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December 11, 2023

Samantha Deshommes
Chief, Regulatory Coordinator
Division Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

Re: Comment in Response to the DHS/USCIS Agency Information Collection Activities; Revision of a Currently Approved Collection: Application for Naturalization; DHS Docket No. USCIS–2008–0025; OMB Control Number 1615-0052

Submitted via Regulations.gov

Dear Chief Deshommes,

The Immigrant Legal Resource Center (ILRC) submits the following comment in response to the Department of Homeland Security's (DHS) Agency Information Collection Activities; Revision of a Currently Approved Collection: Application for Naturalization, published on November 9, 2023.

The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC's mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates, and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations in building their capacity.

The ILRC also leads the New Americans Campaign, a national non-partisan effort that brings together private philanthropic funders, leading national immigration and service organizations, and over two hundred local services providers across more than 20 different regions to help prospective Americans apply for U.S. citizenship. Through our extensive naturalization network with service providers, immigration practitioners and immigration benefits applicants, we have developed a profound understanding of the barriers faced by low-income immigrants of color seeking to naturalize. As such, we welcome the opportunity to provide comments on Form N-400, Application for Naturalization. The recommendations that follow are gleaned from the experiences of many low-income immigrants who we and our partners serve.

I. ILRC commends USCIS for numerous positive changes made to Form N-400

We reiterate our gratitude to the agency for the positive changes to Form N-400 that we noted in our comment submitted during the previous collection.[1] These changes will make the form more user-friendly and will reduce the burden on applicants – particularly pro se applicants – and adjudicators. The agency is to be commended for its efforts to streamline the form and enhance the user experience.

We note, with further thanks, the positive improvements to the proposed form in the November 9, 2023, version. Several of the changes made were included in our previous submission and we are gratified to see these changes in the updated form. Such improvements include:

- The addition of clarifying language in Part 9, Question 2 regarding voting in local elections for which noncitizens are eligible to vote. This clarification will reduce the submission of incorrect information and will bring the form in line with an evolving area of the law in many states throughout the United States.
- The addition of "retired" as an option in the employment section in Part 7. Adding this option recognizes the dignity of older applicants who no longer work.
- The modification of Part 6 which now only requires that applicants provide information on their children under 18 years old. Information collection on adult children is unnecessary to the adjudication of the form and we urge the agency to continue to consider adding this provision to other forms which request information on an applicant's children.

While we are appreciative of the positive changes, we still see room for improvement. Overall, we urge the agency to produce shorter, clearer forms and instructions. The Biden Administration has tasked federal agencies with reducing administrative burdens and simplifying processes to promote efficiency.[2] The proposed N-400 form is 14 pages long, which is an improvement over the current version at 20 pages long, while the proposed N-400 instructions are 30 pages long compared to the current version at 18 pages. It is unreasonable to expect applicants to navigate a form and instructions of this length. Forms that are dense, confusing, and onerous are a de facto barrier to the immigration benefit associated with the application. The Biden administration has tasked the federal government with promoting naturalization,[3] and the length of the forms and instructions associated with naturalization are contrary to that goal. We provide the following suggestions on how the N-400 form and instructions can be altered to streamline the naturalization process and reduce barriers to naturalization for eligible applicants.

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[1] ILRC, *ILRC Comments on Proposed Changes to Form N-400,* June 20, 2023, https://www.ilrc.org/resources/ilrc-comments-proposed-changes-form-n-400.

[2] Exec. Order No. 14058, *Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government,* 86 FR 71357 (Dec. 16, 2021).

[3] Exec. Order No. 14012, *Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans*, 86 FR 8277, 8278-9 (Feb. 2, 2021).

II. ILRC cautions against the addition of the request for fee reduction on Form N-400

We have concerns about the inclusion of the request for fee reduction on Form N-400. While we support the measure to alert applicants to the existence of a fee reduction and fee waiver, we worry that its inclusion on the form itself will create more complications and pitfalls for applicants.

