



U.S. Citizenship
and Immigration
Services

HQRPM 70/33-P
AD06-09

Interoffice Memorandum

To: Service Center Directors
Regional Directors
District Directors
Officers-in-Charge

From: Michael Aytes /s/
Acting Associate Director
Domestic Operations

Date: May 10, 2006

Re: Adjudication of Form N-648, Medical Certification for Disability Exceptions
to the Immigration and Nationality Act (INA) Section 312 Naturalization Requirements

Revisions to *Adjudicator's Field Manual (AFM)* Chapter 72.2(d)(5) and Appendix 72-13
(*AFM* Update AD06-09)

1. Purpose

USCIS has detected patterns of fraud and misrepresentation in the submission of Form N-648, Medical Certification for Disability Exceptions. In order to address these concerns and protect the integrity of the naturalization process, USCIS is issuing this memorandum to provide comprehensive and updated policy guidance for the review of Form N-648. This memorandum supersedes the April 7, 1999 Memorandum entitled, "Section 312 Disability Naturalization Adjudications (Policy Memo # 47 and attachments)," and updates the *Adjudicator's Field Manual (AFM)*.

2. Background

Section 312(b) of the INA 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." Under the regulations at 8 CFR 312.2, a medical professional 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.

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“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 laboratory 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, the regulations require that the medical professional establish and certify that the applicant has a physical or mental abnormality that has impaired the 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. Therefore, those applicants, whose disability exception requests have been accepted, must still establish good moral character, residence, and assent to the oath (unless waived), etc.

It is also important to note that the statutory exception requested in a Form N-648 is not the same as a request for accommodations under the Rehabilitation Act of 1973 or a request for waiver of the oath requirement.

3. Contact Information

Questions related to this memorandum should be directed to Bunnie Bryce, through appropriate supervisory channels.

4. Use

This memorandum is intended solely for the guidance of USCIS personnel in performing their duties relative to adjudications of applications. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

5. Field Guidance AFM Chapter 72.2(d)(5)

Effective immediately, USCIS field offices are directed to comply with the following instructions, as set forth in revised *AFM* Chapter 72.2(d)(5):

(5) Adjudication Guidelines for the Form N-648 Waiver. **[Revised as of 05/10/2006]**

(A) Medical Professionals Authorized to Complete the Form N-648.

Under 8 CFR 312.2, the following medical professionals who are licensed to practice in the United States (including Guam, Puerto Rico, and the Virgin Islands) are eligible to sign a Form N-648 diagnosis and medical opinion on behalf of an applicant: 1) medical doctors; 2) doctors of osteopathy; and 3) clinical psychologists.

Medical professionals must certify, under penalty of perjury, that their statements are true and correct. In addition, 8 CFR 312.2(b)(2) and the Form N-648 Instructions require the certifying medical professional to have appropriate experience and qualifications that will enable him/her to diagnose and assess the claimed disability and/or impairment. For example, a certification by a general practitioner regarding a mental disability will be acceptable if the general practitioner has appropriate experience and qualifications to diagnose and assess that type of disability. A Form N-648 should be reviewed based on the standard of review outlined in section (D) below.

(B) Validity and Timeliness of the Form N-648.

The Form N-648 may be submitted as an attachment to the Form N-400 Application for Naturalization, as a supplement to the Form N-400 after the initial filing of the Application for Naturalization, or at the time of the interview. If the Form N-648 is submitted at the time of the interview, the examination may be continued pending the adjudication of the Form N-648.

The Form N-648 must be submitted within six months of when it was completed by the medical professional or psychologist. A properly submitted Form N-648 will remain valid indefinitely unless it is denied, or until such time as the District Adjudications Officer (DAO) determines that the disability described does not preclude the applicant from demonstrating the requisite knowledge and understanding of English and/or U.S. history and government.

(C) Appropriate Role of Adjudicators in Reviewing Form N-648.

DAOs are responsible for determining whether the applicant meets the requirements of Section 312 of the INA. Each district office should designate a Journeyman DAO

to be the point of contact for training and oversight of the Form N-648 adjudications. In reviewing the Form N-648, the DAO's role is to determine whether the Form N-648 contains sufficient information to establish that the applicant is eligible for a disability exception. The medical professional's role is to establish and certify the applicant's diagnosis, to explain how the anatomical, physiological, or psychological impairment diagnosis was arrived at (including which medically acceptable clinical or laboratory diagnostic tests were used to reach the diagnosis), and to explain how this condition affects the applicant's ability to learn or demonstrate knowledge of English and/or U.S. history and government.

DAOs must ensure that the Form N-648 contains an explanation of the origin, nature, and extent of the medical condition including a list of the medically acceptable clinical or laboratory diagnostic tests employed in reaching the diagnosis, a notation that the disability has lasted, or is expected to last, 12 months or longer, and a notation that the disability is not the direct effect of the illegal use of drugs.

