**U.S. Department of Homeland Security**
Bureau of Citizenship and Immigration Services

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MEMORANDUM FOR REGIONAL DIRECTORS
DISTRICT DIRECTORS
OFFICERS-IN-CHARGE
SERVICE CENTER DIRECTORS

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SUBJECT: Procedures for Implementing the Waiving of the Oath of Renunciation and Allegiance for the Naturalization of Aliens having Certain Disabilities

This memorandum provides comprehensive policy guidance on procedures for conducting examinations and waiving the oath of allegiance for naturalization applicants with disabilities.

**Background**

This memorandum is issued in order to provide procedures for conducting examinations and waiving the oath of allegiance and the requirement of demonstrating attachment to the principles of the Constitution and well disposition to the good order and happiness of the United States for naturalization applicants with disabilities.

Naturalization applicants must establish that they meet all the requirements for naturalization, including the demonstration of the applicant's residence, physical presence in the United States, good moral character, understanding of and attachment to the fundamental principles of the Constitution of the United States, ability to read, write and speak English, and other qualifications to become a naturalized citizen as required by law.

Subject: Procedures for Implementing the Waiving of the Oath of Renunciation and Allegiance for the Naturalization of Aliens having Certain Disabilities

In 1994, Section 108 of the Immigration and Nationality Technical Corrections Act of 1994 (INTCA), Public Law 103-416, amended section 312 of the Immigration and Nationality Act (Act) to provide a waiver of the English and civics requirements for applicants with disabilities. However, the naturalization oath was required for all applicants under section 337 of the Act. To fulfill the oath requirement, an applicant must understand that he or she is (1) becoming a citizen of the United States, (2) foreswearing allegiance to his or her country of nationality, and (3) personally and voluntarily agreeing to a change in status. Certain disabled applicants were precluded from naturalization because they could not personally express intent or voluntary assent to the oath requirement.

To remedy this problem, Public Law 106-448, enacted on November 6, 2000, authorizes the Attorney General to waive the attachment requirement under section 316(a) and the oath requirement under section 337 of the Act for any individual who has a developmental or physical disability or mental impairment that makes him or her unable to understand, or communicate an understanding of, the meaning of the oath. Public Law 106-448 was enacted to remove any further obstacles in the naturalization process for applicants with disabilities.

**Examination of applicants**

Pursuant to section 332 of the Act, the Attorney General is authorized to prescribe the scope and nature of the examination of naturalization applicants. Currently under 8 CFR 335.2, all applicants for naturalization are required to appear in person and give testimony under oath as to their eligibility for naturalization. The Bureau of Citizenship and Immigration Services (BCIS), however, has concluded that these procedures should be modified for applicants with severe disabilities who otherwise may be eligible for naturalization but are unable to personally attest to their eligibility through the current examination process.

The BCIS has determined that, in certain instances, it is appropriate to permit a designated representative to complete the naturalization examination on behalf of a qualified applicant, attesting orally (and through affidavits and submission of documentary evidence) to the disabled applicant's qualifications for naturalization. Such a modified procedure will allow the BCIS to obtain the most accurate information available regarding the applicant's eligibility from those individuals who are most familiar with the applicant's life history and current impairment.

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**Requirements for Oath and Attachment Waiver Under Public Law 106-448**

A. Eligibility for waiver.

To be eligible for an oath waiver, an individual must have a developmental or physical disability or mental impairment that prevents him or her from being able to understand the meaning of the oath or to communicate an understanding of the oath requirement.

The requirements for the oath waiver are distinct from the requirements for the English and civics waiver under section 312 of the Act. While both section 312 and section 337 of the Act, as amended, require that the applicant have a "developmental or physical disability or mental impairment" and while the BCIS is adopting a definition of this phrase that is similar to the one provided in current §§ 312.1(b)(3) and 312.2(b)(1), the assessment of a person's ability to meet the oath requirement is different from the assessment of the applicant's ability to learn English and civics.

