
NOTES

ALMOST CITIZENS: HOW THE MEDICAL EXCEPTION CONTINUES TO LIMIT REFUGEE NATURALIZATION

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I. INTRODUCTION

The refugee¹ experience is complex, challenging, and dangerous at times. One must be resilient both in their home country and during the refugee process to make it safely to resettlement. Unsurprisingly, many refugees have experienced traumatic events that may manifest in cognitive impairments. These impairments may go unnoticed and untreated, yet they frequently inhibit the ability of refugees to become United States citizens.

Refugees resettled through the United States Refugee Admissions Program are put on a path to citizenship the moment they arrive in the United States as these refugees are mandated to apply for their lawful permanent resident ("LPR")² status after one year of physical presence in the United States.³ Not only are refugees placed on this path by these procedures and systems, but citizenship also affords individuals with several significant rights and privileges, including the right to vote in elections, participate on a jury, and the ability to access certain public benefits.⁴

The process for an LPR to become a citizen has many steps and requirements, posing an even more significant barrier for individuals with disabilities and/or impairments to become a naturalized citizen. The United States immigration system has progressively adapted in an attempt to provide support to applicants with disabilities. Yet, despite these adaptations and applicants' adherence to the application process through the use of disability exceptions, vulnerable populations

¹ Refugees are defined as:

[A]ny person who is outside any country of such person's nationality . . . who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion

Immigration and Nationality Act § 101(a)(42), 8 U.S.C. § 1101(a)(42).

² An LPR is issued a Permanent Resident Card, which is more widely known as a "green card." Therefore, an LPR is a green card holder. See *Green Card*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/greencard> (last updated Feb. 22, 2018).

³ *Green Card for Refugees*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/greencard/refugees> (last updated June 26, 2017).

⁴ USCIS Policy Manual, Volume 12: Citizenship and Naturalization, Part A: Citizenship and Naturalization, Chapter 2: Becoming a U.S. Citizen, *available at* <https://www.uscis.gov/policy-manual/volume-12-part-a-chapter-2> (last updated Dec. 20, 2019).

face immigration officers who use their discretion to deny their applications.

This note will discuss the various requirements to become a naturalized citizen, the possible exceptions to these requirements, refugee trauma, and the interplay between cognitive impairments in refugee populations and the ability for refugees to meet the requirements of naturalization. This note will further explore how current United States Citizenship and Immigration Service ("USCIS") policies and federal regulations operate to impede the naturalization of certain immigrants, especially refugees.

II. OVERVIEW OF THE STEPS TO NATURALIZATION

Since 2003, USCIS of the Department of Homeland Security ("DHS") has had the authority to adjudicate applications for naturalization.⁵ The requirements for naturalization include age,⁶ residency,⁷ physical presence in the United States,⁸ and good moral character.⁹ Additionally, the following naturalization requirements are of import to the topic at hand: an applicant must (1) "demonstrate an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language"¹⁰ ("English" requirement); (2) "demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States"¹¹ ("civics" requirement); and (3) "demonstrate an attachment to the principles and ideals of the U.S.

⁵ See generally *Our History*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/about-us/our-history> (last updated May 25, 2011). See also WILLIAM A. KANDEL & CHAD C. HADDAL, CONG. RESEARCH SERV., RL34040, U.S. CITIZENSHIP AND IMMIGRATION SERVICES' IMMIGRATION FEE AND ADJUDICATION COSTS: PROPOSED ADJUSTMENTS AND HISTORICAL CONTEXT 1, 1 (July 16, 2010).

⁶ USCIS Policy Manual, Volume 12: Citizenship and Naturalization, Part D: General Naturalization Requirements, Chapter 1: Purpose and Background, *available at* <https://www.uscis.gov/policy-manual/volume-12-part-d-chapter-1> (last updated Dec. 20, 2019).

⁷ See Immigration and Nationality Act § 316(a), 8 U.S.C. § 1427(a) (2012).

⁸ See *id.* § 316(b)-(c), 8 U.S.C. § 1427(b)-(c).

⁹ See *id.* § 316(d), 8 U.S.C. § 1427(d).

¹⁰ *Id.* § 312(a)(1), 8 U.S.C. § 1423(a)(1).

¹¹ *Id.* § 312(a)(2), 8 U.S.C. § 1423(a)(2).

Constitution"¹² ("oath" requirement). Over the years, the English, civics, and oath requirements have been modified.

Refugees, like most LPRs, are eligible to apply for naturalization after five years of permanent residency by submitting a Form N-400 to USCIS.¹³ Refugees must meet the same requirements and follow the same process to apply for naturalization as all other LPRs.¹⁴

III. REFUGEE TRAUMA AND ITS IMPLICATION ON COGNITIVE IMPAIRMENTS

Resettled refugees go through three critical periods.¹⁵ The first is "preflight," when an individual and their family face persecution and trauma.¹⁶ Next, "flight," is when the individual is seeking asylum, possibly going to a refugee camp or detention center, and lives in uncertainty of their destination and the registration process.¹⁷ Lastly, the resettlement experience is when an individual must adapt to a new culture and language with the hope of integrating into their new community.¹⁸ All three phases of the refugee experience can affect the mental well-being of a refugee.¹⁹ Unsurprisingly, psychological studies of refugee populations throughout the years have found

¹² See *Naturalization Information*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/citizenship/educators/naturalization-information> (last visited Dec. 23, 2019).

¹³ *Path to U.S. Citizenship*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/us-citizenship/citizenship-through-naturalization/path-us-citizenship> (last updated Apr. 17, 2019).

¹⁴ See *id.* (explaining eligibility to apply for U.S. Citizenship). After having a green card for five years, green card holders submit the Form N-400, Application for Naturalization. *Id.* This is applicable no matter what immigration process one used to obtain their green card. See *id.*; see also USCIS Policy Manual, Volume 12: Citizenship and Naturalization, Part D: General Naturalization Requirements, Chapter 2: Lawful Permanent Resident (LPR) Admission for Naturalization, available at <https://www.uscis.gov/policy-manual/volume-12-part-d-chapter-2> (last updated Dec. 20, 2019) (A refugee is generally considered an LPR as of the date of entry into the United States).

¹⁵ See *Mental Health*, REFUGEE HEALTH TECH. ASSISTANCE CTR., <https://refugee-healthta.org/physical-mental-health/mental-health/> (last visited Dec. 23, 2019).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

"alarmingly high rates of depression, anxiety, substance abuse, and posttraumatic stress disorder"²⁰ among this population.

Furthermore, researchers have also found that refugees have experienced "high levels of violence exposure, often involving multiple traumas, [and experience] significant health problems."²¹ Despite the frequency of these conditions occurring among refugees, medical providers are only *encouraged* to conduct a mental health screening "depending on available services"²² during the first 90 days of a refugee's presence in the United States.²³ Consequently, there is no formal requirement to screen refugees for any mental health conditions, disabilities, or cognitive impairments before resettlement, at the time of arrival, or at the time of resettlement and adjustment of status. Thus, undiagnosed and untreated mental health consequences of trauma and torture frequently result in cognitive impairments that may last for the rest of a refugee's life, impeding their ability to integrate fully.²⁴

An understanding of the refugee experience is critical for United States naturalization, since, by the end of 2018, the United States was hosting 313,241 refugees.²⁵ In 2018 alone, the United States resettled

²⁰ Daryl Gordon, *Trauma and Second Language Learning Among Laotian Refugees*, 6 J. SOUTHEAST ASIAN AM. EDUC. ADV. 1, 2 (2011) (referencing research conducted by Jaranson et al. in 2004; Mollica, Wyshak & Lavelle in 1987, and; Westermeyer & Her in 2007).

²¹ Marshall et al., *Mental Health of Cambodian Refugees 2 Decades After Resettlement in the United States*, 294 JAMA 571, 571-78 (2005).

²² Div. of Glob. Migration & Quarantine, *Summary Checklist for the Domestic Medical Examination for Newly Arriving Refugees*, U.S. DEPT HEALTH & HUM. SERVS. 1, 2 (July 16, 2012), <https://www.cdc.gov/immigrantrefugeehealth/pdf/checklist-refugee-health.pdf>.

²³ *Id.*

²⁴ See Dawn Blankenship & Nathan Madson, *Resource Guide for Serving Refugees with Disabilities*, U.S. COMMITTEE FOR REFUGEES & IMMIGRANTS 1, 14 (2007), <https://refugees.org/wp-content/uploads/2015/12/Serving-Refugees-with-Disabilities.pdf> (explaining how, in fact, when refugees are not integrating or using services, despite no record of disability, these refugees may need a further evaluation to see if they may have an underlying diagnosis); see also Catholic Legal Immigration Network, Inc., *Strategies for Naturalizing the Most Vulnerable Applicants: A Guide to Helping Refugees and Immigrants Who Are Elderly, Disabled, Low-Income, Low-Literate, and Limited English Proficient*, CLINIC 1, 3 (2011), https://cliniclegal.org/sites/default/files/236953_clinic_handbook-p4-final.pdf (on file with author).

²⁵ *Global Trends Forced Displacement in 2018*, UN HIGH COMM'R FOR REFUGEES (2019), <https://www.unhcr.org/en-us/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html>.

22,900 refugees.²⁶ The largest groups of refugees resettled in the United States in fiscal year 2018 came from the Democratic Republic of Congo (7,878), Burma (3,555), and Ukraine (2,635).²⁷ Some of the experiences refugees resettled in the United States faced in their home countries and during migration include government unrest, repression, human rights violations, attacks on civilians, mass displacement, restriction from accessing aid, and ethnic cleansing.²⁸

A. Torture, Generally

Torture, as defined by the United Nations Convention Against Torture, is:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.²⁹

Cognitive psychology research provides insight into the impact traumatic experiences can have on brain chemistry.³⁰ Due to the fight

²⁶ *Refugees in America*, USA FOR UNHCR UN REFUGEE AGENCY, <https://www.unrefugees.org/refugee-facts/usa/> (last visited Dec. 21, 2019). In 2018, the cap on refugee admissions was limited to 45,000, which was the fewest number of admissions the United States allowed since the Refugee Act of 1980 was enacted. In 2019, President Trump and his administration further reduced the cap on refugee admissions to 30,000. Zuzana Cepla, *Fact Sheet: U.S. Refugee Resettlement*, NAT'L IMMIGR. F. (Jan. 25, 2019), <https://immigration-forum.org/article/fact-sheet-u-s-refugee-resettlement/>.

