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July 14, 2022

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; Extension, Without Change, of a Currently Approved Collection: Application for Naturalization; DHS Docket No. USCIS-2008-0025; OMB Control Number 1615-0052

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; Extension, Without Change, of a Currently Approved Collection: Application for Naturalization, published on May 16, 2022.

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 the 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. USCIS should revise the N-400 to reduce the length and streamline the information sought and adjudication processes.

We urge U.S. Citizenship and Immigration Services (USCIS)to revise and shorten the N-400 in line with previous versions of the form.[1] The current form at twenty pages is onerous for all parties involved. For applicants, a longer, more burdensome form presents a chilling effect on those Lawful Permanent Residents (LPR) who are eligible to naturalize but do not feel confident to file the long form themselves, do not have the resources to hire legal representation, or live outside the service area of pro bono or low bono legal services providers. For practitioners, particularly non-profit service providers, the longer form presents a more substantial burden in time and resources which reduces the numbers of naturalization clients an individual representative can assist. For USCIS, the longer form – coupled with a lengthy and unnecessary vetting of underlying applications – presents an unnecessary drain on agency resources and contributes to backlogs and long processing times.[2]

Revising, streamlining, and shortening the N-400 could have a profound impact on the eligible-to-naturalize population and the adjudicatory structure around it as well as helping USCIS to meet its obligations under President Biden's Executive Order on Restoring Faith in the Legal Immigration System[3] and the stated goals of the Interagency Strategy for Promoting Naturalization.[4] Making the form more user-friendly could encourage more pro se LPRs to engage with the naturalization process on their own. This would reduce the burden on practitioners – particularly non-profit providers – by allowing them to reserve resources for more complicated cases in addition to the lower burden of completing a shorter form generally. A shorter form would also be less of an adjudicatory burden for USCIS. Eliminating unnecessary questions and rescinding language in the USCIS policy manual that requires officers to re-adjudicate underlying, approved forms – in the case of the N-400, the application for lawful permanent residence – would reduce the burden on agency staff and would help to alleviate backlogs and processing times.

II. USCIS should maintain certain positive aspects of the N-400 and certain adjudicatory processes.

The ILRC has been encouraged to see changes to the N-400 designed to help applicants identify where they may qualify for exemptions or where an applicant does not need to submit an N-400. Specifically, we urge USCIS to maintain the following parts and questions of the N-400:

- Part 2, Question 13: This question lays out the parameters for exemptions from the English language test clearly for applicants. We urge USCIS to apply the same clarity to Question 12 above it – as well as the N-400 instructions – providing more information about what kind of disability or impairment would qualify for exceptions.

[1] The N-400 has undergone changes regularly over the years, but previous versions as late as 2008 were half the length of the current form and as short at four pages in the late 1980s.
[2] In recent meetings with stakeholders, USCIS has stated that the agency has over eight million pending cases, over five million of which are considered part of the backlog.
[3] Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/02/executive-order-restoring-faith-in-our-legal-immigration-systems-and-strengthening-integration-and-inclusion-efforts-for-new-americans/ .
[4] USCIS, Interagency Strategy for Promoting Naturalization, https://www.uscis.gov/sites/default/files/document/reports/Interagency_Strategy_for_Promoting_Naturalization_Final.pdf.

- Part 6, Information About Your Parents: This information can be used to assess acquisition and derivation of citizenship and can be useful to both applicants and adjudicators to identify those applicants who are already U.S. citizens.

We would also like to commend the agency on the practice of re-using biometrics and encourage the continuance and expansion of this practice wherever possible. Reusing biometrics increases agency efficiency and relieves applicants who do not have to make arrangements to miss work or find childcare to attend a biometrics appointment when their information is already on file. We applaud these measures and USCIS's efforts as a good use of resources and evidence of the agency's commitment to the promotion of naturalization.

III. Questions that require information that is not relevant to eligibility for naturalization should be altered or eliminated.

Part 10, Information About Your Marital History: Questions in Part 10 should be revised and shortened significantly. 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 serve to re-adjudicate 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.

