



U.S. Department of Justice
Immigration and Naturalization Service

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MEMORANDUM FOR REGIONAL DIRECTORS

FROM: Michael Pearson, /s/ Joseph D. Cuddihy
Executive Associate Commissioner,
Office of Field Operations

SUBJECT: Fingerprint Waiver Policy for All Applicants for Benefits under the
Immigration and Naturalization Act and Procedures for Applicants Whose
Fingerprint Responses Expire after the Age Range during Which
Fingerprints are Required

I. Fingerprint Waiver Policy for All Applicants for Benefits under the Immigration
and Naturalization Act

Public Law 105-119 requires that the Immigration and Naturalization Service (INS) receive confirmation from the Federal Bureau of Investigation (FBI) that a full criminal background check has been completed before adjudicating a naturalization application. At this time, the FBI makes this type of confirmation only in response to queries made by submitting fingerprints.

On December 1, 1997, Paul W. Virtue, as the Acting Executive Associate Commissioner, Office of Programs issued a Policy Memorandum that stated:

The purpose of this memorandum is to advise you that the policy regarding fingerprint check integrity found in the May 23, 1997 Naturalization Quality Procedures (NQP) memorandum now also applies to the following benefit-seeking applications and petitions requiring agency checks: Application for Status as a Permanent Resident (I-485); Request for Asylum in the United States (I-589); Registration for Classification as a Refugee 9I-590); Petition to classify Orphan as Immediate Relative (I-600);

Application for Advance Processing of Orphan Petitions (I600A); application for Status as a Temporary Resident (I-687); Application for Temporary Resident Status as a Special Agricultural Worker (I-700); Application for Voluntary Departure Under Family Unity Program (I-817); and, Application for Certification as a Designated Fingerprint Service (I-850). For more information, refer to part III, pages 3 to 11, of the May 23, 1997 NQP memorandum.

Please note that page 4 part B of the NQP memorandum indicates that an FBI response regarding fingerprint clearances is required before any naturalization applicant who is required to submit a fingerprint card may be scheduled for an interview. This does not apply to the above list of benefit-seeking applications. You still are authorized to proceed with the interview of adjustment, asylum, and orphan petitioners.

Since the publication of this directive, the INS has made minor changes to this directive. The NQP program is now published as NQP4 dated June 5, 1998. The Fingerprint Check Integrity is still in part III from pages 4 to 14. The Application for Certification as a Designated Fingerprint Service (I-850) was discontinued on March 17, 1998. The Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of pub. L. 105-100 (NACARA)) (I-881) has come into use since May 1, 1999. The December 1, 1997 directive is still in force.

There are a small number of applicants for naturalization who have disabilities that render them unable to be fingerprinted. The Rehabilitation Act requires in certain instances that all federal agencies make reasonable accommodations for people with disabilities. Therefore, policy memorandum # 60, "Fingerprint Waiver Policy for Naturalization Applicants who are Unable to be Fingerprinted" was issued on November 15, 1999. This memorandum established a fingerprinting waiver for certain naturalization applicants with disabilities who are unable to provide fingerprints or are unable to provide legible fingerprints. This memorandum also provided guidance on the procedures for waiving the fingerprinting requirement and alternative procedures for determining whether the applicant meets the good moral character eligibility requirement.

This current memorandum expands Policy Memorandum #60 to standardize fingerprint waivers for all applicants and petitioners applying for benefits who are disabled, in accordance with the December 1, 1997 instructions that all benefit-seeking applications and petitions follow the policy regarding fingerprint integrity found in NQP.

Waiver Eligibility

A small number of applicants, for various reasons, are unable to provide fingerprints. These reasons may include, but are not limited to, birth defects, physical deformities, skin conditions and psychiatric conditions.

Only an INS officer responsible for overseeing applicant fingerprinting is authorized to waive the fingerprinting requirement. An INS officer may grant a waiver only after he or she:

1. Has personally seen the applicant;
2. Has attempted to fingerprint the applicant **or** has observed a fingerprint technician employed by INS attempt to fingerprint the applicant; and
3. Determines that the applicant cannot be fingerprinted at all **or** cannot provide a single legible fingerprint.

A fingerprinting waiver may never be granted simply because an individual has fewer than 10 fingers. The FBI can produce a criminal background record for an individual who provides fewer than 10 fingerprints. A waiver may only be granted when an INS officer determines that an applicant can provide **no fingerprints. The waiver must not be granted solely because it appears that the prints will be unclassifiable.** In addition, a fingerprinting waiver may never be granted if the reason an individual cannot provide fingerprints or cannot provide legible fingerprints is due to a temporary condition. The decision of the INS officer not to grant a fingerprinting waiver is final and may not be appealed.