²⁷ Cepla, *supra* note 26.

²⁸ There is some overlap in country conditions, while some conditions are unique to the country itself. *Compare Democratic Republic of Congo: Events of 2018*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2019/country-chapters/democratic-republic-congo> (last visited Dec. 21, 2019) (explaining the conditions in the Democratic Republic of Congo), *with Burma: Events of 2017*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2018/country-chapters/burma> (last visited Dec. 21, 2019) (overviewing the conditions in Burma), *and Ukraine: Events of 2017*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2018/country-chapters/ukraine> (last visited Dec. 21, 2019) (explaining conditions in Ukraine).

²⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. No. 51, U.N. Doc. A/39/51.

³⁰ See Gordon, *supra* note 20.

or flight response required when faced with dangerous events, those exposed to traumatic experiences suffer from brain implications in "pervasive and profound" ways.³¹ Unfortunately, studying both torture and refugee populations generally remains a difficult task, so research remains limited on both the prevalence of torture and the impact torture has on the lives and health of refugees.³² However, a study published in 2004 found that torture rates among refugees hovers between five and thirty-five percent.³³ Further, a 2015 meta-analysis of five studies revealed that there could be as many as 1.3 million survivors of torture living in the United States alone.³⁴

Experiencing torture can have long-term physical and psychological effects on the victim.³⁵ Effects of torture include, but are not limited to, headaches, musculoskeletal pains, hearing loss, visual problems, neurological damage, difficulty concentrating, insomnia, and memory loss.³⁶ Since there is a broad spectrum of the forms of torture, the implications on a survivor's health can vary based on the experiences they overcame.³⁷ Notably, the long-term impact on a person's mental health is just as severe for survivors of psychological torture as those who experienced physical torture.³⁸ As many refugees are survivors of torture, these lasting effects influence their ability to integrate into their country of resettlement.

B. Posttraumatic Stress Disorder

The American Psychiatric Association defines Posttraumatic Stress Disorder ("PTSD") as "a psychiatric disorder that can occur in people who have experienced or witnessed a traumatic event such as a natural disaster, a serious accident, a terrorist act, war/combat rape

³¹ *Id.* (referencing a study conducted in 1999).

³² Jaranson et al., *Somali and Oromo Refugees: Correlates of Torture and Trauma History*, 94 AM. J. PUB. HEALTH 591, 591 (Apr. 2004).

³³ *Id.*

³⁴ Craig Higson-Smith, *Updating the Estimate of Refugees Resettled in the United States Who Have Suffered Torture*, CTR. FOR VICTIMS TORTURE 1, 5 (Sept. 2015), http://www.cvt.org/sites/default/files/SurvivorNumberMetaAnalysis_Sept2015_0.pdf.

³⁵ *Effects of Torture*, CTR. FOR VICTIMS TORTURE (Apr. 2015), <https://www.cvt.org/sites/default/files/downloads/CVT%20Effects%20Torture%20April%202015.pdf>.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

or other violent personal assault.³⁹ PTSD is often a chronic condition in which patients can suffer from the symptoms for years after the initial trauma.⁴⁰ Although often thought of as an anxiety disorder diagnosed among combat veterans, PTSD can happen to any person.⁴¹

Studies of various refugee groups have found high PTSD rates, specifically among survivors of mass violence from Gaza, Algeria, Ethiopia, Cambodia,⁴² and Rwanda.⁴³ Recent research indicates that refugees are ten times more likely than the general population in their host country to have PTSD.⁴⁴ For refugees previously exposed to torture, one study found that 25% experienced PTSD as compared to only 4% of non-tortured refugees.⁴⁵

PTSD can have substantial implications on critical cognitive functions.⁴⁶ In fact, one of the most "pervasive symptoms of PTSD . . . [is] cognitive difficulties ranging from memory loss to an impaired ability to learn new things."⁴⁷

³⁹ Ranna Parekh, *What Is Posttraumatic Stress Disorder?*, AM. PSYCHIATRIC ASS'N (Jan. 2017), <https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd>.

⁴⁰ Salah U. Qureshi et al., *Does PTSD Impair Cognition Beyond the Effect of Trauma?* 23 J. NEUROPSYCHIATRY & CLINICAL NEUROSCIENCES 16, 17 (Jan. 2011).

⁴¹ Parkeh, *supra* note 39.

⁴² Marwa Shoeb et al., *The Harvard Trauma Questionnaire: Adapting a Cross-Cultural Instrument for Measuring Torture, Trauma and Posttraumatic Stress Disorder in Iraqi Refugees*, 53 INT. J. SOC. PSYCHIATRY 447, 447 (Sept. 1, 2007) (citing Joop T.V.M. de Jong et al., *Lifetime Events and Posttraumatic Stress Disorder in 4 Post-Conflict Settings*, 286 JAMA 555, 558–59 (Aug. 1, 2001) (a 2001 study of survivors of mass violence from Gaza, Algeria, Ethiopia, and Cambodia, which found PTSD rates as high as 37.4%)).

⁴³ *Id.* (citing Phuong N. Pham et al., *Trauma and PTSD Symptoms in Rwanda: Implications for Attitudes Towards Justice and Reconciliation*, 292 JAMA 602, 606 (Aug. 4, 2004) (a study in 2004 that found that 24.8% of a Rwandan sample met the criteria for PTSD)).

⁴⁴ Sameena Hameed et al., *The Increased Vulnerability of Refugee Population to Mental Health Disorders*, KAN. J. MED. 20, 22 (2018).

⁴⁵ Jaranson et al., *supra* note 32, at 596.

⁴⁶ Qureshi et al., *supra* note 40, at 17.

⁴⁷ Michele Hoos, *How PTSD Impairs Learning and Memory*, COLUM. U. IRVING MED. CTR. (Aug. 30, 2012), <https://www.cuimc.columbia.edu/news/how-ptsd-impairs-learning-and-memory>. Among elderly individuals with PTSD, two of three research studies found that their ability to learn was significantly impaired. Qureshi et al., *supra* note 40, at 26.

C. Traumatic Brain Injuries

The Centers for Disease Control and Prevention ("CDC") defines a traumatic brain injury ("TBI") "as a disruption in the normal function of the brain that can be caused by a bump, blow, or jolt to the head, or penetrating head injury. . . [and] everyone is at risk for a TBI."⁴⁸ Nearly 70% of torture survivors report a closed head injury, which can lead to a TBI.⁴⁹ An individual with a TBI commonly suffers from issues with speech and language, memory and learning, attention, and concentration.⁵⁰ In fact, after suffering a brain injury, the ability to understand and process information slows down.⁵¹ Memory is also often impacted; those with a TBI are frequently able to remember events from a long time ago but face difficulties with learning and remembering newer events and information.⁵² Other symptoms include physical disabilities, dementia, psychiatric disorders, and cognitive impairment,⁵³ which "pose[] challenges to learning English"⁵⁴ and, therefore, to naturalization.

D. Mental Health Diagnoses Such as Depression and Anxiety

Although there is no exact known cause, depression is believed to be a result of psychological, biological, environmental, and genetic factors.⁵⁵ Depression alone can be debilitating,⁵⁶ however, depression is

⁴⁸ *Traumatic Brain Injury*, CTFRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/traumaticbraininjury/index.html> (last updated Mar. 4, 2019).

⁴⁹ Mara Rabin & Cynthia Willard, *Torture and Refugees, in* REFUGEE HEALTH CARE: AN ESSENTIAL MED. GUIDE 181, 184 (Aniyizhai. Annamalai ed., 2014).

⁵⁰ Dawn Neumann & Anthony Lequerica, *Cognitive Problems After Traumatic Brain Injury*, TBI MODEL SYS. 1, 1 (2009), http://uwmskte.washington.edu/sites/uwmskte/files/files/TBI_cognitive.pdf.

⁵¹ *Id.* at 2.

⁵² *Id.*

⁵³ Nino Stocchetti & Elisa R. Zanier, *Chronic Impact of Traumatic Brain Injury on Outcome and Quality of Life: A Narrative Review*, CRITICAL CARE 1, 6–7 (2016).

⁵⁴ Rabin & Willard, *supra* note 49, at 54.

⁵⁵ David Railton, *Link Between Depression and Cognitive Decline Explored*, MEDICALNEWSTODAY (May 29, 2018), <https://www.medicalnewstoday.com/articles/321935.php>.

⁵⁶ As explained by The American Psychiatric Association, depression "negatively affects how you feel, the way you think and how you act . . . causes feelings of sadness and/or a loss of interest in activities once enjoyed . . . can lead to a variety of emotional and physical problems and can decrease a person's ability to function . . ." *What Is Depression?*, AM. PSYCHIATRIC ASS'N, <https://www.psychiatry.org/patients-families/depression/what-is-depression> (last visited Dec. 21, 2019). Further, research shows that when mental health

also associated with various other diseases such as dementia⁵⁷ and overall cognitive impairment.⁵⁸ A common mental health comorbidity is between depression and anxiety, with a comorbidity rate estimated at 60%.⁵⁹ In a study of previously traumatized Cambodian refugees, researchers evaluated the group for major depression, PTSD, and alcohol use disorder and found that only approximately 30% of the sample was free of any of the three disorders.⁶⁰ Another study, reported in a CDC publication, found that 18.8% of Iraqi adults have a mental disorder at some point in their lifetime.⁶¹

These types of mental health concerns can arise at various points during the refugee process, starting with the experience prior to migration.⁶² Studies on diverse refugee populations have found that before migrating, those "who experienced more traumatic events were more vulnerable to depression"⁶³ and face obstacles even to obtain the needed health care to address these disorders.⁶⁴ Then, during the migration process, other stressors are added that can implicate both depression and anxiety among refugees.⁶⁵ Some of the common triggers include lack of certainty for the future and the absence of basic necessities within refugee camps.⁶⁶ Lastly, once migrated, the experience of post-migration and accompanying depression has been found to have many long-term effects on refugee health.⁶⁷ Feelings of insecurity and the stress accompanying the process of acculturation both lend

concerns are left untreated, it can become debilitating and lead to other long-term diseases. Patricia J. Shannon, *Refugees' Advice to Physicians: How to Ask About Mental Health*, 31 FAM. PRAC. 462, 463 (2014).

