

U.S. Department of Justice
Immigration and Naturalization Service

HQ 70/33-P

425 I Street NW
Washington, DC 20536

April 7, 1999

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

FROM: Michael A. Pearson /s/ *William R. Yates*
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Section 312 Disability Naturalization Adjudications

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

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

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

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

A. Disability Exceptions under Section 312

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

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

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

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

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

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B. Medical Professionals Authorized to Complete the N-648

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

C. Validity and Timeliness of the N-648

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

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

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

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

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

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

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

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

E. Standard of Review of the N-648

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

1. Clarification of Standard of Review

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

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

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

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

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

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

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

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

2. Old Age and Depression

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) Review the N-648 for sufficiency;
- (b) If the N-648 is sufficient, proceed with the interview without testing the applicant on English and civics;
- (c) If the DAO determines the N-648 is insufficient, the DAO should:
 - (i) Complete a Notice of Incomplete N-648 as an Attachment to the N-14

DAOs should only check those items that are necessary to be completed in order for the N-648 to be sufficient. In addition, where a DAO determines that a certifying doctor failed to provide sufficient detail as to the nexus between the applicant's condition and his or her ability to learn, the DAO should also specify the exact nature of the deficiency in the space provided. (See **Attachment D**);
 - (ii) Provide a copy of the Notice and the original Form N-648 to the applicant, requesting that the applicant resubmit the Form N-648 to the doctor for completion;
 - (iii) Retain a copy of the original N-648 and the Notice in the applicant's A-file;
 - (iv) Before proceeding with the interview, explain to the applicant that he or she is about to be tested on English and civics. However, also explain that the applicant has another opportunity not only to qualify for the disability exception but also, if he or she fails, to be tested again on English and civics.
 - (v) Proceed with the interview, including testing the applicant on English and civics (if the applicant was able to be sworn in);
 - (vi) If the applicant fails one or both, or the DAO is unable to begin the interview because of the applicant's inability to understand English, schedule the applicant for reexamination as provided under 8 CFR § 335.3(b), which will include retesting on English and civics under 8 CFR § 312.5.

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

If an applicant fails to appear for reexamination, he or she must notify the Service of the reasons for non-appearance. If the applicant fails to establish good cause for the nonappearance, the applicant will be

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deemed to have failed the second examination pursuant to 8 CFR § 312.5(b) and the Service shall deny the application for naturalization pursuant to 8 CFR § 336.1.

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

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

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

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

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

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

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

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

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

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

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- (i) Complete a Notice of Incomplete N-648 as an Attachment to the N-14 (See **Attachment D**) and provide a copy of the Notice and the original Form N-648 to the applicant, requesting that the applicant resubmit the Form N-648 to the doctor for proper completion;
- (ii) Retain a copy of the original N-648 and the completed Notice in the applicant's A file;
- (iii) Stop the reexamination and do not test the applicant for a second time on English and civics;
- (iv) Schedule the applicant for a reexamination at a later date under 8 CFR § 335.3(b).

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

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

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

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

6. Postponed Reexamination for Good Cause

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

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

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

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

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

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

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

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

H. Procedures for Cases of Suspected Fraud

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

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

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

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

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

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

1. Cases Continued Based on December 30th Guidance

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

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

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

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

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

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

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

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

K. Reasonable Accommodations and Modifications under the Rehabilitation Act

With accommodations or modifications, many applicants with disabilities will be able to meet the section 312 requirements. Section 504 of the Rehabilitation Act of 1973 requires all Federal agencies to make reasonable accommodations for persons with disabilities. Applicants are not required to file an N-648 or

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present a letter or other documentation from their doctor to request an accommodation or modification to the naturalization process because of a disability.

1. Reasonable Accommodations for Signatures on Naturalization Forms

(a) Form N-648

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

(b) Form N-400

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

(c) Form N-550

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

2. Other Modifications to the Naturalization Process

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

Aside from the modifications that can be made to the test administration, DAOs must give consideration to modifications to the actual interview that would accommodate persons with disabilities. DAOs may continue

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

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

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

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

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

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

Questions about this guidance should be directed through the Regional Offices to Richard Sheridan, Immigration Services Division, Office of Field Operations, on (202) 616-0583.

Attachments (7)