The diagnosis of the medical professional will be presumed valid in the absence of significant discrepancies or credible doubt. However, the DAO may, pursuant to the regulations, refer the applicant to another authorized medical specialist, at the applicant's expense, for a supplemental disability determination when there are "credible doubts about the veracity of a medical certification." 8 CFR 312.2(b)(2) For this purpose, each district shall refer the applicant to the state medical board in order to locate a medical specialist in the appropriate specialty area (i.e., psychiatrist, neurologist, psychologist). See Attachments A and B.

[(b)(2) or (b)(7)(E)]

(D) Standard of Review of the Form N-648.

A DAO must first review the Form N-648 to ensure that it is properly completed. If more than one Form N-648 was submitted, the most recent Form N-648 will be considered. DAOs can, however, examine previously submitted Form N-648s for additional information or discrepancies.

The focal point of the DAO's review should be to determine if the medical professional has clearly shown how the applicant's diagnosed condition affects the applicant's ability to function, i.e., the **nexus** (connection) 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 by themselves constitute a sufficient 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 must evaluate each Form N-648 individually and determine, based on all the information, 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.

The Form N-648 must also include a sufficiently thorough explanation of how the disability or impairment was diagnosed. The medical professional should include a list of medically acceptable clinical or laboratory diagnostic tests employed to determine that the applicant has a condition that makes him or her unable to learn or demonstrate knowledge of English and/or U.S. history and government. If the Form N-648 does not provide a sufficiently thorough explanation, regulatory authority exists that allows the DAO to request a copy of the applicant's medical records to determine that the claimed diagnostic tests were performed. Prior to the DAO issuing a request for the applicant's medical records, the specific case should be referred to the Supervisory District Adjudications Officer (SDAO) for approval. The DAO may review the records to determine the veracity of the medical professional's claims on the Form N-648 regarding how he or she reached the diagnosis. DAOs are not permitted to request medical records solely to question whether there was a proper medical basis for the noted impairment. DAOs may only review medical records to determine whether the certifying medical professional has conducted the claimed medically acceptable clinical or laboratory diagnostic tests to arrive at the diagnosis noted in the Form N-648.

DAOs should review the Forms N-648 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) can qualify for a disability exception, if the disability results in an impairment in functioning so severe that the applicant is unable to learn or demonstrate knowledge of English and/or U.S. history and government. Similarly, depression should be treated like any other disability or impairment. Post Traumatic Stress Disorder (PTSD) should be similarly evaluated under the standard of review set forth in this section.

[(b)(2) or (b)(7)(E)]

(E) Procedures for Review of and Action on Form N-648.

Under 8 CFR 312.2(b)(2), applicants are required to submit the Form N-648 with their Form N-400. Applicants may also submit their Form N-648 waiver as a supplement to the Form N-400 prior to the interview, or may submit the Form N-648 waiver at the time of the interview. If the Form N-648 is submitted at the time of the interview, the examination may be continued pending the adjudication of the Form N-648.

Under 8 CFR 312.5, applicants should receive two opportunities to meet the requirements of Section 312 of the INA. If the DAO finds that the Form N-648 is insufficient to establish eligibility for an exception from the English and/or U.S. history and government requirements for naturalization, the DAO must give the applicant a choice to either proceed with testing or to be rescheduled for re-examination. If the applicant fails the test, or opts for rescheduling, the DAO must issue a Form N-14 and schedule the applicant for re-examination within 45 days. The Form N-14 must include a detailed explanation of the deficiencies and inconsistencies in the Form N-648 and, if appropriate, request the applicant to obtain another evaluation from an authorized medical specialist for a supplemental determination.

If upon re-examination, the DAO determines that an applicant is not eligible for a disability exception and the applicant fails to pass the English and/or U.S. history and government tests, the Form N-400 must be denied. The Form N-648 denial may be reviewed in the context of a hearing on the denial of the Form N-400 under Section 336 of the INA (336 hearing). An applicant may submit additional documentation for review at the 336 hearing, including a new Form N-648.

(F) [(b)(2) or (b)(7)(E)]

(G) Reasonable Accommodations and Modifications under the Rehabilitation Act.

Section 504 of the Rehabilitation Act of 1973 requires all Federal agencies to make reasonable accommodations for persons with disabilities. As a federal agency, USCIS may not exclude qualified persons with disabilities from its programs or activities based solely on the person's disability. To ensure that persons with disabilities are not excluded from USCIS programs or activities because of their disabilities, the Rehabilitation Act requires USCIS to provide modifications or accommodations that permit qualified persons with disabilities to have an equal opportunity to participate in its programs. DAOs should refer to the January 21, 2003 policy memo, "Guidance on Making the Naturalization Process Accessible to Applicants with Disabilities," for further guidance on accommodations.

