

## A STEP BY STEP GUIDE TO COMPLETING THE NEW NATURALIZATION APPLICATION

### IMMIGRANT LEGAL RESOURCE CENTER

On February 4, 2014 the United States Citizenship and Immigration Service (“USCIS” or “CIS”) introduced a new N-400 (Rev. 9/13/13), Application for Naturalization form. Beginning May 5, 2014 all naturalization applicants must use the new form only. The new naturalization form is now 21 pages long, which is more than twice as long as the old form. Thus, the new form will take significantly longer for applicants and their representatives to complete. It includes more questions and a two-dimensional bar code at the bottom of each page that should help CIS process the application more efficiently. To help attorneys, BIA accredited representatives, and others learn how to complete this new form, we have developed a step by step guide.

The first step in applying for naturalization is completing the application with the client. The application form is called an “Application for Naturalization” or Form N-400. The form must be completed by hand in black ink or electronically, using a computer. It may be helpful to translate the application into your client’s native language and have her complete her own draft of the application.<sup>1</sup> A client who has difficulty reading or writing may have a relative or friend assist her. Afterwards, you and your client can review the draft together and fill out the form that goes to CIS. There will be at least a few blanks that the applicant will not fill out because she does not have any relevant information. In those blanks that do not apply to her, she should write N/A (not applicable). But where the answer to a question is “none,” she should write “none” in the blank; for example, if she does not belong to any organizations, she should write “none” in Part 11, Item 9.

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**PRACTICE TIP:** The Form N-400 is available online at [www.uscis.gov/n-400](http://www.uscis.gov/n-400), and copies of the form are accepted.<sup>2</sup> Please note that any agency that makes blank N-400 forms available to the public must ensure that potential applicants learn about the naturalization requirements and risks of applying. Organizations should make sure that “red flag” issues are known to those taking the form. One way to do this is by providing the forms in a class or other workshop that discusses these issues. Alternatively, a form that describes the requirements and red flags (See the ILRC’s manual entitled, *Naturalization and Citizenship, The Essential Legal Guide*) can be

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<sup>1</sup> Translations of the new N-400 in Spanish, Chinese and Vietnamese are available on the ILRC website at <http://ilrc.org/resources/n-400-translations-in-spanish-vietnamese-chinese>.

<sup>2</sup> 8 C.F.R. § 299.4. The forms must use black ink that will not fade or “feather” within 20 years and conform to the officially printed forms currently in use with respect to size, wording and language, arrangement, style and size of type and paper specifications. Every part of the official form must be copied onto the photocopy or laser printed form. Computer generated forms are accepted so long as they comply with the requirements specified in 8 CFR § 299.4.

attached to the N-400. Potential applicants should be instructed to read both sides of the red flags form, and mark with an “X” any of the red flag issues that apply to them, and discuss them with someone from your agency or another immigration expert.

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Although the N-400 form is among the most straightforward of immigration applications, several points can cause confusion for applicants. Advocates and their clients should read the accompanying instructions before completing the form. Also, it is important for applicants and representatives to understand that while several changes have been made to the N-400 form, the requirements for naturalization have not changed. CIS has published a great deal of information on the naturalization requirements including recently issued filing tips that provide additional information about the naturalization form and new questions.<sup>3</sup> You can access this information on the CIS website at <http://www.uscis.gov/us-citizenship>.

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**NOTE:** CIS has created the *USCIS Policy Manual*, which is the agency’s centralized online repository for CIS’s immigration policies. According to CIS, this policy manual will ultimately replace the Adjudicator’s Field Manual (AFM),<sup>4</sup> the CIS Immigration Policy Memoranda site, and other policy repositories. The multi-volume manual covers different areas of immigration benefits administered by the agency, including citizenship and naturalization (see Volume 12). Advocates and applicants are encouraged to review the manual<sup>5</sup> for detailed information on CIS’s policy regarding naturalization.

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The new Form N-400 is divided into 17 parts. Below is a review of some of the sections of the N-400 application, including possible problem areas for some applicants. A sample Form N-400 with annotations, or pointers, to help answer the questions on the form is available on the ILRC website at <http://www.ilrc.org/resources/annotated-n-400>.

At the top of each page of the application, the applicant needs to write his or her A-Number.<sup>6</sup> This helps CIS in case the application pages are separated. The updated application

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<sup>3</sup> USCIS Tips for Filing Form N-400, Application For Naturalization (Rev. 9/13/13), May 5, 2014, (hereinafter “N-400 Filing Tips (May 5, 2014)”) available at <http://www.uscis.gov/forms/tips-filing-form-n-400-application-naturalization-rev-91313>.

<sup>4</sup> Per a memorandum issued by USCIS on January 7, 2013, the “guidance, contained in Volume 12 of the Policy Manual, replaces the naturalization and citizenship guidance found in Chapters 71, 72, 73, 74, 75 and 76 of the Adjudicator’s Field Manual (AFM), the AFM related appendices, and policy memoranda. Where conflicts exist, this guidance is controlling”. See USCIS Policy Alert “Comprehensive Citizenship and Naturalization Policy Guidance” (January 7, 2013), available at <http://www.uscis.gov/policymanual/Updates/20130107-CitizenshipAndNaturalization.pdf#>.

<sup>5</sup> USCIS Policy Manual, Volume 12: Citizenship & Naturalization is available at <http://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12.html>

<sup>6</sup> If the applicant does not have an A-Number, for example, because she or he is a U.S. National, such as

also includes a barcode at the bottom of each page.<sup>7</sup> For applicants completing the form electronically, CIS will use the barcode to extract the information entered into the form. Applicants should be careful not to damage the barcode area (e.g., puncture, staple, spill on, write on, etc.) because this could affect CIS' ability to timely process the form. Applicants and representatives, who intend to fill out the form electronically, should download the most recent version of Adobe Acrobat onto their computer, and download and complete the PDF form of the Naturalization Application.<sup>8</sup>

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**NOTE:** “Hybrid forms”—forms that have both electronically inputted and handwritten information—are accepted by CIS. However, the CIS recommends applicants use one method or the other. Where the field or dropdown menu does not allow applicants to write-in or indicate the most appropriate answer, the applicant may leave that section blank on the computer, and handwrite her answer on the form after printing it. If an applicant has filled out the form electronically, the CIS suggests the applicant not make changes or try to correct any errors by crossing out information entered electronically and entering new information by hand, because the new information will not be captured in the barcode, unless inputted electronically. Instead, the applicant should make the correction on the computer and re-print that page of the form.

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The revised N-400 form instructions require that applicants submitting additional information, such as information that does not fit within the space given on the form or an explanation to a question, do so on additional sheet(s) of paper. On all additional pages, the applicant must provide on the top of each page his or her A-Number (if applicable), the date, the part and item number to which the information refers, and the applicant's signature.<sup>9</sup> This is different from the old version, which did not require the date or applicant's signature.

### **Part 1: “Information About Your Eligibility”**

This part asks the applicant to check the basis upon which she is applying for naturalization. It is very important that she check the correct category. During the interview, the CIS adjudicator will ask her questions to make sure that she qualifies on the basis she checked.<sup>10</sup>

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those from American Samoa and Swains Islands, the applicant may leave the A-Number sections blank.

<sup>7</sup> The CIS has clarified that it will also accept the new N-400 forms (Rev. 9/13/13) that do not have the barcode on the bottom of the page. *See* N-400 Filing Tips (May 5, 2014).

<sup>8</sup> Some web browsers are not compatible with the new form and will not display the barcode. In our experience, Internet Explorer works well, but advocates should be prepared to try different web browsers to identify what works best for them. *See also* N-400 Filing Tips (May 5, 2014).

<sup>9</sup> Instructions for Application for Naturalization, page 2, available at <http://www.uscis.gov/sites/default/files/files/form/n-400instr.pdf>.

<sup>10</sup> If the applicant checks items 2, 3, 4, or 5 she will have to provide CIS with additional documentation to prove she is eligible:

Item 2: An application based upon marriage to a U.S. citizen for 3 years (INA § 319 -- allows the applicant to file after just three years of lawful permanent resident status) requires proof that the marriage and the U.S. citizen spouse's citizenship are valid. An applicant must provide the naturalization or U.S. birth certificate of

## **Part 2: “Information About You”**

The N-400 requires very specific information about the client’s names. Item 1 asks for the applicant’s current legal name. This means the name that is on the applicant’s birth certificate or the name the applicant has legally adopted through a legal name change or through marriage. If the applicant has married or changed names since becoming a permanent resident, her legal name might be different than her name as it appears on her green card or birth certificate.

