



Assisting Naturalization Applicants Who Have Disabilities by Using Form N-648

Understanding the Disability Exception

Practice Advisory

By Melissa Rodgers

Introduction¹

This is the first of two practice advisories addressing how to help naturalization applicants with disabilities, using Form N-648. This advisory describes the criteria for the disability exception. A separate practice advisory addresses how to complete Form N-648, as well as the procedure for submitting the form.

The eligibility requirements for naturalization include demonstrating an understanding of the English language (the “English” requirement) and a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States (the “civics” requirement).² Some naturalization applicants are exempt from the English requirement on the basis of their age and how long they have had their green card.³ This practice advisory focuses on exceptions to the English and civics requirements on the basis of disability, and describes the process for obtaining an exception using Form N-648, Medical Certification for Disability Exceptions.

Advocates sometimes refer to the Disability Exception as a “Medical Exception,” “Disability Exemption,” or “Disability Waiver.” This practice advisory uses the term “**Disability Exception.**”

Filing a successful N-648 is no simple task. As one advocate noted, “Prepare the N-648 with the mindset that USCIS will look for any reason—no matter how insignificant—to deny it.”

As of the date of this practice advisory, Legal Services NYC-Bronx Legal Services filed a lawsuit in the Southern District of New York, alleging numerous violations by USCIS of rules and policy related to the adjudication of N-648 applications.⁴ The complaint describes USCIS officers routinely substituting their own judgment for the judgment of medical professionals, denying applications for arbitrary reasons, and failing to provide meaningful notice describing the defects of a denied N-648. The ILRC will monitor the outcome of the litigation and encourages advocates to do so as well. Advocates exploring litigation may want to contact the attorneys in the case for further information.

Disability Exception to the English and Civics Requirements versus Reasonable Accommodation

Naturalization applicants with disabilities may qualify for an *accommodation* to the method of taking the English

¹ The ILRC thanks Asian Americans Advancing Justice-Los Angeles, Asian Counseling and Referral Service, Asian Law Alliance, CASA, Catholic Charities-Diocese of Arlington-Hogar Immigrant Services, the Michigan Immigrant Rights Project, and the Northwest Immigrant Rights Project, for providing many examples of good practices in completing N-648 forms. The ILRC also thanks Legal Services NYC-Bronx for sharing the *De Dandrade* complaint.

² 8 CFR §§ 312.1 and 312.2.

³ INA § 312. These exempt applicants are not required to speak English or read or write in English. Applicants exempt from demonstrating a basic understanding of English take the civics exam in their native

language or a language of their choice. See USCIS Policy Manual, Volume 12: Citizenship & Naturalization, Part E: English and Civics Testing and Exceptions, Chapter 2: English and Civics Testing, available at www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartE-Chapter2.html (last visited May 2018). Cited hereinafter as 12 USCIS-PM E.2. See Chapter 7 of the ILRC’s manual entitled *Naturalization and U.S. Citizenship, The Essential Legal Guide*, for more information about these exemptions.

⁴ The lawsuit, *De Dandrade et al v. United States Department of Homeland Security et al*, was filed December 7, 2017 (case number 1:17-cv-09604).

and civics exams, or they may qualify for an *exception* to the requirement that they demonstrate English literacy and/or knowledge of US history and government. There is a significant difference between requesting an accommodation and requesting a disability exception. Applicants who qualify for an accommodation must still pass the English and civics exams whereas the disability exception exempts applicants from taking the exams. Advocates who are working with a naturalization applicant should be clear on whether the applicant would be able to pass the English and civics exams with the appropriate accommodations, or whether the applicant has a disability that prevents them from demonstrating an understanding of English and civics, even with an accommodation.

Reasonable accommodations for naturalization purposes include, but are not limited to, sign language interpreters, extended time for testing, and off-site testing.⁵ Accommodations are available for the naturalization interview, the English and civics exams, and the oath of allegiance. For an in-depth analysis of the difference between accommodations and disability exceptions, and a discussion of how to secure a reasonable accommodation, please see Chapter 7 of the ILRC's manual entitled *Naturalization and U.S. Citizenship, The Essential Legal Guide*.