Waiver Procedure

Only an INS Application Support Center (ASC) manager, an INS officer supervising a mobile fingerprinting route or an INS officer acting in the capacity of an ASC manager may grant a fingerprinting waiver. Therefore, all individuals, including individuals who believe they qualify for a fingerprinting waiver, must still be scheduled for and appear for fingerprinting at an INS-designated location.

The determination that an applicant or petitioner is unable to provide fingerprints because of a physical inability to do so normally is beyond any doubt. If there is a question regarding the possibility of fingerprints being taken, fingerprints should be taken. The determination regarding the fingerprinting of applicants or petitioners who have accessible fingers but on whose behalf a claim is made that they cannot be fingerprinted for physiological reasons can be far less certain. Unless the ASC manager is certain of the *bona fides* of the inability of the person to be fingerprinted, the ASC manager should request that reasonable documentation be submitted by a Psychiatrist, a licensed Clinical Psychologist or a medical practitioner who has had long-term responsibility for the care of the applicant/petitioner.

If an ASC manager or other authorized INS officer grants a fingerprinting waiver, he or she must:

1. Note on the applicant's fingerprint notice that a fingerprinting waiver is granted;
2. On the fingerprint notice sign his or her name and the date the waiver is granted;
3. Describe on the fingerprint notice the condition that prevents fingerprinting the

- applicant;
4. Give the applicant a copy of the annotated fingerprint notice and a notice to bring local police clearances to his or her examination or interview (copy of Police Clearance Notice attached); and
 5. Forward the annotated fingerprint notice and a copy of the Police Clearance Notice to the service center.

When a service center receives a waiver-annotated fingerprint notice and Police Clearance notice, the notices must be retained with the corresponding application.

For N-400 applications, the service center, or the local office if the file was shipped before the completion of normal procedures pursuant to Policy Memo # 53, must circle "Waived" in the Remarks section of the FD-258 Control Number line of the N-650A and annotate "Policy Memo # 80" in the Remarks. After the service center, or local office, has completed all file transfer procedures and other Naturalization Quality Procedures (NQP) requirements for the application, the fingerprint waiver must be updated in CLAIMS 4 to allow the applicant to be scheduled for a naturalization examination.

For I-485 applications, the service center or the local office that has the application must annotate "Waived" in the "Yes" box of the "Stage 1" column of the I-485 Fingerprint (NQP) Quality Review Checklist and annotate "Policy Memo # 80" directly above this box.

If an applicant or petitioner is scheduled for fingerprinting at a designated law enforcement agency (DLEA), and the DLEA believes the applicant cannot be fingerprinted, the DLEA must refer the applicant to an INS fingerprinting location to complete the procedure described in this section.

Procedure at time of Examination or Interview

An applicant or petitioner who is granted a fingerprinting waiver must bring local police clearances to his or her examination or interview. The local police clearances must be retained with the application or petition. In addition to the local police clearance, the INS officer conducting the examination or interview must execute the sworn statement found in attachment # 7 to the NQP4 memorandum.

II. Procedures for Applicants Whose Fingerprint Responses Expire After Their 75th or 79th Birthday

All persons except the small number covered in Part I of this memorandum who are between their 18th and 75th birthday at the time of filing an N-400, Application for Naturalization or between their 14th and 75th birthday or their 14th and 79th when filing other benefit-seeking applications or petitions, depending on the requirements of the

specific application or petition, that requires a fingerprint check must submit a properly executed FD-258.

Immigration Service Operating Instruction 105.10(a) requires that the response to the background check be within 15 months of the granting of any benefit that requires a background check. At this time, if a response “expires” by the passing of 15 months the desired benefit cannot be granted without a new background check being conducted. For the vast majority of applicants and petitioners, this requires the submission of a new FD-258.

As of the date of this memorandum, any applicant or petitioner filing before his or her 75th or 79th birthday, depending on the requirements of the specific application or petition, whose FD-258 received a response of 1) NONIDENT, 2) no record found by FBI conducting search based on unclassifiable FD-258, or 3) IDENT only for immigration violations that did not go to a court other than an Immigration Court will not automatically be required to submit a new FD-258 if the earlier response has “expired” after the person’s 75th or 79th birthday. The applicant or petitioner should be given the option of either submitting new fingerprints or submitting police clearances from every jurisdiction where he or she has resided since the last background check was conducted.

All persons whose previous FD-258 submission resulted in an IDENT response from the FBI that included criminal charges should be required to submit a new FD-258 if the application or petition being adjudicated was filed before the person’s 75th or 79th birthday. This memorandum does not remove the adjudicating office’s discretion to request the submission of a new FD-258 in any case, in which this request appears to be warranted.

This procedure is effective for all applications and petitions that have not received a final adjudication as of the date of this memorandum.