For naturalization applications where the underlying permanent residence is not based on marriage, Part 10 should be eliminated entirely. An applicant's marital status and history are irrelevant to naturalization eligibility. For naturalization applicants where the underlying permanent residence is based on marriage, USCIS should eliminate the burdensome and irrelevant questions related to the applicant's spouse, prior spouses, and prior spouse of current spouse. Specifically, USCIS should eliminate the following questions:

- Question 4, Questions D, F, and G, Questions 5-7, Information About Current Spouse: These questions are irrelevant to any inquiry relating to naturalization. If the purpose of these questions is to ascertain if the applicant is still married to the spouse through which he or she adjusted status or received an immigrant visa, that goal can be accomplished through requesting the current spouse's name and the date of the marriage. If the applicant's spouse is different from the previous U.S. citizen or LPR spouse through which permanent residence was obtained, the form should direct the applicant to provide an addendum and/or USCIS can issue a Request for Evidence (RFE). USCIS should only collect additional information about an applicant's spouse if there is an indicator of irregularity or fraud, not as a matter of practice.
- Questions 8-9, Information about Your Prior Spouse and Your Current Spouse's Prior Spouse: As with the previous questions, USCIS should, as a matter of practice, collect only the minimum information for individuals other than the applicant, including the applicant's prior spouse and the applicant's current spouse's prior spouse. USCIS should limit the inquiry on prior spouses to name and date of marriage and can issue an RFE if there is an indicator of fraud, rather than collecting an invasive amount of information from all applicants.

In the same vein, USCIS should eliminate Part 11, Information About Your Children, unless a minor child will be deriving citizenship from the applicant parent or where a naturalization applicant intends to petition for a child

abroad. For all other instances, information about an applicant's children is not needed because in any subsequent petitions or applications, the parent-child relationship will be adjudicated there, rendering this information collection for the N-400 redundant. As such the disclosure of this information should be voluntary and the form and instructions should be revised to indicate that those applicants who will either petition for their children in the future or those who have LPR minor children in their custody who will derive citizenship as a result of the applicant's naturalization.

IV. Part 12 should be revised to match the reality for the current legal landscape and limit inquiries to the period between approval of LPR status and application for naturalization.

- Question 1: This question should be revised to reflect the language of the USCIS Policy Manual regarding false claim to U.S. citizenship.[5] The question should make it clear that the false claim must be knowing and with the intent to obtain a benefit. For example, the question should read: *Have you ever knowingly falsely claimed to be a U.S. Citizen in writing or in any other way in order to obtain a benefit for which U.S. citizenship was required?* [emphasis added].
- Questions 2-3: These questions 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." [6] Failure to change this language on both the form and instructions could create a chilling effect for LPRs who have lawfully voted in local elections. These questions could cause confusion for applicants and lead to incorrect or inconsistent responses, which in turn will lead to more agency resources used to clarify. The form should allow for a clarification between unlawful voting and lawful voting.
- Question 5: This question should be eliminated because is irrelevant to the applicant's eligibility for naturalization. If the applicant has a current disability or impairment that prevents taking a meaningful oath of naturalization, disclosure of such a condition is covered in the application in Part 2. A historical impairment that no longer affects an applicant's ability to take the English and civics exam or the oath of naturalization is not relevant to eligibility for naturalization. Further, this question creates a chilling effect for applicants who may have or have had mental health conditions and believe that their application for naturalization will not be granted because of that. This question only serves to further stigmatize applicants who have struggled with mental health conditions.
- Question 7: This question should be revised to cover the statutory period, rather than asking if an applicant "EVER" failed to pay taxes. An applicant's tax history should only be relevant for the statutory period – three or five years – and the question and instructions should be updated to reflect this.
- Questions 9-36: Generally, USCIS should eliminate questions that request applicants disclose information from their entire history. Part 12 of the N-400 asks a series of questions that require applicants to disclose if they have "EVER" engaged in a particular activity. These questions are present on the form I-485 asking the applicant if he or she has "EVER" engaged in the activity in question. As such, the presence of these questions on the N-400 is redundant. USCIS should revise the N-400 to replace "EVER" with "since being granted permanent residence" or "since becoming a Lawful Permanent Resident" and restrict the inquiry on these matters to the period between the approval of permanent residence and application for naturalization.

[5] 12 USCIS-PM 5.M (1).
[6] 12 USCIS-PM 5.M(3).

- Question 22: This question should be eliminated entirely. The question requires applicants to draw a legal conclusion in assessing whether they have committed a crime for which they were not arrested. The question is vague and disadvantages applicants – particularly pro se applicants – who are not equipped to draw a conclusion that any particular activity rises to the level of chargeable or arrestable activity. Further, the chances that an applicant will erroneously answer in the affirmative are high and will take an adjudicator additional time to clarify and draw the legal conclusion for the application and heightens the risk of erroneous RFEs and denials.
- Questions 22-29: For crime-related questions in Part 12, the form and instructions should include language that juvenile adjudications are not considered convictions for immigration purposes and should not be included in the answers to Questions 22-29. Additionally, the form should specify that speeding tickets and traffic offenses should not be included in the applicant's answers to Questions 22-29.
- Question 44.B: This question should be eliminated. An applicant's Selective Service information is not necessary and status information letter (requested in Question 44.C.2) are not necessary regardless of the answer to Question 44.A. The applicant's addendum with an explanation should suffice for USCIS's purposes. Obtaining a Selective Service status information letter is an additional and unnecessary barrier for applicants and representatives and has the potential to discourage applicants, particularly pro se applicants, from completing their naturalization process.