⁵⁷ For example, a 2015 study found that people with depression were at an 83% increased risk of acquiring dementia compared to people without depression. Railton, *supra* note 55.

⁵⁸ *Id.*

⁵⁹ Beth Salcedo, *The Comorbidity of Anxiety and Depression*, NAT'L ALLIANCE ON MENTAL ILLNESS (Jan. 19, 2018), <https://www.nami.org/Blogs/NAMI-Blog/January-2018/The-Comorbidity-of-Anxiety-and-Depression>.

⁶⁰ Marshall et al., *supra* note 21, at 576–77.

⁶¹ Div. of Glob. Migration & Quarantine, *Iraqi Refugee Health Profile*, U.S. DEPT HEALTH & HUM. SERVS. 1, 13 (Dec. 16, 2014), <https://www.cdc.gov/immigrantrefugeehealth/pdf/iraqi-refugee-health-profile.pdf> (The most common mental disorder being anxiety).

⁶² See Hameed et al., *supra* note 44, at 21–22.

⁶³ *Id.* at 21.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 22.

to anxiety and depression among refugees, implicating the long-term mental health concerns that occur even after a refugee has fled and resettled.⁶⁸ Thus, refugees may present with symptoms of anxiety and depression even after they have lived in the United States as an LPR for many years.

IV. EVOLUTION OF MENTAL IMPAIRMENTS AND NATURALIZATION IN THE UNITED STATES

Discrimination against immigrants with disabilities is not a new concept; the implications on individuals with disabilities attempting to become United States citizens have merely shifted as time has passed. As early as 1882, the 47th Congress enacted legislation that barred entry to the United States to those persons who were "unable to take care of himself or herself without becoming a public charge," or were found to be a "convict, lunatic, [or] idiot."⁶⁹ This language was the first use of express language within immigration law that limited the admission of individuals with disabilities into the country.

The Naturalization Act of 1906 introduced the requirement that prospective citizens demonstrate an ability to speak the English language.⁷⁰ Original legislation provided an exemption for applicants who were "physically unable to comply" with the statute's standard of English proficiency due to deafness or blindness.⁷¹ Subsequently, demoralizing and pointed language was used to bar individuals with disabilities from accessing the United States immigration process when, in 1917, "idiots, imbeciles, feeble-minded persons, epileptics, [and] insane persons"⁷² were denied entry into the United States.⁷³ Concurrent with these inadmissibility grounds, The Immigration Act of 1917 implemented the first-ever literacy test for all applicants over the age of sixteen attempting to gain admission to the United States.⁷⁴ This requirement to speak English was upheld by federal courts in 1927, stating that

⁶⁸ *Id.*

⁶⁹ Act of Aug. 3, 1882, ch. 376, § 2, 22 Stat. 214.

⁷⁰ Joren Lyons, *Mentally Disabled Citizenship Applicants and the Meaningful Oath Requirement for Naturalization*, 87 CALIF. L. REV. 1017, 1026 (1999).

⁷¹ *Id.* at 1028.

⁷² Immigration Act, ch. 29, § 3, 39 Stat. 875, 875 (1917) (repealed 1952).

⁷³ *Id.*

⁷⁴ Sarai Martinez-Suazo, *Timeline of US Naturalization Law/Civics Exam*, U. VA. FAM. MED. 1, 1 (June 2015), https://med.virginia.edu/family-medicine/wp-content/uploads/sites/285-/2017/02/Sarai-Martinez-Suazo-US-Naturalization_Web.pdf.

applicants would need to "fit themselves to comply with this rule."⁷⁵ Later, in 1940, the Nationality Act enacted a "basic verbal English proficiency,"⁷⁶ placing additional parameters and obstacles to naturalization.

The 1952 Immigration and Nationality Act ("INA"), which still dictates modern United States immigration law, contained the same broad bans on immigration of individuals who were illiterate, "feeble-minded," and those likely to become a public charge.⁷⁷ However, by 1990, the INA became inclusive by opening doors for immigrants with disabilities and their families who were previously barred from entering the United States, so long as the applicant with a disability would not cause harm to themselves or others.⁷⁸ With large numbers of families immigrating to the United States, Congress reviewed the policies and law on naturalization requirements.⁷⁹ As such, the 1990s signaled a meaningful shift in immigration law to promote the naturalization of applicants with disabilities.⁸⁰

A. Age and Residency Exemption

The Subversive Activities Control Act of 1950 formalized the requirement that naturalization applicants had to demonstrate English literacy.⁸¹ However, the legislation included a grandfather clause to exempt applicants from the English requirement if, at the time of the enactment, they were over the age of fifty and had twenty years of permanent residency in the United States.⁸² By 1990, this exemption to the English requirement expanded to all current and future applicants over the age of fifty-five who had been permanent residents for at least fifteen years.⁸³ These age and residency-based exemptions

⁷⁵ *In re Katz*, 21 F.2d 867, 868 (E.D. Mich. 1927).

⁷⁶ Martinez-Suazo, *supra* note 74, at 2.

⁷⁷ Lyons, *supra* note 70, at 1024.

⁷⁸ The INA for the first time provided waivers for applicants with disabilities who relatives that were United States citizens or were permanent residents and would otherwise be able to immigrate. *Id.* at 1025.

⁷⁹ Congress was also prompted to review the policies because LPRs were aging and developing Alzheimer's or other diseases impacting their cognition. *Id.*

⁸⁰ *Id.* at 1024.

⁸¹ *Id.* at 1028 n.64.

⁸² *Id.* at 1028.

⁸³ Current naturalization policies provide an exemption for the English requirement to applicants over the age of fifty who have lived as an LPR in the United States for at

made it possible for elderly immigrants to naturalize without demonstrating proficiency in English.

B. Rehabilitation Act Accommodations

The Rehabilitation Act of 1973 ("Rehab Act") was a turning point in the naturalization process for individuals with disabilities by expanding civil rights protections to federal agencies.⁸⁴ The Rehab Act provides individuals with disabilities protection from "discrimination by federal contractors and in any program receiving federal support."⁸⁵ Since the Immigration and Nationality Service ("INS"), and its successor, USCIS, fell under the confines of the Rehab Act, they too were required to comply and conduct themselves consistently with the Act.⁸⁶

Decades later, the current USCIS policy manual, which is the primary source for agency guidance, states, "The Rehabilitation Act . . . regulations require USCIS to provide accommodations that assist an applicant with a disability to have an equal opportunity to participate in its programs, to include the naturalization process."⁸⁷ Under Section 504 of the Rehab Act, USCIS must make modifications for applicants with disabilities during the naturalization process.⁸⁸ These accommodations do not alter the requirements for naturalization in any way, they merely provide a means for the applicant to access

least twenty years and for those over the age of fifty-five who have lived in the United States as an LPR for fifteen years. Applicants meeting these criteria must still take the civics exam but may do so in their native language. However, if an applicant is over the age of sixty-five and has lived in the United States as an LPR for at least twenty years, they will also receive special consideration to be exempt from the civics exam. *Exceptions & Accommodations*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/us-citizenship/citizenship-through-naturalization/exceptions-accommodations> (last updated Apr. 17, 2019).

⁸⁴ Leslie Francis & Anita Silvers, *Perspectives on the Meaning of "Disability"*, 18 *AMA J. ETHICS* 1025, 1027–28 (2016); see also Lyons, *supra* note 70, at 1038.

⁸⁵ Francis & Silvers, *supra* note 84, at 1027.

⁸⁶ Lyons, *supra* note 70, at 1038–39.

⁸⁷ USCIS Policy Manual, Volume 12: Citizenship and Naturalization, Part C: Accommodations, Chapter 1: Purpose and Background, *available at* <https://www.uscis.gov/policy-manual/volume-12-part-c-chapter-1> (last updated Dec. 21, 2019).

⁸⁸ CATHOLIC LEGAL IMMIGRATION NETWORK, *The Disability Waiver and Accommodations, in* CITIZENSHIP FOR US: A HANDBOOK ON NATURALIZATION & CITIZENSHIP 241, 251 (2002), https://cliniclegal.org/sites/default/files/231718_CLINIC_07.pdf (on file with author).

the process.⁸⁹ As such, the Form N-400 asks whether an applicant is blind or has low vision, is deaf or hard of hearing, or has another type of disability or impairment for which they need an accommodation.⁹⁰

C. Oath of Allegiance Requirement

The United States naturalization process has included an oath requirement since the very first naturalization law in 1790.⁹¹ The Naturalization Act of 1795 implemented a more formalized oath requirement, requiring applicants to support the Constitution, attach to the principles of the Constitution, and renounce all former allegiances.⁹² However, at the time, there was no consistent language or official oath, and the immigration courts independently handled the oath in the manner to which they deemed fit.⁹³ By 1929, applications for naturalization included a printed version of a standardized oath.⁹⁴ Soon after, The Nationality Act of 1940 produced a formal requirement for applicants to have an understanding of and attachment to the fundamental principles of the Constitution.⁹⁵

Currently, the last step in the naturalization process is the administration of the Oath of Allegiance, in English, in a public ceremony.⁹⁶ The Oath of Allegiance reads as follows:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or

⁸⁹ USCIS Policy Manual, Volume 12: Citizenship and Naturalization, Part C: Accommodations, Chapter 3: Types of Accommodations, *available at* <https://www.uscis.gov/policy-manual/volume-12-part-c-chapter-3> (last updated Dec. 20, 2019) (providing examples of the available accommodations) [hereinafter Types of Accommodations Policy].

⁹⁰ Part 3 of the Form N-400 is a section for accommodations for applicants with impairments and/or disabilities. *See N-400, Application for Naturalization*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/n-400> (last updated Oct. 17, 2019) (providing a link to download the form).

⁹¹ *Naturalization Oath of Allegiance to the United States*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/us-citizenship/naturalization-test/naturalization-oath-allegiance-united-states-america> (last updated June 25, 2014).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ 1940 Nationality Act, Pub. L. No. 76-853 § 327, 54 Stat. 1137, 1151 (1940).

⁹⁶ INA § 337, 8 U.S.C. § 1448 (2012); *see also Naturalization Oath of Allegiance to the United States*, *supra* note 91.

citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.⁹⁷

Since one of the requirements to naturalize is the need to "demonstrate an attachment to the principles and ideals of the U.S. Constitution,"⁹⁸ the applicant is required to take the oath, unless a waiver, modification, or accommodation exists. This final step creates an obstacle and can even prohibit an applicant with disabilities or cognitive impairments from naturalizing.⁹⁹

1. Oath Modification

Modifications to the Oath¹⁰⁰ only "modif[y] the manner in which an applicant meets the oath requirement."¹⁰¹ Modifications are mostly in the interest of religious accommodations or an applicant's deeply held moral or ethical code.¹⁰²

⁹⁷ *Naturalization Oath of Allegiance to the United States*, *supra* note 91.

⁹⁸ *Naturalization Information*, *supra* note 12.

⁹⁹ *See, e.g.*, Hector Becerra, *Citizenship Denied Childlike Vijai*, L.A. TIMES (Apr. 26, 2000, 12:00 AM), <https://www.latimes.com/archives/la-xpm-2000-apr-26-me-23592-story.html>.

¹⁰⁰ USCIS Policy Manual, Volume 12: Citizenship and Naturalization, Part J: Oath of Allegiance, Chapter 3: Oath of Allegiance Modifications and Waivers, *available at* <https://www.uscis.gov/policy-manual/volume-12-part-j-chapter-3> (last updated Dec. 20, 2019) [hereinafter Oath Modification Policy].

¹⁰¹ Sharon Hing, *Modifications and Waivers to Taking the Oath of Allegiance*, IMMIGRANT LEGAL RES. CTR. 1, 3 (2018), *available at* https://www.ilrc.org/sites/default/files/resources/modifica_waivers_oath_allegiance-20180503.pdf.

¹⁰² A modification of the Oath on religious or conscientious objections allows an applicant to delete either or both of the "bearing arms" and "performing noncombatant service" phrases of the Oath. This type of modification requires evidence through attestation or a witness statement that the applicant is opposed to the clause(s) due to "religious training and belief or deeply held moral or ethical code." *See* Oath Modification Policy, *supra* note 100; *see also* INA § 337(a)(5)(A)–(B), 8 U.S.C. § 1448 (a)(5)(A)–(B) (2012). Another modification to the Oath allows an affirmation of allegiance by affirming the Oath instead of reciting the "so help me God" phrase of the Oath. *See* Oath Modification Policy, *supra* note 100; *see also* 8 C.F.R. § 337.1 (2011).

For applicants with disabilities who may not be able to take the Oath in its standard form, USCIS offers four modifications: (1) simplifying the language to allow the applicant to assent to the Oath; (2) an expedited scheduling of taking the Oath; (3) use of a sign language interpreter during the Oath ceremony, and; (4) administration of the Oath at a different location.¹⁰³ Although the USCIS Policy Manual states that a simplified version of the Oath is available, there is no example in the Form N-400 instructions or elsewhere, as USCIS has adopted no official version of a simplified oath.¹⁰⁴ Simple language versions are available online, but these have been created by immigration advocates and not adopted by USCIS.¹⁰⁵ Other advocates suggest explaining the Oath in alternative ways, such as asking questions to the applicant that boil down to the foundational principles of the Oath of Allegiance.¹⁰⁶ For instance, officers could ask an applicant, "[w]ould you do anything to hurt America?"¹⁰⁷ With no standardized simplified language of the Oath, individual USCIS officers may offer this modification as they see fit.¹⁰⁸

D. Form N-648: Medical Certification for Disability Exceptions

The Immigration and Nationality Technical Corrections Act of 1994 ("INTCA") was a critical point in time when immigration law addressed an exception for applicants with disabilities. For the first time, an English and civics exception was made available to individuals with disabilities, not just those applicants who were deaf or blind.¹⁰⁹ The Act intended to:

promote the acquisition of U.S. citizenship by relaxing or eliminating certain burdensome and unreasonable testing . . . requirements . . . [by waiving the English and civics requirement for applicants with] functioning so impaired as to render the individual unable to participate in the normal testing procedures.¹¹⁰

Although the INTCA aimed to provide accommodations for naturalization applicants with disabilities, in practice, those applicants

¹⁰³ Types of Accommodations Policy, *supra* note 89.

¹⁰⁴ *See id.*

¹⁰⁵ *See, e.g.*, CATHOLIC LEGAL IMMIGRATION NETWORK, *supra* note 88, at 256.

¹⁰⁶ *See id.*

¹⁰⁷ *Id.* at 256.

¹⁰⁸ *See id.*

¹⁰⁹ *See* Lyons, *supra* note 70, at 1039.

¹¹⁰ *Id.* at 1040.

unable to meet the English and civics requirements of naturalization were still denied citizenship.¹¹¹

In response to the passing of the INTCA, a preliminary guidance memorandum was distributed internally in the INS "directing officers to waive the English fluency and U.S. history/civics requirements for disabled applicants, but to maintain all other requirements."¹¹² The memorandum highlighted the fact that the INS was trying "to be as accommodating as possible" and instructed officers to provide applicants filing disability exceptions "the same level of compassion and professionalism as any other applicant for a benefit The same level of discretion and sensitivity the INS officers apply to orphan adoption cases should be replicated in all section 312 disability exception cases."¹¹³ The memorandum even recommended that, if needed, adjudicators should reach out to other agencies, such as the Social Security Administration, which may have deemed an applicant disabled.¹¹⁴ Despite this memorandum, there was no public notice made in the Federal Register.¹¹⁵

Prior to 1996, under the INA, LPRs had access to many federal programs and were only prohibited from accessing a few rights afforded solely to United States Citizens (the right to vote, to serve on a jury, and to be qualified for certain government jobs).¹¹⁶ Consequently, LPRs who could not learn English or civics due to mental impairments were not inclined to apply for naturalization because they could already access these critical federal programs.¹¹⁷ However, with the passing of The Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA") in 1996, restrictions were placed on the ability of permanent residents to access public benefits¹¹⁸ such as

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ 74 No. 22 Interpreter Releases 926 (1997).

¹¹⁴ Memorandum from Louis D. Crocetti, Assoc. Comm'r of the INS Office of Examinations, to the Reg'l Dirs., Dist. Dirs., Officers-in-Charge, & Serv. Ctr. Dirs. (Mar. 12, 1997).

¹¹⁵ Lyons, *supra* note 70, at 1040.

¹¹⁶ *Id.* at 1018–19.

¹¹⁷ *Id.*

¹¹⁸ ALISON SISKIN, CONG. RES. SERV., RL33809, NONCITIZEN ELIGIBILITY FOR FEDERAL PUBLIC ASSISTANCE: POLICY OVERVIEW 1, 1–17 (2016).

Supplemental Security Income ("SSI").¹¹⁹ If an immigrant was already in the United States, they could only have access to SSI for seven years; therefore, within those seven years, they would need to naturalize or else lose access to the benefit.¹²⁰ Thus, whereas LPRs with disabilities once may not have applied for naturalization, they were now faced with the *need* to apply to obtain these critical benefits; their ability to access the means to pay their living expenses hinged on their ability to meet all naturalization requirements.¹²¹

Consequently, it became imperative with the passing of the PRWORA that a formal process be established so that individuals with disabilities could fulfill the naturalization process and subsequently access these needed public benefits. Accordingly, a group of attorney advocates filed suit on July 3, 1996, requesting that the INS "adopt official rules implementing [the INTCA] amendments and to make its waiver policy public."¹²² In response, a formal policy was introduced in 1997 when the INS created the Form N-648 Medical Certification for Disability Exception.¹²³

Form N-648 is available for applicants who,

establish that he or she (1) 'is unable, because of a medically determinable physical or mental impairment . . . which has lasted or is expected to last at least 12 months, to demonstrate an understanding of the English language,' and (2) 'is unable to demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States because of a medically determinable physical or mental impairment, that already has or is expected to last at least 12 months.'¹²⁴

Furthermore, the Code of Federal Regulations defines "medically determinable" as "an impairment that results from anatomical, physiological, or psychological abnormalities *which can be shown by medically acceptable clinical or laboratory diagnostic techniques* to have resulted in functioning so impaired as to render an individual unable

¹¹⁹ Barbara Weiner, *Protecting SSI Benefits for Elderly and Disabled Refugees*, A.B.A.: C.R. & SOC. JUST. (Apr. 4, 2004), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol31_2004/spring2004/hr_spring04_protecting/.

¹²⁰ An immigrant would either have to naturalize within those seven years or have accrued a substantial work history within the Social Security system. *Id.*

¹²¹ *See id.*

¹²² Lyons, *supra* note 70, at 1041.