Including the fee reduction on the form has the potential to bias adjudicators against the applicant. Currently, fee waivers and fee reductions are adjudicated before the application is transferred to the relevant field office for adjudication of the naturalization application. While the agency has not provided any information on how this proposed change to the N-400 will affect the adjudication process, we see potential for negative bias to be applied by adjudicators who will see the request for a fee reduction on the application itself. Right now, a pseudo firewall is in place to ensure that different personnel adjudicate the fee-related forms and the naturalization application. This separation helps to ensure that applicants are not unjustly judged for a lack of financial means. Including this section on the application will weaken that separation to the potential detriment of the applicant.

We do applaud the agency's inclusion of fee reduction information on the proposed form. We recommend that the agency alter Part 10 of the proposed form to include language about eligibility for both a fee reduction and fee waiver – including describing the eligibility for each and providing a link to both the Form I-942 and I-912. Including this information without soliciting information from the applicant would not elongate the form from the proposed version and would reduce the length of the proposed instructions as the list of required evidence could be eliminated. We suggest the following language to be included on the Form N-400 itself:

> Part 10. Requesting ~~for~~ a Fee Reduction or Fee Waiver
>
> You may be eligible for a fee reduction or fee waiver. To qualify for a fee waiver, you must meet one of the following criteria:
>
> - You, your spouse, or the head of household living with you is currently receiving a means-tested benefit;
> - Your household income is at or below 150 percent of the Federal Poverty Guidelines (to obtain information about the Federal Poverty Guidelines, visit https://www.aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines);[4] or
> - You have a financial hardship.
>
> To qualify for a reduced fee, your household income must be greater than 150 percent and not more than 200 percent of the Federal Poverty Guidelines. To apply for a fee waiver, visit https://www.uscis.gov/i-912 and to apply for a fee reduction, visit https://www.uscis.gov/i-942.

Finally, we once again **urge the agency to make both the fee reduction and fee waiver forms available for online filing**. Doing so will increase the number of naturalization applications filed online, which will

[4] Note: The link on the proposed instructions is not functional so we have replaced it with a link to the 2023 guidelines.

increase agency efficiency.[5] The partners we serve through our organization as well as through the New Americans Campaign, have repeatedly identified this issue as a priority so that interested applicants can file online. During the pandemic, many partners moved to remote operations to continue serving their clients and now offer hybrid services wherever possible. An online fee reduction and fee waiver would facilitate that work and ensure that partners are able to help as many applicants as possible, including those who live far from legal service providers and who may rely on remote assistance.

III. USCIS should consider further clarifications and options for applicants in the form and instructions.

The proposed Form N-400 streamlines many of the inquiries, and the elimination of several unnecessary sections is very welcome. However, there are further opportunities for clarification and inclusion, as described below:

Part 2

- USCIS should consider restoring the questions about English language exemptions found at Question 13 on the current N-400. Having these questions on the form is helpful to pro se applicants who may not be aware of the exemptions. Further, this is a useful tool for volunteers at naturalization clinics and workshops. We acknowledge that the information on English language exemptions is included in the N-400 instructions and that the proposed form includes a specific instruction that there are exceptions based on age and years as a lawful permanent resident. However, the inclusion of the exemptions on the form itself – as it is on the current form- heightens the possibility that those eligible will be alerted to the exemption. The N-400 instructions are voluminous and those with limited English capabilities who qualify for an exemption may not be able to find this information in the instructions.
- Similarly, USCIS should reconsider the deletion of Part 3 of the current Form N-400, "Accommodations for Individuals with Disabilities and/or Impairments." Even though information on accommodations is provided in the instructions, there should be some indication of the existence of accommodations on the form itself to alert applicants completing the form. Testing anxiety is one of the main barriers for many naturalization applicants and alerting them to the possibility of exemptions, accommodations, and waivers on the form may encourage more eligible applicants to apply.

Part 3

- Question 2: We commend the agency's reordering of the race categories to alphabetical order rather than listing "White" as the first option. However, USCIS should include an option for "multiracial" or "another race" in order to be more inclusive of the applicant's racial identity as

[5] In its annual 2023 report, the Citizenship and Immigration Ombudsman points to online filing as a primary tool to mitigate backlogs across the board and increasing the availability for naturalization applicants to file online will help to reduce backlogs even further. *See*, CISOMB, Annual Report 2023, June 30, 2023, https://www.dhs.gov/sites/default/files/2023-07/23_0630_cisomb_2023-annual-report-to-congress.pdf.

well as an option to decline to provide that information. "Unknown/other" is an option for other biographical questions and the same should be made true for the question about a person's race.