In addition, an approved disability exception applies only to the English and civics requirements for naturalization. The N-648 does not waive other naturalization requirements or the interview itself. If the applicant's disability also prevents them from understanding the Oath of Allegiance, they will require an oath waiver.⁶

Practice Tip: Advocates working with applicants who have severe disabilities and whose condition may worsen to the point where by the time of the naturalization interview the applicant may require not just a waiver of the English and civics exam, but also possibly an oath waiver, should consider this possibility in advance. For example if an applicant has Alzheimer's, and the prognosis suggests rapid progression of the disease, it may make sense to begin working with the medical provider before the interview to prepare a letter in support the oath waiver application, especially given current processing times for N-400s.

⁵ See USCIS Policy Manual, Volume 12: Citizenship & Naturalization, Part C: Accommodations, Chapter 3: Types of Accommodations, available at www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartC-Chapter3.html (last visited May 2018). Cited hereinafter as 12 USCIS-PM C.3.

⁶ Also note that when an applicant cannot complete any part of the naturalization examination because of a severe physical or developmental disability or mental impairment, a legal guardian,

Requirements for the Disability Exception

Disability exceptions require naturalization applicants to show that their medical conditions prevent them from complying with the English and civics requirements, even with reasonable accommodations, "because of" a "medically determinable" physical or developmental "disability" or mental "impairment" that "has lasted or is expected to last at least 12 months."⁷ This practice advisory covers each of the requirements in turn, focusing on practice pointers. For a more in-depth legal analysis of the requirements, please see Chapter 7 of the ILRC's manual entitled *Naturalization and U.S. Citizenship, The Essential Legal Guide*.

When deciding whether it seems likely that a naturalization applicant will qualify for a disability exception advocates should analyze each of the requirements separately and ensure they are able to provide evidence for each of them.

First Requirement: The applicant has a physical, developmental, or mental impairment, or combination of impairments.

Although the regulation uses the terms "physical or mental impairment," the statutory language includes developmental disabilities.⁸ USCIS does not provide a list of disabilities or impairments that automatically qualify for the exception. The regulations aim for consistency with the way other federal agencies, such as the Social Security Administration, evaluate disability. Applicants are evaluated for eligibility for a waiver on a case-by-case basis.

Practice Tip: Although the Social Security Administration's regulations do not control the decisions of USCIS, Social Security materials, such as the "Blue Book" for medical professionals, can be a good source of examples and information. The Blue Book is available at <https://www.ssa.gov/disability/professionals/bluebook/general-info.htm>.

Physical impairments are general medical conditions, such as diabetes, cancer, stroke, heart disease, chronic pain, blindness, deafness, and others. **Developmental impairments** are conditions that began during the developmental period before adulthood and generally last

surrogate, or an eligible designated representative can complete the entire naturalization process for the applicant, including the oath.

⁷ INA § 312(b)(1); 8 CFR §§ 312.1(b)(3) and 312.2(b). See USCIS Policy Manual, Volume 12: Citizenship & Naturalization, Part E: English and Civics Testing and Exceptions, Chapter 3: Medical Disability Exception, available at www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartE-Chapter3.html (last visited May 2018). Cited hereinafter as 12 USCIS-PM E.3.

⁸ INA § 312(b)(1); 8 CFR §§ 312.1(b)(3) and 312.2(b)(1).

throughout the person's life, such as cerebral palsy, autism, Down syndrome, and others. Many developmental disabilities affect learning. **Mental impairments** affect a person's ability to reason or think clearly. These include Alzheimer's disease, dementia, post-traumatic stress disorder, depression, schizophrenia, bipolar disorder, panic disorder, and others. In addition, a **combination of impairments** that, considered together, create a severe impairment, may also allow an applicant to qualify for the disability exception.