¹²³ *Id.*

¹²⁴ Hassan v. Dedvukaj, No. 09-10716, 2010 WL 199931, at *6 (E.D. Mich. Jan. 19, 2010) (citing 8 C.F.R. §§ 312.1(b)(3), 312.2(b)(1) (2011)).

to demonstrate[.]"¹²⁵ the requisite knowledge even if given "reasonable modifications."¹²⁶ Despite the requirement to show an impairment, USCIS does not provide any list of impairments or disabilities that would automatically qualify for the disability exception.¹²⁷ Instead, there is a nexus requirement that the doctor¹²⁸ must persuasively document that is specific to the individual applicant with the diagnosis.¹²⁹

A USCIS officer "must carefully review the form to determine whether the applicant is eligible for the exception."¹³⁰ The primary responsibility of the officer is to "determine whether the form has been properly completed"¹³¹ by ensuring that the questions are answered, that the submission lacks discrepancies, and that the nexus (causal relationship) is sufficient to demonstrate by a "preponderance of the evidence"¹³² that the applicant is eligible.¹³³ The USCIS Policy Manual states that officers must adjudicate the Form N-648 without second-guessing the medical professional's diagnosis or questioning the validity of the stated reasoning as to why the applicant is unable to meet the English and civics requirements.¹³⁴ Ultimately, the officer is to "focus on whether the medical professional has sufficiently explained with enough supporting details that the applicant has a disability or impairment and its nature."¹³⁵

¹²⁵ 8 C.F.R. § 312.1(b)(3) (2011) (emphasis added).

¹²⁶ *Id.*

¹²⁷ See, e.g., Melissa Rodgers, *Assisting Naturalization Applicants Who Have Disabilities by Using Form N-648 Completing and Submitting Form N-648*, IMMIGRANT LEGAL RES. CTR. 1, 2 (May 2018), https://www.ilrc.org/sites/default/files/resources/n648_advisory-2of2-20180509v2.pdf.

¹²⁸ Form N-648 may be completed by medical doctors, doctors of osteopathy, and clinical psychologists. See USCIS Policy Manual, Volume 12: Citizenship and Naturalization, Part E: English and Civics Testing and Exceptions, Chapter 3: Medical Disability Exception (Form N-648), available at <https://www.uscis.gov/policy-manual/volume-12-part-e-chapter-3> (last updated Dec. 20, 2019) [hereinafter Medical Disability Policy] (This policy requires the medical professionals to be licensed to practice "in any of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, or the Commonwealth of the Northern Mariana Islands.").

¹²⁹ See *id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

The USCIS Policy Manual states that, generally, the medical professional's diagnosis should be accepted by the officer.¹³⁶ Hence, an officer grants an exception if the applicant has met the aforementioned burden of proof, if there is a nexus between the disability and their inability to meet the English or civics examination requirements, or both.¹³⁷ This burden is satisfied when the applicant has demonstrated "that, even with reasonable accommodations, he or she is unable to meet the English and civics requirements for naturalization."¹³⁸

If an officer deems the Form N-648 insufficient,¹³⁹ an applicant is left to do one of the following: continue with the interview as though a Form N-648 was never submitted, attempt to take the English and civics examinations, or decline to take the examinations and have a failed attempt.¹⁴⁰ An applicant has two chances to pass the English and civics examinations per naturalization application submission.¹⁴¹

If an officer deems the Form N-648 sufficient, the officer will conduct the interview for naturalization in the applicant's preferred language, using an interpreter.¹⁴² The civics examination will also be waived if the Form N-648 specifies that the applicant is unable to learn civics due to their impairment(s).¹⁴³ If an exception is granted, USCIS then will establish whether the applicant meets all of the other naturalization requirements,¹⁴⁴ including whether the applicant can understand the meaning of the Oath.¹⁴⁵

¹³⁶ *Id.*

¹³⁷ *See id.*

¹³⁸ *Id.* ("Additionally, illiteracy and advanced age, alone, are not valid reasons to seek this medical disability exception.")

¹³⁹ *See id.* (listing reasons why the form may be deemed insufficient, as related to credible doubt).

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ USCIS Policy Manual, Volume 12: Citizenship and Naturalization, Part J: Oath of Allegiance, Chapter 2: Oath of Allegiance, available at <https://www.uscis.gov/policy-manual/volume-12-part-j-chapter-2> (last updated Dec. 20, 2019).

The Oath of Allegiance is complicated and challenging to comprehend.¹⁴⁶ Yet, Form N-648 itself is not sufficient to demonstrate that an applicant, as stated by a medical professional, is unable to understand or communicate, due to a medical condition, the meaning of the Oath.¹⁴⁷ Consequently, although Form N-648 appears on its face to provide adequate exceptions to the requirements of naturalization, a subset of applicants with disabilities may also require additional evidence to waive their taking of the Oath so that they can naturalize.

1. Oath Waiver

Prior to the INTCA, taking the Oath of Allegiance did not pose a barrier for naturalization applicants with disabilities because these applicants were either not applying due to their inability to meet the English and civics requirements or were applying and being denied naturalization after failure to pass these examinations.¹⁴⁸ Once the INTCA passed and applicants with disabilities could receive an exception from the English and civics requirements, applicants still faced the obstacle of taking the Oath of Allegiance and demonstrating an *understanding* of the Oath.¹⁴⁹ However, the internal memorandum released to USCIS field officers in response to the INTCA instructed officers to separate those cases for applicants who met the eligibility requirements for the disability exception but were unable to meet the Oath requirements.¹⁵⁰ These cases were kept separate until officers received further guidance and instruction on how to adjudicate those cases.¹⁵¹

As recently as 1997, the idea of waiving the Oath requirement continued to go unnoticed by the Department of Justice.¹⁵² Then, in

¹⁴⁶ The wording of the Oath of Allegiance comes from the Naturalization Act of 1795 and has not been revised since. *USCIS Issues Policy Guidance on Eligibility to Modify the Oath of Allegiance*, NEW AM. CAMPAIGN, <https://www.newamericanscampaign.org/uscis-issues-policy-guidance-eligibility-modify-oath-allegiance/> (last visited Dec. 21, 2019).

¹⁴⁷ Hing, *supra* note 101, at 3 ("Note that the process to request an oath waiver is *separate* from the process to obtain an exception to the English and civics requirement.")

¹⁴⁸ Lyons, *supra* note 70, at 1020–21, 1029.

¹⁴⁹ *Id.* at 1032–34.

¹⁵⁰ *Supra* note 113.

¹⁵¹ *Id.*

¹⁵² A memorandum opinion from the Office of Legal Counsel stated:

In concluding that the oath requirement of section 337 cannot be waived, we do not disagree with the proposition . . . that section 504

2000, the idea of an oath waiver was no longer off the table and the INA was amended to allow for the Attorney General, in their discretion, to provide a waiver of the Oath if it is believed that the applicant is "unable to understand, or to communicate an understanding of, its meaning because of a physical or developmental disability or mental impairment."¹⁵³ In doing so, the applicant receiving a waiver is "considered to have met the requirements of . . . attachment to the principles of the Constitution and well disposition to the good order and happiness of the United States."¹⁵⁴ Therefore, if an applicant's disability would also prevent them from understanding and communicating the Oath, an additional document called an "Oath Waiver" is required.¹⁵⁵ Unlike a modification to the Oath, an Oath Waiver "completely exempts the applicant from taking the oath."¹⁵⁶

In practice, an Oath Waiver requires an applicant to submit a "written request and a written evaluation by an authorized medical professional . . . [however, there is no] specific form to request an oath waiver,"¹⁵⁷ and instead, the USCIS Policy Manual lists five requirements for information that the written evaluation must include.¹⁵⁸ If an applicant's Oath Waiver is approved, instead of the applicant taking the Oath of Allegiance, "a legal guardian, surrogate, or an eligible designated representative attests to the applicant's eligibility for naturalization"¹⁵⁹ and the burden of proof for naturalization shifts to this representative who must establish the applicant's eligibility.¹⁶⁰

of the Rehabilitation Act . . . might require some sort of accommodation for persons who, because of their disabilities, cannot take the oath of allegiance. Whether there exists any accommodation to the oath requirement that would not result in a 'fundamental alteration' of the naturalization program. . . Should you determine that you would like us to address these questions, we will solicit the views of the Civil Rights Division and the State Department.

Waiver of Oath of Allegiance for Candidates for Naturalization, 21 Op. O.L.C. 41, 43 (1997).

¹⁵³ Act of November 6, 2000, Pub. L. No. 106-448 § 1, 114 Stat. 1939.

¹⁵⁴ *Id.*

¹⁵⁵ See INA § 337(a), 8 U.S.C. § 1448(a) (2019); see also Oath Modification Policy, *supra* note 100.

¹⁵⁶ Hing, *supra* note 101, at 3.

¹⁵⁷ Oath Modification Policy, *supra* note 100.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

V. FORM N-648 IN PRACTICE

Although the Form N-648 creation over two decades ago formalized the medical exception for naturalization applications, under the current version of the INA, individuals with mental disabilities or cognitive impairments face new concerns and various obstacles to overcome to become a United States citizen.

A. Creation and Initial Implementation of Form N-648

On March 19, 1997, the original Form N-648 was created when the Federal Register published the "Exceptions to the Educational Requirements for Naturalization for Certain Applicants."¹⁶¹ Ultimately, the INS concluded that a new form would:

allow the licensed medical professionals to state simply, via reference to the instructional guidelines, how the applicant's disability prevents the applicant from learning the information needed to fulfill the requirements of section 312 of the Act [and] allow the licensed medical professional an opportunity to comment on how their particular medical experience qualifies them to render complex disability assessments.¹⁶²

The INS noted that since the professionals would now be required to "sign and declare that the examination and certification is accurate under penalty of perjury"¹⁶³ the integrity of the disability determination would be maintained.¹⁶⁴ The INS further noted that to prevent fraud, Form N-648 would "allow for the submission of additional background medical documentation, upon request of the INS."¹⁶⁵ The INS was mainly concerned with holding medical professionals accountable for determining an applicant disabled, rather than demonstrating a concern for the risk that the applicant would engage in fraudulent behavior.¹⁶⁶

As a result of the final rule, all applicants seeking a medical exception from the English or civics requirement for naturalization

¹⁶¹ Exceptions to the Educational Requirements for Naturalization for Certain Applicants, 62 Fed. Reg. 12,915, 12,918–19 (Mar. 19, 1997) (codified at 8 C.F.R. pt. 229, 312, 419).

¹⁶² *Id.* at 12,918.

¹⁶³ *Id.* at 12,919.

¹⁶⁴ *Id.* at 12,917–18.

¹⁶⁵ *Id.* at 12,919.