Accommodations are different from statutory waivers or exceptions. If an applicant receives a waiver, that applicant is exempted from meeting the specific naturalization requirement for which that waiver is granted. All applicants qualifying for a waiver receive the same relief. For example, all applicants receiving an English test waiver will not have to take the English exam. Existing waivers cover the English and/or U.S. history and government requirements and the Oath of Allegiance.

On the other hand, an accommodation is not a waiver but rather a modification of an existing practice or procedure that will enable an applicant with a disability to participate in the naturalization process. The accommodation does not exempt the applicant from the obligation to satisfy the requirement, but modifies the manner in which the applicant demonstrates that he or she meets the requirement. Accommodations are likely to vary according to the nature of the individual's disability. For example, an applicant who is unable to use his or her hands should be permitted to take the U.S. history and government tests orally. An applicant who is unable to speak might receive an accommodation that would allow that applicant to respond to questions on the English and/or U.S. history and government test with a previously agreed upon nonverbal form of assent.

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

(H) Procedures for Waiver of the Oath of Allegiance.

Under Section 337 of the INA, as amended, the Oath of Allegiance and attachment requirements may be waived for applicants having a disability or impairment that prevents them from being able to understand the meaning of the oath or to communicate an understanding of the oath requirement. The procedures for conducting examinations and waiving the oath are outlined in the June 30, 2003 Memorandum entitled, "Procedures for Implementing the Waiving of the Oath of Renunciation and Allegiance for the Naturalization of Aliens having Certain Disabilities." <http://uscis.gov/graphics/lawsregs/handbook/PolMem96Pub.pdf>

The requirements for the oath waiver are distinct from the requirements for the English and/or U.S. history and government waiver under Section 312 of the INA. 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," 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.

6. Field Guidance AFM Appendix 72-13, Attachments A-C.

Effective immediately, USCIS field offices are directed to comply with the following instructions as set forth in revised *AFM* Appendix 72-13, Attachments A-C.

Appendix 72-13 Disability Naturalization Applications [Revised as of 05/10/2006]

Attachment A
State Medical Boards Contact Information

<u>State</u>	<u>Telephone</u>	<u>Web Address</u>
Alabama	(334) 242-4116	www.albme.org
Alaska	(907) 269-8163	www.dced.state.ak.us/occ/pmed.htm
Arizona	(480) 551-2700	www.bomex.org/middle.asp
Arkansas	(501) 296-1802	www.armedicalboard.org
California	(916) 263-2389	www.medbd.ca.gov
Colorado	(303) 894-7690	www.dora.state.co.us/medical
Connecticut	(860) 509-8000	www.dph.state.ct.us
Delaware	(302) 744-4507	www.professionallicensing.state.de.us
District of Columbia	(202) 671-5000	www.doh.dc.gov
Florida	(850) 245-4100	www.doh.state.fl.us
Georgia	(404) 656-3913	www.medicalboard.georgia.gov
Hawaii	(808) 586-3000	www.hawaii.gov/dcca/areas/pvl
Idaho	(208) 327-7000	www.bom.state.id.us
Illinois	(217) 785-0800	www.idfpr.com/dpr/default.asp
Indiana	(317) 234-2060	www.in.gov/pla/bandc/mlbi/

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Iowa	(515) 281-5171	www.docboard.org/ia/ia_home.htm
Kansas	(785) 296-7413	www.ksbha.org
Kentucky	(502) 429-7150	www.state.ky.us/agencies
Louisiana	(504) 568-6820	www.lsbme.org
Maine	(207) 287-3601	www.docboard.org/me/me_home.htm
Maryland	(410) 764-4777	www.mbp.state.md.us
Massachusetts	(617) 654-9800	www.massmedboard.org/contact/shtm
Michigan	(517) 241-9427	www.michigan.gov
Minnesota	(612) 617-2130	www.state.mn.us/portal/mn/jsp/home
Mississippi	(601) 987-3079	www.msbml.state.ms.us
Missouri	(573) 751-0098	www.pr.mo.gov/healingarts.asp
Montana	(406) 841-2300	www.emedicine-resources.com/montana-board-of-medicine.htm
Nebraska	(402) 471-3121	www.hhs.state.ne.us
Nevada	(775) 688-2559	www.medboard.nv.gov
New Hampshire	(603) 271-1203	www.nh.gov/medicine/
New Jersey	(973) 504-6200	www.state.nj.us/lps/ca/contactinfo.htm
New Mexico	505) 476-7220	www.state.nm.us/nmbme/
North Carolina	(919) 326-1100	www.ncmedboard.org
North Dakota	(701) 328-6500	www.ndbomex.com