***Practice Tip:** Even though the regulations only use the "combination of impairments" language in the section dealing with the waiver of the English requirement, there is no legal basis for it not to apply to the civics requirement as well. In USCIS memoranda, the "combination of impairments" language applies to exceptions to both the English and civics requirements.⁹*

***Practice Tip:** Some advocates recommend that the medical professional identify the strongest diagnosis and focus on it, rather than include diagnoses for several impairments. One advocate notes, "The more included, the more potential to find an error." However, if the applicant cannot take the test due a combination of impairments, each of which would be insufficient grounds on its own, then the medical professional will need to make a strong case about how the impairments, considered together, amount to a severe impairment sufficient to support the N-648 application.*

Second Requirement: The impairment(s) are "medically determinable."

A *medically determinable* disability or impairment is a condition that results from anatomical, physiological, or psychological abnormalities *and* can be shown using acceptable clinical or laboratory techniques.¹⁰ Being illiterate, or being at an advanced age, without other medical factors, is not sufficient to qualify for a disability exception.

***Practice Tip:** Old age, poor memory (without a medical diagnosis), and illiteracy are not impairments that meet the criteria for a disability exception. USCIS will reject an N-648 based solely on one or more of these factors. In fact, mentioning non-qualifying factors on the N-648 may undermine the application. Medical professionals may note an applicant's educational level on the N-648 when they are describing the applicant's impairment or the nexus. Including the educational level in a disability assessment is a common practice for other disability*

evaluations (for example, the Social Security Administration considers factors such as age and education in the disability evaluation). On the N-648, however, information about the educational level could backfire on the applicant. For example, in the lawsuit filed by Legal Services NYC (see footnote 4), plaintiff Obdulia Ruiz was told that her N-648 would have been denied because it mentioned her 5th grade level of education.

There is no specific list of tests that USCIS will accept. However, medical professionals must explain in detail how they used appropriate techniques to establish the impairment including the test they used, the results of the test, and the medical provider's conclusion drawn from the test results.

Form N-648 also requires the diagnosis itself. For mental impairments, doctors must provide a DSM descriptor and/or ICD code, or an explanation of why the code cannot be provided. The "DSM" means the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association (APA) and current in its fifth edition (DSM-5). For diagnostic purposes, physicians use diagnosis codes from the International Statistical Classification of Diseases and Related Health Problems, published by the World Health Organization, and usually called the International Classification of Diseases, or ICD. The current edition is ICD-10. The DSM-5 does not have its own diagnostic codes but rather directs to ICD codes, based on the DSM diagnosis.¹¹

***Example:** The DSM-5 code for the diagnosis of "major neurocognitive disorder due to Alzheimer's disease" is the ICD-10 code, G30, with additional sub-coding for more specificity. For example, "G30.9 F02-80," which means major neurocognitive disorder due to Alzheimer's disease (G30.9), with dementia without behavioral disturbance (F02-80).*

***Practice Tip:** If an applicant describes symptoms, such as pain, it is important to tie these symptoms to an underlying medically determinable physical or mental impairment, even if the symptoms are the reason the applicant cannot fulfill the English and civics requirements.*

Third Requirement: The disability or impairment(s) have lasted or are expected to last at least 12 months.

Temporary disabilities of less than 12 months do not qualify an applicant for the disability exception. The applicant must have a disability that has lasted or is

⁹ 8 CFR § 312.1(b)(3) and Supplementary Information to 8 CFR § 312, 62 FR 12915, 12917 (Mar. 19, 1997).

¹⁰ See 8 CFR § 312.1(b)(3) and 8 CFR 312.2(b).

¹¹ In other words, the DSM is not a coding system. The codes in the DSM are ICD codes, with descriptor matched to the codes.

expected to last for a continuous period of at least 12 months.¹²

Practice Tip: Applicants do not have to wait until they have had the disability for 12 months before they can be granted a disability exception, if their doctor states that the disability is expected to last at least 12 months.

Fourth Requirement: The applicant is unable to meet the English and/or civics requirement because of the impairment(s).

The applicant must show that, because of the disability, they are unable to demonstrate the required English or civics knowledge, or are unable to participate in the testing procedures (even with a reasonable accommodation).¹³ One of the greatest challenges that advocates encounter when working with medical professionals to establish an applicant's eligibility for the disability exception is showing this nexus, or causal connection, between the applicant's disability and their inability to meet the English and/or civics requirements. The doctor completing the N-648 can do this by including significant detail about the applicant's symptoms and explaining how these relate to the applicant's ability to learn or demonstrate knowledge of English and/or civics.