- Question 3: USCIS should eliminate the requirement that a person disclose their height and weight. In addition to not being relevant to naturalization eligibility, this question invites inconsistent answers. An adult's weight – and to a certain extent, their height – can fluctuate over time and as such, answers to these questions may not be consistent in an immigration process that can span years from initial admission to the United States to the completion of the naturalization process. Further, this information is collected through biometrics processing and including it on the form is redundant.

Part 9

- Question 22a: USCIS should provide more clarification on "people born as male" who must register for the Selective Service. Further clarification is provided on the Selective Service System web site according to guidance proffered by the U.S. Office of Personnel Management.[6] USCIS should consider incorporating this official guidance into the form and instructions to avoid any confusion for those applicants who identify as transgender or non-binary.
- Question 33: This question should be eliminated as it is confusing and repetitive. Other questions before and after already ask if the applicant understands the oath of allegiance (oath) and is willing to take the oath.
- Question 33 Instructions: The proposed draft N-400 instructions on page 9 further confuse the requirements of the waiver of English/civics pursuant to INA § 312(b) with the requirements for the waiver of the oath of allegiance pursuant to INA § 337(a). Beginning at the bottom of page 8 of the draft N-400 Instructions, the title is "Required Evidence – Disability Exceptions" and a section describing the need for an N-648 (the waiver form for English/civics) is immediately followed by a section describing the need for a legal guardian, surrogate, or designated representative. Thus, the applicant reading this may incorrectly conclude that they will need a guardian or designated representative for a waiver of English/civics, which they do not.

  Additionally, this section of the instructions currently does not specify that this guardian/designated representative requirement is only for persons seeking a waiver of the oath requirement. The section should be re-written, and the instructions should have the title "Requirements for an Oath Waiver" before describing any requirements pertaining to legal guardian, surrogate, or designated representative. The instructions and form need to clarify that

[6] "US citizens or immigrants who are born male and changed their gender to female are still required to register. Individuals who are born female and changed their gender to male are not required to register. OPM notes that "transgender" refers to people whose gender identity and/or expression is different from the sex assigned to them at birth (e.g., the sex listed on an original birth certificate). The OPM Guidance further explains that the term "transgender woman" is typically used to refer to someone who was assigned the male sex at birth but who identifies as a female. Likewise, OPM provides that the term "transgender man" typically is used to refer to someone who was assigned the female sex at birth but who identifies as male." Selective Service System, *Who Needs to Register*, https://www.sss.gov/register/who-needs-to-register/#p7.

these are separate waivers with separate requirements to avoid confusion and unnecessary filings of oath waivers by applicants.

These instructions also further institutionalize a requirement for oath waivers that is not required by the statute. The requirement of a court-ordered representative or certain U.S. citizen relatives is an unnecessary, ultra vires barrier to naturalization for persons seeking oath waivers that was added to the USCIS Policy Manual. It does not exist in the statute or regulations. We have previously urged USCIS to drop this requirement and instead allow applicants to have "any trusted individual" substitute for them in the oath waiver process.[7]

IV. USCIS should further reduce the amount of information requested to only that information that is necessary to determine eligibility for naturalization.

In line with the positive changes mentioned above, USCIS should further reduce the collection of information on Form N-400 to include only those questions that speak to the applicant's eligibility to naturalize. The over-collection and storage of personal information does nothing to increase adjudicatory efficiency, but only serves to aid the agency in its extreme vetting practices. We offer the following suggestions for removal of information that is not germane to naturalization eligibility.

Part 2

- Question 6: USCIS should eliminate the requirement added to request additional dates of birth for the applicant. The collection of this information is unnecessary to the eligibility for naturalization and will only serve to intimidate and confuse applicants, particularly for those applicants who do may not have had an official date of birth recorded due to country conditions at their time of birth.
- Question 9: The issue of citizenship for other countries is not relevant to an applicant's eligibility for naturalization. It is not uncommon for individuals to have multiple citizenships and to obtain passports from the countries where they are citizens. Additionally, having multiple citizenships and passports is not a bar to naturalization. Collecting this information is, again, an overstep that bears no relevance to the inquiry at hand – the applicant's eligibility for naturalization.