Currently, the BCIS tests an applicant's English language and civics knowledge during the naturalization examination. For applicants with disabilities who are unable (even with reasonable modifications) to pass the English and civics tests, the BCIS allows the applicant to submit a Form N-648, Request for Medical Certification For Disability Exceptions, from a qualified physician, describing the applicant's disability and explaining how, and to what extent, the disability prevents the applicant from learning English and civics. If the BCIS determines that the applicant has a disability that prevents him or her from learning English and civics even with reasonable modifications, the BCIS grants the waiver. In many instances, however, applicants who are granted an English and civics waiver can still fulfill the oath requirement despite their disability.

The BCIS assesses whether the applicant can meet the oath requirement and is willing to take the oath in a public ceremony by asking questions during the naturalization examination. To fulfill the oath requirement, an applicant must understand that he or she is (1) becoming a citizen of the United States, (2) foreswearing allegiance to his or her country of nationality, and (3) personally and voluntarily agreeing to a change in status. For disabled applicants, the BCIS uses various methods to assess whether the applicant understands the oath requirement and can communicate such an understanding to a BCIS officer. These methods include explaining the requirements to family members who are acting as interpreters, permitting the applicant to demonstrate assent by giving "yes" or "no" responses to simplified questions about the oath, and accepting predetermined physical motions or signals that the applicant uses to communicate.

The oath waiver also is not intended for applicants who find the naturalization process challenging or attendance at an oath ceremony inconvenient. Nor is the oath waiver available to applicants who object to taking the oath as written but cannot qualify for a modified oath as

provided under section 337(a) of the Act. The oath waiver is designed for those applicants who are so severely disabled that they cannot, in any fashion or by any means, either demonstrate an understanding of the oath or communicate that understanding to a BCIS officer. Any individual whom the BCIS determines qualifies for an oath waiver also will be deemed to have met the attachment requirement under section 316(a)(3) of the Act.

B. Procedures for requesting waiver.

The BCIS decided not to create a form for the oath and attachment waiver because the waiver applies to a very small class of individuals. The BCIS, however, will ask that applicants either annotate Part 3, section I of the current Form N-400, Application for Naturalization or submit a letter requesting the waiver at the time of filing the Form N-400. The BCIS is not making this requirement mandatory because there are certain instances where an applicant may have a disability that, through the passage of time, causes significantly impaired functioning that may not have manifested at the time of filing the application for naturalization.

An applicant who is eligible for an oath waiver may need a designated representative to act on his or her behalf. Filing the waiver request with the N-400 will allow the BCIS sufficient time to review the request prior to the initial examination and determine if any additional documentation is necessary to establish eligibility for the waiver or to determine who is qualified to act as a designated representative on the applicant's behalf. Nonetheless, the BCIS will accept requests for an oath and attachment waiver at any point in the naturalization process up until the administration of the oath ceremony.

C. Documentary requirements for waiver.

Applicants who need a waiver generally will have disabilities or have a medical condition as a result of these disabilities that makes the need for the waiver apparent upon seeing or attempting to examine the applicant (e.g. applicants in a vegetative state or comatose, or non-responsive due to severe mental impairments).

The BCIS, however, will require applicants seeking a waiver (or designated representatives acting on the applicant's behalf) to submit a written evaluation completed by either a medical or osteopathic doctor licensed to practice medicine in the United States or a clinical psychologist licensed to practice psychology in the United States. The BCIS also will require that the evaluation:

(1) Be completed by the physician who has had the longest relationship with the applicant or is most familiar with the applicant's medical history;

(2) Express the applicant's condition/disability in lay terms (except for the names and medical definitions of the disabilities) that can be easily understood by both the designated representative and the BCIS examiner;

(3) State why and how the applicant is unable to understand or communicate an understanding of the meaning of the oath because of the disability;

(4) Indicate the likelihood of the applicant being able to communicate or demonstrate an understanding of the meaning of the oath in the near future; and

(5) Contain the signature and state license number for the medical professional completing the written evaluation, reflecting that the professional is authorized to practice in the United States.

