



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

January 22, 2019

Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Policy and Strategy
Chief, Regulatory Coordination Division
20 Massachusetts Avenue, NW
Washington, DC 20529-2140

Submitted via www.regulations.gov
Docket ID No. USCIS-2008-0025

Re: OMB Control Number: 1615-0052

USCIS 60 Day Notice and Request for Comments: Application for Naturalization
Revision of a Currently Approved Collection

To Whom It May Concern:

The American Immigration Lawyers Association (AILA) respectfully submits the following comments in response to the above-referenced 60-day notice and request for comments on proposed revisions to Form N-400, Application for Naturalization, published in the Federal Register on November 21, 2018.¹

Established in 1946, AILA is a voluntary bar association of more than 15,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws.

General Comments

AILA notes that the proposed changes to Form N-400, Application for Naturalization, and its instructions have resulted once again in an increase of the form's length as well as an expansion of general requirements for applicants. This in turn creates a more significant burden for both applicants and USCIS adjudicators to complete and ultimately adjudicate this form. For example, one proposed change to the N-400 requests that applicants provide a comprehensive list of all trips beyond 24 hours outside of the United States over the past ten years. This doubles the currently requested time period of five years and will ultimately require applicants to expend additional time and resources to track down their prior travel records and document their travel

¹ 83 FR 58781 (Nov. 21, 2018)

history on the new form, as well as an additional encumbrance on USCIS officers who will be required to review this additional information while adjudicating the application.

The proposed instructions also expand the evidence required at the time of filing to include tax returns, as well as birth certificates of children. Both documents are not currently required at the time of filing, but instead can be brought to the Form N-400 interview. Requesting that these documents be included with Form N-400 at the time of filing will only serve to increase the size of N-400 filings, unnecessarily burdening applicants and potentially delaying the processing of N-400 applications by increasing the scope of review before an N-400 interview is scheduled.

There does not appear to be a rational basis for either of the new proposed changes discussed above, which clearly increase the burden on the applicant as well as the agency, in contradiction of the Paperwork Reduction Act, which instructs agencies to reduce collection of information when it is not necessary. The additional burden created by these proposed changes would only lead to further backlogs in the processing of naturalization applications. AILA recommends that USCIS shorten the proposed form to reduce the burden on naturalization applicants.

Additionally, we would like to renew our objections to requests for information that does not impact one's eligibility for naturalization, highlighted in our February 15, 2013² comments and repeated in our June 8, 2015³ comments. These include questions such as information about the applicant's parents, information about the applicant's current spouse's prior spouse(s), and the applicant's child's U.S. social security number. Eliminating these and other requests for information that do not affect eligibility for naturalization would lead to a shortened and ultimately more efficient collection of information.

Comments on Proposed Form N-400:

Page 1, Attorney State Bar Number (if applicable) Attorney or Accredited Representative USCIS Online Account Number (if any)

This information is also collected by USCIS on Form, G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. We believe that requesting that this information to be provided again on the Form, N-400 is repetitive and unnecessary.

Part 1, Question 1: Information About Your Eligibility

In addition to the options included in this question, we believe that USCIS should add an additional option for individuals who have been a lawful permanent resident for three years under the Violence Against Woman Act (VAWA), regardless of whether the applicant is currently living with a U.S. citizen spouse. Another option should be added for individuals whose conditions on permanent residence were removed after three years after being subjected to extreme mental or physical abuse, regardless of whether they are still married or residing with their U.S. citizen spouse. If USCIS is unwilling to add these options to Question 1, USCIS

² AILA/CLINIC Comments on Proposed Changes to Form N-400, AILA Doc. No. 13022047 (dated 2/15/13), available at <http://www.aila.org/infonet/aila-clinic-comments-proposed-changes-n-400>.