Item 2 asks for the name exactly as it appears on the applicant’s green card, even if it is misspelled (or has changed). Often, a middle name does not appear on the green card, but it is a part of the applicant’s legal name.

Item 3 asks for other names that the applicant has used; for example, an applicant should write her maiden name here if she uses her married name now.

Item 4 provides a space for the applicant to write the name that he or she would like to use in the future if it is different from his or her present legal name. When an applicant naturalizes she has the opportunity to legally change her name through the federal court if, and only if, the federal district court conducts the oath ceremonies in the CIS district in which the applicant is applying for naturalization. In many places, CIS conducts administrative ceremonies instead of court ceremonies. You must check to see if the federal district court in your CIS district still conducts the oath ceremonies, if not, the applicant cannot change her name as part of the naturalization process. Also, CIS cannot process name change requests for members of the military or spouses who are naturalizing overseas. For information on how to change an applicant’s name in situations where he or she cannot change it through the naturalization process, please refer to the rules in the state in which the applicant resides.

Item 5 provides a space to write the applicant’s social security number. It is important that applicants only note the valid social security number that was issued to the applicant. Applicants should *not* note any fake social security numbers they may have used over the years.

Item 7 asks for the date the applicant became a permanent resident. The date the applicant became a lawful permanent resident is not always very clear. Many of the I-551 cards (“green card”) list it on the back in the middle of the first line of what looks like code. You will see something like “P26 LAS 890714 245 9099001001.” The date that person was admitted to lawful permanent resident status is July 14, 1989—found after the three letters (for the port where

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the U.S. citizen spouse and a marriage certificate. If either spouse was previously married, the applicant must produce documents showing proper termination of the earlier marriage(s).

Item 3: INA § 319(b) allows certain lawful permanent residents to naturalize if they are the spouse of a U.S. citizen who is employed by certain organizations overseas. Although not a new basis for naturalization, the new N-400 form now allows applicants to indicate their basis for naturalizing, pursuant to INA § 319(b), directly on the form.

Item 5: This part includes several categories including non-citizen nationals.

admitted), which are the second group in the sequence, and written year/month/day. Some applicants who became lawful permanent residents through the amnesty program have cards that list at the top the date they were admitted to *temporary* residence. The temporary residence date is *not* the correct date to list on the N-400, or to use in making a determination of whether the applicant has met the five-year residency period. Instead, look to the date listed in the sequence of numbers described above. Some green cards have the date of admission listed on the front instead of the back, including new green cards. You can also access valuable information on this topic at [www.uscis.gov](http://www.uscis.gov), the CIS website. Look under the forms part of the website; specifically, the Form N-400 and the CIS handbook titled, “A Guide to Naturalization.”

Items 8 and 9 ask for different information. While item 8 asks for the applicant’s country of birth, item 9 asks for where the applicant is a national (i.e., citizen) presently. For item 8, you must write the name of the country where the applicant was born, even if the country no longer exists. If the country where he or she was born no longer exists, you can add the current name of the country as well.

Item 10 asks the applicant if he or she is requesting an accommodation to the naturalization process because the applicant has a disability. Under federal law, CIS must make reasonable accommodations (i.e., changes) to the naturalization process for applicants who have disabilities. It is important to note the disability and the accommodation the applicant needs. Often, it is best to submit a letter from a doctor verifying the applicant’s disability and the need for the accommodation. An applicant who needs a waiver of the oath requirement due to a disability should check the fourth box and write something like, “I am unable to take an oath of allegiance because of \_\_\_\_\_ (describe disability) and I therefore request a waiver of the oath requirement.”

Item 11 asks whether the applicant is applying for a waiver of the English and/or civics test based on the applicant’s disability. Applicants applying for such waivers should submit Form N-648, Medical Certification for Disability Exceptions, as an attachment to their naturalization application.<sup>11</sup> Also, applicants should state their requests for such waivers in a cover letter attached to the N-400 application as well.

Item 12 asks whether the applicant seeks an exemption from the English language test based on the applicant’s age and how long she has been a lawful permanent resident. This exemption is often referred to as the “55/15 or 50/20” rule. Likewise, the applicant may indicate that she qualifies for the easier history and civics exam offered to applicants over 65 who have been living in the U.S. for at least 20 years as lawful permanent residents. If the applicant qualifies for either exemption, she or he should mark “yes” in part 2, item number 12.

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<sup>11</sup> Form N-648 (Medical Certification for Disability Exceptions) and its instructions are available at <http://www.uscis.gov/n-648>.

### **Part 3: “Information To Contact You”**

Items 1 through 5 ask for the applicant’s contact information, including his or her mobile number, work numbers and email address. Applicants should provide their current telephone numbers and email address. If the applicant does not have a telephone number or email, she should write “none.” Applicants that are hearing impaired and use a TTD telephone connection, should write “TTD” after the telephone number.

### **Part 4: “Information About Your Residence**

The purpose of the residence section of this part is to help the CIS examining officer determine whether the applicant has actually lived in the United States for the required length of time to meet the continuous residence period (five years for most applicants, three years for those applying as the spouse of a U.S. citizen, and as little as one year for those applying under the military service provisions). The adjudicator will ask the applicant at her interview about any gaps in the information she provides here. Note that some of those gaps can be explained by absences she will have listed in part 8, but it is important not to give the impression that she abandoned her residence during those absences. Any gaps at all should be discussed with a representative.

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**PRACTICE TIP:** Many parts of the form require applicants to list dates, such as dates of employment or schooling and dates of travel outside of the United States. Often, applicants do not recall exact dates, but may recall only the year or month and year. There are a few options for those completing the form electronically: leave the date field blank and handwrite on the form the known information (e.g. May/2010); or enter the date electronically as the first of the month (e.g., “10/01/13” to indicate October 2013, and attach a short explanation on a separate sheet of paper explaining the date is an approximation. Those completing the form by hand may also handwrite partial information on the form (Month/Year) and include a note next to the date identifying it as an approximation (e.g. “Approximate” or “Approx.”). Note, however, that the CIS filing tips state that applicants should not write outside the blank space provided for answers.<sup>12</sup>

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In items 1 through 4 list the addresses where the applicant has lived for the last five years. Start with the current address and then the one before it, and so on. Item 1 asks for the applicant’s home address.<sup>13</sup> This question asks for the actual physical address where the applicant is living (do not provide a PO Box number unless that is the applicant’s *only* address). It is okay to list an address here which is not the official address on file with CIS. The purpose is really to indicate actual residence, regardless of the more official mailing address.

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<sup>12</sup> See N-400 Filing Tips (May 5, 2014).

<sup>13</sup> The new form now requires applicants to include a zip code + 4 digits for all addresses requested on the form. The applicant may leave the +4 fields blank if she does not know this information. See N-400 Filing Tips (May 5, 2014).

Item 2 asks for the mailing address of the applicant. If the mailing address and the home address are the same, please write “same.” If not, then make sure to write the best mailing address for the applicant. Sometimes, farm workers or others prefer that their mail go to a more secure address than where they live, such as the address of a relative who does not change his or her address often or a PO Box.

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**TIP:** If the applicant is living at a shelter and/or received benefits under the Violence Against Women Act (VAWA), the applicant does not have to provide the shelter address or actual home address if it is confidential. Instead, she can say the address is confidential and provide only the city and state.<sup>14</sup> Yet, in the box that asks for mailing address, the applicant must provide an address where she can receive correspondences from CIS.

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**Part 5: “Information About Your Parents”**

Part 5 asks about the citizenship status of the applicant’s parents. If one or both of the applicant’s parents is or are U.S. citizens, it is possible that the applicant is already a U.S. citizen too. Unlike the old version of the form which included only one question about whether either one of the applicant’s parents is a U.S. citizen, the new form adds specific questions that are better suited to help applicants and representatives identify whether there is a possibility that the applicant may already be a U.S. citizen without knowing it. For example, the new questions ask whether the applicant’s biological or legally adoptive mother or father is a citizen by birth or naturalized before the applicant’s 18th birthday, and whether the applicant’s parents were married before her 18th birthday. Advocates should always screen for derivation and acquisition of citizenship, if there is any indication that the applicant may already be a U.S. citizen. The ILRC has recently updated quick reference charts to help advocates determine if an applicant has derived or acquired citizenship.<sup>15</sup> More information is also available on the CIS website under the “Citizenship through Parents” section.<sup>16</sup>

**Part 6: “Information for Criminal Records Check”**

Information in this part will help the FBI do its criminal record search on the applicant, which is part of the good moral character determination.

**Part 7: “Information About Your Employment and Schools You Attend”**

Part 7 asks about the employment and schools the applicant attended during the last five years. The applicant should list her employers and schools (including military service) for the last five years, with her present employer or school in item 1 and least recent in item 3 (or on additional page(s), if needed). If the applicant is a homemaker, she should write that in this section. If the applicant works for herself, she should write “self-employed.” If unemployed, the

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<sup>14</sup> See N-400 Filing Tips (May 5, 2014) and N-400 application instructions, page 5.

<sup>15</sup> These resources are available on the ILRC website at <http://www.ilrc.org/resources/naturalization-quick-reference-charts>.

<sup>16</sup> See <http://www.uscis.gov/us-citizenship/citizenship-through-parents>.

applicant should write “unemployed” in the field labeled “Your Occupation” and write the dates of unemployment where requested.<sup>17</sup> Enter “N/A” in all other fields. If the applicant is retired or on disability, she should indicate this fact and specify her last employment (if she had one) before retiring or acquiring the disability. This will show some connection to the workforce and thus some positive equities for the applicant. CIS often will inquire about how an applicant who is not working is supporting him or herself.

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**NOTE:** If the applicant has been receiving unemployment or public benefits, he or she is still eligible to naturalize. Receipt of public benefits is not a bar to eligibility unless the applicant committed fraud to receive the benefits. If the applicant received public benefits by fraud or by lying, CIS might deny the applicant for failing to show good moral character.<sup>18</sup> In some CIS jurisdictions, CIS’ policy is to confirm that the applicant received such benefits appropriately. Thus, in some of these CIS jurisdictions if CIS believes there may have been a fraud issue involved in the receipt of public benefits, the officer may request that the applicant who has received public benefits obtain a letter from the county or federal agency distributing the benefit indicating that the distributing agency knew about the potential fraud.

For example, some public benefit programs forbid someone from receiving benefits while he or she is out of the U.S. for more than 30 days at one time. Some CIS offices require naturalization applicants who have been absent from the U.S. for more than 30 days at one time while receiving public benefits to bring to CIS a letter from the governmental agency distributing those benefits acknowledging that the governmental agency was aware of the absence in question.

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#### **Part 8: “Time Outside the United States”**

Part 8 of the form asks about trips taken by the applicant outside of the United States *during the last five years only*. Item 3 requests that the applicant list all trips (over 24 hours) taken outside of the United States during the last five years. In these questions, CIS is concerned with the continuous residence requirement of either five or three years; the physical presence requirement of two and a half or one and a half years; and with whether the applicant abandoned his/her lawful permanent resident status.

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**NOTE:** While the form has been simplified to require less information, CIS will continue to

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<sup>17</sup> See N-400 Filing Tips (May 5, 2014).

<sup>18</sup> See Page 16, part 11, item number 30.I., which asks the applicant whether she has ever made any misrepresentation to obtain any public benefit in the United States. In a stakeholder meeting on April 24, 2014, CIS clarified that this question is not limited to misrepresentation that is willful or knowing. According to CIS, if the applicant made a misrepresentation to obtain a public benefit (regardless of intent), she should mark “yes” and provide a written explanation. Advocates should talk through this carefully with the applicant to determine how this may affect the applicant’s naturalization application.

investigate abandonment from the time the applicant became a lawful permanent resident.<sup>19</sup> Advocates should discuss with applicants all trips taken since becoming a lawful permanent resident to ensure that these did not cause the applicant to have abandoned her lawful permanent resident status. It is important to remember that CIS has access to information obtained by other agencies, including Customs and Border Protection, which may reveal information related to the issue of abandonment (e.g. a list of dates of the applicant's departures from, and returns to, the United States). Additionally, CIS might ask the applicant during the interview about absences before the five-year period and could look at the applicant's passport to determine if the applicant abandoned her residence more than five years ago.

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It is also important to remind applicants that trips to Mexico and Canada are trips outside the U.S. Applicants do not have to list any absence from the U.S. that lasted less than 24 hours. If the applicant has left the U.S. for a period of between six months and less than one year, she will have to establish to the satisfaction of the adjudicator that she did not break the continuity of her residence. If she cannot, she will be required to wait five years after she returned to file the application so that the residency requirements are met.<sup>20</sup>

If the applicant was gone one year or longer, she will not be eligible for naturalization until four years and one day (or two years and one day if married to a U.S. citizen) after she returned from the absence.<sup>21</sup> In the case of such a long absence, you should also be on the lookout for abandonment of residence issues. These issues arise when the applicant moved from the U.S. to live in another country after obtaining residency in the U.S., and where the applicant cannot prove that she did not abandon her home in the United States. In these cases, CIS might deny the naturalization application and determine that she abandoned her lawful permanent residence, thus causing the DHS to place her in removal proceedings. In spite of this risk, the applicant must answer this and all questions truthfully. She must work with a trusted immigration law expert to decide whether or not it is advisable to apply for naturalization, and if so, to help prove that she did not disrupt her continuous residence nor abandon her lawful permanent resident status. If there is a real possibility that CIS will decide that she has abandoned her residence, she should consider not applying for naturalization, because CIS could place her in removal proceedings. In removal proceedings, CIS will try to show she has lost her residency and as such is now deportable. See the ILRC's manual entitled, *Naturalization and Citizenship, The Essential Legal Guide* for more information on these topics.

If your client has more than six absences from the U.S., she should list them on a separate sheet of paper and attach it to the application. Be sure to include the applicant's identifying

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<sup>19</sup> Information obtained during advocates meeting with USCIS in Washington, DC on April 24, 2014. See N-400 Filing Tips (May 5, 2014).

<sup>20</sup> 8 CFR § 316.5(c)(1)(i) and (ii).

<sup>21</sup> 8 CFR § 316.5(c)(1)(i) and (ii).

information (including A-Number and signature) on all additional pages, as specified in the N-400 application instructions and filing tips.<sup>22</sup>

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**PRACTICE TIP:** Of course, it can be difficult to remember the dates of vacations taken several years ago. It may be best to suggest that the applicant try to remember what time of year it was—was it around Christmas or anyone’s birthday? Was it a special occasion or holiday? What kinds of things did she do—summer or winter activities? She can try to remember how long the vacation was by thinking about whether she had to have someone watch her house or apartment during that time, or whether she took a vacation or a leave of absence from work, or whether she was between jobs. She should also look at the dates in her passport and reentry permits, if she had any.<sup>23</sup> Although exact dates are best, CIS will accept estimate dates in this section. There are a few options for those completing the form electronically: leave the date field blank and handwrite on the form the known information (e.g. May/2010); or enter the date electronically as the first of the month (e.g., “10/01/13” to indicate October 2013), and attach a short explanation on a separate sheet of paper explaining the date is an approximation. Those filling out the form by hand may also handwrite partial information on the form (Month/Year) and include a note next to the date identifying it as an approximation (e.g. “Approximate” or “Approx.”). Note, however, that the CIS filing tips state that applicants should not write outside the blank space provided for answers.<sup>24</sup> If the applicant travels outside of the United States frequently or during specific times of the year, the applicant may include a written statement explaining where she travels, how often, and the number of days she spent outside of the United State.<sup>25</sup> For example, if the applicant left the U.S. every year for short vacations, her explanation might say something like, “One two-week vacation to Guadalajara, Mexico approximately every year from 2009-2012.” For handwritten applications, the ILRC suggests applicants write “Approximately or Approx.” next to the date if the exact date is unknown.

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**WARNING:** Applicants and their advocates must look very carefully at their responses to the questions regarding residences, work history, and absences from the U.S. If there are gaps or

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<sup>22</sup> USCIS Instructions for Application for Naturalization, page 2, available at <http://www.uscis.gov/sites/default/files/files/form/n-400instr.pdf>. *See also* N-400 *See also* Filing N-400 Tips (May 5, 2014).

<sup>23</sup> Immigrants are required to turn in their old reentry permits to CIS when they get them renewed. (Reentry permits are generally obtained when someone is taking longer trips outside the U.S.) Additionally, many people never had re-entry permits and might not have stamps in their passports. Therefore, the applicant may not be able to determine all of her trips out of the U.S. from her current permit or passport. You and she can request a copy of her file with a Freedom of Information Act (FOIA) request, which will include copies of her reentry permits, if any. In addition to helping her remember the dates of her absences, it will help her make sure the absences she lists are consistent with what CIS has in its records.

<sup>24</sup> *See* N-400 Filing Tips (May 5, 2014).

<sup>25</sup> *Id.*

contradictions in these answers, CIS probably will discover them and it could cause delays, denials, or even deportation.

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### Part 9: “Information About Your Marital History”

CIS uses this information to determine whether a marriage that formed the basis of lawful permanent resident status (where gained by marriage to a U.S. citizen or lawful permanent resident) was valid, and to determine whether an applicant really qualifies for the “three-year residence rule” (a spouse of a U.S. citizen may qualify for naturalization after only three years of lawful permanent resident status). If the applicant is applying as the spouse of a U.S. citizen (part 1, item 2), she must check that her marital status is “married.” An applicant needs to complete part 9 even if she did not get her lawful status via marriage and is not applying under the three-year rule.

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**NOTE:** The new N-400 form now includes “separated” as an option for applicants to indicate their current marital status. In this context “separated” means *legally* separated. This change is important because if a marriage ended in divorce, *legal separation*, or death before or after the naturalization application is submitted, the applicant will not be able to receive naturalization benefits from the marriage, such as being able to naturalize after three years. The three-year rule requires the marriage to be valid, with the parties living in “marital union”<sup>26</sup> during the three-year period. A *legal* separation breaks the marital unity.<sup>27</sup> See the ILRC’s manual titled, *Naturalization and Citizenship, The Essential Legal Guide* for more information on this topic.

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Applicants should be warned that if they committed marriage fraud (i.e., if they got married *only* to get their green cards), CIS could deny their naturalization applications *and* place the applicant in removal proceedings.<sup>28</sup> CIS could become suspicious if the application indicates that an applicant who was married for a short period of time became a permanent resident through his or her spouse. Also, if the applicant is still married, and the applicant’s spouse’s address listed in this section is different from the applicant’s listed in part 4, item 1 of the application, CIS will get suspicious. Because of the risks involved, people who committed marriage fraud should be discouraged from applying for naturalization unless they check with an expert in immigration law first.

Item 4.E. calls for the date of the marriage of the applicant and his or her spouse. This can be a crucial date for a couple reasons. First, if the marriage occurred before the applicant

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<sup>26</sup>INA 316(a)(1); 8CFR 319.1(b)(2)

<sup>27</sup> Be aware that sometimes married couples live apart for non-voluntary reasons or because of circumstances outside of their control; for example, if the spouse is a member of the U.S. Armed Services and is stationed abroad, or because the spouse is engaged in essential business abroad. In these cases, prolonged separations will not necessarily preclude the applicant from receiving naturalization benefits from the marriage.

immigrated to the U.S., and the applicant immigrated as the unmarried child, son, or daughter of a permanent resident (second preference petition) or the unmarried child, son, or daughter of a U.S. citizen (immediate relative petition or first preference petition), the applicant could be denied naturalization and placed in removal proceedings for having committed visa fraud. People in such a situation should not apply for naturalization before checking with an expert. See the ILRC's manual titled, *Naturalization and Citizenship, The Essential Legal Guide* for more information on this topic. Second, if the applicant was previously married, and the date of divorce is after the date of the new marriage, the current marriage is not valid.

Item 7.C. asks about the immigration status of the applicant's spouse—the applicant should either check the “Lawful Permanent Residence” box or the “Other” box. If she checks the “Other” box, she should write the spouse's immigration status, or if the spouse is undocumented, the applicant should write “Alien” in this box instead of “Undocumented.”

Item 8 asks several questions about the prior marriages of both the applicant and the applicant's current spouse, including new questions about the prior spouse's date of birth and country of birth (Items 8.C.- D. and 9.C.-D.).<sup>29</sup> As was true on the old N-400, the form includes questions about when and how the prior marriage(s) ended (Items 8.G.-H. and 9.G.-H.). These could be vital questions if the applicant immigrated as a spouse under either an immediate relative petition or second preference petition and either the applicant's previous marriage or the applicant's spouse's previous marriage actually ended after the applicant and her current spouse got married. If this is the case, depending on the laws of the state or country where the applicant got married, the applicant may not have been legally married to the person who petitioned for her. Thus, the applicant could be denied naturalization and placed in removal proceedings for not having been eligible for her green card when she received it. People in such situations should not apply for naturalization before checking with an attorney who is an expert in immigration law.

In addition, applicants should be careful of alien smuggling issues. If it appears that the applicant's spouse is in the U.S. without legal immigration documents (for example, has no Social Security number or Alien registration number listed on the application), the Immigration Service could ask at the naturalization interview about whether or not the applicant helped his or her relative enter the U.S. illegally. An applicant could be denied naturalization and even removed from the U.S. if she helped smuggle someone across the border illegally, even if she merely helped her spouse (or children) cross the border illegally by sending money to pay a professional smuggler. If placed in removal proceedings, an immigration lawyer may be able to help an applicant apply for a waiver of this ground of deportation. If the applicant in such a

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<sup>29</sup> The CIS has clarified that if an applicant cannot answer a question because she or he does not have the information or does not know the answer, the applicant should leave that section blank (if completing the form electronically) and include a written explanation on a separate sheet of paper. If completing the form by hand, the applicant can include a short handwritten statement on the form, and a more detailed explanation (if necessary) on a separate sheet. See N-400 Filing Tips (May 5, 2014). If providing handwritten answers, the ILRC suggests the applicant write “See Attached” next to the question whenever there is an attachment involved.

situation is not already being represented by an immigration expert attorney, the applicant must be referred to an expert attorney in immigration law before applying for naturalization. See the ILRC's manual titled, *Naturalization and Citizenship, The Essential Legal Guide* for more information on smuggling.

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**PRACTICE TIP:** All advocates must learn the different rules relating to the effects of alien smuggling upon a naturalization application. If you do not know all the different effects, please see the ILRC's manual titled, *Naturalization and Citizenship, The Essential Legal Guide* for more information on these topics. If you still feel uncomfortable with your knowledge of the issue, please refer the case to an expert in immigration law who knows the issue well.

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### **Part 10: "Information about Your Children"**

Some children may automatically become citizens when the applicant naturalizes through a process called, "derivation of citizenship."<sup>30</sup> See the ILRC's manual titled, *Naturalization and Citizenship, The Essential Legal Guide* for more information on derivation of citizenship. The information the applicant provides in this section will enable CIS to determine whether the applicant's children will automatically derive citizenship. Even where children are not entitled to automatically derive citizenship, it is important to list all the children because the parent might plan to submit a visa petition for her children as "immediate relatives" after she naturalizes. Therefore, she should list *all* of her children (even those who are not lawful permanent residents or who live abroad), including undocumented, legally adopted, illegitimate and current stepchildren, whether married or unmarried to facilitate her petitioning for them in the future.<sup>31</sup> The instructions to the application state that applicants should list even children who are deceased or missing, those children born out of wedlock, those born to a previous spouse, and those born in another country.

Applicants should be warned about alien smuggling issues here, as well. If it appears that the applicant's child is in the U.S. without legal immigration status (for example, if a child lives in the United States, is not a U.S. citizen, and has no alien registration number listed in this part

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<sup>30</sup> INA § 320.

<sup>31</sup> If the applicant failed to report all children at the time of an immigrant visa or adjustment interview, but includes them on her N-400 so that he can petition for them later, CIS may be concerned about why the applicant is reporting the children one way on the N-400 and another on her visa application several years prior to applying for naturalization. Additionally, when making a determination of whether the applicant has good moral character, the examiner may be concerned about whether the applicant has lied about her children. In this instance, it is usually best to clear up the confusion with CIS rather than continue to lie or hide the truth. This might mean preparing a short statement about why a child was not included in an earlier petition. For instance, "At the time I applied for permanent residence, my representative did not explain that I should include all children I ever had. I did not list my daughter Sandra because I was never married to her mother and do not know where she is. Sandra is an adult now." Representatives should always ask if all the children were listed in prior applications and make sure no child is left off at the time of naturalization.

of the naturalization application), the naturalization adjudicator could ask about whether the applicant helped her child enter the U.S. illegally. As mentioned in the discussion for part 9 of the application, alien smuggling can cause an applicant to be denied naturalization and even placed in removal proceedings. See discussion of part 9 above.

In completing this section, applicants also should be concerned with the good moral character issue of failing to provide child support. If a minor child is listed on the application and the address where the child lives is different from the applicant's address, CIS may ask about whether the applicant supports the child. Willfully failing to support one's dependents can be grounds to deny someone naturalization. Please see the ILRC's manual titled, *Naturalization and Citizenship, The Essential Legal Guide* for more information on these topics.

### **Part 11: "Additional Questions"**

Part 11 is the longest section in the N-400 form, as well as the section with the most revisions to the old form. As was true in the old version, part 11 asks for additional information that the CIS adjudicator will use to determine whether an applicant is eligible to naturalize. Generally these questions go to the reasons listed in the Immigration and Nationality Act for which CIS can deny naturalization. If an applicant obtains naturalization fraudulently, and this is discovered, CIS could begin proceedings to denaturalize her, which means losing her citizenship.<sup>32</sup> If this happens, they can also place the person in removal proceedings for deportation. So, it is important that applicants answer the questions in this part, and all other parts, of the application truthfully. The advocate can then help the potential applicant decide whether applying for naturalization is the best option.

The questions in part 11 focus on good moral character issues; political affiliations that may cause the applicant to be ineligible for naturalization; military issues; selective service registration issues; previous deportation, removal, and exclusion issues; and the oath of allegiance requirements. Naturalization may be denied to persons who are not of "good moral character." Part 11 also includes over a dozen new questions involving the applicant's eligibility as it relates to national security and good moral character. This includes questions about the applicant's involvement in genocide, torture and the enlistment of child soldiers. According to CIS these additional questions stem from the Intelligence Reform Terrorism Prevention Act (IRTPA) of 2004 and the Child Soldier Accountability Act of 2008.

If your client answers "yes" to any one of the items in part 11, you will have to work with her to provide a detailed explanation of why she answered yes. You will have to evaluate the issue carefully to determine whether or not your client should apply for naturalization. Before a client with any criminal convictions or arrests applies for naturalization, you should obtain the criminal records of that client by submitting his or her fingerprints to the FBI and/or your state's criminal justice background check program. This way, you and your client will be aware of, and can analyze, all of the relevant good and bad facts in her case. See the ILRC's manual titled, *Naturalization and Citizenship, The Essential Legal Guide* for more information on these topics.

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<sup>32</sup> INA § 340(a).

Issues in this section that are commonly raised or are particularly problematic are discussed below.

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**NOTE:** In a policy memorandum dated November 7, 2011, titled “Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens,” USCIS describes circumstances, including guidance specific to naturalization applications, in which it will issue a NTA or will refer the case to ICE for NTA issuance.<sup>33</sup> The memorandum also discusses NTA issuance required by statute or regulation, fraud cases with a statement of findings substantiating fraud, and cases involving criminal issues such as Egregious Public Safety (EPS) cases. Advocates must thoroughly examine any issues that could lead not only to the applicant being denied naturalization, but also to be found removable.

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***Items 1-3: False claim to U.S. citizenship and voting***

Most of these questions relate directly to the applicant’s good moral character. If the applicant answers “yes” to any of these questions, CIS could deny her application. In addition, a “yes” answer to items 1 through 3 could even result in the Immigration Service placing the applicant in removal proceedings. Thus, it is vital that anyone answering yes to any of the questions in this part work with an expert immigration attorney or BIA accredited representative before applying for naturalization. Please see the ILRC’s manual titled, *Naturalization and Citizenship, The Essential Legal Guide* for more information on these topics.

***Item 5: Legal Competence***

CIS can deny naturalization to applicants who are not legally competent at the time of the naturalization interview or oath. If an applicant was declared legally incompetent before the interview and/or oath, and he or she can demonstrate to CIS that he or she is now legally competent, CIS should grant her application.<sup>34</sup> If the applicant is unable to understand the oath of allegiance, he or she may apply for a waiver of the oath requirement.

***Items 6-8: Payment and Filing of Taxes***

Unlike the old version of the N-400 form which asked if the applicant had ever failed to file a *required* federal, state, or local tax return, since becoming a lawful permanent resident, the new form no longer asks only about required tax returns. Instead, the new form asks whether the applicant has *ever* not filed a federal, state, or local tax return since becoming a permanent resident. CIS recently clarified that if the applicant ever did not file a federal, state, or local tax return since becoming a lawful permanent resident, *even if* the applicant was not required to file based on his or her income,<sup>35</sup> the applicant should check “yes” and provide a written explanation

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<sup>33</sup> The memorandum is also available on the USCIS website at [http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static\\_Files\\_Memoranda/NTA%20PM%20%28Approved%20as%20final%2011-7-11%29.pdf](http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/NTA%20PM%20%28Approved%20as%20final%2011-7-11%29.pdf).

<sup>34</sup> See 8 CFR § 316.12.

<sup>35</sup> People with very low incomes *are not required* to file income tax returns. For example, for 2013, a single

on a separate sheet of paper.<sup>36</sup> While CIS prefers applicants to include their explanation in a separate attachment, some practitioners suggest writing a short explanation in the margins. For applicants who filed all required taxes, a written explanation may state something like, “I have filed all required taxes. However, some years (list years if recall those), I did not file because my income was below the minimum income threshold, and therefore I was not required to file.”

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**NOTE:** At the naturalization interview, adjudicators frequently phrase this question differently, i.e.: “Have you always paid your taxes?” These applicants can say, “I have not had to, because my income was too low.” Or, “I paid all taxes I was required to pay, but some years I did not have to file because my income was low.” Some CIS offices require that applicants bring copies of tax returns for the three years preceding the interview. You should do some research to determine what your jurisdiction requests regarding tax returns.

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If an applicant made enough money to be required to file a federal, state, or local tax return, but did not do so, she must also mark “yes” and explain to CIS why she did not file. Failure to file taxes since becoming a permanent resident is a good moral character issue, but not an issue that will cause one to be deportable. See the ILRC’s manual titled, *Naturalization and Citizenship, The Essential Legal Guide* for more information on this topic.

It is important to note that often CIS is primarily concerned with what the applicant has done for the last five years (the period for which good moral character is required—three years for applicants married to U.S. citizens). Any applicant who failed to file a tax return should see an immigration expert who will help him determine whether to file his past tax returns before applying.<sup>37</sup>

Item 6 concerns whether the applicant owes any overdue federal, state, or local taxes. One would think that even if an applicant negotiated a settlement with the Internal Revenue Service for payment of back taxes, if the applicant still owes some money as part of such a settlement, he or she has to answer “yes” to item 6.

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person who was under 65 years of age at the end of 2013, and whose gross income was \$10,000 or more was required to file an income tax return for the 2013 tax year. Married individuals filing jointly would be required to file if they were both under 65 years of age at the end of 2013 and their gross income was \$20,000 or more. (Information received from the Internal Revenue Service (IRS) website <http://www.irs.gov/pub/irs-pdf/i1040.pdf>, on March 31, 2013.) The IRS publishes filing requirements every year to help people determine whether they are required to file a federal income tax return. Advocates can use the IRS website for specific information about filing requirements for applicants depending on their age, filing status, and gross incomes. You can find these requirements in the “Filing Requirements” Section of the instruction booklet for the particular year of filing. The requirements are outlined in Charts A, B, and C.

<sup>36</sup> See N-400 Filing Tips (May 5, 2014).

<sup>37</sup> Usually, an applicant can file past returns and set up a payment schedule with the Internal Revenue Service for any back taxes owed.

Items 7.B. and 8 ask whether, since becoming a lawful permanent resident, the applicant did not file a Federal, State, or local tax return because she considered herself to be a “non-resident” and whether she indicated on a Federal, State, or local tax return that she was a nonresident. A “yes” answer to these questions, may raise a rebuttable presumption that an applicant has abandoned his or her status as a lawful permanent resident. Anyone who marks “yes” to these questions must see an expert in immigration law before applying for naturalization—someone who has abandoned his residence risks being put in removal proceedings, losing her green card, and being deported.

**Item 9: “Affiliations”**

This section asks the applicant to list membership or affiliation with any group—both in the U.S. and elsewhere. If she needs additional space, she should use another piece of paper.

There are two purposes for the questions in this section. First, membership in some of these groups can reflect positively upon one’s good moral character. For instance, if the applicant is an active member in her child’s Parent-Teacher Association (PTA) or volunteers at the local Red Cross, CIS will consider such membership and activity to be a positive factor when determining good moral character.

The second and more common use of the questions in this section is to determine whether the applicant has been a member of a Communist, totalitarian, anarchist or Nazi group, or any group committed to overthrowing the United States government.<sup>38</sup> Advocates should also be on the lookout for organizations that fall within the “terrorist” group definition<sup>39</sup> and any direct or indirect involvement by the applicant with such group(s), including providing material support. If your client is concerned about her membership or participation in any group, you must work with her to prepare to explain them to the adjudicator at her interview.

**Item 10: Membership in Communist Organizations**

People who have been involved in certain political activities (in the U.S. or abroad) cannot naturalize until ten years after they have stopped their involvement in those activities. Those political activities include advocating anarchism (a philosophy opposed to all forms of government), advocating totalitarianism (one political party or group controls everything), or advocating communism (for example, as practiced in the former Soviet Union). Concerns about communist affiliation are far more common than concerns about the first two philosophies. A person who *voluntarily* participated in communist activities or with communist groups cannot naturalize for ten years following the last involvement.<sup>40</sup> *However*, if the applicant can prove that the association or activities were involuntary,<sup>41</sup> required by law<sup>42</sup> (as in several communist

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<sup>38</sup> INA § 313.

<sup>39</sup> *See generally* INA § 212(a)(3)(B), (E)-(G); INA § 237(a)(4)(B), (D), INA § 219.

<sup>40</sup> INA § 313(a) and (c); 8 CFR § 313.2.

<sup>41</sup> INA § 313(d); 8 CFR § 313.3(b)(1).

<sup>42</sup> INA § 313(d); 8 CFR § 313.3(b)(4).

countries), or necessary for the purpose of obtaining employment, food or other essentials of living,<sup>43</sup> she will be allowed to naturalize. CIS will ask many applicants from communist or formerly communist countries about this issue. In making a determination of whether the membership was voluntary or not, the applicant should be ready to say truthfully whether or not she believes in the principles of communism, anarchism, or totalitarianism.

***Items 14-21: National Security and Additional Good Moral Character Questions***

Items 14 through 21 are new to the N-400. According to CIS these additional questions are based on legal requirements involving the applicant's eligibility as it relates to national security and good moral character. Some of these questions stem from the Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004<sup>44</sup> and the Child Soldier Accountability Act of 2008.<sup>45</sup> These laws amended provisions of the INA as it relates to good moral character, inadmissibility and deportability. For example, the IRTPA amended the INA making it a permanent bar to showing good moral character if the applicant at any time engaged in genocide, acts of torture or extrajudicial killings or severe violations of religious freedom.<sup>46</sup> It also added a ground of deportability for receiving "military-type training"<sup>47</sup> from or on behalf of an organization that at the time the training was received was a terrorist organization.<sup>48</sup>

Item 14. A-F asks if the applicant has ever been involved in any way with any of the following: genocide; torture; killing or trying to kill someone; badly hurting or trying to hurt a person on purpose; forcing or trying to force someone to have any kind of sexual contact or relations; or not letting someone practice his or her religion. If the applicant is the victim of one of these crimes, the applicant can answer "no" unless the applicant was both a victim and perpetrator of the act. CIS has said that the applicant should answer "yes" if the applicant ever committed one of the acts listed, or if any action taken by the applicant, even if under duress, contributed to or enabled another person to carry out these acts against another. It will be interesting to see what happens with these questions as some advocates may disagree with the CIS' interpretation of what to say if the applicant, even if under duress, contributed to or enabled another person to carry out these acts against another. Individuals found to have engaged in the conduct specified in A-F not only could have problems demonstrating good moral character, but because these offenses relate to grounds of deportability and inadmissibility (which could cause applicants to be found to have been inadmissible at the time of becoming permanent residents), they could be placed in removal proceedings and deported. For example, an applicant who has ordered incited, assisted or otherwise participated in genocide,<sup>49</sup> torture<sup>50</sup> (or extrajudicial

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<sup>43</sup> INA § 313(d); 8 CFR § 313.3(b)(5).

<sup>44</sup> Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, 118 Stat. 3638 (2004).

<sup>45</sup> Child Soldiers Accountability Act of 2008, Pub. L. No. 110-340, 122 Stat. 3735 (2008).

<sup>46</sup> Pub. L. No. 108-458, § 5501, 118 Stat. 3740 (2004).

<sup>47</sup> "military-type" training includes many types of activities, such as causing death or serious bodily injury, destroying or damaging property, assembly of explosives firearms and other weapons. Pub. L. No. 108-458, § 5402, 118 Stat. 3737 (2004).

<sup>48</sup> *Id.*

<sup>49</sup> "Genocide" is the specific intent (whether in time of peace or war) to destroy in whole or in substantial part, a national, ethnic, racial or religious group by engaging in certain acts against members of that group,

killings), or severe violations of religious freedom,<sup>51</sup> at any time, is permanently barred from establishing good moral character for naturalization.<sup>52</sup> Applicants who answer “yes” to any of these questions should consult with an expert immigration attorney to determine whether they are eligible to naturalize and/or possibly deportable.<sup>53</sup>

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**NOTE:** The language used in many of the new questions on the new N-400 form has been simplified for applicants. However, this also means that it can be very difficult for applicants and their representatives to identify the meaning given to these terms by CIS. For example, item number 14.D., related to “badly hurting” or trying to hurt a person on purpose, can likely be read to mean “intentionally and severely injuring” another person as specified on Form I-485 (Application to Register for Permanent Residence or Adjust Status, Rev. 06/20/13). Consult that form for an understanding of the intent behind this question.

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Many of the new questions in part 11, are broad and include terms not defined in the

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including killing, causing serious bodily injury, or causing permanent impairment of mental faculties through drugs, torture or similar techniques. See 18 U.S.C. §1091(a) for complete definition.

<sup>50</sup> “Torture” is an act committed outside the U.S. by a person acting under color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incident to lawful action) upon another person within his custody of physical control. See 18 U.S.C. § 2340 for a complete definition.

<sup>51</sup> Violation of religious freedom applies to noncitizens who, while serving as a foreign government official was responsible for carrying out certain offenses such as arbitrary prohibitions on, restrictions of or punishment for assembling for peaceful religious activities such as worship, preaching, and prayer, including arbitrary registration requirements; speaking freely about religious views; changing one’s religious beliefs and affiliation; possession and distribution of religious literature, including Bibles; or raising one’s children in the religious teachings and practices of one’s choice; or any of the following acts if committed on account of an individual’s religious belief or practice: detention, interrogation, imposition of an onerous financial penalty, forced labor, forced mass resettlement, imprisonment, forced religious conversion, beating, torture, mutilation, rape, enslavement, murder, and execution. See 22 U.S.C. § 6402 for complete definition.

<sup>52</sup> INA §§ 101(f)(9); 212(a)(3)(E) and 237(a)(4)(B) (genocide and torture); 212(a)(2)(G) (religious freedom). See also USCIS Policy Manual. Vol. 12. Citizenship & Naturalization, Part F: Good Moral Character, Chapter 4. available at <http://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartF-Chapter4.html>.

<sup>53</sup> Legal advocates should review relevant grounds of inadmissibility and deportability, including: INA § 237(a)(4) subsections. (B) Terrorist Activities; (D) Participation in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing; (E) Participation in Commission of Severe Violations of Religious Freedom; (F) Recruitment or use of child soldiers. INA § 212(a)(2) subs. (G) Foreign Government Officials who have committed particularly severe violations of religious freedom; INA § 212(a)(3) Security and Related Grounds (including subsections: (B) Terrorist Activities and organizations defined; (E) Participation in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing (F) Association with Terrorist Organizations; (G) Recruitment or use of child soldier. INA § 219 (8 USCA 1189) Definition of Foreign Terrorist Organization.

INA, such as whether the applicant participated in a self-defense unit, police unit, or insurgent organization (part 11. item 15<sup>54</sup>). Because these questions are overly general and legally vague, advocates should thoroughly interview applicants to determine whether the response on the form is legally relevant. Also, advocates working with applicants who received Temporary Protected Status (TPS), asylum or benefits under the Nicaraguan Adjustment and Central American Relief Act (NACARA), should review the applicant's original asylum, TPS or NACARA application to determine if the applicant may have already implicated information related to item numbers 14 through 21.

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**NOTE:** Advocates should be aware that USCIS has issued policy memorandums regarding the implementation of new discretionary exemptions to terrorism-related inadmissibility grounds (TRIG) for certain *voluntary* activities or associations under INA §212(d)(3)(B)(i), such as those related to the Farabundo Marti National Liberation Front (FMLN), the Nationalist Republican Alliance (ARENA), the Eritrean Liberation Front (ELF), and other groups.<sup>55</sup> It is the ILRC's position that these memorandums appear to provide officers the discretionary authority not to apply TRIG to certain voluntary activities in non-duress situation that would otherwise constitute material support. Advocates working with applicants who may have applied for and/or received asylum, TPS or benefits under NACARA, should thoroughly review the applicant's original applications for facts that may indicate the applicant engaged in or provided material support to "terrorist activities". You can obtain a copy of your client's applications and complete immigration or "A file" by submitting a Freedom of Information Act (FOIA) request to CIS.<sup>56</sup> This way, you can better analyze the information and carefully determine whether or not your client should apply for naturalization.

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Item 19 asks if the applicant has ever received any type of military, paramilitary or weapons training. According to CIS, in this context an applicant should respond "yes" even if the weapons training was recreational, and explain the circumstances on a separate sheet of paper. Also, applicants and advocates should be aware that "weapons" training is not limited to firearms.

Items 20-21 directly relate to the Child Soldier Prevention Act of 2008. The Act defines "armed force or group" as an army, militia or other military organization whether or not it is state-sponsored, but excludes groups assembled solely for nonviolent political association.<sup>57</sup>

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<sup>54</sup> In a meeting with advocates in Washington, DC on April 24, 2014 USCIS clarified that for item number 15.B., relating to the applicant's membership, service, help, or participation in a paramilitary group, USCIS is not looking for organizations that are associated with the United States military, such as ROTC.

<sup>55</sup> The full list of TRIG Groups Based Exemptions memorandums is available on the USCIS website at: <http://www.uscis.gov/unassigned/terrorism-related-inadmissibility-grounds-trig-group-based-exemptions>.

<sup>56</sup> The ILRC has created a guide on how to request information under the Freedom of Information Act (FOIA) and Privacy Act, available at [http://www.ilrc.org/files/documents/intro\\_to\\_foia\\_requests.pdf](http://www.ilrc.org/files/documents/intro_to_foia_requests.pdf).

<sup>57</sup> Pub. L. No. 110-340, § 2442, 122 Stat. 3735 (2008).

**Items 22–29: Criminal Record:**

It is very important for applicants to be honest about any arrests, no matter how long ago, seemingly insignificant the offense, and regardless of whether the charges were dropped or erased (“expunged” or “vacated”) from the applicant’s record—because the questions ask whether the applicant was ever arrested, cited, or detained, not just convicted. CIS will discover arrests through the applicant’s fingerprint checks so there is no advantage in hiding arrests. Additionally, an applicant could be denied naturalization for a lack of good moral character if she gives false testimony under oath (i.e., verbal testimony).

It is important to note that item 23 of this section asks “Have you ever been arrested, cited, or detained by any law enforcement officer (including any and all immigration officials or the U.S. Armed Forces) for any reason?” As such, this would include any arrest, citation, or detention by the INS, CIS, CBP, ICE, or any Immigration Service agency. Also, due to the fact that this question includes the word “cited,” the ILRC believes that applicants should answer “yes” to this question, even if the only interaction the applicant has ever had with any law enforcement official was a traffic citation, and disclose those incidents in part 11, item 29.<sup>58</sup> Although traffic citations without arrests or any other problems should not affect one’s good moral character for naturalization, many CIS offices require that an applicant note any traffic citations on the application and mention them when under oath during the interview or else possibly risk having her naturalization application denied for giving false testimony under oath. Often, they will follow up by asking if the citations are paid.

CIS will use an applicant’s fingerprints to find out about all of her arrests—so they will know if the applicant lied, and can deny the application for that reason. Anyone who answers “yes” should see an expert in immigration law since an applicant may be denied, placed in removal proceedings, and possibly removed from the U.S. if he or she has been convicted of certain crimes. On the other hand, an immigration law expert may easily resolve some problems.

Someone who was arrested by the INS, the border patrol, CIS, ICE, or CBP and left the U.S. under “voluntary departure” should consider this an arrest in answering item 23. As with all arrests, one who was arrested by any of the above-mentioned federal agencies and then allowed to leave the U.S. under voluntary departure, should write an explanation to this question about the circumstances of the arrest and departure. Generally, a voluntary departure prior to becoming a permanent resident will not affect one’s naturalization application.

**Example:** Applicant Ann might relate the circumstances of her voluntary departure on her N-400 as follows: “In 1978 I was detained by the INS during an INS raid of my workplace. I voluntarily departed the United States and returned to Hong Kong. In 1986, I immigrated to the United States with a family visa.”

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<sup>58</sup> The instructions for the N-400 indicate that if the fine was less than \$500, then documentation of the incident is not required, unless the incident was drug or alcohol related. See page 10 of the Form N-400 instructions. This instruction supports the conclusion that any citation should be disclosed in response to item 16, but that further documentation/records will not be required with a traffic citation of less than \$500.

**PRACTICE TIP:** Your client may have misconceptions as to what constitutes an arrest or conviction. In addition, she may think that if the arrest occurred several years ago, it will not show up in her record or is unimportant. To avoid misunderstandings, explain to clients that you need to know everything about their encounters with the police or any other law enforcement agency, no matter how trivial it may be. It may also be a good idea to obtain the applicant's FBI record, state criminal history records, and court dispositions to confirm the client's recollections and to comply with the Service's requirement that dispositions on all criminal cases be submitted.<sup>59</sup>

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Item 27 relates to whether the applicant has been placed on probation or has been on parole. If the applicant is now on probation, parole or under a suspended sentence CIS cannot adjudicate his or her naturalization application.<sup>60</sup> Further, although probation, parole or a suspended sentence during a statutory period does not automatically preclude the applicant from establishing good moral character, this may affect the overall good moral character determination. All applicants who answer "yes" should consult with an experienced immigration attorney.

Item 28.B. asks applicants who have ever been in jail or prison to indicate how long they were in jail or prison. While the form only provides space for "Years," "Months," and "Days," if the applicant was detained in jail or prison for less than 24 hours, the applicant should enter "1" in the "Days" field. The applicant also should provide a written explanation on a separate sheet of paper that includes the actual number of hours the applicant was detained.<sup>61</sup>

### ***Item 30: Good Moral Character***

These questions relate to the applicant's good moral character. They involve issues such as alien smuggling, failure to pay child support, giving false testimony to come to or stay in the U.S., prostitution, polygamy, illegal gambling, and the sale and/or smuggling of controlled substances, illegal drugs, or narcotics. Some of these activities, such as failure to support dependents, might result in a denial of the naturalization application (but nothing more). Other activities, however, such as alien smuggling and drug-related offenses, can also result in removal proceedings. It is important to note that for some of these offenses the applicant does not need to be convicted for CIS to deny the naturalization application and/or place the person in deportation proceedings. The mere commission of some of these activities is sufficient. See the ILRC's manual titled, *Naturalization and Citizenship, The Essential Legal Guide* for more information on this topic.

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<sup>59</sup> See the CIS Policy Manual (Vol. 12: Citizenship & Naturalization, Chapter 3 Evidence and the Record) which discusses circumstances where an applicant is required to provide a certified court disposition, available at <http://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartF-Chapter3.html>.