The BCIS will not require doctors to provide an explanation of how they reached their diagnosis, a listing of clinical or laboratory techniques used to reach the diagnosis or supporting documentation to establish the claimed disability. The BCIS, however, will require the doctor to provide a thorough explanation of how the applicant's disability impairs their functioning so severely that the applicant is unable to demonstrate an understanding of the oath requirements or communicate an understanding of its meaning. The BCIS reserves the right to request documentation if there is a question upon examination about the applicant's disability and ability to understand the oath requirement.

D. Adjudication of waiver requests.

In adjudicating a request for an oath waiver, the BCIS will evaluate the relevant documentary evidence submitted by the applicant and his or her designated representative, including the doctor's assessment of the applicant's condition. The BCIS will also consider the applicant's physical conditions and response to questions customarily asked during the naturalization examination, as well as any statements of the designated representative regarding the applicant's capabilities.

If the BCIS determines that the applicant understands that he or she is (1) becoming a citizen of the United States, (2) foreswearing allegiance to his or her country of nationality, and (3) personally and voluntarily agreeing to a change in status, the waiver is not necessary, will not be granted, and the BCIS will schedule the applicant for participation in an oath ceremony. If the BCIS determines that the applicant cannot express intent or voluntary assent to the oath requirement, even after reasonable modifications such as simplified questioning or use of predetermined signals, the BCIS will grant the oath waiver.

**Designated Representatives**

A. Individuals eligible to act as designated representatives.

The BCIS has defined the phrase "designated representative" to mean any individual who either has been recognized by a court of competent jurisdiction over family law matters in the state of the applicant's place of residence or appropriate state agency to exercise legal authority to act on behalf of an applicant in all matters, including filing of applications for benefits, or has a recognized familial relationship with the applicant and primary custodial care and responsibility for the applicant. This rule authorizes designated representatives to act on behalf of applicants with disabilities in every stage of the naturalization proceeding.

The designated representative may be either:

1. a legal guardian or surrogate appointed by a recognized court with jurisdiction over matters of guardianship or surrogacy or an appropriate state agency with authority to make such appointments in the jurisdiction of the applicant's place of residence in the United States; or

2. in the absence of a legal guardian or surrogate, a U.S. citizen spouse, parent, adult son or daughter, or adult brother or sister.

The designated representative may have filed the application on behalf of the applicant and, if not a legal guardian or surrogate, must have knowledge of the facts supporting the applicant's eligibility for naturalization.

B. Documentary requirements.

A legal guardian or surrogate should submit documentary evidence from the appropriate state authority or court of competent jurisdiction in the state of the applicant's place of residence that granted legal guardianship or custody over the applicant.

A U.S. citizen spouse, parent, adult son or daughter, or adult brother or sister must submit evidence of their citizenship status as described in § 204.1(g).

A U.S. citizen spouse also must submit evidence that he or she is legally married to the applicant and must state under oath that they are still legally married. A U.S. citizen parent must submit evidence that the applicant is their child or son or daughter as required in § 204.2(d)(2).

A U.S. citizen adult son or daughter who is primary caretaker of the applicant must submit evidence required in § 204.2(d)(2) of this chapter establishing that he or she at some time met the requirements of the definition of "child" found at section 101(b)(1) of the Act. The adult son or daughter must also submit evidence that he or she has primary custodial responsibility for the applicant, e.g. tax returns reflecting that the applicant has been declared a dependent in the household or an executed power of attorney.

A U.S. citizen adult brother or sister who is the primary caretaker of the applicant must submit evidence required under § 204.2(g)(2) of this chapter establishing that he or she meets the requirements of being a sibling of the applicant. The adult brother or sister must also submit evidence that he or she has primary custodial responsibility for the applicant, e.g. tax returns reflecting that the applicant has been declared a dependent in the household or an executed power of attorney.