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Ohio	(614) 466-3934	www.med.ohio.gov
Oklahoma	(405) 848-6841	www.okmedicalboard.org
Oregon	(503) 229-5770	www.egov.oregon.gov/BME/
Pennsylvania	(717) 787-8503	www.dos.state.pa.us/bpoa/site/default.asp
Rhode Island	(401) 222-3855	www.health.ri.gov/hsr/bmld/
South Carolina	(803) 896-4500	www.llr.state.sc.us/pol/medical/
South Dakota	(605) 367-7781	www.state.sd.us/doh/medical/
Tennessee	(615) 532-3202	www.state.tn.us/health/
Texas	(800) 248-4062	www.tmb.state.tx.us/
Utah	(801) 530-6628	www.dopl.utah.gov/
Vermont	(802) 657-4220	www.healthyvermonters.info/bmp/bmp.shtml
Virginia	(804) 662-9900	www.dhp.virginia.gov/
Washington	(360) 236-4700	www.doh.wa.gov/contact.htm
West Virginia	(304) 558-2921	www.wvdhhr.org/wvbom/
Wisconsin	(608) 266-2112	www.drl.wi.gov/index.htm
Wyoming	(307) 778-7053	www.wyomedboard.state.wy.us/

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Attachment B

Disability Diagnosis

Medical Specialist

Organic Mental Disorder

Psychiatrist, Psychologist, or Neurologist

Psychological or behavioral abnormalities associated with a dysfunction of the brain. Demonstration of a loss of specific cognitive abilities or affective changes and the medically documented persistence of at least one of the following: Disorientation to time and place; or Memory impairment, either short-term (inability to learn new information), intermediate, or long-term (inability to remember information that was known sometime in the past); or Perceptual or thinking disturbances (e.g., hallucinations, delusions); or Change in personality; or Disturbance in mood; or Emotional lability (e.g., explosive temper outbursts, sudden crying, etc.) and impairment in impulse control; or Loss of measured intellectual ability.

Schizophrenic, Paranoid and Other Psychotic Disorders

Psychiatrist, Psychologist, or Neurologist

- Delirium
- Hallucinosi
- Catatonia
- Schizophrenia
- Manic Disorder
- Bipolar Affective Disorder
- Depressive Disorder
- Mixed Affective Disorder

Characterized by the onset of psychotic features with deterioration from a previous level of functioning.

Affective Disorders

Psychiatrist, Psychologist, or Neurologist

Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation and manifests in difficulty in concentrating or thinking.

Mental Retardation

Psychiatrist, Psychologist, or Neurologist

Characterized by significantly sub-average intelligence.

Anxiety-related Disorders, e.g. Post Traumatic Stress Disorder (PTSD)

Psychiatrist, Psychologist, or Neurologist

Characterized by significant decrease in normal functioning and intellect when placed in anxiety producing settings.

Substance Addiction Disorders

Psychiatrist, Psychologist, or Neurologist

Characterized by the manifestation of a cluster of cognitive, behavioral, and physiological symptoms that cause loss of concentration and control.

Autistic and Other Development Disorders

Psychiatrist, Psychologist, or Neurologist

Characterized by deficits in developmental verbal and non-verbal communication.

Attention Deficit Hyperactivity Disorder or Attention Deficit Disorder (ADHD and ADD)

Psychiatrist, Psychologist, or Neurologist

Characterized by inattention, impulsivity, and hyperactivity with the inability to concentrate.

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Dementia

Psychiatrist, Psychologist, or Neurologist

- Alzheimer's
- Vascular
- Pick's
- Creutzfeldt-Jakob
- Huntington's
- Parkinson's
- HIV

Characterized by the inability to retain or learn new language or information.

Traumatic Brain Injury (TBI)

Psychiatrist, Psychologist, or Neurologist

Characterized by neurological and mental impairments with a wide variety of posttraumatic symptoms and signs. Sometimes a mental impairment may appear to improve immediately following TBI and then worsen, or, conversely, it may appear much worse initially but improve after a few months. Therefore, the mental findings immediately following TBI may not reflect the actual severity of mental impairment (s). The actual severity of a mental impairment may not become apparent until 6 months post-injury.

Brain Tumors – Primary or Metastatic

Neurologist, Neurosurgeon, Radiologist, or Oncologist

Characterized by neurological and mental impairments.

Note: Specified disorders may be due to brain damage, dysfunction, and physical disease. Disorders must be of the severity that they prevent the applicant from learning or demonstrating knowledge of English and/or civics.

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Attachment C

[(b)(2) or (b)(7)(E)]

7. AFM Transmittal Memoranda

The *AFM* Transmittal Memoranda button is revised by adding a new entry, in numerical order, to read:

AD 06-09 (05/10/2006)

**Chapter 72.2(d)(5) and
Appendix 72-13**

This memorandum revises **Chapter 72.2(d)(5)** and **Appendix 72-13** of the *Adjudicator's Field Manual (AFM)* regarding adjudications of N-648 medical certifications for disability exceptions