V. Questions that require unnecessary contact information should be eliminated

The current N-400 requires applicants to include their mailing and physical addresses, phone numbers and email address. It also requires interpreters and preparers to provide their contact information. USCIS should revise the N-400 to eliminate these questions, specifically:

- Part 4, Information to Contact You: This section should be eliminated entirely. USCIS does not contact applicants via telephone and contacts applicants via email when they file their applications online through a USCIS Online Account, where an email address is required for filing. The collection of this information is redundant and unnecessary and should be eliminated.
- Part 14, Interpreter's Contact Information: The requirement for the interpreter's mailing address, phone number and email address should be eliminated. USCIS does not provide case updates to the interpreter on any case, negating the need for contact information.
- Part 15, Preparer's Contact Information: The requirement for the preparer's mailing address, phone number and email address should be eliminated. USCIS does not provide case updates to the preparer if that preparer is not a representative with a G-28 on file. Where the preparer is the applicant's representative, Question 7 specifically states that an attorney or representative must file a G-28 if representation extends further than acting as preparer on the N-400. The G-28 requires the same contact information for the representative that is required in this part, and it is redundant to collect it again. Where the preparer is not the representative, there is no need for USCIS to collect and maintain the contact information for the preparer as there is no situation where USCIS will need to contact the preparer.

VI. USCIS should revise the N-400 and the Instructions to provide clarity on name change, to provide for non-binary gender markers and to clarify the list of required evidence.

- Part 2, Question 4, Name Change: USCIS should revise the instructions for Part 2, Item 4 to clarify that applicants who wish to change their name as part of the naturalization process may only do so if they are

taking the naturalization oath in court.[7] As part of this clarification, USCIS should indicate that naturalization by court is not available in all jurisdictions and should list the jurisdictions where it is available. Further, the instructions should indicate that an applicant who wishes to change his or her name for whom naturalization by a court is not available, must change his or her name in accordance with state laws.[8]

- Part 2, Question 7, Gender: USCIS should alter the form and instructions to provide an alternative gender to male and female – the only options currently. Allowing for other options in recognition of non-binary applications will bring naturalization in line with other application procedures of the federal and state governments. In April 2022, the U.S. State Department altered passport operations to allow passport holders to select "X" as a gender marker.[9] Further, 22 states and the District of Columbia allow residents to select a gender neutral "X" marker on their driver's licenses.[10] USCIS should follow suit and allow applicants for naturalization to choose another option for gender.
- Required Evidence: A long list of documentation is onerous and discourages applicants from completing the naturalization process. USCIS should revise the list of required evidence to clarify which evidence that is mandatory for all applicants and which evidence is necessary only for certain applicants. For example, items four and five in the list of the required evidence in the N-400 instructions requires evidence of marriage and termination of prior marriages, which should not be required for applicants who did not adjust status or immigrate on the basis of marriage.

VII. 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 – the long form puts a strain on resources and creates an unnecessary burden. 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 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

[7] *See* 8 C.F.R. § 337.4.
[8] 12 USCIS-PM 3.B(3).
[9] *X Gender Marker Available on U.S. Passports Starting April 11*, U.S. Department of State Press Release, March 31, 2022, https://www.state.gov/x-gender-marker-available-on-u-s-passports-starting-april-11/.
[10] *Here are the states where you can (and cannot) change your gender designation on official documents*, The Hill, May 31, 2022, https://thehill.com/changing-america/respect/diversity-inclusion/3507206-here-are-the-states-where-you-can-and-cannot-change-your-gender-designation-on-official-documents/.

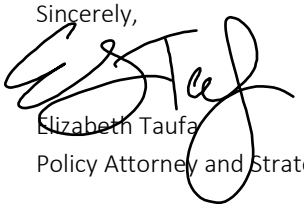
the past, which are often requested as a result of re-adjudication. For these reasons, we ask USCIS to withdraw 12 USCIS-PM D.2(d) in its entirety and replace language in the Policy Manual to make it voluntary, not mandatory, for officers to address issues in underlying applications.

VIII. Conclusion

We urge USCIS to consider these suggestions to revise Form N-400. Returning the form to a simpler version will benefit all applicants and practitioners but will also benefit USCIS by streamlining the process for adjudication and will aid in addressing the current and future backlogs. A streamlined form will encourage more eligible LPRs to apply for naturalization and will allow practitioners and non-profit service providers more time and resources to assist the eligible-to-naturalize population. These measures will aid in the agency's stated goal of promoting naturalization.

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

Sincerely,



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