The BCIS will require that every qualified designated representative state, in writing and under oath, that to the best of his or her knowledge and belief no other person has been granted the legal guardianship or authority over the affairs of the applicant whom he or she seeks to represent.

C. Determination of eligibility to act as designated representative.

The BCIS will review all the documentation submitted by the individual seeking to act as a designated representative on behalf of a disabled applicant to determine if the individual is a qualified legal guardian or surrogate, or has the required familial relationship and custodial responsibility for the applicant.

For consistency, the BCIS will permit only one recognized designated representative to represent the applicant at any time throughout the naturalization process. In the case of multiple parties seeking to represent the applicant in the naturalization proceeding, the BCIS will recognize designated representatives in the following order of priority: (1) legal guardian or surrogate; (2) U.S. citizen spouse; (3) U.S. citizen parent; (4) U.S. citizen adult son or daughter; and (5) the U.S. citizen adult brother or sister. If there is a priority conflict between the individuals seeking to represent the applicant and the individuals share the same degree of familial relationship, the BCIS will give priority to the party with seniority in age.

**Procedures for handling Form N-400 for qualified waiver applicants**

A. Filing of Form N-400

A granting of the oath waiver does not relieve the applicant of establishing eligibility for naturalization in all respects. Applicants who are eligible for an oath and attachment waiver are still required to file the Form N-400 with all supporting documentation, including the photographs and fees required under § 103.7(b)(1). If the applicant has not yet reached his or her 75th birthday at the time of filing, the applicant must be fingerprinted in order for the Federal Bureau of Investigation to conduct a background check or, if eligible for a fingerprint waiver, provide local police clearances from every jurisdiction where the applicant has resided during the statutory period.

In most instances, individuals who will act as the designated representative will file the application on behalf of the applicant. Individuals seeking to represent an applicant who has a physical or developmental disability or mental impairment should provide documentation with the applicant's Form N-400 establishing their eligibility to act on behalf of the applicant as a designated representative. In addition, if the designated representative prepares the application, the BCIS will require that the designated representative sign the application in the Preparer's box of section 11 and, in cases where the applicant is physically unable to sign, in the signature box, attesting under penalty of perjury that the information being provided is true and correct.

a. Examination on Form N-400.

The BCIS will still require that all applicants for naturalization appear for an examination. However, in those cases where applicants are homebound or in medical care facilities and cannot be transported to the BCIS office for medical reasons, the BCIS will conduct an off-site examination at an alternate location as provided in § 334.4. The BCIS will conduct the examination with the applicant, making reasonable accommodations as appropriate to elicit responses to questions on the Form N-400. The BCIS will only conduct an examination through a designated representative when it is determined that the applicant cannot respond in any fashion, including through the use of predetermined signals or motions, to questions posed by the BCIS officer. In such cases, a designated representative will be permitted to complete the naturalization examination on behalf of a qualified applicant, attesting orally under oath and through affidavits and submission of documentary evidence to the applicant's qualifications for naturalization.

The BCIS will require that the designated representative address every requirement for naturalization including lawful permanent residence, duration of lawful residence, physical presence, continuity of residence, and good moral character, and the designated representative will bear the burden of establishing the applicant's eligibility for naturalization. The designated representative will be required to annotate any amendments to the N-400 and at the conclusion of the examination sign the application under penalty of perjury, attesting to the truthfulness of the statements contained on the Form N-400 and to his or her testimony during the examination.