Practice Tip: The applicant must show specifically how their disability interferes with meeting each or both of the English and civics requirements. Advocates submit a single form, Form N-648, addressing both the nexus between the impairment and the applicant's inability to meet the English requirement and/or the nexus between the impairment and the applicant's inability to meet the civics requirement. Obviously, applicants who speak English may only be seeking an exception to the civics test. An advocate working with an applicant who is seeking a disability exception for the English exam only will have to work closely with the doctor completing the N-648 to address why the applicant has sufficient capacity to learn civics but not English.

Example: Angela Viellechner suffered a stroke last year. Her stroke caused significant cerebral infarction (death of brain tissue) and has left her with severe and irreversible neurological damage, as reflected in the MRI scan performed on 02/25/17 and confirmed by x-ray with angiogram on 03/05/17. Because of the widespread damage to the brain tissue, she suffers markedly decreased cerebral function and is incapable of remembering basic information, articulating, or learning. The prognosis provides no chance of recovery. Because of Angela's condition, she is unable to learn a new language or U.S. history and government."

In the above example, the medical doctor has identified the applicant's medical condition: "stroke causing significant cerebral infarction." The doctor also explained the impact of the medical condition on the person: "widespread damage to brain tissue." They then explained the symptoms of the medical condition as being "incapable of remembering, articulating, or learning." The doctor concluded that the medical condition prevented the person from meeting the testing requirements. The doctor cited the diagnostic tests used, "MRI and x-ray with angiogram" and concluded that the disability would last for at least 12 months, "the prognosis provides no chance of recovery." The doctor must also check the box on the N-648 indicating that the impairment is likely to last at least 12 months (See discussion above—disability or impairment lasting at least 12 months).

Practice Tip: Remember that being illiterate, or merely being at an advanced age, is not a medically determinable impairment and therefore not a valid ground for the disability exception. Advocates who have extensive experience with N-648 applications have concluded that USCIS is likely to use references to the applicant's literacy or age against them. One organization provides line-by-line instructions to medical professionals in very straightforward terms, noting explicitly not to include information about the applicant that is extraneous to the specific criteria on the N-648. For the nexus question (question 10 on the current version of the N-648), the organization tells medical providers to address how the impairment prevents the applicant from learning English and civics, focusing on factors such as attention, concentration, memory, the ability to learn new material, etc. The medical provider should focus on answering the questions and avoid including detail about how the applicant functions in their daily life. In particular, it is a best practice to avoid comments about the applicant's financial situation, socioeconomic status, or educational level, as these may draw the USCIS officer's attention to irrelevant issues.

Applicants with mental health conditions that exist on a spectrum of severity, such as depression, must establish that their specific diagnosis interferes with their ability to learn new information.

Practice Tip: Advocates warn of the risk that a USCIS officer may think, "I have depression and I can take this test." A strong nexus, showing how the impairment interferes with the applicant's ability to learn, is especially important in cases where the USCIS officer could discount the severity of the impairment. It is equally important that the medical professional completing the form make the

¹² 8 CFR §§ 312.1(b)(3) and 312.2(b)(1).

¹³ 8 CFR §§ 312.1(b)(3) and 312.2(b)(1).

case for the applicant's inability to meet the English and civics requirements due to the impairment, rather than suggest it would be difficult (but not impossible) for them to do so.

Example: Aisha Khan suffers from depression and post-traumatic stress disorder (PTSD). **The initial, rejected N-648 stated:** "The patient suffers from depression with post-traumatic stress disorder. Her condition makes concentration and memory retention very difficult. She scored very low on the mini mental state examination (MMSE) with a particularly low score on memory and concentration. It is my professional opinion that her condition makes learning English and U.S. history and civics difficult." **The approved N-648 stated:** "The patient has been treated in our clinic since May 2017 and suffers from major depressive disorder, recurrent severe without psychotic features (DSM-5 F33.2) and post-traumatic stress disorder (DSM-5 F43.10). Although she is currently taking medication to control anxiety and depression, severe symptoms continue. These symptoms include chronic unwelcome and intrusive thoughts which create severe anxiety, fear, and worry, and constantly disrupt her thought process. Medication has been only partially successful in alleviating these conditions. Even with medication, she cannot effectively organize her thinking, focus her attention for any significant period of time, plan for the future, or think abstractly. As a result of her condition, her memory is severely impaired, as measured by her MMSE results (8 of 30). After a ten-minute delay, she was able to recall only 1/3 of objects shown to her. This level of memory impairment, coupled with her