¹⁶⁶ *Id.* at 12,917–18.

are required to submit Form N-648 as an attachment to their naturalization applications, formalizing the application process.¹⁶⁷ The first Form N-648, released on March 24, 1997 was four pages, including the instructions for completion.¹⁶⁸ The medical professional was required to provide information about the applicant, including findings on the applicant's disability that prevented them from meeting the English or civics requirements and the duration of the disability.¹⁶⁹ However, Form N-648 did not require the medical professional to explain any sort of nexus between the impairment and the inability to meet the requirements, but did request information about the doctor-patient relationship and specialization of the medical professional.¹⁷⁰

Naturalization applications that were submitted with this original Form N-648 were often denied due to the adjudicator deeming Form N-648 insufficient.¹⁷¹ In response, a group of seven naturalization applicants with disabilities brought suit in 1998 after USCIS officers were not following the guidelines and were not using proper procedures during the adjudication of Form N-648.¹⁷² Prior to deeming a Form N-648 insufficient, officers were instructed to contact the certifying medical professional.¹⁷³ Yet, two plaintiffs explicitly noted that the officers did not take this initial step and instead found the form insufficient.¹⁷⁴

B. *Subsequent Editions*

On February 18, 1999, the INS issued a final rule that would allow for licensed doctors of osteopathy to complete Form N-648.¹⁷⁵ Subsequently, the Service made some minor linguistic changes to the form that can be seen in the March 30, 2005, revised edition of Form

¹⁶⁷ 8 C.F.R. § 312.2(b)(2) (2011).

¹⁶⁸ 74 Interpreter Releases 512-15 (1997).

¹⁶⁹ *Id.*

¹⁷⁰ *See id.*

¹⁷¹ *Disability Waivers 101*, NEW AM. CAMPAIGN, <https://www.newamericascampaign.org/disability-waivers-101/> (last visited Dec. 21, 2019).

¹⁷² *See Campos v. INS*, 70 F. Supp. 2d 1296 (S.D. Fla. 1998).

¹⁷³ *Id.* at 1304.

¹⁷⁴ *Id.* at 1302.

¹⁷⁵ 8 C.F.R. § 312.2 (2011).

N-648.¹⁷⁶ The 2005 Form N-648, unlike the original 1997 edition, expands the "Instructions to the Form" to include more in-depth directions and even examples of sufficient and insufficient responses to the questions. It also included a section explaining the purpose of the form and a definition of disability and/or impairment(s).¹⁷⁷ Additionally, Form N-648 asked the medical professional to explain "how long and for what conditions have you been treating the applicant" if the professional had seen the applicant prior to the appointment for the completion of the form.¹⁷⁸ Lastly, the 2005 edition of Form N-648 asked the medical professional to explain the nature of their practice.¹⁷⁹

Further revisions were made, and revised Form N-648s were released in January 2006, May 2008, and July 2009.¹⁸⁰ Between these revised versions, only minor changes were made. Mainly, the instructions were broken down even further and expanded upon. An inter-office memorandum published on May 10, 2006, from the Acting Associate Director of Domestic Operations at USCIS to the Directors of the Service Centers sheds some light on the revisions made and the concerns USCIS had with Form N-648.¹⁸¹ The memorandum explained that revisions were being made to the "Adjudicator's Field Manual" as a response to detection in "patterns of fraud and misrepresentation in the submission of Form N-648."¹⁸²

By 2008, a significant change was made in the adjudication procedures of Form N-648 where the form could be deemed insufficient if all information was not provided on it.¹⁸³ Previously, if there

¹⁷⁶ See DEPT OF HOMELAND SEC., U.S. CITIZENSHIP & IMMIGR. SERVS., OMB NO. 1615-0060, N-648 MEDICAL CERTIFICATION FOR DISABILITY EXCEPTIONS (2005), <https://www.lexisnexis.com/practiceareas/immigration/pdfs/web828.pdf> (last visited Dec. 21, 2019) [hereinafter 2005 N-648].

¹⁷⁷ Compare Exceptions to the Educational Requirements for Naturalization for Certain Applicants, *supra* note 161, with 2005 N-648, *supra* note 176.

¹⁷⁸ 2005 N-648, *supra* note 176.

¹⁷⁹ *Id.*

¹⁸⁰ Since USCIS does not archive the forms, this article includes all forms able to be located and is believed to be a complete list of all revised forms from 2005–09.

¹⁸¹ Interoffice Memorandum from Michael Aytes, Acting Assoc. Dir. Domestic Operations, USCIS (May 10, 2006), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2006/adjn648051006pub.pdf.

¹⁸² *Id.*

¹⁸³ The instructions on the form specifically stated the following: "If the medical professional does not provide all required information, USCIS may deem the Form N-648 insufficient."

was missing information, the medical exception would not be granted but a revised or second Form N-648 could be submitted.¹⁸⁴ In response to the 2008 revision, Catholic Legal Immigration Network ("CLINIC") issued a public comment, stating, among other concerns, that the example responses on Form N-648 should include examples of sufficient responses to the question on how the medical professional reached the diagnosis, that the definition of disability and how USCIS defines it ought be expanded upon, and that many questions should be broken down and asked in a yes/no format.¹⁸⁵

Form N-648 did not have any significant changes until December of 2010, when it was updated with "clearer and more concise language."¹⁸⁶ Many of the changes suggested by CLINIC in response to the previous edition¹⁸⁷ were ultimately implemented into the updated Form N-648. USCIS cited the change as being a means for "clarify[ing] the requirements and instructions and to standardize the process."¹⁸⁸ The 2010 version of Form N-648¹⁸⁹ broke down many of the questions and added checkboxes for various components, including the addition of a section to the form asking about the use of an interpreter during the examination.¹⁹⁰ In response to the new version, the Hebrew Immigrant Aid Society ("HIAS") published helpful hints for individuals

¹⁸⁴ Interoffice Memorandum from Michael Aytes, *supra* note 181, at 6.

¹⁸⁵ Letter from Donald M. Kerwin, Exec. Dir., Cath. Legal Immigr. Network, to Chief, Reg. Mgmt. Div., Dep't of Homeland Sec., USCIS (June 12, 2008), https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwjXx5WR7a_jAhVXBc0KHS-XBIMQFjAAegQIABAC&url=https%3A%2F%2Fwww.reginfo.gov%2Fpublic%2Fdo%2FdownloadDocument%3FobjectId%3D7872001&usq=AOvVaw0-meM8cqz6aheVjnL0nXug.

¹⁸⁶ *Disability Waivers 101*, *supra* note 171.

¹⁸⁷ Letter from Donald M. Kerwin, *supra* note 185.

¹⁸⁸ *USCIS Revises Form for Naturalization Candidates Seeking Medical Disability Exceptions*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/archive/archive-news/uscis-revises-form-naturalization-candidates-seeking-medical-disability-exceptions> (last updated Dec. 22, 2010).

¹⁸⁹ N-648, Medical Certification for Disability Exceptions, GALSTYAN L. FIRM, <http://www.galstyanlaw.com/forms/n-648-medical-certification-for-disability-exceptions/> (last visited Dec. 21, 2019) (providing a link to download the 2010 edition of Form N-648).

¹⁹⁰ *See id.*; *see also* Letter from Donald M. Kerwin, *supra* note 185, at 1 (discussing that this interpreter statement was not included on any prior versions of the form and their suggestion to remove the statement); *Fact Sheet: USCIS Revises Form for Naturalization Candidates Seeking Medical Disability Exceptions*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/archive/archive-news/fact-sheet-uscis-revises-form-naturalization-candidates-seeking-medical-disability-exceptions> (last updated Dec. 22, 2010).

utilizing Form N-648, reflecting that, despite an attempt to improve the form, it still poses problems for both medical professionals and applicants due to minute issues that can result in the form being deemed insufficient.¹⁹¹

The next greatest change to the Form occurred in 2017, when Form N-648 was updated to allow for International Classification of Diseases ("ICD") codes in place of, or in addition to, DSM codes.¹⁹² There was also a change to Form N-648 instructions, which updated the example about describing the applicant's impairment from an applicant with "Downs Syndrome" to an applicant with "Intellectual Disability (Severe)."¹⁹³

The 2017 version of Form N-648 required much of the same information requested on the original 1997 version of Form N-648, discussed *supra*,¹⁹⁴ but also asked for the following: cause (if known) of the medical disability and/or impairment(s); the clinical methods used to diagnose the applicant; a clear description of how the impairment impacts the applicant's ability to demonstrate knowledge and understanding of civics and/or English (nexus); the medical professional's opinion of whether their impairment would prevent the applicant from all or some of their ability to read/write/speak English and/or answer questions about United States history and civics; and whether an interpreter was used during the examination.¹⁹⁵ The 2017 version of Form N-648 is six-pages and needs to be certified by the medical professional who must also certify that they verified the applicant's identity using identity documents.¹⁹⁶

¹⁹¹ *HIAS Helpful Hints: Form N-648*, HIAS 1, 1–3, <https://cliniclegal.org/sites/default/files/HIASHelpfulHints100311.pdf> (on file with author).

¹⁹² See *N-648 Medical Certification for Disability Exceptions*, FORMS ARCHIVE (July 1, 2017), <https://formsarchive.com/n-648-medical-certification-for-disability-exceptions/> (providing a viewable version or a link to download the 2017 version of Form N-648) [hereinafter 2017 Form N-648].

¹⁹³ Compare DEP'T OF HOMELAND SEC., U.S. CITIZENSHIP & IMMIGR. SERVS., OMB NO. 1615-0060, INSTRUCTIONS FOR FORM N-648, MEDICAL CERTIFICATION FOR DISABILITY EXCEPTIONS (2011), <https://www.hplct.org/assets/uploads/files/Library%20Services/Immigration/n-648instr.pdf> (last visited Dec. 21, 2019), with 2017 Form N-648, *supra* note 192.

