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FIA INFORMATION MEMO

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**TO: DIRECTORS, LOCAL DEPARTMENTS OF SOCIAL SERVICES
DEPUTY/ASSISTANT DIRECTORS FOR FAMILY INVESTMENT
FAMILY INVESTMENT SUPERVISORS**

FROM: KEVIN MAHON, EXECUTIVE DIRECTOR, IMA

RE: NATURALIZATION OUTREACH TO NONCITIZENS

PROGRAM AFFECTED: FOOD STAMP PROGRAM

**ORIGINATING OFFICE: OPA/ DIVISION OF PROGRAM POLICY AND
REGULATION**

President Clinton directed federal agencies to take steps to promote naturalization outreach to noncitizens. The Food and Consumer Service (FCS) Mid-Atlantic Regional Office recently sent out a fact sheet about a final Immigration and Naturalization rule which was published March 19, 1997. The new rule provides procedures that facilitate the naturalization process for individuals with disabilities which prevent them from completing the English and civics requirements. The FCS requested that the Fact Sheet be available to food stamp recipients in local departments.

A supply of the fact sheet will be sent to local departments for distribution to recipients. A copy of the fact sheet is attached.

cc: FIA Management Staff
Constituent Services

FACT SHEET

3/19/97

Final INS Rule:

Exceptions from English and Civics Testing Requirements For Naturalization Applicants With Disabilities

On March 19, 1997, the Immigration and Naturalization Service (INS) will publish a final rule in the *Federal Register* that implements Congressionally-mandated exceptions from the English and civics (U.S. history and government) requirements for naturalization for persons with disabilities that prevent them from meeting such requirements. This final rule makes changes to the proposed rule published in August, 1996. The INS invites public comments for 60 days on certain new proposals contained in this final rule concerning quality control, the appeals process and training for adjudicators.

BACKGROUND

- On October 25, 1994, Congress passed the Immigration and Nationality Technical Corrections Act of 1994. Section 108(a)(4) of this Act amended Section 312 of the Immigration and Nationality Act (INA) to provide exceptions to the English proficiency and history and government knowledge requirements for naturalization for persons with "physical or developmental disabilities" or "mental impairments."
 - While the proposed rule was under development, INS provided policy guidance to its field offices with preliminary instructions for adjudication of naturalization applications based on the exceptions provided under the 1994 Technical Corrections Act. The Service also provided preliminary definitions of the terms concerning disability and mental impairment in the Act.
 - The INS has consulted extensively with the Department of Health and Human Services (HHS), the Social Security Administration (SSA), and other government health agencies for guidance in developing the regulatory language contained in this final rule.
 - The INS published a proposed rule to implement this legislative change on August 28, 1996. INS has carefully considered 228 comments on the proposed rule which were submitted by a wide range of immigrant assistance groups, health professionals, organizations that assist persons with disabilities, and individuals. The final rule addresses these comments and makes substantial modifications.
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THE FINAL RULE

Definitions

- The Service has modified the definitions of qualifying disabilities contained in the proposed rule in response to many public comments that the definitions were too narrow and inconsistent with existing definitions in other federal statutes.
- The rule now provides that an exception shall be granted to any person "who is unable because of a medically determinable physical or mental impairment or combination of impairments which has lasted or is expected to last at least 12 months, to demonstrate an understanding of the English language..." or who is unable for any of the same reasons "to demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States."
- "The term medically determinable means an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual unable to demonstrate an understanding of the English language, as required by [Section 312], or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications to the methods of determining English proficiency..." The definition of "medically determinable" is the same with regards to the exception from the civics knowledge requirement. Loss of cognitive abilities based on the direct effect of the illegal use of drugs is not covered as a disability.
- This interpretation of the disability and mental impairment terms in the Technical Corrections Act comports more closely with existing federal policies (such as Social Security Administration definitions) and regulations for implementing the nondiscrimination requirements of Section 504 of the Rehabilitation Act of 1973.