Part 7

- As noted in previous comments, we appreciate the removal of the requirement that a complete marital history be disclosed where the basis of lawful permanent residence is not marriage to a U.S. citizen; we also ask USCIS to further reduce the information required of applicants' marital histories. In particular, the requirement that all naturalization applicants produce marriage, divorce, and annulment decrees is unnecessary and redundant. This information is not relevant to a naturalization applicant's eligibility if the basis of lawful permanent residence was not marriage.

[7] *See*, *ILRC Advocacy Letter on Oath Waiver*, https://www.ilrc.org/advanced-search?terms=oath.

Further, the requirement of disclosure of the applicant's spouse's employer is irrelevant as to the applicant's eligibility for naturalization.

V. USCIS should reconsider and amend many of the questions in Part 9 pertaining to good moral character and criminal history.

- Question 5: We are concerned by the broadening of categories to be considered in disclosure of membership in a group engaged in the enumerated list of activities. In particular, the addition of "unlawful damage, injury or destruction of property" is concerning as it is overly broad and could be used to retaliate against activists. USCIS should remove this criterion from Question 5.b.
- Question 6: USCIS should consider amending the language proceeding Question 6 regarding the provision of material support to certain groups. As written, the provision is overly broad and will entrap many eligible applicants who provided goods or services to these groups unwittingly. The language should be amended in the following way:

  Have you EVER been a member of, involved in, or in any way associated with, or have you EVER provided money, a thing of value, services or labor, or any other assistance to a group that you knew and supported the fact that:"

- Question 15:
  - USCIS should eliminate the language preceding Question 15 related to juvenile adjudications. Juvenile adjudications are not convictions for the purposes of immigration law and many states bar the use of juvenile records or their disclosure. Juvenile justice systems across the United States recognize the significant developmental differences between children and adults and that juvenile proceedings are largely geared toward early intervention, community-based resources, and restorative efforts. Even the Supreme Court has recognized that youthful violations of the law may not be indicative of adult character and behavior. *See Roper v. Simmons* 543 U.S. 551, 570 (2005). It is therefore contrary to the purpose of juvenile justice systems to use juvenile adjudications to deny immigration benefits, even as a matter of discretion. The language in Part 9 should be amended not only to exclude juvenile adjudications in the naturalization eligibility assessment but should also affirmatively state that juvenile adjudications should not be considered. Specifically, the language should be amended in the following way:

    Include all the crimes and offenses in the United States or anywhere in the world (including domestic violence and driving under the influence of drugs or alcohol. Do not include juvenile adjudications.~~, and crimes and offenses while you were under 18 years of age~~) which you EVER:

  - Question 15.a should be eliminated entirely and USCIS should also reconsider the revisions in the language proceeding Question 15.a and Question 15.b and amend these

questions to ensure that applicants are not asked to draw legal conclusions. By asking applicants if they committed a crime for which they were not arrested, the agency requires that applicants understand state and federal penal codes. By including the language "notified that you were being investigated for a crime," the agency asks applicants to disclose information that may not have resulted in any finding whatsoever. The revised Questions 15 broaden the scope for applicants, further muddying the waters and relying on the over-inclusion of potentially irrelevant information, rather than tailoring the inquiry to the information needed to make an eligibility determination. Questions like these are particularly harmful to pro se applicants and are, at best, over-broad and, at worst, an attempt to trap applicants into revealing something that will require a request for evidence.[8] There is also the risk that applicants will unintentionally omit something that should be disclosed due to confusion about what should be included and will later be found to have committed fraud or false testimony when asked about it at an interview. This is an inefficient use of agency resources as well as an unnecessary burden on applicants, especially in light of the numerous questions on the form that ask about criminal and immigration violations.

- Question 15 Chart: USCIS should revert back to the information requested on the current N-400 for three reasons:
    i. First, specifically, requiring applicants to disclose the dates of offenses may prove difficult for applicants whose criminal history was years in the past. For many applicants, court, police, or other official records may no longer exist if the time between the occurrence and the naturalization application is many years.
    ii. Next, in the proposed third column, the language should be changed to "Date of your conviction." Adding the term "guilty plea" is confusing, as a guilty plea is not required for many convictions.
    iii. Finally, the requirement that the applicant provide the exact sentence may be confusing, particularly for pro se applicants, who may have been subject to pre-trial detention (for which they may or may not have received credit) or may not remember the exact sentence imposed (as it often varies from the time served). Requesting the final disposition will provide USCIS with this information, without requiring applicants to determine what their official sentence was.