<sup>60</sup> 8 C.F.R. § 316(c)(1).

<sup>61</sup> See N-400 Filing Tips (May 5, 2014).

**NOTE:** Item 30.I., which asks about misrepresentation by the applicant to obtain a public benefit in the United States, is not limited to “willful and knowing” misrepresentation. According to USCIS, if the applicant has ever made any misrepresentation, such as lying or omitting information, to obtain a public benefit, regardless of whether the applicant intended to misrepresent herself, the applicant should answer “Yes” and provide a written explanation on a separate sheet of paper. Applicants who answer yes to this question should consult with an experienced immigration attorney or representative before applying.

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For more information on these issues and how they can affect one’s naturalization application and immigration status, please see the ILRC’s manual titled, *Naturalization and Citizenship, The Essential Legal Guide* for more information on good moral character.

**Items 33-36: “Removal, Exclusion and Deportation Proceedings”**

Someone who has been deported, excluded, or removed in the past should see an expert in immigration law before applying for naturalization. Even if she was deported, excluded, or removed long ago, and then became a lawful permanent resident after the deportation was waived,<sup>62</sup> we still suggest that such an applicant see an expert in immigration law to ensure there will not be problems pursuing naturalization. If someone is now in deportation or removal proceedings or under an order of removal or deportation, generally the CIS cannot naturalize the person until the proceedings are terminated

**Item 46: “Selective Service”**

Every male between the ages of 18 and 26—citizen or not—has to register with the Selective Service (or the “draft”). The only males exempt from this requirement are those who are here pursuant to a non-immigrant visa or in diplomatic status. CIS considers it a lack of good moral character for men who are required to register with the Selective Service to knowingly and willfully fail to do so. Applicants who were required to register with the Selective Service, and did, need to include the date of registration and their selective service number on the form (item number 46.B.).<sup>63</sup> Applicants, who were required to register for the Selective Service but did not, and are still under 26 years of age, must register for the Selective Service before applying for naturalization.<sup>64</sup>

The rules are a bit more confusing for applicants that did not register for the draft. Some people are required to submit a statement explaining why they did not register and a status

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<sup>62</sup> If the applicant was deported, and then immigrated legally within five years, he would have needed a waiver of the “prior deportation” ground of exclusion [INA § 212(a)(9)(A)].

<sup>63</sup> See Practice Tip below.

<sup>64</sup> See N-400 Form (Rev. 09/13/13), part 11, item 46.C.1. See also USCIS Policy Manual, Vol. 12, Citizenship & Naturalization, Part D: General Naturalization Requirements, Chapter 7, available at <http://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartD-Chapter7.html>.

information letter from the Selective Service<sup>65</sup> and others are not required to submit such information. The rules are as follows according to the CIS<sup>66</sup>:

- If the applicant is between 26 and 31 years of age when he applies for naturalization (or between ages 26-29 and applying based on marriage to a U.S. citizen) *and* did not register for the Selective Service, he must provide a status information letter from the Selective Service and statement explaining why he did not register. The applicant can send the statement and letter with his naturalization application or take it with him to his interview.<sup>67</sup>
- If the applicant was required to register for the Selective Service, but did not, and is more than 31 years of age when he applies for naturalization (or over age 29 and applying based on marriage to a U.S. citizen), he does *not* need to submit a status information letter from the Selective Service or a written statement explaining why he did not register.<sup>68</sup>

For a thorough description of CIS' policy regarding failure to register for the Selective Service, including information on what to say in the attached statement, please see the ILRC's manual titled, *Naturalization and Citizenship, The Essential Legal Guide*.<sup>69</sup>

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**PRACTICE TIP:** An applicant can find out if he did register for the selective service, or what his registration number (and date of registration) was, by visiting the Selective Service Online Registration Verification website at <https://www.sss.gov/Regver/mobile/mVerification.aspx>. The applicant can also get this information by calling the Selective Service registration information line at 1-847-688-6888.

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#### **Items 47-53: "Oath of Allegiance"**

In order to become a U.S. citizen, an applicant must be willing to support the U.S. government. Generally this requires that the applicant be willing to serve in the armed services or provide alternative service if she is "religiously" opposed to bearing arms.<sup>70</sup> If she answers "no"

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<sup>65</sup> See N-400 Form, Item 46.C. Applicants can find the Status Information letter request form on the Selective Service website at <https://www.sss.gov/instructions.html>. This letter cannot be completed online. Applicants must print and fill out the form and mail it along with supporting documents (if necessary) to the corresponding address. <sup>66</sup> See N-400 Filing Tips (May 5, 2014).

<sup>66</sup> See N-400 Filing Tips (May 5, 2014).

<sup>67</sup> Id.

<sup>68</sup> See N-400 Filing Tips (May 5, 2014).

<sup>69</sup> See also USCIS Policy Manual. Vol. 12. Citizenship & Naturalization, Part D: General Naturalization Requirements, Chapter 7. available at <http://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartD-Chapter7.html>.

<sup>70</sup> INA § 337.

to any question in items 47 through 53, you and she will need to work together to provide a full explanation.

**Part 12: “Your Signature”**

By signing the form, the applicant is indicating that the information provided and documents submitted are correct to the best of his or her knowledge.<sup>71</sup> Knowingly providing false information is a ground for revocation of naturalization and for permanent denial of naturalization.<sup>72</sup> According to the instructions, if an applicant is unable to write in any language, he or she may sign her name with an “X.”<sup>73</sup> Furthermore, a designated representative may sign here if the applicant is unable to sign due to a physical or developmental disability or mental impairment. A designated representative, who is signing on behalf of the applicant, should write the name of the applicant and then his or her own name followed by the words “Designated Representative.”

**Part 13: “Signature and Contact Information of Person Who Prepared This Form, if Other than the Applicant”**

If someone helped the applicant complete the N-400, the person who prepared the application should complete this section.<sup>74</sup> Also, CIS could interpret that the regulation 8 C.F.R. § 1003.102(t) requires all attorneys and accredited representatives to complete a G-28 and sign the N-400 application form if they assisted with the preparation of the form, which is defined as including giving legal advice and could include helping with the completion of the N-400 form.

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**NOTE:** In 2011, DHS issued a “Statement of Intent Regarding Filing Requirements for Attorneys and Accredited Representatives Participating in Group Assistance Events.” In its statement, DHS announced that until further notice, DHS does not intend to initiate disciplinary proceedings against practitioners based solely on their failure to submit form G-28 in relation to pro bono services provided at group processing assistance events.<sup>75</sup>

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<sup>71</sup> 8 CFR § 335.2(e). Although the Form N-400 signature clause reads “I certify ... that this application ... are all true and correct,” the oath included in 8 CFR § 335.2(e) reads, “I swear (affirm) and certify under penalty of perjury under the laws of the United States of America that I know that the contents of this application for naturalization subscribed by me, and the evidence submitted with it, are true and correct to the best of my knowledge and belief” [emphasis added].

<sup>72</sup> INA § 340.

<sup>73</sup> See N-400 form instructions, page 8.

<sup>74</sup> See N-400 instructions.

<sup>75</sup> USCIS, *Statement of Intent Regarding Filing Requirements for Attorneys and Accredited Representatives Participating in Group Assistance Events* (last updated Feb. 18, 2011). Available at <http://www.uscis.gov/news/alerts/statement-intent-regarding-filing-requirement-attorneys-and-accredited-representatives-participating-group-assistance-events>.

**Part 14: “Interpreter’s Statement and Signature”**

Applicants who answer “yes” to Part 2, items 11 or 12 (seeking an exemption to the English language and/or civics requirement to naturalization due to a disability or length of time as a lawful permanent resident), *and* during the completion of the form used an interpreter to interpret the questions on the form before submitting the form, are required to complete this section. The interpreter is also required to complete this section. By signing this section the interpreter is certifying that her or she is: (1) fluent in English and the language used to interpret to the applicant; (2) that he or she has read every question and instructions on the form, and the answer to each question to the applicant; and (3) the applicant understood each and every instruction and question, and answer to each question.

**Parts 15-17: “Statements to Sign at Interview Regarding Renunciation of Foreign Titles and Oath of Allegiance”**

These parts of the application should not be filled out by the applicant before submitting his or her application. An applicant should complete these sections at his or her interview, if and when the CIS officer instructs him or her to do so.