Procedures for Obtaining the Exceptions

- In order to base its adjudication of requests for the disability exceptions on solid medical evidence, the INS requires all persons seeking an exception to submit a new Form N-648, Medical Certification for Disability Exceptions, to be completed by a licensed medical doctor (which includes psychiatrists) or a licensed clinical psychologist. These certifying professionals must be licensed to practice in the United States (including the U.S. territories of Guam, Puerto Rico or the Virgin Islands). They must also be experienced in diagnosing persons with physical disabilities or mental impairments. They must attest to the origin, nature, and extent of the medical condition as it relates to the exceptions for English and civics. A person who qualifies as disabled for other government benefit programs is not necessarily unable to demonstrate the level of English proficiency or civics knowledge required for naturalization.

- The categories of health professionals who may certify an applicant's disability were expanded and clarified in response to comments that the proposed rule was too narrow in its near-exclusive dependence on civil surgeons. Civil surgeons who meet the current requirements may still certify an applicant's disability.
- The medical certification form may be submitted in support of requests for both the English proficiency and civics knowledge exceptions. Form N-648 may be photocopied. Forms may be obtained from local INS district offices, by calling the INS Forms Center at 1-800-870-3676, or by ordering it through the Internet at <http://www.usdoj.gov/ins>. By the end of March, applicants may also call 1-800-755-0777 or TDD: 1-800-767-1TDD, for information about the disability exceptions.
- Under penalty of perjury, both the applicant and the medical professional must attest that all information submitted is accurate. A legal guardian may sign the N-648 authorizing the release of additional medical records to the Service.
- The Service reserves the right to request an applicant to submit additional supporting evidence or a second certification from another qualified professional in cases where the Service has credible doubts about the veracity of a medical certification that has been initially presented.
- Persons with disabilities who are not seeking exceptions to the English and civics requirements do not need to submit Form N-648.
- In conformance with Section 504 of the Rehabilitation Act of 1973, INS will continue to provide reasonable modifications in its testing procedures to enable naturalization applicants who have disabilities to participate in the process. Examples of such modifications may include providing sign language interpreters, wheelchair-accessible test sites, or modifications in test format or administration procedures, among others.

Other Naturalization Requirements

- The disability exceptions are not blanket exemptions from all naturalization requirements. Congress did not authorize the Service to waive any of the other naturalization requirements outlined in the INA for applicants with disabilities.
- Applicants must, for example, be able to demonstrate their good moral character, have the necessary residency as a permanent resident (five years, or three years if married to a U.S. citizen), and have the ability to take the statutorily prescribed oath of allegiance. INS will continue to make reasonable accommodations to enable persons with disabilities to demonstrate that they can meet these requirements.

- When necessary, INS will accommodate applicants with disabilities by modifying procedures used to determine whether an applicant meets the requirements for naturalization, including those related to administration of the oath of allegiance. The Service believes that many applicants with disabilities, while excepted from the English and civics requirements, will be able to have a limited but sufficient understanding of the concepts of the oath.
- Each applicant's capabilities regarding the oath requirement will be assessed on a case-by-case basis. Although a disabled applicant need not understand every word of the oath at the interview, the INS officer must conclude that an applicant has an understanding of the nature of the oath. The Service will explain the oath in simplified terms to individuals who, because of their disability, have difficulty understanding it. If the officer concludes that an applicant does understand the nature of the oath, the oath can be administered. For example, an inquiry by an officer at the interview might include an attempt to determine whether the applicant understands that he or she is becoming a U.S. citizen, is forswearing allegiance to his or her other country of nationality, and personally and voluntarily agrees to this change of status. No requirements will be imposed on applicants with disabilities that are not required of other naturalization applicants.
- INS officers will also accept a wide variety of signals from an applicant with a disability that indicate that the applicant understands the nature of the oath, including, but not limited to, a simple head nod, eye blinking, or other signals specific to the individual that mean "yes" or "no".