- Question 17.b – USCIS should return to the simplified version of this question on the current N-400 ("Sold or smuggled controlled substances, illegal drugs, or narcotics") in lieu of the proposed question, which is much broader and vaguer. It is concerning that the proposed question seems to target the legal cultivation and sale of marijuana in states that have legalized these activities. USCIS should ensure that this question distinguishes conduct permitted by state law from illegal

[8] Questions such as these are contrary to President Biden's Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans which specifically instructs agencies to promote naturalization. By relying on these extreme vetting practices, the agency runs the risk of intimidating eligible applicants and creating a chilling effect on naturalization applications.

conduct and the N-400 form and instructions should make that distinction clear. Question 17.b should be amended as follows:

"Sold or smuggled controlled substances, illegal drugs, or narcotics in violation of law? Do not include conduct that is legal in the state where the conduct occurred."

VI. USCIS should withdraw the policy manual sections that fail to give deference to prior approvals of underlying LPR applications for naturalization applicants.

The N-400 contains many questions that indicate that the adjudicator should not give deference to a prior approval of the underlying permanent residence application in its entirety. This is an onerous and unnecessary task for applicants and practitioners. Pro se applicants are particularly disadvantaged as the number of questions may discourage them from filing the applications without representation. For practitioners – particularly non-profit providers – these questions often necessitate an unnecessary investigation of a client's past and puts a strain on resources creating an unnecessary burden and reducing the numbers of clients that the practitioners can represent.

Furthermore, failure to give deference to the prior approval of permanent residence is a waste of agency resources. At the naturalization stage, unless there are extenuating circumstances, USCIS should give deference to the prior approval and should eliminate questions that seek to readjudicate the permanent residence application. A favorable deference policy and practice have been adopted by USCIS as a matter of efficiency and consistency in other contexts.[9] By engaging in yet another full analysis re-investigating eligibility, the agency wastes adjudicator time and resources, potentially issues redundant or erroneous requests for evidence, and causes delays which further exacerbate existing backlogs and long processing times.

In addition to altering the N-400 to eliminate or revise these questions, we urge USCIS to withdraw the sections that encourage adjudicators not to second guess prior approvals in the USCIS Policy Manual, specifically 12 USCIS-PM D.2(d). This section directs USCIS officers to review eligibility for the underlying lawful permanent residence (LPR) status in all naturalization cases, even where no question about eligibility is raised, thus failing to give any deference to the agency's own prior approval of an individual's LPR status, or to distinguish between cases where red flags are presented. This practice not only wastes agency resources but disproportionately affects low-income, vulnerable, and unrepresented naturalization applicants who may not have the resources to hire legal representation to respond to requests for documentation from decades in the past. Such requests are often made due to a failure to defer to a prior approval of permanent residence. For these reasons, we ask USCIS to withdraw 12 USCIS-PM D.2(d) in its entirety and replace language in the Policy Manual to favor deference to prior approvals except in extenuating circumstances where there was a material error, a material change in circumstances or eligibility requirements, or new material information arises. As this is already

[9] See USCIS, *"Deference to Prior Determinations of Eligibility in Requests for Extensions of Petition Validity,"* 2 USCIS-PM A.4. (April 27, 2021) (Policy Manual update available at https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210427-Deference.pdf).

established policy and practice in other contexts, the agency should remain consistent in how prior applications are viewed across all adjudications.

VII. Conclusion

We urge USCIS to consider these suggestions and amend the proposed revisions to Form N-400. Again, we are appreciative of the many positive changes proposed and encourage USCIS to maintain those changes while also addressing the concerns we have raised here with the proposed form. These measures will aid in the agency's stated goal of promoting naturalization, streamlining adjudications processes, and reducing backlogs.

Please reach out to Elizabeth Taufa, etaufa@ilrc.org, if there are any questions.

Sincerely,
/s/Elizabeth Taufa
Elizabeth Taufa
Policy Attorney and Strategist