If the BCIS determines that the designated representative has made false statements under oath or willfully concealed or misrepresented material facts during the naturalization process, the BCIS will deny the application for naturalization. In addition, if the BCIS subsequently determines after approval of the naturalization application but before administration of the oath that the designated representative made false statements or willfully misrepresented material facts on the Form N-400, the BCIS will reopen the application under § 335.5 and deny the application based on the derogatory information.

b. NQP Notations

On oath waiver cases, the DAO will initial and date the "Established attachment to the Constitution" line on the N-650B. In the remarks section, write "oath waived per PL 106-448" and initial and date. The notation, "oath waived per PL 106-448" and the officer's initials and date should be made on the Certificate Preparation Sheet and Oath Declaration or Part 14 of the revised N-400 depending on the version of the N-400 filed. The applicant granted an oath waiver and the designated representative are not required to sign the Oath of Allegiance on the Certificate Preparation Sheet and Oath Declaration or Part 14 of the revised N-400.

**Oath ceremony**

If the BCIS approves an oath and attachment waiver, the disabled applicant will not be required to appear in a public oath ceremony as required under section 337 of the Act. However, the BCIS will honor requests by applicants or their designated representatives either to participate in an oath ceremony or to receive the Certificate of Naturalization in an appropriate manner. In keeping with the spirit of § 337.2(a), the BCIS will deliver or present the Certificate of Naturalization in such a manner as to preserve the dignity and significance of the occasion while respecting the wishes of the applicant and his or her designated representative.

**Pending cases**

Any case that is currently pending and which would have been approved if the person(s) who assisted the applicant had met the requirements of being a Designated Representative pursuant to this memorandum should be approved.

In any case that has had an initial examination and that cannot be approved because of the applicant's lack of understanding or inability to participate in the examination, the applicant should be afforded the opportunity of having another examination at which the applicant can be represented by a person who meets the requirements of this memorandum. Before the N-400 is adjudicated, the applicant should have the opportunity of receiving the assistance of a Designated Representative, as authorized by this memorandum.

**Denials**

Since November 6, 2000, no N-400, Application for Naturalization, can be properly denied because of the applicant's failure to understand the oath of renunciation and allegiance.

If an applicant with a disability, with or without the assistance of a Designated Representative, fails to demonstrate required lawful admission for permanent residence, sufficient duration of residence, required continuity of residence, sufficient physical presence,

residence in the jurisdiction, good moral character, English literacy and knowledge of civics, if not waived or exempted, and freedom from any statutory bar to naturalization, the N-400 should be denied for failure to demonstrate the required eligibility or freedom from a bar, not for the applicant's failure to understand.

**Questions**

The Federal Regulations are forthcoming and will be published in the Federal Register.

If you have any questions about this memorandum, please forward them through appropriate channels.

Attachment

Subject: Procedures for Implementing the Waiving of the Oath of Renunciation and Allegiance for the Naturalization of Aliens having Certain Disabilities

# Attachment 1

# Public Law 106-448

## An Act To amend the Immigration and Nationality Act to provide a waiver of the oath of renunciation and allegiance for naturalization of aliens having certain disabilities.

# Public Law 106-448

An Act

To amend the Immigration and Nationality Act to provide a waiver of the oath of renunciation and allegiance for naturalization of aliens having certain disabilities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. WAIVER OF OATH OF RENUNCIATION AND ALLEGIANCE FOR NATURALIZATION OF ALIENS HAVING CERTAIN DISABILITIES.

Section 337(a) of the Immigration and Nationality Act (8 U.S.C. 1448(a)) is amended by adding at the end the following: `The Attorney General may waive the taking of the oath by a person if in the opinion of the Attorney General the person is unable to understand, or to communicate an understanding of, its meaning because of a physical or developmental disability or mental impairment. If the Attorney General waives the taking of the oath by a person under the preceding sentence, the person shall be considered to have met the requirements of section 316(a)(3) with respect to attachment to the principles of the Constitution and well disposition to the good order and happiness of the United States.'.

SEC. 2. EFFECTIVE DATE.

The amendment made by section 1 shall apply to persons applying for naturalization before, on, or after the date of the enactment of this Act.