissioner Meissner should use this opportunity to explicitly link this limitation to the President's welfare fix proposal. In her statement, she could say something about naturalization is not the full answer to addressing the harsh provisions pertaining to legal immigrants in the welfare reform law, then discuss how the Administration is proposing to address the problem legislatively. The INS has asked whether we would want to have a White House statement or a letter from the President about the Administration's proposals to distribute at the briefing.

I guess I think that the Commissioner should probably make the link in her statement because one of the first questions that is likely to be asked is what is to become of these people and what does the Administration propose to help them. I am less certain that it would be helpful to release a White House statement on welfare reform at an INS briefing.

Any thoughts on this? I would need to get back to INS later today.

Thanks.

File
Immig - Disability

Diana Fortuna 03/17/97 05:21:25 PM

Record Type: Record

To: Stephen C. Warnath/OPD/EOP
cc: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP, Kenneth S. Apfel/OMB/EOP
Subject: Re: naturalization regulations & welfare reform

I agree with Steve.

INS should make the point in their briefing: this reg/guidance is done well and will facilitate naturalization for some people; but there will be people (we don't know how many) who won't be helped by it; and the Administration's welfare fix is needed to solve that problem.

Stephen C. Warnath

03/11/97 01:17:25
PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Diana Fortuna/OPD/EOP

Subject: naturalization and individuals with disabilities

Elena -- I am requesting your sign-off this afternoon on the disability guidance so that INS can proceed with publishing the regulation with a release date of March 18th. My recommendation is that you approve it. As you know, the guidance states that those who do not demonstrate an understanding of the nature of the oath during the interview will be denied. However, DOJ/INS has determined that notification of denial in an individual case will not be made until Headquarters provides further guidance on the proper process for denying these sensitive cases. This guidance will be issued by mid-April. During this time INS will develop a letter for this particular circumstance explaining why INS is constrained to denying the application and probably involve some supplemental training of field officers. Part of INS' briefing to Congress and interested parties and groups will be to explain this so that any potential criticism of this approach should be minimized.

Dennis Hayashi, who leads HHS implementation, has now recommended to the Secretary that she approve this approach. As a say, this is my recommendation as well. Based upon my conversations with Diana and our understanding of why these cases will be held until April, I believe that she supports this recommendation. (Diana, correct me if I am wrong.)

So please let me know and I will pass the word on so that INS can dot its i's and cross its t's today.

thanks

File -
Immigration -
Disability Regs