¹⁹⁴ See 2017 Form N-648, *supra* note 192.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

*C. December 2018 Policy Update and February 2019
Implementation*

On December 12, 2018, USCIS issued a Policy Alert entitled "Sufficiency of Medical Certification for Disability Exceptions (Form N-648)," to alert the public of "clarifications" being made to the Volume 12 of the USCIS Policy Manual, specifically, "that an officer may find an N-648 insufficient if there is a finding of credible doubt, discrepancies, misrepresentation or fraud as to the applicant's eligibility for the exception."¹⁹⁷

Afterwards, during a teleconference between the USCIS Public Engagement Division and stakeholders,¹⁹⁸ a multitude of reasons were given as to why a USCIS adjudicator may determine a Form N-648 to be insufficient.¹⁹⁹ Stated reasons included:

- (1) the medical professional did not properly complete the form;
- (2) the medical professional did not explain how the applicant's medical condition prohibits them from meeting the English requirement, the civics requirement, or both requirements;
- (3) the medical professional who certified the Form N-648 is not authorized to make such certification;
- (4) the medical professional did not examine or diagnose the applicant;
- (5) the applicant described in the Form N-648 is not the same person as the naturalization applicant;
- (6) someone other than the medical professional completed or certified Form N-648; or
- (7) significant anomalies, discrepancies, or fraud indicators were discovered.²⁰⁰

In response to the 2018 policy updates, on May 23, 2019, the most current edition of the Form N-648 was published,²⁰¹ making no

¹⁹⁷ Sufficiency of Medical Certification for Disability Exceptions (Form N-648), U.S. CITIZENSHIP & IMMIGR. SERVS. (Dec. 12, 2018), <https://www.uscis.gov/sites/default/files/policy-manual/updates/20181212-N648MedicalCertification.pdf> [hereinafter Sufficiency].

¹⁹⁸ USCIS Teleconference on N-648, Medical Certification for Disability Exceptions 1, U.S. CITIZENSHIP & IMMIGR. SERVS., https://www.uscis.gov/sites/default/files/files/nativedocuments/USCIS_Teleconference_on_Form_N-648_Medical_Certification_for_Disability_Exception-s.pdf (last visited Dec. 21, 2019) [hereinafter USCIS Teleconference].

¹⁹⁹ *Id.* at 2.

²⁰⁰ *Id.*

²⁰¹ Sufficiency, *supra* note 198.

changes to the March 21, 2017 edition, except for the ability to use a "USPS zip code lookup."²⁰²

Even though the standardization of Form N-648 makes clear the required documentation, advocates assisting naturalization applicants continue to experience USCIS officers finding Form N-648 insufficient.²⁰³ For instance, advocates have suggested something so minute as handwriting can cause concern for adjudicators, and they recommend the responses on Form N-648 be typed by the medical professionals.²⁰⁴

D. False Certification by Medical Professionals

One possible reason for the implementation of new policies is that USCIS uncovered licensed physicians across the country who were falsifying Form N-648 and medical records to fraudulently assist multiple applicants in the naturalization process.²⁰⁵

If USCIS has "credible doubts about the veracity of a medical certification,"²⁰⁶ it may refer the applicant for another disability determination conducted by another medical professional, or even deem Form N-648 insufficient and deny the exception.²⁰⁷ Nevertheless, the Field Manual for the Adjudicators (effective June 2007) explains that officers are to "assume that the medical professional's *diagnosis is valid in the absence of credible doubt*."²⁰⁸ However, "credible doubt" has no formal definition, and instead, is a subjective determination

²⁰² Compare 2017 Form N-648, *supra* note 192, with N-648, Medical Certification for Disability Exceptions, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/n-648> (last updated Aug. 15, 2019) (providing a link to a downloadable version of the most current Form N-648) [hereinafter Current Form N-648].

²⁰³ See Rodgers, *supra* note 127, at 3.

²⁰⁴ *Id.*

²⁰⁵ See, e.g., Frank Main, *Doctors Gave Fake Medical Opinions to Help Win Citizenship*, CHI. SUN TIMES (Mar. 31, 2017, 11:00 AM), <https://chicago.suntimes.com/2017/3/31/1-8383915/doctors-gave-fake-medical-opinions-to-help-win-citizenship>; U.S. Immigration & Customs Enf't, *Chicago Psychiatrist and Counselor Indicted for Citizenship Fraud*, ICE.GOV: NEWSROOM (Dec. 4, 2015), <https://www.ice.gov/news/releases/chicago-psychiatrist-and-counselor-indicted-citizenship-fraud>.

²⁰⁶ 8 C.F.R. § 312.2(b)(2) (2011).

²⁰⁷ *Id.*; see also Medical Disability Policy, *supra* note 128.

²⁰⁸ Hassan v. Dedvukaj, No. 09-10716, 2010 WL 199931, at *7 (E.D. Mich. Jan. 19, 2010) (citing 8 C.F.R. § 312.1(b)(1), (3) (2011)); see Medical Disability Policy, *supra* note 128 (listing factors that may give rise to credible doubts during the adjudication process).

in the hands of the adjudicator.²⁰⁹ The closest to a precise definition is the aforementioned list of "factors that may give rise to credible doubts" provided by USCIS during a February 2019 teleconference between the Public Engagement Division of USCIS and stakeholders.²¹⁰

The concern of fraud with medical exceptions has historically centered around the medical professionals themselves, not the applicants. USCIS continually attempt to ensure the physicians are not the ones fraudulently completing the forms; concerns possibly enhanced by the uncovering of large schemes of fraudulent certifications of Form N-648s uncovered in 2008²¹¹ and in 2016.²¹²

VI. CURRENT FORM N-648 POLICIES CONTINUE TO RESTRICT REFUGEES FROM NATURALIZING

Although, in theory, the creation of Form N-648 in 1997 created a path for individuals with disabilities to naturalize, it is evident that current immigration law and policies continue to perpetuate the historical notion that individuals with disabilities should not enter the country and ultimately should not be citizens of the United States. Refugees, in particular, are a vulnerable population with a wide variety of experiences, traumas, and histories. Current immigration policy ignores the implications that this vulnerability has on not only

²⁰⁹ See *Hassan*, 2010 WL 199931, at *7–8.

²¹⁰ *USCIS Teleconference*, *supra* note 198, at 3–4.

²¹¹ In October 2008, three Philadelphia persons were indicted for a fraudulent medical exception immigration scheme. One of the individuals operated a foundation to assist immigrants to naturalize and charged \$2,000 to refer those struggling to read and write English to one of two medical professionals. These medical professionals were paid \$120 from the referral, and they subsequently certified the Form N-648 for these individuals "fraudulently," whether or not they had a legitimate medical reason. Kathleen Brady Shea, *3 Indicted in Immigration Scheme*, PHILA. INQUIRER (Oct. 3, 2008), https://www.inquirer.com/philly/news/local/20081003_3_indicted_in_immigration_scheme.html.

²¹² A psychiatrist in Miami was sentenced on May 13, 2016, to forty-eight months in prison and ordered to pay over \$33 million in restitution to the Social Security Administration, the Department of Health and Human Services, the State of Florida, and USCIS. The psychiatrist was one of four co-conspirators operating a scheme in Miami in which she and the others "conspired to provide fraudulent medical information in support of false Social Security Disability applications, false Medicare and Medicaid claims, and false statements with respect to immigration benefits." Office of the Inspector Gen., Soc. Sec. Admin., *Miami Sentenced to Prison, Ordered to Repay \$33 Million for Role in Schemes to Facilitate Government Fraud*, OIG.SSA.GOV (May 13, 2016), https://oig.ssa.gov/sites/default/files/audit/full/pdf/Exposito%20May%2013%20Release_0.pdf.

a refugee's mental health and cognitive functioning, but the role that it plays on an applicant's ability to meet all the naturalization requirements, especially those with diagnosable disorders.

As such, USCIS is due to reform their policies surrounding the Form N-648 to assist the large population of refugees in the United States who have suffered trauma and are also likely to have cognitive impairments. Adequately explaining these impairments and the implications the refugee experience has on such impairments may not fit nicely into pre-defined boxes on a form. Indeed, the ability to naturalize for individuals with disabilities should not hinge on the decisions of USCIS officers who are not trained medical professionals, but instead are employees of the government instructed to rely upon the conclusions of trained medical professionals. This misplaced reliance creates unnecessary barriers to naturalization for applicants with disabilities that could be addressed by USCIS if the Form N-648 nexus question is re-worded, USCIS officers are appropriately trained for the adjudication of the disability exception, and an additional oath requirement question is implemented onto the Form N-648 itself.

A. The Nexus: Refugee Trauma-Related Diagnoses and Qualifying Disabilities for a Disability Exception

Form N-648 requires the certifying medical professional to "clearly describe how the applicant's disability and/or impairments affects his or her ability to demonstrate knowledge and understanding of English and/or civics."²¹³ This requirement is referred to as a "nexus" between the diagnosed disability or impairment and the ability to meet the English and civics requirements to naturalization. This nexus requirement is where a better understanding of the mental health effects of trauma is needed; even when these mental health impacts are diagnosed as an impairment, the impairment can hinder one's ability to learn and understand new languages or concepts, such as civics. This proper nexus understanding is lacking both on the part of medical professionals, and the USCIS officers who are tasked with finding the nexus sufficient to grant the medical exception.

Refugees have fled persecution and were at the hands of human rights crises, yet, they are expected to adequately inform medical professionals in the United States about their history so as to be

²¹³ See Current Form N-648, *supra* note 202.

diagnosed with a mental impairment. However, it's unlikely that the refugees had been receiving medical care during the years spent living in a country of asylum, and medical doctors often do not have the training to properly interview people about their trauma. It is also inappropriate to assume that a refugee will openly and willingly share the history of their trauma with a medical doctor with whom they are communicating through an interpreter. Consequently, it is unlikely that any primary care physician would be able to properly complete Form N-648, even when a refugee may have cognitive impairments, due to the lack of training by most doctors to respond to trauma and torture survivors along with the wording of the form itself and its accompanying instructions. Thus, refugees may be faced with physical and cognitive impairments that prevent them from meeting the naturalization requirements, while simultaneously lacking the medical care to assist them in meeting the burden of proof on Form N-648.