³ AILA Comments on Proposed Changes to Form N-400, AILA Doc. No. 15081061 (dates 6/8/15), available at <https://www.aila.org/infonet/aila-comments-changes-to-n-400>.

should provide applicants with information in the Form, N-400 instructions concerning how to utilize Option E: Other (Explain) to include this information.

Accommodations for Individuals with Disabilities and/or Impairments (Currently Listed in Part 3 of Form N-400):

AILA notes that this part of the form was deleted in its entirety from the proposed Form N-400. As a result of the proposed change, applicants with disabilities would no longer be able to indicate their request for an accommodation required under the Rehabilitation Act at the time of filing. In addition, the revised instructions do not describe any alternative way to request accommodations. These changes in combination with the proposed changes to the N-648 guidance would severely limit applicants' knowledge and ability to apply for accommodations. Applicants with disabilities would be disadvantaged in the naturalization process. AILA recommends that the language regarding accommodations for individuals with disabilities and/or impairments should be restored to Form N-400 to be consistent with the requirements of 8 CFR 312.1(b)(3).

Part 8, Question 3: Time Outside the United States

The proposed change to this question requires all trips taken outside of the United States since becoming a lawful permanent resident, or during the last ten years. In comparison with the current Form N-400, this proposed language would increase the required travel history information requested by an additional five-year period. Given that the statutory period for assessing continuous residence and physical presence under 8 CFR §316.2(a)(4) is five years, the request for an additional five-year period of travel history is unnecessary. Lastly, the proposed question could be overly burdensome for travelers whose travel history might not be available in full via resources such as the U.S. Customs and Border Protection (CBP) I-94 website.

Part 11, Question 11:

The question "Have you EVER been associated with, worked for, or given any kind of money, help, or any other thing to a group or a member of a group that used weapons or engaged in violence," is overly vague and burdensome on applicants who might have engaged with an organization or attended an event while remaining within the bounds of "good moral character", whose actions might be conflated with others who use weapons or engage in violence even though they themselves did not do so. Furthermore, the question's vague wording and inclusion of "any other thing" is incredibly broad and could apply to any number of actions outside the scope of what constitutes "good moral character".

Part 11, Question 18:

Proposed questions 18, 18A, and 18B do not account for whether an applicant served in the military, nor do these questions provide a means to explain such service. This context is important when reviewing the selections made in these three questions, considering the typical duties of a soldier.

Part 11, Question 25:

In the proposed Form N-400, there are a number of questions that cover previous arrests and convictions that the applicant might have. This question is therefore redundant. Additionally, there are multiple situations in which an individual might have had their fingerprints taken by a law enforcement officer, including when that individual enters a law enforcement, child-care, or legal profession.

Part 11, Questions 30A and 30B:

Question 30A is vague and does not account for whether a pardon was received in the United States or in a foreign country. Furthermore, question 30B requests an explanation if the applicant selects “Yes” for question 30A. The proposed Form N-400 instructions already provide that each “yes” response for questions in the section, aside from Item Numbers 41, 42, 43, and Item A. in Item Number 49, require an explanation on a separate page. Therefore, the explanation space provided by question 30B appears to be superfluous.

Part 11, Question 33E:

The proposed addition to this question adds “attempted to marry” for the purposes of determining if any applicant ever sought to obtain an immigration benefit through marriage. This language is beyond what the regulations require in 8 CFR §316.10 and furthermore lacks a clear definition of what an attempt to marry someone would entail. Therefore, the proposed language added to this question should be removed.

Part 11, Questions 40, 40A, 40B, and 40C:

This proposed question, relating to whether an applicant has ever been removed or deported from any (other) country, raises concerns, particularly if it will require a legal conclusion to be made by USCIS officers regarding foreign immigration laws. What may be considered as a removal or deportation under U.S. laws may be completely different in a foreign country and therefore is not a good barometer for “good moral character”. The subsequent requests for information concerning when and why an applicant might have been removed or deported from a foreign country are also burdensome for both the applicant in preparing the form and the USCIS officer who will require adequate training on the specific immigration laws of each foreign nation as they apply to removal and deportation.

