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June 20, 2023

Samantha Deshommès
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

Dear Chief Deshommès,

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 April 20, 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**

The ILRC notes with gratitude many of the changes made to Form N-400. Significantly, the **reduction in the length of the form** is a welcome change that will make the form more user-friendly, particularly for pro se applicants, as well as more efficient. This change will lead to more expeditious processing and a lighter burden on USCIS officers and applicants alike. In the same vein, many of the questions have been streamlined – e.g., address histories, etc. have been reduced to a box rather than a list with separate boxes for answers – which, again, make the form less intimidating for pro se applicants. Additionally, the **removal of the requirement for mailing addresses for interpreters and preparers** is a welcome change.

We are also appreciative of the **addition of another gender marker option** included on the form. In our previous comments, we encouraged USCIS to offer a gender marker other than M and F and are pleased to see an inclusive choice of “Another Gender Identity.”¹ We appreciate that the USCIS change goes even further the U.S. Department of State’s inclusion of an “X” gender marker.

We are appreciative that those applicants **who did not obtain LPR status through a marriage-based process must now provide only limited information about their spouse** and do not have to provide information about former spouses. We note that the breadth of information required in this section is still too broad both for those who did and did not obtain LPR status through marriage, but the reduction is still a positive step for which USCIS is to be commended.²

We appreciate the **streamlining of information about the applicant’s children**, specifically the removal of the requirement that the children’s full addresses be provided. This information was unnecessary, and its removal will ensure more adjudicatory efficiency. Similarly, the **removal of the separate section requesting information about the applicant’s parents** is a welcome change for the same efficiency reasons while also maintaining the information about potential acquisition or derivation on the form itself.

We commend the agency for making certain changes to the good moral character and criminal history sections. Specifically, we applaud the agency for the **removal of Question 9 on the current form asking about membership in any group** without exception. This question was over-broad and confusing for applicants and its removal is a welcome change that will ensure that USCIS is requesting only relevant information from applicants.

Another appreciated change is the **removal of Question 30.a on the current form asking if the applicant has ever been a habitual drunkard**. This phrase was vague and caused confusion for applicants. Similarly, the **removal of Question 5, “Have you EVER been declared legally incompetent or been confined to a mental institution,”** is a welcome change to remove an overbroad inquiry into someone’s mental health history.

¹ The ILRC requested this change specifically during the last open comment period for the N-400 and are gratified by its inclusion in the updated form. Our previous comment is available online at <https://www.ilrc.org/resources/comment-form-n-400-application-naturalization>.

² An applicant’s marital history is not relevant to an application for citizenship, particularly if that applicant did not apply for permanent residence on the basis of marriage to a U.S. citizen or LPR. For applicants whose permanent residence is based on marriage, these questions allow for re-adjudicating the validity of that marriage. This is redundant and a waste of resources as USCIS had the opportunity to assess the bona fides of the marriage at the time of I-485, Application to Register Permanent Residence or Adjust Status adjudication and, in some cases, again at the I-751, Petition to Remove Conditions on Residence adjudication. By including these questions again at the naturalization stage, USCIS is wasting agency resources by directing officers to search for marriage-based fraud, sometimes for the third time, even when there has been no indication of fraud.

Other positive changes include questions regarding an applicant's tax history which, on the proposed form, **require an applicant to disclose whether taxes are owed "currently" and "since becoming a lawful permanent resident."** The alteration allows for a more narrowly tailored inquiry into facts that could be negative discretionary factors for a good moral character analysis instead of the previously overbroad inquiry into someone's entire tax history.

These changes all reduce the breadth of inquiry in some way to solicit information necessary to adjudicate naturalization applications, streamlining the application process for applicants, representatives, and adjudicators and creating a more efficient and fair process for all.

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

The proposed Form N-400 appears to strike a balance between streamlining and providing clarity. 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. However, the inclusion on the form itself 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 4

- Question 2: USCIS should include an option for "multiracial" or "another race" in order to be more inclusive of the applicant's racial identity as 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.

Part 5

- The form should be amended to include "retired" as an option in addition to employed and unemployed. As it stands now, the only option for retired applicants is "unemployed" which may cause confusion and offense for older applicants who have worked for many years and do not equate retirement with unemployment. Adding this option for applicants is more inclusive and respectful of older applicants.

Part 9

- Question 2: This question and the accompanying instruction should be revised to reflect that non-citizen voter registration and voting in local elections has gained a foothold in various jurisdictions and continues to expand. The questions should match the updated language in the USCIS Policy Manual to make clear that “voting in a local election is not unlawful voting if the applicant is eligible to vote under the relevant law.”³ Failure to change this language and provide more clarification on both the form and instructions could create a chilling effect for LPRs who have lawfully voted in local elections. Further, this question could cause confusion for applicants and lead to incorrect or inconsistent responses, which in turn will lead to more agency resources being used to clarify. The form should allow for a clarification between unlawful voting and lawful voting.
- Question 22: 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.⁴ 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. Before and after this question on the proposed form are questions asking if the applicant understands and is willing to take the Oath of Allegiance (Oath). Additionally, the proposed instructions indicate that those who cannot take the Oath must complete Form N-648, Medical Certification for Disability Exception. The N-648 is intended for those who need a waiver of the English and Civics tests requirements of the naturalization process. There are different statutory provisions⁵ with different criteria for those who need an oath waiver and those who need a waiver of the English and Civics tests. A Form N-648 is not required to request an oath waiver, neither is it dependent upon a certain medical diagnosis, as it is for those who are seeking a waiver of the English and Civics tests.

Furthermore, these instructions further institutionalize a requirement for oath waivers that we argue is in violation of the statute. The requirement of a court-ordered representative or certain U.S. citizen relatives is an unnecessary barrier to naturalization for persons seeking oath waivers that was added to the USCIS Policy Manual. 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.⁶

The instructions and form need to make clear that these are separate waivers with separate requirements to avoid confusion and unnecessary filings of oath waivers by applicants.

³ 12 USCIS-PM 5.M(3).

⁴ “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>.

⁵ The disability waiver for English and Civics testing is found at INA § 312(b). The Oath waiver – added to the statute after the disability waiver is found at INA § 237.

⁶ See, *ILRC Advocacy Letter on Oath Waiver*, <https://www.ilrc.org/advanced-search?terms=oath>.

Instructions

- USCIS should consider providing more information about an applicant's potential eligibility for a fee waiver in the N-400 instructions. The proposed form gives detailed information about potential eligibility for fee reductions but does not provide the same level of detail for fee waivers. Adding more information about the eligibility for the fee waiver on the form instructions could encourage more eligible people to apply. The instructions should be revised in the following way:

You may be eligible for a fee waiver ~~under 8 CFR 103.7(c)~~, if:

- *You, your spouse, or the head of household living with you, are currently receiving a means-tested benefit.*
- *Your household income is at or below 150 percent of the Federal Poverty Guidelines at the time you file.*
- *You are currently experiencing financial hardship that prevents you from paying the filing fee, including unexpected medical bills or emergencies.*

If you believe you are eligible for a fee waiver, complete Form I-912, Request for Fee Waiver (or a written request) and submit it and any required evidence of your inability to pay the filing fee with this application. You can review the fee waiver guidance at www.uscis.gov/feewaiver.

III. 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 above, 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. Further, the requirement of disclosure of the applicant's spouse's

employer – as well as their place of birth and other immigration information – is irrelevant as to the applicant’s eligibility for naturalization.

IV. **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 preceding 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. 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 or crimes committed while under the age of 18 years old.”, 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 preceding Question 15 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.⁷ 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.

- Question 15 Chart: USCIS should revert back to the information requested on the current N-400. Specifically, requiring applicants to disclose the dates of offenses and convictions 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. Further, requiring a date of “conviction or guilty plea” is redundant when the applicant is also being asked for the date of crime or offense, disposition, and sentence. 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). Requiring this information is not only burdensome on applicants, but results in unnecessary RFEs for information that is no longer available from official avenues.
- 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 vague. 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 legal conduct from illegal 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 was legal in the state where and when the conduct occurred.”

V. **USCIS should withdraw the policy manual sections used to re-adjudicate underlying LPR applications for naturalization applicants.**

The N-400 contains many questions that aim to re-adjudicate 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 necessitate an onerous, 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.

Further, re-adjudicating the permanent residence application is a waste of agency resources. At the naturalization stage, USCIS has had the opportunity to adjudicate these issues – sometimes multiple times – and has already

⁷ 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.

engaged in a full analysis of any inadmissibility issues pre-dating the permanent residence application. By engaging in yet another full analysis re-covering time periods and questions that have already been asked, 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 on “extreme vetting” in the USCIS Policy Manual, specifically 12 USCIS-PM D.2(d) which directs USCIS officers “verify” the underlying lawful permanent residence (LPR) status in all naturalization cases, even where no question about eligibility is raised, in essence re-adjudicating an individual’s LPR status. This practices 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, which are often requested because of re-adjudication. 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 make such an inquiry voluntary, not mandatory, for USCIS officers.

VI. 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