The sufficiency of Form N-648 centers around the aforementioned nexus question. As such, this question should leave no room for error on the part of the medical professional. Therefore, the nexus question should be written in a way to properly address the unique experiences of refugees who have survived persecution and the resulting cognitive impact this trauma plays on their ability to learn and demonstrate knowledge of English and civics. Primarily, since it is evident in the USCIS policy manual that this nexus is the main concern,²¹⁴ Form N-648 should signify this emphasis. Specifically, question ten about the nexus on the form should be re-worded as to make clear that this question, unlike the other nine, is requesting the medical professional to speak specifically and clearly about the applicant, not just a generalized diagnosis.²¹⁵ The response to this question must not be one size fits all. However, as worded currently, the question does not adequately signify this import to the certifying medical professional. The instructions for Form N-648 also only give one example for a sufficient response to the nexus question, using

²¹⁴ USCIS Policy Manual, Volume 12: Citizenship and Naturalization, Part E: English and Civics Testing and Exceptions, Chapter 3: Medical Disability Exception (Form N-648), available at <https://www.uscis.gov/policy-manual/volume-12-part-e-chapter-3> (last updated Dec. 20, 2019).

²¹⁵ Question ten of the form states, "clearly describe how the applicant's disability and/or impairments affect his or her ability to demonstrate knowledge and understanding of English and/or civics." *Id.*

an example of an individual with severe intellectual disability.²¹⁶ Both the instructions and the question itself should better emphasize the critical consideration and weight given to this nexus, especially since there are no specific medical conditions that will automatically qualify an applicant for a disability exception.

B. Proper Training of USCIS Officers on the Cognitive Effects of Trauma

Ultimately, an application is adjudicated by a USCIS officer who reviews the file and conducts the interview.²¹⁷ The applicant bears the burden, by a preponderance of evidence, that they meet the requirements for naturalization, including the medical exception.²¹⁸ Officers are instructed to review Form N-648 prior to the interview, if one was included with the naturalization application.²¹⁹ Despite this instruction, advocates frequently represent applicants at naturalization interviews where officers did not review the completed Form N-648, possibly due to the shift from paper to electronic files,²²⁰ making it less obvious a Form N-648 was submitted. Yet, applicants submitting these forms deserve to receive an adequate and proper review of their file so that: (1) officers do not rush through a review of Form N-648, and (2) officers are appropriately prepared to conduct the interview with the applicant's medical history in mind, including any cognitive impairments.

USCIS officers who adjudicate naturalization interviews come from various educational backgrounds and personal experiences.²²¹ It is vital USCIS takes the proper steps to meaningfully train the officers, especially regarding the nexus between trauma and a person's ability to learn and understand a new language. This training would provide

²¹⁶ Current Form N-648, *supra* note 202 [link to Instructions for Form N-648].

²¹⁷ *Supra* note 214.

²¹⁸ USCIS Policy Manual, Volume 12: Citizenship and Naturalization, Part E: English and Civics Testing and Exceptions, Chapter 3: Medical Disability Exception (Form N-648), available at <https://www.uscis.gov/policy-manual/volume-12-part-e-chapter-3> (last updated Dec. 21, 2019).

²¹⁹ *USCIS Teleconference*, *supra* note 198, at 7.

²²⁰ *Id.*

²²¹ A search for "Immigration Services Officer" on the job boards for government positions reveals that the USCIS officers are at a GS9 pay scale and grade. No specific degree in a particular subject is required for the position. Therefore, each officer is unique, with their own background and experience.

fundamental knowledge to officers which could be used in their assessment of Form N-648 submissions. Furthermore, although the officers receive mandatory training on new versions of USCIS forms and accompanying policies, there is no evidence to suggest a thorough training exists for USCIS officers to gain a comprehensive understanding of this sub-set of applicants who submit a Form N-648 based on cognitive impairments that result from trauma, even when it is a psychological, rather than physical, impairment. As such, it is imperative that USCIS officers receive adequate training on hidden impairments and disabilities.

C. The Oath Waiver is a Necessary Section to be Added to the Form N-648

An applicant whose Form N-648 is found sufficient is still required to take the Oath of Allegiance to become a citizen.²²² Although many applicants with a sufficient Form N-648 are still able to "demonstrate an attachment to the principles and ideals of the U.S. Constitution,"²²³ there is a need to address the process for those with a sufficient disability exception who are also unable to meet this prerequisite to naturalization. This means there are ultimately two categories of naturalization applicants with sufficient Form N-648s: those who can meet the oath requirement and those unable to meet the oath requirement. USCIS policy has acknowledged this insofar as having an Oath Waiver available to applicants demonstrating an "inability to understand (or communicate) the meaning of the oath due to a medical condition."²²⁴ In practice, USCIS officers issue a Notice of Continuance for the applicant to submit an Oath Waiver request, whether or not a medical professional has indicated on Form N-648 that the applicant cannot understand or communicate the oath. USCIS officers are therefore making medical conclusions about the severity of an applicant's cognitive impairment or disability.

²²² See Oath Modification Policy, *supra* note 100, n.13 ("The oath waiver requirements are distinct from the requirements for the medical exception to the English and civics requirements for naturalization under INA 312(b), which requires an applicant to submit a medical exception form."); see also Rodgers, *supra* note 127, at 2 ("The N-648 does not waive other naturalization requirements of the interview itself. If the applicant's disability also prevents them from understanding the Oath of Allegiance, they will require an oath waiver.").

²²³ See *Naturalization Information*, *supra* note 12.

²²⁴ Oath Modification Policy, *supra* note 100.

If the Form N-648 were to include a question about the ability of an applicant to meet the oath requirement, the naturalization process for individuals with disabilities would improve, as would the efficiency of adjudicating such applications. This could be accomplished by including the Oath on the Form N-648, as well as a yes/no question for the medical professional to determine whether the applicant can meet the oath requirements. This question can also provide a place for the medical professional to include all the necessary information to satisfy the oath waiver requirements of a written request and written evaluation by a medical professional who has determined that the applicant cannot understand or communicate the Oath due to their disability or cognitive impairment.

This simple addition to Form N-648 would assist both types of applicants with disabilities: those needing an oath waiver and those not needing an oath waiver. Since the USCIS officer is not allowed to make their own medical conclusions in the absence of fraud, this response would be sufficient to demonstrate that the applicant does not need an oath waiver, so long as the medical professional states that an applicant can meet the oath requirement. Then, so long as all other naturalization requirements are met, the applicant can take the Oath of Allegiance and naturalize. If, however, the medical professional states that an applicant cannot meet the oath requirement, the officer could then adjudicate both the Oath Waiver request and evaluation as part of Form N-648 at the time of the naturalization interview.

Since there is an emphasis on fraud in the current policy manual, it is possible that officers may draw a connection between an approved Form N-648 and the need for an oath waiver.²²⁵ On the other hand, some applicants may not be aware of the oath waiver requirement and still require one to naturalize. Consequently, this small addition to the Form N-648 would prevent USCIS officers from issuing continuances for applicants with disabilities. This would not only prevent applicants who may travel long distances to the interview from having to return, but also would complete the naturalization process in one interview and ultimately help the backlog that USCIS currently faces in the adjudication of naturalization applications.

VII. CONCLUSION

Over time, individuals with disabilities have gradually been afforded more rights and protections in the United States. This too applies with respect to immigration reform, allowing for individuals with disabilities to waive some of the requirements to naturalize. Despite this shift, our current system continues to have barriers for refugees who frequently have mental and cognitive impairments, often due to a history of trauma. In turn, responsibility is placed on the refugee to obtain proper health services and diagnoses by requiring them to freely share their experiences with health care professionals about sensitive topics, often personal in nature. Accordingly, many of these impairments go unreported or unrecognized due to the nature of the harm. Yet, the United States naturalization process expects all individuals unable to understand and/or learn English and/or civics to ensure medical professionals recognize and demonstrate the nexus between their past trauma and their current limitations to learning English and/or civics.

Adjudication of refugee naturalization applications is in the hands of officers who may have little or no background in trauma, health, mental health, and refugee experiences. The expectation is that an applicant will have sought proper health care in the United States, that the medical professional completed the Form N-648 in a way to demonstrate a nexus between the impairment and the ability to meet the English and civics requirements, and that the officer will not have any doubt as to the applicant's abilities. As such, medical conclusions during the naturalization process should be left to the medical professionals, not to USCIS officers. Nevertheless, the system often leaves too much room for skepticism and doubt, especially given the narrative concerning the risk of fraud throughout USCIS publications and training materials.

Even if a refugee is successful in getting an approved Form N-648, they still must show an ability to understand the Oath of Allegiance. For those unable to do so, the ability to obtain an oath waiver remains a mere afterthought and is not incorporated in the disability exception process. This last hurdle is the difference between becoming a United States citizen and not becoming a citizen. Citizens with disabilities in the United States can access SSI, a critical program to ensure basic needs are being met. Even though refugees are afforded this right upon arrival, the seven-year limitation on these benefits leaves some refugees vulnerable and in need of citizenship

to continue to access benefits that are essential to paying for food and shelter. Current USCIS policies, specifically the discretion of a USCIS officer to require that some applicants provide an oath waiver request due to a disability or mental impairment, prohibit some refugees from attaining citizenship. This hurdle could be eliminated through the addition of an oath waiver question on Form N-648.

The United States takes pride in being a place of freedom. However, some of the bravest persons living in the United States are unable to naturalize. The resettlement process for refugees in the United States requires refugees to obtain a green card after one year of physical presence in the country, putting them directly on the path to citizenship. Despite this clear goal of resettlement, United States immigration practices fall short in ensuring every person gets a fair chance to become a citizen. The United States must improve its practices and procedures to provide meaningful support and guidance for refugees with cognitive impairments by (1) enhancing the Form N-648 nexus question, (2) providing appropriate training to USCIS officers who adjudicate the disability exceptions, and (3) incorporating an oath waiver portion to Form N-648. Those improvements would greatly enhance the ability for refugees with cognitive impairments to reach the ultimate goal of citizenship.