disorganized and unfocused thinking, renders her unable to acquire a useful amount of English language skills or knowledge of U.S. history and government."

For more examples of successful N-648 descriptions for specific medical conditions, please see Chapter 7 of the ILRC's manual entitled *Naturalization and U.S. Citizenship, The Essential Legal Guide*. The Guide includes examples related to dementia, HIV-Associated Neurocognitive Disorder (HAND), mental retardation, schizophrenia, bipolar disorder, and depression.

Fifth Requirement: The loss of cognitive skills is not based on the direct effects of illegal drug use.

Advocates working with applicants who have a history of illegal drug use will need to pay attention to this additional, fifth requirement. If the loss of cognitive skills is due to the direct effect of the applicant's illegal use of drugs, USCIS will not approve the disability waiver. If, however, the applicant has an additional impairment that interferes with their ability to learn English and/or civics and that is not related to the drug abuse, USCIS can grant the waiver.¹⁴

To learn about the process for applying for the disability exception, including how to complete and submit Form N-648, please read the second practice advisory in this series.

¹⁴ 8 CFR §§ 312.1(b)(3) and 312.2(b)(1).

Resources

USCIS Resources

- **USCIS Form N-648 and Instructions:** <https://www.uscis.gov/n-648>
- **USCIS Instructional Video:** <https://www.youtube.com/watch?v=KnwreOU4YbQ>.
- **USCIS Training:** Medical Certification for Disability Exceptions Form N-648 [Training for External Stakeholders](#)

Materials

- **Chapter 7 of ILRC's Manual,** [Naturalization and U.S. Citizenship: The Essential Legal Guide](#)
- **New Americans Campaign Blog,** [From New Americans](#). May 2015 blog post includes a five-minute video by the Michigan Immigrant Rights Center (MIRC) to help medical professionals who are evaluating naturalization applicants for the disability exception. The blog post also includes links to a USCIS presentation and instructional video. Read more at <https://newamericascampaign.org/disability-waivers-101/>. Follow the link to the [Citizenship and Disability Video for Medical Providers Completing the N-648](#).
- **New Americans Campaign Ning** [Materials](#) providing tips on the N-648:
 - [N-648 Tips for Success](#) (Asian Americans Advancing Justice-LA)
 - [N-648 Instructions for Medical Professionals](#) (Asian Americans Advancing Justice-LA)
 - [Tips for Physicians Completing Form N-648](#) (MIRC)
- **University of Washington's Harbor Medical Center** has an ethnic medicine website (EthnoMed) that contains information for physicians who work with immigrants and refugees, including information about helping immigrants who are applying for naturalization with the N-648 at https://ethnomed.org/cross-cultural-health/immigration/copy_of_for-providers. (Note, however, that the specific materials on the site may not all be up to date; for example, examples of diagnoses may refer to the DSM-IV rather than the current DSM-5.)
- **New Americans Campaign Best Practices Toolkit** on [Serving a Diversity of Applicants](#)

Trainings

- **Using the N-648 to Help Individuals with Disabilities Naturalize** (recorded webinar): <https://www.ilrc.org/recordings>.
- **Pro Bono Training Institute**, online training module covering the N-648 (California CLE available): <http://pbtraining.org/all-courses/naturalization/>.



San Francisco

1663 Mission Street, Suite 602
San Francisco, CA 94103
t: 415.255.9499 f: 415.255.9792

ilrc@ilrc.org www.ilrc.org

Washington D.C.

1016 16th Street, NW, Suite 100
Washington, DC 20036
t: 202.777.8999 f: 202.293.2849

About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.