Part 11, Questions 42-45:

Given that the answer to Question 41 might determine if answers are needed to Questions 42-45, we believe that there should be an option to skip these questions if the applicant indicates “No” for Question 41.

Part 12, Applicant's Statement, Contact Information, Certification, and Signature:

As stated in AILA's previous comments, submitted June 8, 2015, the language on the Form N-400 requesting consent from the applicant to allow USCIS to access to "any and all of my records" is overly broad and presents concerns for invasion into an applicant's privacy.⁴ We suggest that USCIS revise this language to describe the parameters of what information USCIS might collect, and possibly distribute, in order to ensure the applicant's privacy interests are protected.

Comments on Proposed Instructions for Form, N-400, Application for Naturalization

Page 5, Lawful Permanent Residence Status:

First, the proposed language omits reference to lawful permanent residents (LPR) who are married to U.S. citizens who may naturalize after three years in LPR status. Additionally, we request that USCIS also include reference to individuals that may apply to naturalize after three years under the Violence Against Woman Act.

Page 6, Conditional Residence:

Given recent significant USCIS processing delays for Form I-751, Petition to Remove Conditions on Residence, we suggest that USCIS add the following language to this section: "If your Form I-751 remains pending when you would otherwise be eligible to apply for naturalization, you may file an N-400, Application for Naturalization."

Page 10, Taxes, Required Evidence:

As discussed earlier, we believe that the requirement that all applicants provide copies of their tax returns at the time of filing Form N-400 is unnecessary. Given the already lengthy size of the Form N-400, USCIS should be striving to reduce filing and form size, rather than expanding them. We recommend that for the purposes of preventing delays in the preparation and review of Form, N-400 filings, USCIS should continue to allow applicants to bring tax documents to their N-400 interview as required.

Page 10, Crimes and Offenses Evidence:

Under the section beginning with "Had any arrest or conviction...", please add "or" before document number 2.

The last paragraph of this section concerning whether an applicant has ever been ordered to pay a fine, make restitution or garnish wages, should be revised to make clear that it does not relate to traffic incidents.

⁴ AILA Comments on Proposed Changes to Form N-400, AILA Doc. No. 15081061 (dates 6/8/15), *available at* <https://www.aila.org/infonet/aila-comments-changes-to-n-400>

It would also be beneficial for USCIS to include language in the instructions that makes clear what documentation and information is required for traffic violations. We suggest language similar to that of the Form I-485, Application to Register Permanent Residence or Adjust Status, which states:

“In general, you do not need to submit documentation relating to traffic fines and incidents that did not involve an actual physical arrest if the penalty was only a fine of less than \$500 or points on your driver’s license. However, you must submit such documentation if the traffic incident resulted in criminal charges or involved alcohol, drugs, or injury to a person or property.”

Page 12, Party or Group Affiliations:

We recommend that USCIS remove “and happiness” from this statement as it is unclear what the “happiness of the United States” would entail. Additionally, we recommend that USCIS make clear that generally political or religious views are not grounds for denial.

Page 17, Domestic Violence Victims:

We recommend that USCIS replace the phrase “victim of domestic violence” with “survivor of domestic violence”. Also, we recommend that USCIS also note that survivors may also provide the address of the attorney of record as a “safe address” as well.

Page 18, Information about Your Children:

As noted above, we believe that the proposed requirement that applicants provide birth certificates for all of their children as required initial evidence is excessive. These documents are not currently required as initial evidence in the Form N-400 instructions, but instead can be brought to the Form N-400 interview, if necessary. It is not clear why they should be part of the required initial evidence as in most cases the information gleaned would not have any impact on the eligibility of an applicant for naturalization other than to provide support.

Conclusion:

We appreciate the opportunity to comment on the changes proposed to Form N-400, Application for Naturalization, and its instructions, and we look forward to a continuing dialogue with USCIS on these issues.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION