CITIZENSHIP AT RISK:

NEW OBSTACLES TO NATURALIZATION

Credits

This report is the second in a series of reports produced by the Catholic Legal Immigration Network, Inc. (CLINIC) on at-risk immigrants in the United States. The series attempts to put a human face on the hardships caused by our nation's immigration laws and policies. The series does not seek to advance specific policies or reforms. It intends merely to relate the stories of newcomers in the confidence that they will speak powerfully for themselves.

Since its inception in April 1999, this project has been a collaborative one. CLINIC paralegal Molly McKenna served as its principal staff person and champion. Juan Osuna, the editor of this series, effectively guided and shaped the project. Donald Kerwin and Charles Wheeler reviewed and commented on the report.

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TABLE OF CONTENTS

Acknowledgments	ii
A. Denaturalization	3
B. The Backlog	5
C. Customer Service	9
D. Fee Increases and the Availability of Fee Waivers	12
E. Elderly and Disabled Applicants	16
F. Good Moral Character	21
G. The Naturalization Test	25
H. Denials	28
I. Conclusion	30
Glossary of Terms	34

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“Citizenship At Risk: New Obstacles to Naturalization” is the second in a series of reports by the Catholic Legal Immigration Network, Inc. (CLINIC) on at-risk immigrants in the United States. The series will attempt to put a human face on the hardship caused by our nation’s immigration laws and policies. The series does not seek to advance specific policies or reforms. It intends merely to relate the stories of newcomers in the confidence that they will speak powerfully for themselves.

CLINIC, a subsidiary of the U.S. Catholic Conference, provides legal support services to a network of 131 local Catholic immigration programs. From its ten offices nationwide, CLINIC also directly represents and administers legal service projects for at-risk newcomers.

This project has been a collaborative one. Since its inception in April 1999, CLINIC paralegal Molly McKenna has served as its principal staff person and champion. Juan Osuna, the editor of this series, has also effectively guided and shaped the project.

The report on citizenship was authored by CLINIC attorney Laurie Joyce. Jeff Chenoweth and Laura Burdick, who administer CLINIC’s naturalization projects, wrote most of the report’s case studies and supplemented several sections of the report. Molly McKenna also wrote several case studies. Donald Kerwin, CLINIC’s Chief Operating Officer, and Charles Wheeler, a CLINIC Senior Attorney, reviewed and commented on the report. Juan Osuna edited it.

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CLINIC greatly appreciates the many contributions it received in putting together this report. It hopes that the final product does justice to the newcomers whose stories it tells and contributes (however modestly) to an immigration system that honors our heritage as a nation of immigrants.

CITIZENSHIP AT RISK: NEW OBSTACLES TO NATURALIZATION

Photo Courtesy: INS

United States citizenship is anchored in the U.S. Constitution. It is an integral part of the democratic process. Throughout U.S. history, millions of immigrants have secured greater rights and accepted civic responsibilities by affirming the oath of allegiance to the United States.

Among the many benefits of U.S. citizenship are: the rights to vote and hold public office; the possession of a U.S. passport; the right to leave and re-enter the United States freely; protection against removal; eligibility for public benefits; greater access to employment and educational opportunities; and the ability to expedite admission of family members to the United

States. In addition to these rights, citizenship brings with it important responsibilities. Most immigrants who make the decision to become U.S. citizens take these responsibilities seriously. Through the naturalization process, immigrants declare and accept their permanent stake in the well-being of their adopted country.

Immigrants must meet certain eligibility requirements for naturalization. They must be at least 18 years old; have five years of lawful permanent residence (three years if they have a U.S. citizen spouse); have good moral character; be able to read, write, and speak basic English; pass a test on U.S. history and

government; and take an oath of allegiance to the United States. Certain waivers to the English language and civic knowledge requirements exist for certain categories of applicants based on disabilities, age, and length of lawful permanent residence in the United States.

Traditionally, once citizenship has been obtained, it has been virtually inviolate, to be revoked only for grave reasons by a federal judge. Yet in 1990, Congress passed a law authorizing the Immigration and Naturalization Service (INS) to administratively revoke naturalization in cases where it had been mistakenly granted or where the applicant was not eligible for naturalization. No development in recent years has done more to devalue citizenship than administrative denaturalization. The citizenship process also falls victim to uneven and arbitrary decision-making by INS officers and severe backlogs. The following statistics and findings demonstrate how the naturalization process has been undermined.

- Regulations issued by the INS in 1996 allow the agency to conduct denaturalization proceedings. Previously, only federal courts had the power to strip an individual's citizenship. Section A describes the impact of denaturalization on lawful permanent residents of the United States.
- At the end of 1999, naturalization processing times were up to two years long in more than a half dozen INS district offices and up to three years in at least one office.¹ Section B describes the impact of the naturalization backlog on lawful permanent residents.
- The inability of applicants and their legal representatives to obtain information about the status of an application aggravates the naturalization process. In order to make personal inquiries and determine the status of a case, applicants must form long lines outside INS district offices, sometimes as early as 3:00 a.m.² Section C details the experiences of immigrants who endure long waits at INS offices, discourtesy and cultural insensitivity.
- In January 1999, the INS raised the naturalization application fee from \$95 to \$225. As a result, naturalization application filings declined significantly. From October to December 1998, the INS received 219,023 applications for naturalization. From February to April 1999, only 62,964 appli-

cations were filed, a decline of more than 70 percent.³ Section D1 discusses the impact of the increased filing fee on low-income immigrants.

- Although the INS may waive the naturalization fee for applicants who establish that they are unable to afford the fee, many applicants are unaware of the availability of the fee waiver. Failure to adhere to fee waiver guidelines has resulted in inconsistent decisions. Section D2 highlights such decisions.
- While the INS has issued guidelines waiving the English language and civics requirements for persons with certain disabilities, many deserving cases have been denied. The INS has also been slow to make reasonable accommodations in the naturalization process for the sick and disabled. Section E describes the obstacles faced by disabled applicants seeking citizenship.
- The INS has improperly denied naturalization applications based on the failure to meet the good moral character requirement, notwithstanding evidence of honest mistakes, rehabilitation, and good behavior after past misconduct. Section F includes studies of applicants who have been unfairly prejudiced by such denials.
- According to the INS, citizenship denials grew 251 percent during the first six months of fiscal year 1999, as compared to the same period in FY 1998.⁴ The leading cause for naturalization denials is failure to pass the English and civics examination. A 1997 survey by the Center for Equal Opportunity found that INS district officials were free to administer the test as they saw fit, without oversight from INS headquarters.⁵ Section G highlights how inconsistent test administration contributes to naturalization denials. Section H discusses other reasons for the increase in denials.

This report outlines the myriad ways in which the naturalization process is threatened, and urges a more clear-headed and fair approach to protecting and administering this bedrock of American democracy.

Photo Courtesy: INS

A. Denaturalization

Until 1990, the power to denaturalize U.S. citizens rested exclusively with the federal courts. If the INS wanted to revoke an individual's naturalization, it had to start the procedure by filing suit in federal court. Such cases were brought infrequently — for example, against accused Nazi war criminals — and were subject to exacting procedural standards, with the burden of proof on the government.⁶

In 1990, Congress transferred this power to the Attorney General, who delegated it to the INS. As it stands, the most fundamental right in our constitutional democracy — indeed the right to have rights — can now be stripped through a relatively informal administrative process by an agency widely criticized in Congress and elsewhere for its arbitrariness and incompetence. No other development has devalued citizenship more than administrative denaturalization.

Pursuant to its newly granted power, in 1996 the INS issued regulations that allowed the agency to initiate and conduct administrative denaturalization proceedings within two years of granting citizenship if there was “clear and probative evidence” that the naturalization was granted by mistake, or the applicant was not eligible for naturalization.

The regulations require a person who has been served with a “notice of intent to revoke naturalization” to respond within 60 days. Failure to respond is deemed an admission of the grounds for revocation. The

regulations shifted the burden of proof from the INS to the citizen to prove that he or she was in fact eligible for naturalization. As a result, U.S. citizens bore responsibility for proving that they should remain so, or put differently, the INS could create a presumption that a U.S. citizen no longer deserved to be so. Perhaps realizing that this shift was contrary to our nation's most cherished principles, on March 31, 2000, the INS implemented an interim rule, shifting the burden of proof back to the agency.⁷

After historic numbers of immigrants began naturalizing in 1996, members of Congress began calling for investigations of the naturalization process, arguing that the process had been rushed for political purposes. A government audit of the 1,049,867 individuals who naturalized from August 1995 through September 1996 revealed that 5,634 failed to disclose prior arrests.⁸ The audit found that only 369 of the 1,049,867 individuals had committed crimes that would have actually barred citizenship. Despite this small number, Congress appropriated over \$3 million for revocation of citizenship for persons who were “improperly” naturalized. With the new funding and issuance of the regulations, the INS issued 2,722 notices of intent to revoke naturalization.⁹

In March 1998, a lawsuit was filed against the INS on behalf of individuals who had been served with notices of intent to revoke naturalization on the basis that they had failed to disclose criminal records when applying for citizenship.¹⁰ The INS took the position that any and all arrests needed to be disclosed. Failure to disclose any arrest triggered an automatic fraud finding by the INS, barring a grant of citizenship.

A U.S. District Court in Washington enjoined the INS from initiating or continuing administrative denaturalization proceedings, holding that the INS regulation exceeded the authority of the statute. The court also held that the plaintiffs faced an “imminent threat” of an “allegedly unlawful procedure to revoke their citizenship.” By the time the district court issued the injunction, the INS already had revoked the citizenship of 16 people and had an additional 1,900 cases under review.¹¹

In June 1999, however, the Ninth Circuit Court of Appeals ruled that the INS could act on its own to reopen and revoke its naturalization approvals where it found fraud.¹² Four months later, in October 1999, the Court issued an order to rehear the case. The outcome of the case could affect thousands of individuals who have naturalized in recent years.

Denaturalization not only deprives individuals of the rights and benefits of citizenship, it leaves them vulnerable to deportation. The INS's zealous prosecution of the denaturalization of persons who failed to disclose previous arrests has led to troubling results in many cases.

Failure to Disclose Mistaken Arrest Leads to Denaturalization

Agueda Escalante, a 39-year-old homemaker, was put into denaturalization proceedings by the INS because she allegedly failed to disclose a 1993 arrest for suspicion of cultivating marijuana.¹³ Court documents indicate that four police officers went to her home, saying they were responding to a 911 call. Officers arrested Mrs. Escalante, reporting that they had discovered a marijuana plant. Mrs. Escalante protested that it was a common houseplant, but the officers ignored her protests. She was handcuffed and taken to a police station. An embarrassed police department then discovered that Mrs. Escalante's assertions were true and dropped the matter as soon as it realized the mistake.

Mrs. Escalante did not disclose the arrest on the application because she did not consider this misunderstanding with the police to have been an arrest, particularly because she was released without charge. During her naturalization interview, Mrs. Escalante was never asked if she had been arrested. Moreover, Mrs. Escalante's arrest would not have barred a finding of good moral character, nor would it have prevented her naturalization. Nonetheless, when the INS discovered the incident, it immediately instituted denaturalization proceedings against her, alleging that she had lied about her prior arrest.

INS Pursues Denaturalization Even Where No Knowingly False Statement Was Made

"Mr. I-" has been a lawful permanent resident since 1987. He has a U.S. citizen wife and two U.S. citizen children. Mr. I- was arrested in 1990 for carrying a baseball bat in his car. Mr. I- was informed by the criminal court judge that if he did not have any trouble for six months, the case would be dismissed and sealed and the arrest would be a nullity. After six months, the case was dismissed.

When Mr. I- completed his naturalization application, he did not disclose the 1990 arrest because of his belief that the arrest had become a nullity, as the criminal court judge had informed him. The INS never asked Mr. I- about any arrests during his naturalization interview. Despite the fact that the failure to disclose was innocent and the arrest would not have prevented naturalization had it been disclosed, the INS has pursued denaturalization of Mr. I-.

Mr. I- fears what will happen to the immigration status of his parents if he is denaturalized, because his parents immigrated to the United States based on a visa petition he filed as a U.S. citizen. The INS's action has also jeopardized Mr. I-'s pending application to become a corrections officer with his city's Department of Corrections, because the job requires that officers be U.S. citizens.

Photo Courtesy: INS

B. The Backlog

For the three decades before the 1990s, the annual application rate for naturalization held steady at fewer than 300,000.¹⁴ Immigrants, on average, lived in the United States for 15-20 years before applying for citizenship, while the average application processing time was six months. Naturalization applications began increasing in the 1990s for several reasons. As a result of a "green card" renewal program, many permanent resident immigrants chose to apply for U.S. citizenship when their green cards expired, instead of renewing their green cards. In addition, hundreds of thousands of immigrants who received amnesty and permanent residence through various legalization programs in the late 1980s became eligible for citizenship in the 1990s.

In 1996, Congress passed several anti-immigrant laws, including the Antiterrorism and Effective Death Penalty Act of 1996,¹⁵ the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("the 1996 Welfare Act"),¹⁶ and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("the 1996 Immigration Act").¹⁷ Few immigrants had reason to fear the threat of removal from the United States, but many vulnerable immigrants, especially the elderly, disabled, and children, faced the loss of social, health, and educational benefits. In addition, passage of California's Proposition 187 in 1994, which attempted to restrict and even eliminate basic public services for noncitizens, caused further anxiety. In reaction to these laws and increasing anti-immigrant sentiment by sectors of the

American public, immigrants began to file for naturalization in historic numbers in order to protect and enfranchise themselves.

In 1995, the INS created the "Citizenship USA" program to handle increasing applications and promote U.S. citizenship. While this program maintained the six-month average processing time for naturalization applications, its activities were not adequately coordinated with criminal record checks conducted by the FBI,¹⁸ which led to 6,323 applicants being naturalized in error.¹⁹ However, of this number only 369 actually committed crimes that would have barred citizenship and only 16 have had their citizenship revoked.²⁰ In response to a torrent of Congressional criticism regarding the criminal background checks, the INS implemented more stringent but cumbersome security measures, and had to review thousands of cases.²¹ These measures slowed the processing of applications and led to an unprecedented backlog.

Naturalization application filings rose to an all-time annual high of 1.6 million in 1997,²² while the backlog hovered around 2 million. Modest, stopgap relief came in October 1998 when Congress allowed the INS to shift \$171 million from other benefits programs to naturalization.²³ The INS hired 200 new adjudicators across the country and created a special backlog reduction team. This was not enough, however, to handle the next deluge of naturalization applications. In January 1999, the INS raised the naturalization application fee from \$95 to \$225. Consequently, at the end of 1998, the INS was flooded with naturalization applications from immigrants seeking to avoid the fee increase. In January 1999 alone, 253,402 persons applied for naturalization.²⁴ This was more than one-third the total number of applications projected to be filed in all of FY 1999.²⁵

From FY 1997 to FY 1999, naturalization application filings declined by more than 50 percent.²⁶ Yet by August 1999, the INS had barely made a dent in the backlog; a pending caseload remained of 1,481,364 naturalization cases nationwide.²⁷ By the end of 1999, naturalization processing times hovered at up to two years long in over a half dozen INS district offices and up to three years in at least one INS office.²⁸ In October 1999, however, the INS reported that it had reduced the average processing time from 28 months to one year.²⁹ The one-year national average, however, only applied to those who filed on or after that date; newly filed applications moved relatively quickly, while thousands of older applications remained stuck in the backlog.

Photo Courtesy: INS

Although the INS intends to further reduce the naturalization processing times to six months in 2000, unforeseen problems have plagued INS's efforts at naturalization reform in the past. For example, chronic computer problems at one INS processing center forced the INS to process 120,000 applications from the New York area by hand.³⁰ The INS lost track of applications, filed in 1996 and 1997, as they were being transferred from one computer system to another. The misplaced files constituted 40 percent of the New York citizenship processing backlog.³¹

Nearby, in New Jersey, thousands of naturalization applications were locked away for months due to asbestos contamination in an INS building. A high attrition rate among INS employees in many INS offices also contributed to lost and often forgotten files. In 1998, more employees departed the INS New York District Office than stayed and the departing employees left behind stacks of unfinished cases.³² The Minneapolis/St. Paul INS office uses INS airport inspectors to conduct naturalization interviews when short-staffed. Other districts, such as Phoenix, have called former staff out of retirement to help with the backlog.

The dramatic drop-off in naturalization applications after the fee increase has given the INS some "breathing room" to attack the backlog. In its FY 2000 budget, the Clinton Administration requested \$124 million to concentrate on reducing the backlog.³³ Lawmakers and the Clinton Administration must continue to work together to ensure that adequate

resources are allocated and used efficiently to reduce the naturalization backlog.

The INS's long delays in completing naturalization applications prompted lawsuits and angry criticism in immigrant-heavy cities across the country. In June 1999, the Florida district of the INS was holding thousands of applications that had been pending for over three years.³⁴ INS regulations, which are subject to administrative change, mandated that criminal background security checks required in naturalization cases expired after 15 months. The INS chose not to extend the time period, requiring applicants with expired fingerprints to be re-printed at the cost of INS staff time and financial resources and resulting in inconveniences to applicants and longer waits. While INS officials boast of success in reducing the backlog of naturalization applications, immigration advocates say they note only one major change: a disturbing drop-off in applications filed.³⁵ Many immigrants are discouraged by the long lines and do not want to be caught in what they see as a quagmire. Potential applicants are deterred by the amount of effort that must go into pursuing the application process to completion.³⁶

The long processing delays harm both immigrants and U.S. society at large. The significance of citizenship for most immigrants is in obtaining political rights, and the ability to expedite family reunification through the immigrant visa process. Slower processing of applications results in a lack of participation in the electoral process by would-be U.S. citizens. The slow pace of the citizenship process also stymies the growth of political power for immigrant communities. In 1970, about 90 percent of foreign-born people who had been living in the United States for more than two decades were U.S. citizens.³⁷ By 1997, that figure fell to 67 percent.³⁸ Failure to naturalize impedes integration and assimilation for immigrants. Naturalization rate declines among all foreign-born persons have been even more dramatic, falling from 64 percent in 1970 to 35 percent in 1997.³⁹

The delays also result in immigrants spending months or even years separated from spouses, children and parents waiting to immigrate. This runs contrary to our national efforts to strengthen families. Most affected by the backlogs are immigrants who suffer from poverty, advanced age or illness. Many elderly immigrants have died waiting for their citizenship. Others with serious illnesses, such as Alzheimer's disease, have had their health decline to the point where they are no longer physically or mentally able to take the citizenship oath required to complete the

Photo Courtesy: INS

process. These immigrants often survive on limited incomes. Legislation such as the 1996 Welfare Act stripped Supplemental Security Income (SSI)⁴⁰ and medical benefits from many of these immigrants. Chronic delays in naturalization can also mean the difference between shelter and homelessness for some immigrants.

Loss of Benefits

"Mr. G-" is an 85-year-old Honduran man living in a long-term shelter for the homeless and destitute that is run by a religious order. He has been a lawful permanent resident since 1990. He is a widower who is estranged from his family and lives alone. He receives a monthly check of \$484 in SSI, on which he lives.

Mr. G- was referred by the shelter to the local Catholic Charities immigration services office in the summer of 1997 when he received a notice informing him that, as a non-citizen living in the United States, he might no longer be eligible for SSI benefits. Mr. G- was understandably alarmed by this news, which came as a result of the 1996 Welfare Act. The notice recommended that he apply for citizenship in order to maintain SSI eligibility. Catholic Charities assisted him in submitting an application for naturalization in November 1997.

A year passed, and Mr. G- did not receive an appointment for an interview. Fearing that the INS had lost Mr. G-'s application, Catholic Charities faxed a letter to the local INS district office to inquire about the status of his application. The Catholic Charities staff person was surprised when an INS staff person called five days later, and offered him an interview appointment the following week. The INS officer informed Catholic Charities that Mr. G-'s case had been received from the INS's Vermont Service Center six months earlier, demonstrating a serious lag in the processing of applications within the local INS office.

The Catholic Charities staff person was pleased with the prompt INS response, but faxed the INS to say that Mr. G- was not available on the date scheduled and requested an interview at a later time. This time, however, there was no response from the INS about changing the interview date.

A year later, two years since the filing of the application, Catholic Charities has still been unable to get a response, despite numerous inquiries and attempts to reach the INS by letter, fax, telephone, and personal appearance. As there is no person to take inquiries at the local INS district office, they must be placed in a box in the waiting room, with no confirmation of their receipt and no information given.

Fortunately, Mr. G-'s welfare benefits were restored by a 1997 law. Yet he still fears that a change in the law could leave him without his small monthly income. He still wants to pursue U.S. citizenship and has been studying diligently for the citizenship test in the hope that he will receive an interview appointment soon, but he fears that he may die before that happens.

Unnecessary Anxiety for the Sick and Elderly

"Mr. M-", a 39-year-old lawful permanent resident from Mexico, applied for naturalization in November 1997. Shortly afterward, he was diagnosed with cancer and began a long battle with the disease. By December 1999, he had become terminally ill and was living in a hospice. Two years had passed since he had filed his application for naturalization, and he had not yet been called for an interview.

Mr. M- was very concerned about what would happen to his wife and stepson when he died. Their status and ability to live permanently in the

United States could well depend on his obtaining citizenship or surviving until they could immigrate. Mr. M- had filed a petition to sponsor his family, but he knew that if he died, the petition would be terminated. He also knew that once he became naturalized, his wife and son would be considered "immediate relatives of a U.S. citizen" and their visa would be immediately available, without being subject to visa limitations, and they could apply immediately for permanent resident status. In addition, as an immediate relative filing to adjust status, Mr. M-'s wife would gain employment authorization so she could support herself and her son after his death. If Mr. M- died after obtaining citizenship, although the visa petition would terminate, his wife would be eligible to immigrate pursuant to a "widow's petition."

The hospice nurses sent two letters to the INS district office in December 1999, explaining his situation and asking the INS to expedite his citizenship application and provide the interview and oath at Mr. M-'s home. The INS did not respond to those letters. Two months later, in February 2000, Mr. M- was sent home to die in accordance with his wishes. At this point, Catholic Social Services (CSS) became aware of the case and sent a letter to the INS district office again asking to expedite the case. The INS responded this time and was sympathetic but non-committal. The INS district explained that it had not yet received Mr. M-'s file from the regional Service Center in Laguna Niguel, California, which it needed in order to proceed with his case.

CSS alerted CLINIC about the case, and CLINIC immediately contacted INS headquarters for assistance in getting the file from Laguna Niguel. At this point, CLINIC learned that, due to the backlog, Mr. M-'s fingerprint clearance had expired one month earlier, in January. Now he would need to be re-fingerprinted, and because he was so ill, the INS would have to agree to do it at his home. CLINIC also learned that Laguna Niguel could not send the file until the district office first had received the fingerprint clearance from the FBI.

With unusual promptness, Mr. M- was fingerprinted at his home the following day, and the INS arranged to expedite his clearance with the FBI. The clearance came back within a few days, and the INS then requested the file to be sent from Laguna Niguel. The INS assured CSS that the process could be completed by the end of the week, on March 3. Yet by March 3, CSS had no news from the INS about the case.

Finally, on Thursday of the following week, the INS came to Mr. M-'s home for the citizenship interview. He passed the interview and the INS returned the next day to administer the oath of allegiance and issue the Certificate of Naturalization, one week later than promised. Despite the backlog and the INS's two-month delay in responding to his request, Mr. M- finally was fortunate enough to realize his dream of citizenship and to secure the future of his wife and son before his death.

Photo Courtesy: INS

C. Customer Service

1. Inaccessibility

Added to the aggravation of processing delays is the difficulty of getting even basic information from the INS. Most often, applicants have no knowledge of the status of their cases; receive no response to their letters and faxes; cannot avail themselves of information lines or fax numbers; and often receive unhelpful, even hostile responses from clerks at INS service desks. Congressional staff are frustrated with a deluge of requests for information on pending naturalization cases, while they get no response or a slow response from the INS. Attorneys who have the legal right to represent clients are also frustrated by the information gap. Immigrants who have waited years to be called for a naturalization interview are unable to confirm with the INS that their files are in the correct office and retrievable.

When the inevitable problems occur in a case, it is often impossible for immigrants to reach anyone at the INS to resolve them. Immigrants must go to great lengths to access vital information about their cases. Long lines form outside some INS offices as early as 3:00 a.m. as immigrants wait for hours in the hope that they will be able to get some information.⁴¹

In many communities, it has taken years of effort on the part of community organizations to get the INS to hold regular meetings with the community. Community organizations present real, complex

problems, but the INS frequently responds with lists of technological and administrative initiatives that rarely offer any solution to the immediate, concrete problems at hand.

Conflicting Information

"Mrs. S-," a disabled, 80-year-old Cambodian woman who speaks no English, received conflicting information about the date of her second naturalization interview. At the first interview, the INS officer gave her one date, but later, the Vermont Service Center gave her a different, earlier date. Unable to reach anyone at the INS to clarify which date was correct, Mrs. S- went to the INS for the earlier appointment. Her daughter, busy with several work-related meetings, dropped her off at the INS office early in the morning, planning to rejoin her for the 11:00 a.m. appointment. An INS officer called her name at 12:00 p.m., only to tell her that the date was wrong and she should return at the later date.

95-Year-Old U.S. Citizen Denied State Health Benefits

"Mrs. P-" immigrated to the United States from Greece in 1915 through Ellis Island when she was ten years old. In 1920, Mrs. P- married a U.S. citizen who had naturalized in 1918 after serving in the U.S. Army. They moved to Wyoming, where Mr. P- worked as a miner and Mrs. P- raised their two children, all the while believing herself to be a U.S. citizen by virtue of her marriage. Indeed, under an 1855 law, Mrs. P- became a citizen when she married her U.S. citizen husband. This provision in the law was still in effect at the time of her marriage, although it was later repealed.

Mrs. P- never needed or applied for any proof of her U.S. citizenship. Living in California at the age of 95, however, widowed, homebound, and suffering from many serious health conditions, she applied for federal Medicare benefits in California (Medi-Cal). Although she qualified for the benefits, Medi-Cal denied her, refusing to process her case until she submitted official proof of her U.S. citizenship.

In April 1999, Catholic Charities sent a letter on Mrs. P-'s behalf to the director of naturalization at the local INS District Office. The letter included documentation of Mrs. P-'s U.S. citizenship: copies of her husband's

naturalization certificate, their marriage license, and a citation of the relevant immigration law. Catholic Charities requested that the INS issue proof of Mrs. P-'s citizenship and expedite her case, given Mrs. P-'s frail and elderly condition and her immediate need for the Medi-Cal benefits. The INS office did not respond to the letter, however, and Catholic Charities' repeated attempts to call the INS to follow up were not successful. Mrs. P- then attempted, as a U.S. citizen, to file a passport application, but Catholic Charities was unable to locate a photography service willing to go to Mrs. P-'s home.

CLINIC learned of the case and intervened in June 1999, taking the case to INS headquarters in Washington, D.C., which contacted the director of naturalization at the local INS office. The director had no record of receiving Catholic Charities' letter and was not aware of the case. After receiving the inquiry from INS headquarters, however, he contacted Catholic Charities and in September 1999, the INS issued a Certificate of Citizenship — the long-awaited proof that Mrs. P- needed so desperately.

Mrs. P- was without Medi-Cal benefits for a total of five months while she waited to receive proof of citizenship from her local INS office. Her case, a relatively simple request, was expedited only after intervention at the national level. Such intervention is not available to the vast majority of immigrants.

Photo Courtesy: INS

2. Rudeness and Insensitivity

Often immigrants give up work time to wait hours in line at the local INS office to ask about their cases, only to be met by rude, or even hostile, INS officers.

"That's Your Problem, Not Mine"

Guadeloupe Garcia waited three years to hear from the INS after filing an application for naturalization in Los Angeles.⁴² During that time, Mr. Garcia's case suffered a series of computer foul-ups and he encountered rude immigration clerks. At one point, he waited eight hours at the downtown Los Angeles INS office to inquire about his citizenship application. The response from the INS clerk when Mr. Garcia finally reached the window after an all-day wait was, "That's your problem, not mine."⁴³

In addition to rudeness, INS officers sometimes show insensitivity to persons from different cultures. One Justice Department office responsible for handling discrimination complaints is working with the INS on the issue of cultural sensitivity of INS officers.⁴⁴ Responding to complaints about INS disrespect, the Miami INS Deputy District Director acknowledged that the culture of the INS needed to change. He stated that INS officers are currently going through "sensitivity training" courses and felt confident that the INS was changing.⁴⁵ Advocates are less confident as problems of insensitivity, rudeness, and unprofessional behavior have persisted for decades within the INS.

Numerous members of Congress have voiced complaints about the volume and substance of calls coming from constituents reporting INS mistreatment. Representatives Sam Farr and Zoe Lofgren, both of California, recently called a public hearing to examine the complaints, and issued a press release describing frustration with the "inefficiency" and "discourteous service provided by the INS."⁴⁶ Congresswoman Jan Schakowsky of Illinois stood in line outside INS offices in Chicago to observe first-hand how immigrants were treated. She reported that people in line recounted stories of degradation and humiliation at being treated "like animals."⁴⁷ At one point, an INS officer barked at Rep. Schakowsky to "move or go to jail" because she did not follow instructions quickly enough.

Suspicion and Cultural Insensitivity

"Mr. C-" is a 52-year-old Hmong refugee from the highlands of Laos. He has lived in the United States for 10 years. Like many Hmong men during the Vietnam War, he was recruited by the CIA to be a guerrilla fighter against the Lao Communists. Mr. C- lost two brothers and many other family members during the war. He never went to school in Laos and did not receive any formal education. He is illiterate in his native language. Growing up in a poor, rural area as a

farmer and later a soldier, Mr. C- was able to function almost normally in Laos, even though he suffered from a childhood illness that had left him unable to walk for several years. In addition, he suffered two head injuries from falls as a child.

Mr. C- has struggled with the complexities of modern, urban life in the United States. He has attended English classes for seven to eight years, but is still unable to speak English. He had to take his driver's test three times before he passed it, because he had trouble remembering the test material, even with the help of an interpreter. He works at a factory where he relies on Hmong co-workers to help him and uses gestures to communicate with his boss. At home, his children interpret for him. He is considered "slow" by friends and family.

Mr. C- applied for U.S. citizenship at his local INS office. He enrolled in citizenship test preparation classes at a local community organization. When Mr. C- was called for his interview, he failed the English, history, and government test. In accordance with INS policy, he was given another opportunity for an interview and to re-take the test. At this point, the organization, believing that he had a learning disability, advised him to get a psychiatric evaluation and apply for a disability waiver (which would exempt him from the English and civics requirement).

The community organization assisted him in finding a psychiatrist and submitting the disability waiver. A psychiatrist diagnosed Mr. C- with depression and amnesia, stemming from his war experience, childhood illness, and head injuries. The psychiatrist certified on the form that Mr. C- is unable to learn new information as a result of these mental impairments.

At the INS interview, Mr. C-'s waiver request was viewed with suspicion. The INS officer took out his 10-year-old refugee application, which had been completed in a refugee camp in Thailand, and compared it to the disability waiver form. She noted that on the refugee application, he was asked if he had any disabilities and had checked the box marked, "No." The officer said that she would have her supervisor look at the case later, and terminated the interview. Mr. C- was not told whether his waiver form was acceptable and what, if any, additional information was needed. Contrary to INS guidance and practice, he was not given papers informing him of the status of his application. To date, there is no news on his case.

Mr. C- did not fill out the refugee forms himself. He was assisted by an interpreter who translated and reviewed the application orally with him, because he could neither read nor write. It is not known for certain if he was even asked about a disability, because he had no visible, physical impairment. Medical examinations for refugees are very basic, and Mr. C-'s did not uncover brain damage or a subtle learning disability. His disability would not have resulted in exclusion from the United States, nor was it a priority concern for admission. It was wrong for the INS to insist on rigid consistency with his refugee application without taking these factors into consideration.

3. Other Problems

The INS's efforts to implement new technology have been plagued by failures, delays, and unforeseen problems. Despite its press releases, the INS received an overall grade of C- in a national study that compared government agencies in areas such as technology, finances, and strategic planning.⁴⁸ So-called "improvements" in the INS's technology and systems resulted in 120,000 cases, known as "golden oldies" or "bomb-outs," being lost by the Vermont Service Center during the integration of a new software program with the old one. To date, only half of these applicants have been naturalized, although all have been waiting several years. The new software fails to help applicants with special needs; there is still no way for the INS to flag cases requiring an interpreter or accommodations for a disability. Despite new technology and increased automation of the application and interview process, the INS remains unable to collect basic statistics on how many disability waivers are received, denied, or approved.

Technological errors at the height of the backlog caused applicants to receive interview appointment letters from the Service Centers only two to three days before the appointment date. This problem was fixed, but only after circuitous advocacy: local community organizations alerted national organizations, who took the problem to INS headquarters and finally to the processing centers where it had begun. In a recent technological glitch, the INS announced its long-awaited toll-free number for applicants to call in changes of address, but community organizations have pointed out that some applicants who called the toll-free number were still required to send letters to their district offices because the INS was unable to make a service-wide change of address in the computer system.

Photo Courtesy: INS

D. Fee Increases and the Availability of Fee Waivers

1. Previous Fee vs. New Fee

Naturalization processing is supposed to be supported entirely by application fees.⁴⁹ Three years ago, the INS conducted an internal audit and found that fees do not entirely support the process, which now includes the added cost of more stringent quality control and backlog reduction measures. In 1998, therefore, INS Commissioner Doris Meissner announced that the naturalization fee would need to increase significantly, from \$95 to \$225, to cover the application process. Commissioner Meissner assured the public that the increase would not take effect until the INS had addressed customer service problems by reducing the backlog of applications and speeding up processing times.

Close to 1,300 public comments opposing the fee increase were sent in response to the fee increase announcement.⁵⁰ Advocates argued that the cost estimate for the naturalization process was too high because the system was so inefficient. They also noted the poor quality of service received for the fee,

especially the long backlog. On January 15, 1999, however, the INS raised the naturalization fee to \$225 (applicants must also pay an additional \$25 finger-printing fee) despite the fact that the backlog was close to a record high of 1.8 million cases and the national average wait to naturalize stood at 23 months.⁵¹ Although the INS claimed that the fee increase was necessary to cover increased costs, those costs over the last several years included millions of dollars in fees paid to outside consultants for audits and naturalization process re-designs.⁵² Thus, applicants are now paying not just for processing of their own applications, but for longstanding INS mismanagement.

The \$225 fee for naturalization has proven a prohibitive amount for many people on fixed or low incomes. Danelia Espinoza and her husband, both lawful permanent residents of the United States, with three children, rely, for example, solely on Mr. Espinoza's modest income as a maintenance worker to support the family. They borrowed and saved for one year before they were able to save \$450 in order to file citizenship applications.⁵³ For others, the fee increase has meant postponing or simply giving up on applying for citizenship. This is borne out by the statistics: after the fee increase, naturalization appli-

cations declined over 70 percent.⁵⁴ Although fee waivers are available for people who meet the guidelines, people who earn just enough to cover basic expenses cannot qualify.

Not Poor Enough

"Ms. W-" keeps a large, brown envelope in her desk drawer. Inside is a completed application for citizenship, a copy of her green card, and two photos. The only thing missing is the check. The application has been sitting in the drawer for six months because Ms. W- cannot afford the \$250 in fees.

Ms. W- came to the United States from Ethiopia in 1980 as a student. Today, she is a full-time systems administrator for a college. She is married and has two children, ages two and three, who are U.S. citizens. Her husband, also from Ethiopia, is an accountant who has lived in the United States for 10 years.

Ms. W- wants to vote and otherwise participate in our constitutional democracy. When she finally went to apply for citizenship in May 1999, however, she was surprised to learn that the fee had increased from \$95 to \$225, plus \$25 for fingerprinting. As a result, she was unable to file the application. Her husband had been unemployed for the past two years and was working at temporary, part-time jobs while he searched for full-time employment. When he learned that some of the best jobs require U.S. citizenship, he also decided to apply.

With two small children, they have relied mostly on Ms. W-'s steady income to pay the bills and cover the costs of other, unanticipated expenses. They do not have the extra \$500 required for both of the applications. Because they do not receive public assistance and their income is above the official poverty level, they do not qualify for an INS fee waiver.

Ms. W- has almost saved enough for her application. However, her husband will have to wait an additional six months in order to save enough money for his application.

2. Fee Waivers

The INS has broad discretion to waive any application filing fee if the applicant establishes that he or she is unable to pay the fee.⁵⁵ Although they are available by law, fee waivers have been rarely granted in practice. Before October 1998, when the INS issued

fee waiver guidance, the INS lacked national procedures for implementing a fee waiver, and many local offices often made their own procedures.⁵⁶ In many offices, there was no "point person" with the authority to make decisions on fee waiver requests; therefore, few were granted. Furthermore, the INS kept no records of fee waivers requested or approved.

One INS district office has refused to acknowledge an applicant's request for a naturalization fee waiver, or to consider the merits of the request.⁵⁷ When fee waivers were occasionally approved, there was a lack of consistency in the decisions, both nationally and within local offices, so that applicants with equivalent backgrounds and incomes would receive different decisions depending on chance factors such as geography and who happened to adjudicate their applications. There was no time limit for decisions, so applicants requesting a waiver would often wait many months for an answer, delaying the receipt of an important immigration benefit. In effect, applicants were penalized for applying for a fee waiver, even though this benefit is their right by law. For these reasons, many applicants simply stopped asking for fee waivers and had to either find a way to pay the fee or give up on filing the application.

Photo Courtesy: INS

In 1997, the bipartisan U.S. Commission on Immigration Reform criticized the INS for lacking a clear and consistent fee waiver policy. Additional criticism came from immigrant advocates when the substantial fee increases for naturalization and other immigration benefits were announced in 1998. Commissioner Meissner promised advocates that guidance to local offices on fee waivers, which the INS had been drafting for over a year, would be issued before the fee increases were implemented. The guidance was issued on October 9, 1998, just four days before the first fee increases took effect.⁵⁸ The fee for naturalization increased three months later, in January 1999.

The current fee waiver guidance directs the INS to evaluate the totality of a person's circumstances including, (1) whether the person has qualified for federal "means-tested" benefits within the last 180 days, (2) whether the person's income is at or below the poverty level, (3) whether the person is 65 or older, (4) whether the person is disabled, (5) the number of dependents seeking benefits along with the applicant, and (6) any other humanitarian factors.⁵⁹

When applying for a fee waiver, the person must submit evidence of inability to pay along with an affidavit or declaration under penalty of perjury attesting to the truth of the assertions. If the fee waiver is denied, the application is returned to the person, who must start all over by re-filing the application with the fee. Decisions on fee waivers are made at one of four INS regional Service Centers where applications are first sent for processing. Denials of fee waivers cannot be appealed.

Although initially the INS's record in granting fee waivers was dismal, the latest news from the INS appears hopeful, in some respects. At a February meeting between INS headquarters and local community organizations in Washington, D.C., the INS announced that in January 2000, it received 566 fee waiver requests on the basis of "inability to pay," of which it approved 417, denied 79 and completed 496.⁶⁰

The numbers of fee waivers submitted seem to indicate, however, that nowhere near the number of immigrants who could qualify for the waiver are applying for it. Immigrants distrust the INS after years of non-existent fee waivers. They also have a false fear of being labeled a "public charge", which does not affect one's ability to naturalize but cannot help in their attempts to meet the sponsorship requirements

for immigrating family members. Finally, the fact that denial of the waiver requires re-submission of the entire application, with the attendant delays, may serve as a disincentive in some cases to filing the application at all.

Three immigrant advocacy groups filed a lawsuit in Miami at the end of December 1999, alleging that the INS was thwarting the ability of poor and disabled immigrants to become U.S. citizens. The lawsuit contends that the INS has maintained a "systematic and Miami district-wide policy" of refusing to grant or, in some instances, even to acknowledge the request for fee waivers.⁶¹ The complaint further alleges that the INS's system for evaluation is arbitrary and that the INS fails to explain the basis for its denials.

Fee Waiver Denied With No Explanation

Nildo Diaz, a 62-year-old plaintiff in the Florida lawsuit, has been a lawful permanent resident since 1980. He fled Cuba after spending 10 years in jail as a political prisoner.⁶² For 17 years, he worked and paid taxes in the United States. He made his living repairing watches, but had to stop working in 1997 because of permanent tremors in his hand. He now lives on \$220 a month in Social Security benefits. He wants to be a U.S. citizen so that he can vote, but he cannot afford the \$250 naturalization fee.

Mr. Diaz submitted a naturalization application with a fee waiver request. In November 1999, the INS returned his application with a terse, handwritten note, "Fee waiver denied," and rejected his application for failure to pay the fee.⁶³

Fee Waiver Denied With Confusing Explanation

"Mr. S-" is a 77-year-old lawful permanent resident who also is a plaintiff in the Florida class action suit against the INS. Mr. S-'s only income is the \$500 per month he receives in SSI payments plus \$46 in Food Stamps monthly.⁶⁴ In October 1999, he filed a naturalization application with a fee waiver request that included a declaration regarding his income and expenses and proof of the SSI and Food Stamp income.

The INS Texas Service Center returned Mr. S-'s application for failure to pay the \$250 in fees. The INS wrote "Fee Waiver Denied" on his application and placed a "Post-it" note on the application stating, "Fee Waive—denied Reject for fee—don't cover."⁶⁵

Mr. S- cannot understand the basis on which his fee waiver request was denied or how to re-submit the fee waiver request to meet the INS's criteria. Mr. S- is poor and cannot afford the \$250.

Representative Ileana Ros-Lehtinen, a congresswoman from the Miami area, complained that the INS's application of the fee waiver guidelines is "willy-nilly."

"Sometimes a very poor person will get rejected and an equally poor person will be excused from paying," said Rep. Ros-Lehtinen, who asked lawyers to file the Miami federal lawsuit after a group from Little Havana informed her of what was happening.⁶⁶

Uneven, Unexplained Decisions and Repeated Filing Attempts

Two naturalization applicants in identical financial situations both applied for a fee waiver with legal assistance. One was approved and the other was denied. Both applicants live in adult foster care homes for the mentally impaired and both receive SSI. The first applicant, "Mr. J-," was an Albanian man in his thirties who came to the United States as a refugee. He applied for the fee waiver in May 1997. At that time, applications were sent to the local INS office. The representative explained the case to the naturalization supervisor and his fee waiver was approved. He had an interview in July 1999 and was sworn in as a U.S. citizen shortly afterward.

The second applicant, "Ms. A-," is a 39-year-old woman from West Germany who has lived in the United States since she was eight years old. She has three U.S. citizen children. She suffers from serious mental illness and has lived in adult foster care homes for the mentally impaired for the past five years. Her monthly income of \$607 in SSI is paid directly to the home where she lives. She cannot afford the INS application fee.

Ms. A- applied for U.S. citizenship and a fee waiver after she was informed that she was going to lose her SSI benefits because she was not a U.S. citizen. She also applied for a medical waiver from the history and civics testing requirements. Because of a change in disability waiver procedures, however, the INS returned the appli-

cation and advised her to re-file under the new procedures. This required Ms. A- to return to the doctor for another medical evaluation. Ms. A-'s medical plan allowed her only one medical evaluation per year, however, so she had to wait nine months, until February 1998, to see the doctor again.

Ms. A-'s application, unlike Mr. J-'s, was mailed to the INS's Nebraska Service Center under the INS's new "direct mail" system that was designed to lessen the backlog. Even though by then Congress had restored Ms. A-'s SSI under a 1997 law, Ms. A- wanted to pursue her citizenship, fearing that her situation remained insecure.

Ms. A- re-filed her application in April 1998, along with the medical and fee waiver requests. In June 1998, she received a denial letter with no explanation as to why she was denied or any clue as to why her case was decided differently than Mr. J-'s.

In November 1998, encouraged by the new INS fee waiver guidance, Ms. A- re-submitted her application and included a long letter and affidavit referencing the new guidance along with documentary evidence demonstrating her eligibility for the waiver.

In January 1999, Ms. A- received a letter from the INS requesting additional information, but not identifying the information needed. Given the detail of the fee waiver request previously submitted, Ms. A- did not know what else the INS wanted. Three months later, in April, Ms. A- sent a follow-up letter inquiring about the status of the fee waiver request. In June, seven months after she submitted the application for the third time, the entire application package was returned to Ms. A- with a denial of the request.

The INS denied Ms. A-'s fee waiver request despite her meeting several criteria in the INS fee waiver guidance for determining inability to pay: she receives a federal public benefit (SSI), her income is below the poverty level, and she has a disability. Inexplicably, Mr. J-, who had the same income and disability, promptly received a fee waiver.

Ms. A- still wants to be a U.S. citizen and has called her legal representative several times to ask about what can be done. She also has attempted to study for the citizenship test on "good days" when her mental illness is less severe. Disabled immigrants such as Ms. A- should not be disadvantaged simply because the INS is unwilling to approve waivers which are available to them under the law.

94-Year-Old Man Does Not Satisfy English Language Exemption

"Mr. V-," a Vietnamese national, applied for U.S. citizenship in September 1997. Mr. V- was 94 years of age at the time of his application. He did not realize that he needed to know English at his advanced age. He had been a lawful permanent resident for 12 years and, thus, did not yet qualify for the testing exemption. He was called for an interview in March 1999. The INS officer allowed Mr. V-'s son, a U.S. citizen, to attend the interview with him, and then proceeded to direct all the questions to the son. The officer asked the son if Mr. V- spoke English, and the son answered, "No." The INS officer advised the son to wait until Mr. V- had 15 years of residence so he could get the exemption from the English requirement. Without explanation, the officer gave Mr. V- a piece of paper to sign, which he did. When the officer left his desk briefly, the son glanced at the paper and realized that it was a request to withdraw the application.

Mr. V- was very upset when he realized what he had signed, as he did not want to withdraw his application. He wanted to attempt the test and pursue his citizenship. He will not qualify for the exemption until July 2000, when he is 97 years old. At that time, he can re-apply for citizenship. The estimated time to complete the process is about one year, at which point he will be 98 years old.

Mr. V-'s experience is a common one. Other elderly applicants report being rushed through the interview, dismissed, and treated rudely by INS officers. Under pressure to reduce the backlog, INS officers too often choose speed over professionalism. The INS officer in Mr. V-'s case showed a lack of professional conduct by addressing only the son. Mr. V- was not given an opportunity to prove his ability and there was no explanation of the withdrawal request he was asked to sign. Mr. V- will fulfill his dream of citizenship only if his good health continues to the age of 98.

E. Elderly and Disabled Applicants

1. Exemption Based on Age

To qualify for naturalization under the immigration laws, immigrants must demonstrate an ability to read, write, and speak basic English, and a knowledge of U.S. history and government. The law allows some exceptions for those meeting both age and long-term residence requirements. The English requirement is waived for applicants who, on the date of filing the naturalization application, are either (1) age 50 or older and a lawful permanent resident for 20 years or more; or (2) age 55 or older and a lawful permanent resident for 15 years or more.⁶⁷ Despite the availability of this waiver, elderly applicants who have been here for many years are sometimes left out.

2. Waivers Based on Disability

Apart from the age/residency exemption from the English requirement, there is an exception from the English and civics requirements for "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."⁶⁸ This provision dates back to a 1994 law that amended the immigration laws to

allow the disability exception.⁶⁹

Almost from its inception, however, the disability exception has been a source of dispute. A class-action lawsuit was filed against the INS for failing to implement the disability waiver in July 1996. Amid mounting complaints by disabled immigrants, the INS finally issued administrative regulations for the disability waiver in the spring of 1997 — three years after the law had been passed.⁷⁰

Disability waiver applicants were beset with problems from the beginning. These applicants, many of whom were older, were caught in the backlog and waited up to three years for an interview while their health deteriorated. The INS was reluctant to approve waivers, so applicants were routinely turned away and told to get more information or see another doctor. Naturalization applicants receive two opportunities to pass the citizenship examination. Some elderly applicants, whose disability waivers were denied at their initial interviews, have died while waiting for second interviews.

Death While in the Backlog

In 1989, "Mr. Y-" and his family immigrated to the United States as refugees from the Soviet Union. The family fled the Soviet Union after enduring years of religious persecution due to their Jewish faith. Upon arrival in the United States, Mr. Y- was 72 years of age. In 1995, he and his family became eligible to apply for U.S. citizenship. Although his wife and children filed for naturalization and became citizens in 1995, Mr. Y-'s declining health prohibited him from filing an application until March 1997. Mr. Y- suffered from severe diabetes. His illness forced him to undergo eye and vascular surgeries, and even threatened him with limb amputation. In conjunction with his citizenship application, Mr. Y- submitted a disability waiver, requesting an exemption from the English and history requirements.

In September 1997, Mr. Y- attended his first naturalization interview. At the interview, the INS denied his disability waiver. This denial, coupled with Mr. Y-'s medical condition, prohibited him from passing the citizenship examination. At the interview, the INS officer informed Mr. Y- that he was entitled to a second opportunity to prove his eligibility for citizenship, and that he would receive a new interview notice in the mail.

Shortly thereafter, Mr. Y- suffered a stroke. As a

result, he was repeatedly hospitalized and ultimately confined to a wheelchair. In anticipation of his second citizenship interview, the family obtained an updated disability waiver, reflecting the changes in his medical condition. However, his second interview was not scheduled until January 10, 2000 (29 months after his initial citizenship interview). Mr. Y- died on January 7, 2000, three days prior to his interview date.

It was not uncommon in some INS districts for applicants to submit the disability waiver form three to four times. Yet applicants often received no feedback on their request, so they did not know what further information was required. Resubmitting the form was a shot in the dark. Some INS districts took an extreme view and refused to recognize Alzheimer's and dementia as disabilities, suggesting inaccurately that such afflictions were normal outcomes of old age. Other INS districts required all applicants with mental impairments to see a psychiatrist rather than a family doctor or general practitioner, without thought to the linguistic, cultural, and financial barriers to seeing a psychiatrist.

Although the INS issued its first detailed guidelines for determining who qualifies for the disability waiver in March 1997, decisions by the INS since then have been often arbitrary and many deserving cases have been denied. Despite numerous complaints from advocates about improper denials, it was not until three advocacy organizations filed a lawsuit that the

INS finally took action. The lawsuit was filed in October 1998 on behalf of seven elderly and disabled immigrants in Miami, challenging the INS's denial of their waivers. A favorable settlement for the applicants was reached out of court in the summer of 1999 when the INS agreed to reconsider 3,000 requests for medical waivers that had been denied by the INS in the Miami area since March 1997.⁷¹

In the New York City area, the INS was sued in April 1999 by immigrant advocates on behalf of disabled applicants whose waivers had been denied without justification.⁷² Advocates complained that the INS rejected disability waiver requests out of hand with no explanation and routinely attempted to second-guess doctors' diagnoses in direct violation of the INS's own internal guidelines.

In one example, a woman who had suffered a stroke, was confined to a wheelchair, and could not speak, submitted a medical waiver along with her doctor's diagnosis and copies of an MRI and CAT scans. A public health officer consulting with the INS rejected all of her evidence, declaring the woman fit after he conducted his own "neurological test," which consisted of the woman simply squeezing his hands.⁷³

The INS agreed to settle the New York City lawsuit less than three months after the complaint was filed. The settlement requires the INS to reconsider the disability waivers of about 200 applicants whose physical or mental disabilities prevented them from learning English and civics.⁷⁴ Advocates alleged that the INS arbitrarily refused to waive the testing requirements and then wrongly denied the applicants U.S. citizenship after they failed the tests.

At the request of community organizations, INS headquarters established a joint working group in Washington, D.C. to address these issues. With input from the organizations, the INS released comprehensive guidance on April 7, 1999 on disability waiver eligibility, form requirements, and adjudication procedures. The INS also provided nationwide training on the guidance for its larger districts over the summer of 1999.

Unfortunately, problems continue with disability waivers and accommodations for the disabled, despite the April guidance and the settlements. While the guidance was a positive step, at least in theory, it also tightened requirements for the waiver, suggesting precise language that must be contained in the medical assessment. Previously approvable waivers are now denied simply because they do not contain this language.

Photo Courtesy: INS

3. Reasonable Accommodations for Persons with Disabilities

Aside from the disability waiver, all disabled applicants for citizenship have certain rights under the Rehabilitation Act of 1973.⁷⁵ The Rehabilitation Act requires the INS to make special accommodations for the disabled to allow them to participate in the citizenship process. Accommodations do not remove requirements — they simply compensate for a disability. Any applicant with a disability may request such accommodations from the INS, verbally or in writing.

Examples of accommodations may include a wheelchair-accessible INS office; at-home visits for fingerprints, interviews, or the oath of allegiance; expedited oaths for the very ill; oral tests for the sight-impaired; written tests or sign language interpreters for the hearing-impaired; allowing family members or advocates to repeat the test questions for someone who is hearing-impaired; and allowing a sick or mentally ill applicant to bring a support person to the interview to relieve nervousness. Accommodations are specified by the applicant and may vary according to individual need.

Historically, the INS has been very slow to recognize the need for, and to provide such accommodations. Customer service, already poor, is even worse for the disabled, who may be subject to additional delays, rudeness, and suspicion. One issue of ongoing concern has been at-home interviews for bedridden applicants. In many local districts, these applicants wait many additional months or even years to receive an interview. The INS blames this problem on limited staffing, the large backlog of applicants waiting for interviews, and the pressure to complete cases. An officer can process far more applicants by staying in

the office than by going off-site. Many districts require a doctor's letter for a home interview, even though such a letter is not required by law or regulation. The INS only seems to respond when advocates complain about this poor treatment that violates the law.

On-Site Interview Finally Prompted by Lawsuit

Elizabeth Fontaine is an 87-year old lawful permanent resident of the United States. She has been a permanent resident since 1958. In 1996, she suffered from a stroke. Since that time, she has been bedridden and confined to a nursing home. Ms. Fontaine can only leave her bed for short periods of time. Her frail condition permits her to sit in a wheelchair for no more than 45 minutes per day. She spends the remainder of her days in bed. In June 1997, Ms. Fontaine filed an application for naturalization with a disability waiver. In October 1998, Ms. Fontaine received a naturalization interview notice. Upon receipt of the notice, Ms. Fontaine informed the INS that her disability prevented her from traveling to the INS office and requested an interview at her nursing home. After numerous unanswered requests for an on-site interview, Ms. Fontaine filed a lawsuit against the INS for failing to accommodate her disability. In December 1999, approximately two months after the suit was filed, INS examiners came to Ms. Fontaine's home and conducted the interview. Two and a half years after she initially filed her application, Ms. Fontaine became a U.S. citizen.⁷⁶

Immigrant advocates report that thousands of seniors remain in citizenship limbo, growing older and sicker as they wait for medical waivers, home visits from the INS, or just some news about their application — some of which have been pending for three years.⁷⁷

The problem is compounded by a reduction in fingerprint services in the last two years. Community-based organizations and other entities were responsible for fingerprinting many applicants until December 1997, when the INS took over this service and established "Application Support Centers" in response to fraud concerns. Accustomed to doing outreach in the community, nonprofit organizations had the flexibility to respond quickly and efficiently to the special needs of disabled, homebound applicants. When the INS announced the change in fingerprinting, community organizations pointed out that those needing in-home services would suffer as a result, and this prediction has come to pass. The INS provided a limited number of mobile fingerprinting

vans two years after conversion to Application Support Centers, in response to concerns about the disabled and those living in remote, rural areas. However, scheduling and coordination of services has been a serious challenge.

INS District offices continue to need training and oversight from INS headquarters. In Portland, Oregon, an applicant with a disability waiver documenting that she was legally blind failed the English test in September 1999 when the INS gave her a dictation test. At the same time, all hearing-impaired applicants, as a general rule, are given a written test, even when they ask for a disability waiver. The Portland district office is not evaluating these applicants on a case-by-case basis.⁷⁸ In Chicago, a disability rights group filed a complaint against the INS in December 1999 for failing to "provide sign language interpreters, telecommunications devices for the deaf and other services" for the hearing-impaired, resulting in higher denials and miscommunications.⁷⁹ The group complained that they had advocated on behalf of the deaf for three years, but the INS had failed to respond with the necessary accommodations.⁸⁰

Photo Courtesy: INS

4. No Waiver of Oath for the Severely Disabled

When applicants are granted a disability waiver, they are still required to take an oath of allegiance to the United States. The INS has been willing to modify or simplify the oath for the disabled as an accommodation. For example, the INS can ask a paralyzed applicant several short questions on the nature of the oath and the applicant can respond by blinking, tapping, or nodding.

The INS has been unwilling, however, to provide any type of waiver of the oath for the severely disabled.

Sadly, many applicants with degenerative illnesses, such as Alzheimer's, are adversely affected by the long backlog for citizenship. By the time they have an interview, they may no longer be eligible because they are too mentally incapacitated to understand the oath. This is even more tragic when public benefits, such as SSI, depend on the applicant's citizenship.

Too Sick, Too Bad...

"Mrs. T-" fled the communist government in Cuba in 1972 and joined her U.S. citizen half-brother in the United States in 1972. She was 66 years of age upon arrival in the United States. She was granted lawful permanent resident status five years after her arrival. Today, she has three U.S. citizen daughters and one son who is a lawful permanent resident, with an application for naturalization pending. She has seven U.S. citizen grandchildren, 14 U.S. citizen great-grandchildren, and two U.S. citizen great-great-grandchildren.

Fourteen years ago, Mrs. T- began to exhibit symptoms of Pick's disease and senile dementia. Pick's disease is a chronic organic brain syndrome, similar to Alzheimer's disease. Mrs. T- lives in a small apartment, but is never left unattended. One of her children or grandchildren attends to her twenty-four hours a day, seven days a week. Sometimes she recognizes her family members, other times she does not.

After the passage of the 1996 Welfare Reform Act, Mrs. T-'s daughter assisted her to file an application for naturalization, as she feared losing her SSI. They filed the application in 1996, and attended a naturalization interview at the INS in 1997. At the interview, after Mrs. T- was unable to respond to the officer's questions, she was informed that her case would have to be reviewed by a panel. They were told that they would receive a notice in the mail, informing them to return for a second interview.

The family waited one year with no response from the INS. During this year, Mrs. T-'s Food Stamps were suspended. Ultimately, the INS granted Mrs. T- a waiver of the English and civics tests, but denied her application, finding her incompetent to testify at her naturalization interview and unable to take the oath of allegiance. The family obtained legal assistance and filed an appeal of the decision. The appeal, which was filed in early 2000, is currently pending.

At least one court has found that the INS must waive the oath to accommodate a disability in certain circumstances. However, the INS has appealed this court's ruling.

Photo Courtesy: INS

Victim of Down's Syndrome Unable to Take the Oath of Allegiance

In 1983, at the age of ten, Gustavo Galvez-Letona immigrated to the United States from Guatemala. Today, he is 27 years of age and suffers from Down's Syndrome. He cannot walk, talk, read, or write. He is confined to a wheelchair and requires the constant care of his U.S. citizen mother. As a result, his mother is unable to work. She is divorced from his father, whose whereabouts are unknown. Gustavo's mother relies on his SSI to support him. Fearing that her son would lose his SSI benefits after the passage of the 1996 Welfare Reform Act, Gustavo's mother filed an application for U.S. citizenship on his behalf in October 1996.

In February 1997, the INS interviewed Gustavo. The agency granted Gustavo's disability waiver, thereby exempting him from the English and civics portions of the naturalization examination. However, in October 1998, the INS denied his citizenship application because he was unable to demonstrate that he understood the nature of the oath of allegiance. Gustavo's family appealed the decision of the INS. In July 1999, the U.S. District Court ruled that the oath had to be waived in order to comply with Section 504 of the Rehabilitation Act of 1973, which requires "reasonable accommodations" for the disabled. The Department of Justice has appealed the court's decision, arguing that Gustavo's inability to take the oath caused him to fail to "demonstrate attachment to the principles of the Constitution and the good order and happiness of the United States."⁸¹

F. Good Moral Character

The immigration laws require that, to become a U.S. citizen through naturalization, a person must demonstrate that he or she has been a person of good moral character during the required period of residence.⁸² For most persons, this means good moral character for the five years immediately preceding the filing of the application. Good moral character is not defined in the law or the INS regulations. The law simply contains a list of conduct, acts, attributes, and characteristics that preclude a finding of good moral character.⁸³

Any conduct or characteristic listed in the statute will result in an automatic finding that the person lacks good moral character. The INS may look at other types of conduct, however, even beyond the five-year window, that are not listed in the statute, and make a discretionary finding that the applicant lacks good moral character.

Whether a person has good moral character for naturalization purposes is a factual question that has been interpreted as meaning character that measures up to the standards of the average citizens of the community in which the applicant resides, and so does not necessarily require the highest degree of moral excellence.⁸⁴ A person's reputation and behavior is evidence that tends to establish good or bad moral character.

Because the discretionary judgment of good moral character is loose and shifting, it is subject to abuse. Hundreds of persons have had naturalization applications denied due to lack of good moral character for things as simple as inadvertent and innocent omissions of information on the naturalization application.

1. Inappropriate Denials

The INS often takes an inflexible approach to good moral character determinations, failing to consider the particular facts of applicants and often relying on inappropriate bases for denying the application.

Impossible Documentary Requests

"Mr. T-" is a refugee from Ethiopia who came to the United States in 1990. Since 1991, he has worked as a custodian for a church. His wife is a naturalized U.S. citizen and they have two U.S. citizen children, ages four and five. Mr. T- also has a third child, a 16-year-old daughter who lives in Ethiopia with her uncle. Her mother died several years ago, and Mr. T- has been supporting her financially with the rent he receives on a house in Addis Ababa that he inherited.

Mr. T- applied for citizenship in February 1998, believing that he met all the requirements, including good moral character. Unfortunately, his district INS office, like some other INS districts, imposes extreme evidentiary requirements related to child support. Most districts require applicants to show evidence of child support for all children not living with them when it is court-ordered. Failure to support a child is a discretionary element that may show a lack of good moral character and can disqualify an applicant for citizenship. Mr. T-'s local INS office requires evidence of child support even when it is not court-ordered and the child lives outside the United States. In addition, it only accepts certain kinds of evidence, with no exceptions. Mr. T- was not aware of this requirement when he applied, however, as it is not publicized.

Mr. T- first learned of the INS office's requirement when he was called for an interview on November 18, 1998. At that time, he was told that he needed to show evidence of child support for his daughter in Ethiopia, and was given a written notice detailing acceptable kinds of evidence. Specifically, the INS district office requires copies of court or garnishment payments, copies of canceled checks, bank drafts, or money order receipts. If these are not available, it requires an affidavit from the person with custody of the children detailing how much support is received and how often. Buried in the fine print, the INS notice states that if the child lives outside the state, the applicant must submit the envelope in which the affidavit was mailed. Additionally, he or she must give a written explanation as to why there is no primary evidence, such as canceled checks.

Mr. T- was given 90 days to obtain the evidence. Because he had arranged for the rent money on his house to be paid directly to his daughter, he did not have canceled checks or other primary evidence. Instead, he had to contact his daughter's uncle, the caregiver, in Addis Ababa and ask him for an affidavit. At this point, Mr. T- was at the mercy of the Ethiopian government, which is responsible for providing all affidavits there. The Ethiopian government is bureaucratic and slow in providing such services. In addition, the government is reluctant to give out information. Often, people stand in line for hours only to be told to come back another day. In Addis Ababa, a panel of officials meet only twice a week to hear requests for affidavits, and the uncle was put on a long waiting list.

When Mr. T- realized that he would not be able to get the affidavit within 90 days, he contacted the INS office on January 28, 1999 to request an extension. The INS refused the extension and proceeded to decide his case without additional evidence. Mr. T- received a letter four months later, on May 20, informing him that his application for citizenship was denied. The letter also informed him that he could request reconsideration of the denial and request a hearing, or another interview, with the INS. Mr. T- still did not have the affidavit from the Ethiopian government at this point, but he figured it would come soon. He decided to appeal the denial and submit the affidavit as additional evidence when he had his appeal interview. He sent in the appeal with the required fee of \$110 in June 1999. He had already paid a \$95 application fee when he first applied for citizenship. The appeal interview was scheduled three months later, on September 16.

In the meantime, the uncle appeared before the panel of officials in Ethiopia and obtained the affidavit on Mr. T-'s support for his daughter, dated June 8, 1999. The uncle mailed the affidavit to Mr. T-. Once he had the affidavit in his hands, Mr. T- had to pay to have it professionally translated from Amharic into English. He brought the original affidavit and the translation to his appeal interview in September. The affidavit explained clearly that the uncle, the brother of the child's mother, had cared for the child since her mother died. It stated that since coming to the United States, Mr. T- had supported the child in the amount of approximately \$150 per month from the rent he received on a house in Ethiopia.

In submitting the affidavit, Mr. T-, who speaks English as a second language, overlooked two small details contained in the fine print of the INS's request for evidence. He did not bring the envelope in which the affidavit was mailed from Ethiopia and he did not give the INS a written statement explaining why no canceled checks or other primary evidence was available. The INS denied his appeal on these relatively minor technical grounds in a letter dated October 22, 1999.

Mr. T- is virtually at the end of his rope. He has only two options. He can appeal his case through the federal courts. This is unlikely to happen, as it will require thousands of dollars in attorney's fees. His other option is to re-file a new application, paying an additional \$225.

Mr. T- was the victim of a harsh policy practiced by one district. If he had applied in almost any other INS district, he would not have been required to show evidence of child support, because it was not court-ordered. In the INS's official national handbook for applicants, *A Guide to Naturalization*, there is a page listing documents to be included with the application form. This page states that evidence of child support is required when the applicant has been "ordered to provide financial support." The INS office, however, required additional evidence of Mr. T- and would not give him the time needed to get it.

2. Failure to Balance Equities

The INS is permitted to evaluate the overall conduct of a naturalization applicant, even if it is outside the five-year period preceding the date of filing of the application. Such conduct may not form the basis for an automatic finding of failure to demonstrate good moral character. Rather, the INS must balance the equities in the person's life, weighing any misconduct against evidence of rehabilitation, community involvement, and adherence to the law. Often, however, the INS places enormous weight on misconduct and ignores evidence of rehabilitation and subsequent good behavior.

Misconduct in the Distant Past

In 1973, "Mrs. R-" immigrated to the United States at the age of 17. She and her five siblings came to join their mother, a domestic worker. Today, Mrs. R- has two U.S. citizen children and one child who is a lawful permanent resident. Her eldest son is 27 years old and supports himself. Her two younger children are 20 and 22 years of age. Both are students, live at home, and rely on her for financial support. Mrs. R- also has one U.S. citizen grandchild who she helps to raise and financially support. At present, Mrs. R- is separated from her permanent resident husband.

Throughout her adult life in the United States, Mrs. R- has been steadily employed. She is currently the assistant supervisor of a kitchen in a nursing home. In 1984, however, Mrs. R- was convicted of distribution of three small bags of marijuana. She received a three-year suspended sentence and three years of parole, but was not required to serve a day in jail. This was her only brush with the law. Since 1982, Mrs. R- has completed her GED, earned an Associate of Arts Degree in Restaurant and Cooking at a culinary

institute, and obtained a Dietary Management Certificate.

In 1995, Mrs. R- filed for naturalization and disclosed her prior conviction. She was under the impression that this old conviction would not harm her ability to naturalize. In 1998, Mrs. R- attended her naturalization interview. At the interview, the INS examinations officer requested a copy of her police record. Mrs. R- submitted the requested documentation and was told that she would receive an answer from the INS within three to six months. In May 1999, INS officers arrested Mrs. R- at her home and placed her in removal proceedings.

Although she did not try to conceal her prior conviction from the INS, and was not a danger to the community, Mrs. R- was detained for three months before she was able to post bond. Twice during Mrs. R-'s detention, the utilities in her home were turned off because her children were unable to pay the bills, and she became delinquent on her rent, phone, gas, and electric bills. Mrs. R-'s sister, who has five of her own children, took in Mrs. R-'s children when the utilities were shut off. She also helped them to raise enough money to post a \$10,000 bond for their mother in late July 1999.

Mrs. R- was held in detention along with inmates serving criminal sentences. She had no access to medical treatment. While detained, a filling in one of her teeth fell out. For two weeks she requested pain killers and dental care. She was told that the only thing that could be done was to pull the tooth. Ultimately, her tooth was pulled to relieve the pain. When Mrs. R- informed the INS that she was a vegetarian and requested vegetarian meals, she was told that she would have to pick the meat out of her food if she wanted anything to eat.

Since her arrival in the United States in 1973, Mrs. R- has only returned to her native country of Trinidad and Tobago three times. Her most recent visit took place in 1991. She returned to visit a friend, who now lives in the United States. Mrs. R- has only one sibling in Trinidad. The rest of her immediate family are either lawful permanent residents or U.S. citizens. If Mrs. R- were removed from the United States, her children would not be able to complete school. One of her children is attending community college. The other is in dental school. Her grandchild is dependent on her part-time care and financial support.

Mrs. R- appealed the denial of her naturalization application in federal district court. In response, the INS agreed to reopen her naturalization case and to terminate the removal proceedings if Mrs. R- withdrew her case from district court. Mrs. R- withdrew her case and the Immigration Judge terminated proceedings and ultimately released her from custody. Mrs. R- is now in the process of compiling further evidence of her good moral character for her naturalization case.

Mrs. R- made a serious mistake 18 years ago, but has since had a clean record, been gainfully employed, and contributed to the well-being of others. The INS should exercise its discretion in a fair and common sense manner when confronted with such cases. In this case, however, as in many cases, INS capitulated only when sued in federal court.

Photo Courtesy: INS

3. State Rehabilitative Laws No Longer Provide Relief

A major problem for lawful permanent residents with certain criminal convictions is the inability to eliminate the immigration consequences of those crimes through state "rehabilitative statutes". Those statutes serve to "expunge" or remove the record of criminal conviction in certain deserving cases. For decades, the INS considered an expungement of a criminal conviction as eliminating the conviction for immigration purposes, except in the case of certain drug and firearm offenses.

In March 1999, the Board of Immigration Appeals (BIA) issued a ruling completely changing the rules on expungements. The BIA ruled that a criminal conviction could not be eliminated for immigration purposes by expunging it from the record.⁸⁵ Thus, an expunged shoplifting offense committed years before filing an application for naturalization could result in the naturalization applicant being removed from the United States, rather than becoming a U.S. citizen.

The BIA's ruling is particularly troubling and unfair for applicants with expunged criminal convictions who filed for naturalization before March 1999, when the BIA issued its decision. These applicants filed applications under the old INS policy of permitting expungements to eliminate the immigration consequences of the crime. By filing naturalization applications, these applicants unknowingly made themselves vulnerable to removal from the United States.

4. Voter Registration

Naturalization applicants who have unlawfully voted, whether knowingly or not, may not only be denied U.S. citizenship, but may be deported from the United States. The 1996 Immigration Act created a new ground of deportability for a person who votes in violation of any federal, state, or local law or ordinance.⁸⁶ This provision applies to voting occurring before, on, or after the date of enactment of the 1996 Immigration Act.

Despite these serious consequences, the El Paso INS office sent applicants a list of documents to bring to the naturalization interview, which included a voter registration card. The list is misleading and confusing to applicants because non-U.S. citizens are not supposed to have voter registration cards. Advocates argued that this was tantamount to entrapment, encouraging applicants to get a voter registration card when they did not have one, but El Paso refused to remove the voter registration card from the list.

Innocent Attempt at Civic Participation

At the age of eight, "Mrs. C-," a national of Korea, was adopted by two U.S. citizens. Since that time, she has resided in the United States. Today, she has two U.S. citizen children of her own. They are eight and 14 years of age. She owns and operates a day care business.

Before a recent trip to Bermuda, Mrs. C- had always assumed that she was a citizen of the United States. At the age of 18, Mrs. C- registered to vote. She has voted in one state and one federal election.

Upon returning from her recent trip to Bermuda, Mrs. C- was questioned by INS officials. She explained that she had always thought she was a U.S. citizen, and presented her old alien registration card and a re-entry permit that had previously been issued by the INS.

INS officials inspected Mrs. C-'s documents and informed her that her permanent resident card ("green card") had expired. In 1996, "old" alien registration cards became invalid, as the INS had developed a new alien registration card in order to deter document fraud. After lengthy processing at the airport, Mrs. C- was permitted to return to her home in the United States.

Upon her return, Mrs. C- further inquired into her citizenship status. She learned that her adoptive parents never completed the appropriate paperwork for her to obtain a certificate of citizenship. Under the immigration laws, Mrs. C- could have received a certificate of citizenship if her parents had filed the appropriate paperwork before she turned 18.

Mrs. C- would like to apply for naturalization and become a U.S. citizen. She fears that she would be charged with removability for unlawful voting, however. Mrs. C- has no recollection of Korea. She does not speak, read, or write Korean.

Until recently, Mrs. C- had no connections to her biological family in Korea. One year ago, however, Mrs. C- began the process of tracking down her biological mother. With the help of someone in Korea, she was able to identify her biological mother, brother, and sister. Mrs. C-'s biological mother was able to obtain a visitor's visa to the United States, and is currently here visiting Mrs. C- and her family. Mrs. C-'s biological brother and sister were denied visitor visas to the United States. Mrs. C- would like to travel to Korea to visit them. Mrs. C-'s fear of removal, however, has not only paralyzed her from applying for citizenship, but also from renewing her green card and traveling outside the United States.⁸⁷

Photo Courtesy: INS

G. The Naturalization Test

Citizenship applicants are required by law to "demonstrate an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language."⁸⁸ This is interpreted to mean basic proficiency in English, not fluency. The law also requires applicants to pass a test on U.S. history and government, but states that in evaluating responses, "due consideration shall be given to the applicant's education, background, age, length of residence in the United States, opportunities available and efforts made to acquire the requisite knowledge, and any other elements or factors relevant."⁸⁹ The INS is required to adjust the difficulty of the test based on the factors above.

Failure of the citizenship test is the number one reason for naturalization denials. Advocates believe that these denials are due, in part, to the arbitrary and inconsistent manner in which the test is administered across the country.⁹⁰ They have long criticized the INS for the lack of national testing standards. In 1997, the Center for Equal Opportunity (CEO) surveyed the 33 INS district offices to determine how each administered the civics test. The CEO found that INS district officials were free to administer the test as they saw fit, without oversight from INS headquarters.⁹¹ One INS district might require an applicant to answer correctly 6 out of 10 questions, while another required 8 out of 16.

Some districts were giving the civics test orally, while others were giving a written civics test. To add to the arbitrariness, district officials were often the sole arbiters of what qualified as a correct answer. The Detroit district has one of the most difficult tests because it insists on using dense, outdated INS citizenship textbooks. The Baltimore district surprised applicants who reported for fingerprinting in the summer of 1998 by offering them a civics test at the same time. The tests were administered by temporary student interns and the program was not announced to the public. Although Baltimore said the tests were optional, many applicants did not know this.

Similar difficulties in consistency exist with the English language test. The CEO survey found that some INS offices penalized applicants who were fluent, but had heavy accents.⁹² Advocates report that the ability to pass the test depends on the mood, style or office location of the official who does the interview.⁹³ Others complain that the INS's focus on law enforcement biases interviewers toward finding any reason why a person cannot be naturalized.⁹⁴ For persons who are well-educated, tough questioning may not be a problem, but for the less educated, which includes many refugees, the process is terrifying because it is so unpredictable. The system also places older and disabled applicants at a disadvantage.

As a result of these inconsistencies, applicants are advised to ask others who have been through the

process in their district about what to expect. Many offices give a written multiple choice or oral test on history and government followed by one or two simple sentences for writing dictation, such as "I drive a red car" and "I want to be an American citizen." The ability to speak English typically is tested throughout the interview, in the applicants' spoken responses to questions about the application and their conversation with the interviewer. Many applicants pass the history and government test and demonstrate English speaking ability, but struggle with the written dictation sentences.

In an apparent move toward greater standardization, the INS conducted a 60-day pilot testing program in the summer of 1998 in five districts. Applicants were given the option of taking a multiple choice civics test at the Application Support Center when they reported for fingerprinting. The purpose of the pilot was to evaluate the feasibility of such a program. Statistics showed a pass rate of 85 percent. Those who chose not to take the test were mainly applicants with special needs, such as the elderly and disabled; the program did not have the flexibility to accommodate them.

While they favor standardization, advocates have pointed out that INS testing methods must remain flexible enough to accommodate applicants with special needs. The INS is required to modify testing for disabled applicants in accordance with the Rehabilitation Act, and is training districts on this issue. Few INS officers currently give due consideration for age, education, or background in testing.

Photo Courtesy: INS

Failure to Consider Applicants' Background in Testing

"Mr. and Mrs. B-" came to the United States as refugees from Eritrea in the 1980s. They are now 58 and 44 years old, and have five grown children. The youngest child is severely disabled with epilepsy and requires constant care. Mr. and Mrs. B- worked in a factory. Mr. B- worked the day shift and Mrs. B- worked the night shift so that someone was always at home to care for their disabled son.

Mr. and Mrs. B- applied together for citizenship on September 18, 1998. Both speak basic English, but they have struggled with reading and writing because they did not have much formal schooling in their native country.

Mr. and Mrs. B- received an appointment for an interview at the INS on October 5, 1999. For one month before the interview, Mr. and Mrs. B- received private tutoring to help them prepare for the test. An accredited immigration specialist attended the interview with them. Having attended many interviews recently, the specialist was surprised to learn of a new computer program the INS district was using. Although the INS office had monthly meetings with immigration service providers, no mention had been made of the new program. Mr. and Mrs. B- were unprepared for the abrupt change. The computer generated a random list of questions on history and government that were given to Mr. and Mrs. B- orally. Both of them passed this oral test, Mrs. B- with a score of 100 percent.

The computer then generated two random sentences for a test on dictation and reading comprehension. Both Mr. and Mrs. B- failed the dictation sentences. After preparing for such dictation sentences as "I drive a red car," Mr. and Mrs. B- were asked to dictate, "The men were often in rags and without clothes" and "There were two from every state." Then Mr. B- was asked to explain the meaning of the sentence, "They lived in groups called tribes," and Mrs. B- the meaning of, "They are an important part of the political process."

The immigration specialist argued that the comprehension sentences were out of context and made no sense, as the word "they" was not specified. After pondering this for a moment, the INS interviewer agreed to disregard the

comprehension sentences. Both Mr. and Mrs. B- failed the dictation sentence. Mr. B- failed because he wrote "every" as "evry" and "were" as "wer." Mr. and Mrs. B- were both devastated. They were told that they would be re-scheduled for the interview and would have one more opportunity to pass the test before having their applications denied.

Tragically, Mr. B- was in a serious car accident three weeks later. Following the accident, he spent four weeks in intensive care and is still in poor condition. Doctors believe he may have suffered permanent brain damage. Mrs. B- divides her time between the hospital and home, caring for her husband in addition to her son with epilepsy. They are unable to pursue their citizenship applications at this time.

CLINIC brought the testing issue to INS headquarters and later learned that the computer testing program, called "C-4," was being used nationally. The INS admitted in a meeting with community organizations that the strange dictation sentences found in the system were an oversight and had been replaced by more reasonable ones. The INS also explained that the districts were not required to use the computer-generated sentences; they were optional.

The local INS office announced, however, that applicants who failed the uncorrected dictation test and were denied as a result of the INS's mistake would not be re-tested, but would have to appeal the denial and pay the appeal fee.⁹⁵

Photo Courtesy: INS

H. Denials

Immigrants face steep hurdles when seeking to naturalize, including high application fees, inaccessibility of the INS to answer questions, long waits for interviews, and an enormous backlog of cases. The greatest hurdle appears to be getting the INS to approve the application. The historical average for denials is 25 percent. Yet denials of naturalization applications went up 250 percent nationwide in the first six months of 1999, at a time when the INS struggled to reduce the naturalization backlog.⁹⁶ More than 56,000 applicants in Los Angeles alone were denied during this period of time.⁹⁷

In some cities, the INS figures showed that the percentage of denials jumped dramatically. Rejections in Los Angeles went from 8.2 percent in 1998 to 42.1 percent in 1999, and in New York the percentage of rejections rose from 16.6 percent to 43 percent.⁹⁸

The INS attributed the steep rise in denials to several factors, all of which point to serious problems. First, the INS acknowledges that it did not have an effective system for recording address changes in the past, so correspondence to applicants often went to a prior address. When applicants failed to appear for the interview, the INS automatically denied them. In Los Angeles, several hundred immigrants had cases denied during the first six months of 1999 due to this problem.⁹⁹ The INS announced that it will waive the \$170 fee for persons who wish to appeal denials in these cases.

A second cause of the high rate of denial, according to the INS, is that some applicants filed multiple applications in an effort to beat the backlog, and the INS is now denying the duplicate applications while processing the first submission. A third factor cited by the INS is that questionable cases were put on hold pending further review. Now, the INS is reviewing these cases, and is denying many of them under congressional pressure to clean up the backlog.

Denials Based on the INS's Notice Going to the Wrong Address

"Mr. and Mrs. S-," an Indian couple, applied for citizenship together through the local New York INS district office in October 1996. Mr. S- was 76 years old and Mrs. S-, 74. They had lived in the United States as lawful permanent residents since 1980 and had six adult children, all naturalized U.S. citizens.

In April 1997, Mrs. S- was called for her citizenship interview, and she passed. Although he applied with his wife, Mr. S- did not receive an appointment for an interview until August 5, 1997. He missed the interview, however, because the INS notice was postmarked August 14 and arrived on August 25, which was 20 days after the interview appointment. Mr. S- sent a letter to the INS explaining what happened and asking to be rescheduled.

The following month, the couple decided to move to Texas, to live with their children. They sent a letter to the New York office, this time informing the INS of their new address. Despite the letter, the INS sent a notice for a second interview to Mr. S- at the old address. Because family members were still living at the old address, they forwarded the notice to Mr. S- at the new address. He returned to New York to attend the interview as scheduled in November 1997 and passed. Soon afterward, the family members at the old address left New York to join the rest of the family in Texas.

From 1997 to 1999, Mr. and Mrs. S- received no correspondence from the INS despite repeated inquiries at INS offices about the status of their cases and the transfer of their files. Finally, in April 1999, Mrs. S-, who had passed the interview, received a denial letter from the INS stating that she had been scheduled for an oath ceremony twice, in February and March 1998, and had failed to attend. The denial letter was sent to the old address and was found and forwarded by friends of the family. A daughter helped Mrs. S- file an appeal of the denial, at a cost of \$110, at the INS office near their old address, informing it again of the new address. In August 1999, Mrs. S- received a fingerprint appointment notice at the old address. Again, it was forwarded by friends. Mrs. S-'s previous fingerprints had expired before she completed the naturalization process; as the FBI only keeps fingerprints on file for 15 months.

At this point, Mr. and Mrs. S- consulted Catholic Charities and learned that Mrs. S- could bring the fingerprint appointment notice to a fingerprinting site in Texas and have her prints taken there without traveling back to the old address. She submitted her fingerprints on August 21, 1999. Mr. S- still had not heard from the INS since his November 1997 interview. Catholic Charities contacted the naturalization director at the Texas INS office to ask for the files to be transferred. In accordance with INS quality control procedures, the Texas office has to make three requests for the files from the other office, each at a 30-day interval. If the files are not sent after the three requests, the new office can then create a temporary file, and proceed with the cases.

The arbitrary and inconsistent manner in which the INS administers the English and civics tests also leads to denials. Applicants have been denied naturalization

for simple misspellings of words in the written test or failure to answer a civics question exactly as the INS officer sees fit. (See "the Naturalization Test" above). Advocates also note that the INS's abuse of its discretion in judging good moral character causes more denials. (See "Good Moral Character" above).

Inconsistency and abuse of discretion in giving the oath of allegiance results in further denials. Portland, Oregon, and Seattle, Washington are home to a number of refugees from the former Soviet Union who are Pentecostal Christians. Their religion will not allow them to take an oath (swear) or to bear arms. Instead, they ask for a modified oath, affirming rather than swearing their allegiance, and they pledge to perform non-combatant duties and work of national importance. A common practice in these cases by other INS offices is simply to require applicants to provide a letter from their church explaining these beliefs.

The local INS office in Seattle, however, gives these applicants a burdensome nine-page "interrogatory" form with 47 questions about their allegiance to the United States, while the Portland INS office gives them a two-page version of the same form. Both versions contain a troubling hypothetical question: "If a law were passed and determined by the Courts to be Constitutional, would you obey it, even if you believed that it was unwise or inconsistent with your personal and/or religious beliefs?" Some applicants get stuck on this question and answer "no." This is understandable, as many Americans with religious beliefs would answer the same way. Yet both the Portland and Seattle offices will deny the applicant citizenship unless the answer is "yes."

The entire naturalization application may hinge on this one hypothetical question. Ironically, these people were persecuted for their religious beliefs in the former Soviet Union and came to the United States seeking religious freedom. Now they are unable to become citizens because the INS makes an issue of their beliefs. In addition, the wording of the questions on Seattle's form is so complex and legalistic that it requires translation by an experienced immigration professional.

Increased denials based on INS mistakes, mismanagement, and lack of uniform policies are particularly frustrating in light of the fact, as noted earlier, that the INS promised improved service and efficiency in exchange for a \$171 million budget increase and application fee increases from \$95 to \$225.

I. Conclusion

Naturalization allows immigrants to participate fully in our constitutional democracy and society. The process is fundamental to the existence and prosperity of a nation built by immigrants. Naturalization should be a sacred procedure. Unfortunately, instead of serving as a model democratic process for our country's newest members, it has become an increasingly inaccessible and frustrating one. High costs deter low-income residents from applying, while fee waiver denials bar others from becoming citizens. Lack of accommodations for the disabled, inappropriately denied applications, and backlogs serve as additional barriers to achieving citizenship. The ability of the INS to denaturalize citizens stands in stark contrast to our nation's democratic principles.

In 1970, about 90 percent of foreign-born people who had been living in the United States for more than two decades were U.S. citizens.¹⁰⁰ By 1997, that figure fell to 67 percent.¹⁰¹ Also in 1970, 64 percent of the foreign-born population in the United States were naturalized citizens.¹⁰² By 1997, that number had declined to 35 percent.¹⁰³ It appears that instead of embracing citizenship, many immigrants are choosing to forgo it entirely. The integrity and accessibility of the naturalization process must be restored.

Photo Courtesy: INS

ENDNOTES

- 1 "Report Card on INS Adjudications," *AILA Monthly Mailing* (December 1999).
- 2 Interview with Tuat Cao, Associated Catholic Charities, Galveston-Houston, TX (May 10, 2000).
- 3 INS PAS Data, "N-400 Application for Naturalization," (September 28, 1999).
- 4 McDonnell, "INS Denials of Citizenship Climb Sharply," *Los Angeles Times*, (June 14, 1999).
- 5 Chavez, "Inconsistent Citizenship Standards at INS," *Chicago Tribune* (July 7, 1999).
- 6 Weinstein, "INS Can Void Citizenship, Court Says," *Los Angeles Times* (June 5, 1999) [hereinafter "INS Can Void Citizenship"].
- 7 65 Fed. Reg. 17127-28 (March 31, 2000).
- 8 Department of Justice News Release, "INS and KPMG Complete Review of August 1995-September 1996 Naturalizations" (February 9, 1998) [hereinafter "INS and KPMG Complete Review"].
- 9 "INS Can Void Citizenship."
- 10 *Gorbach v. Reno*, 179 F.3d 1111 (9th Cir. 1999).
- 11 "INS Can Void Citizenship."
- 12 *Gorbach v. Reno*, 179 F.3d 1111 (9th Cir. 1999).
- 13 "INS Can Void Citizenship."
- 14 Mittelstadt, "INS Crows About Its Reduction of Citizenship Application Backlog," *Associated Press* (October 28, 1999).
- 15 Pub. L. No. 104-132, 110 Stat. 1214 (April 24, 1996).
- 16 Pub. L. No. 104-193, 110 Stat. 2105 (August 22, 1996).
- 17 Pub. L. No. 104-208, 110 Stat. 3009 (September 30, 1996).
- 18 "Congress and the Administration Must Work Together To Solve the Citizenship Backlog Crises," Hebrew Immigrant Aid Society and Immigration and Refugee Services of America (February 1999) [hereinafter "Congress and the Administration Must Work Together"].
- 19 "INS and KPMG Complete Review."
- 20 "INS Can Void Citizenship."
- 21 Center for Immigration Research, "Effects of the 1996 Immigration and Welfare Reform Acts on Communities in Texas and Mexico," (March 1999) at 27.
- 22 "Congress and the Administration Must Work Together."
- 23 Viglucchi, "INS Reducing Citizenship Backlog," *Miami Herald* (June 27, 1999).
- 24 "Backlog Worsens," National Immigration Forum Policy Update (April 21, 1999).
- 25 *Id.*
- 26 Pan, "INS Says Citizenship Backlog Cut," *Washington Post* (October 29, 1999) at A13.
- 27 "September 28 INS-CBO and Disability Working Group Meetings," National Citizenship Network Bulletin (October 6, 1999).
- 28 "Report Card on INS Adjudications," *AILA Monthly Mailing* (December 1999).
- 29 INS News Release, "INS Achieves Naturalization Goal for FY 1999," (October 28, 1999).
- 30 Sachs, "To End Backlog, INS Processes Cases by Hand," *New York Times* (June 27, 1999).
- 31 *Associated Press*, "INS to Process 120,000 Naturalization Applications by Hand" (June 28, 1999).
- 32 Sachs, "To End Backlog, INS Processes Cases by Hand," *New York Times* (June 27, 1999).
- 33 "Congress and the Administration Must Work Together."
- 34 Viglucchi, "INS Reducing Citizenship Backlog," *Miami Herald* (June 27, 1999).
- 35 McDonnell, "INS Reports Reduction of Backlog," *Los Angeles Times* (August 28, 1998).
- 36 Center for Immigration Research, "Effects of the 1996 Immigration and Welfare Reform Acts on Communities in Texas and Mexico" (March 1999) at 27.
- 37 Pan, "U.S. Naturalization Rate Drops," *Washington Post* (October 15, 1999).
- 38 *Id.*
- 39 *Id.*
- 40 SSI is a federally funded program that provides cash benefits for low-income people who are aged 65 or older, blind, or disabled.
- 41 Interview with Tuat Cao, Associated Catholic Charities, Galveston-Houston, TX (May 10, 2000).
- 42 Olivo, "INS Reduces Delays on Citizenship," *Los Angeles Times* (September 3, 1999).
- 43 *Id.*

- 44 Presentation by John Trasviña, Department of Justice, Special Counsel Office of Immigration-Related Unfair Employment Practices, National Immigration Law Center Annual Conference (February 28, 2000).
- 45 Lynch, "Activists Hand INS Grievances," *Miami Herald* (October 6, 1999).
- 46 Hennessey, "Mascada Case Spurs Hearing," *The Herald* (February 23, 2000) at A1.
- 47 Puente, "INS Office Takes Heat From GOP, Democrats," *Chicago Tribune* (September 14, 1999).
- 48 Barr, "Agencies Struggle to Make Grades," *Washington Post* (February 1, 1999) at A19.
- 49 63 Fed. Reg. 1779 (January 12, 1998).
- 50 63 Fed. Reg. 43605 (August 14, 1998).
- 51 "Congress and the Administration Must Work Together."
- 52 *Id.*
- 53 Canto, "Raising Price of American Dream," *Orange County Register* (March 14, 2000).
- 54 INS PAS Data, "N-400 Application for Naturalization," (September 28, 1999).
- 55 8 CFR § 103.7(c).
- 56 63 Fed. Reg. 43607 (August 14, 1998).
- 57 *Díaz v. Reno*, CIV-99-03443 (filed December 22, 1999) at allegation #48.
- 58 "INS Issues Guidance Governing Fee Waiver Requests," *Interpreter Releases* (October 26, 1998) at 1478.
- 59 Immigration and Naturalization Service, "Fact Sheet" (October 9, 1998).
- 60 National Citizenship Network Update, "INS Statistical Update" (March 1, 2000).
- 61 Hladky, "Advocates for Poor Immigrants Sue to Force INS to Waive Citizenship Fees," *Miami Daily Business Review* (December 30, 1999).
- 62 Lynch, "INS Hit With Suit Over Fee Waivers," *Miami Herald* (February 8, 2000).
- 63 *Id.*
- 64 *Díaz v. Reno*, CIV-99-03443 (filed December 22, 1999) at allegation #75.
- 65 *Id.* at allegation #76.
- 66 Lynch, "INS Hit With Suit Over Fee Waivers," *Miami Herald* (February 8, 2000).
- 67 8 CFR § 312.1.
- 68 *Id.*
- 69 Mehta, "Naturalization Applicants With Disabilities: Coping With a Flawed Process," *Interpreter Releases* (July 28, 1997) at 1137.
- 70 Sachs, "Would-Be Citizens Trip on INS Hurdle," *New York Times* (February 18, 1999) at A23.
- 71 Colon, "INS May Review Cases of Disabled Immigrants," *Miami Herald* (May 3, 1999).
- 72 Sachs, "U.S. Agency Settles a Suit on Disabled Immigrants," *New York Times* (July 15, 1999).
- 73 Sachs, "Would-Be Citizens Trip on INS Hurdle," *New York Times* (February 18, 1999) at A23.
- 74 Sachs, "U.S. Agency Settles a Suit on Disabled Immigrants," *New York Times* (July 15, 1999).
- 75 29 U.S.C. §791.
- 76 Lade, "S. Florida Seniors Experience Difficulties in Obtaining Citizenship," *Sun Sentinel* (December 16, 1999), and *Fontaine v. INS*, CIV-99-7369 (filed October 18, 1999).
- 77 *Id.*
- 78 Telephone interview with Elena Pollot, BIA Accredited Representative, International Refugee Center of Oregon, (December 7, 1999).
- 79 Puente, "Immigration Office Turning Its Back on Hearing Impaired, Group Alleges," *Chicago Tribune* (December 16, 1999).
- 80 *Id.*
- 81 *Galvez-Letona v. Kirkpatrick*, 54 F. Supp. 2d 1218 (D. Utah 1999); and Foster, "Immigration Agency Fights Disabled Man's Bid for Citizenship," *Salt Lake Tribune* (December 6, 1999).
- 82 INA § 316.
- 83 INA §101(f).
- 84 8 CFR § 316.10(a)(2) and Interpretation 316.1(e).
- 85 *Matter of Roldan*, Int. Dec. 3377 (BIA 1999).
- 86 INA § 237(a)(6).

87 While there is no waiver of removal available to non-citizens
 88 who have voted, the INS has noted that pursuant to its
 89 discretion, it need not move forward with removal in cases
 90 where such persons are otherwise eligible for naturalization.

88 8 CFR § 312.1.

89 8 CFR § 312.2.

90 Chavez, "Inconsistent Citizenship Standards at INS,"
Chicago Tribune (July 7, 1999) [hereinafter "Inconsistent
 Standards"].

91 *Id.*

92 *Id.*

93 Sachs, "Immigration Agency Weighs Changes in Citizenship
 Test," *The New York Times* (July 5, 1999).

94 *Id.*

95 The appeal fee was recently raised from \$110 to \$170.

96 "Inconsistent Standards."

97 *Id.*

98 Haynes, "U.S. Denying Higher Percentage of Applications
 For Citizenship," *Chicago Tribune* (July 9, 1999).

99 "Inconsistent Standards."

100 Pan, "U.S. Naturalization Rate Drops," *Washington Post*,
 (October 15, 1999).

101 *Id.*

102 *Id.*

103 *Id.*

G L O S S A R Y O F T E R M S

Adjustment of Status. The process by which foreign-born persons become lawful permanent residents in the United States. An applicant for adjustment of status must either have an approved immigrant visa petition and a current priority date or be the immediate relative of a U.S. citizen.

Aggravated Felony. A term that initially appeared in the Anti-Drug Abuse Act of 1988 (Public Law No. 100-690). At that time, the term included murder and certain drug and firearm trafficking crimes. Since 1988, the definition of aggravated felony has been expanded numerous times. Today, it encompasses a wide range of crimes for which a term of imprisonment of one year or more is imposed. If a one-year sentence is imposed but suspended (i.e., no jail time is served by the person who commits the crime), such crime is still considered an aggravated felony. The definition appears at INA §101(a)(43).

Anti-Terrorism and Effective Death Penalty Act (AEDPA). (Public Law No. 104-132). Enacted in 1996, a law that broadened the crimes leading to removal, eliminated relief from removal for many crimes, and attempted to limit judicial review. It served as a precursor to the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which supplemented many of its provisions and replaced others.

Beneficiary. The qualifying immigrant relative of the U.S. citizen or lawful permanent resident or the employee of the employer who filed the immigrant visa petition. The beneficiary of an immigrant visa petition is the individual who is seeking lawful permanent resident status.

Board of Immigration Appeals (BIA). The administrative appeals court for decisions made by Immigration Judges, INS District Directors and other immigration officials.

Code of Federal Regulations (CFR). A compilation of the rules that govern the agencies of the federal government. The CFR is divided into 50 titles that represent broad areas subject to federal regulation. Title 8 pertains to immigration and nationality and is composed of all regulations issued by the INS.

Executive Office for Immigration Review (EOIR). The division within the Department of Justice responsible for interpreting and administering federal immigration laws and regulations. EOIR accomplishes its tasks through immigration court proceedings, appellate reviews, and administrative hearings of individual cases. EOIR has three main components: the Board of Immigration Appeals, the Office of the Chief Immigration Judge, and the Office of the Chief Administrative Hearing Officer.

Expungement. The process by which the record of a prior criminal conviction is destroyed or sealed.

Good Moral Character. A requirement for naturalization and several forms of relief from removal under the INA. Good moral character is not defined in the INA nor in the regulations governing the INS. Under the INA, persons who have committed certain crimes, including most drug crimes, smuggling, and prostitution are ineligible to show good moral character. When examining a person's general conduct, an Immigration Judge may use his or her own discretion to determine a person's moral character.

Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). (Public Law No. 104-208). Enacted on September 30, 1996, a law that dramatically altered U.S. immigration law. It created several new grounds of inadmissibility, restricted the ability to apply for asylum, changed inspections and removal processes, and altered provisions relating to public benefits, document fraud and the detention of immigrants.

Immediate Relative. This term, used in the context of family-based immigration, refers to the following: (1) spouses of U.S. citizens; (2) unmarried children (under the age of 21) of U.S. citizens; and (3) parents of U.S. citizens over the age of 21. There are no annual limitations on the number of immigrant visas that may be issued to immediate relatives.

Immigrant Visa Petition. The application (form I-130 or I-140) filed by a U.S. citizen, lawful permanent resident, or employer, to request an immigrant visa for a qualifying relative or employee. The immigrant visa petition is filed with the INS.

Immigration and Nationality Act (INA). The statute encompassing U.S. immigration law. The INA is also found in the United States Code (U.S.C.), a complete collection of the laws governing the United States. Title 8 of the U.S.C. pertains to immigration and nationality.

Lawful Permanent Resident (LPR). A lawful permanent resident is a foreign-born resident of the United States, who has the right to continuously live and work in the United States. Lawful permanent residents do not have the right to vote and are subject to deportation if they are convicted of certain crimes. Lawful permanent residents are 'green card' holders.

Legalization. The process by which certain undocumented persons secured legal immigration status in the United States by applying for temporary residence under the Immigration Reform and Control Act of 1986 (IRCA). Later, such persons adjusted to or were allowed to apply for lawful permanent resident status.

Notice to Appear (NTA). The charging document that lists the legal grounds and sections of the INA under which the INS plans to remove an immigrant. The issuance of a NTA to the immigrant commences removal proceedings.

Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). (Public Law No. 104-103). Enacted on August 22, 1996, legislation that limited non-citizen access to federal public benefits. PRWORA also gave individual states the authority to impose similar restrictions to state-funded programs. Prior to the passage of PRWORA, U.S. citizens and lawful permanent residents enjoyed similar eligibility for welfare programs funded by their tax dollars.

Proposition 187. A 1994 California ballot initiative that sought to deny public education, social services, and non-emergency health care to undocumented immigrants. Proposition 187 would have required teachers, doctors and other service providers to report suspected undocumented immigrants to the INS. In 1998, the proposition was declared unconstitutional. On September 13, 1999, a U.S. District Judge approved an earlier agreement between the State of California and civil rights groups to drop all remaining legal challenges to the earlier finding regarding the proposition's constitutionality.

Refugee. A person who has fled his or her country of origin because of past persecution or a well-founded fear of persecution. This persecution or fear must be based upon one of five grounds: race, religion, nationality, political opinion, or a membership in a particular social group. Refugee status is granted outside the United States. The United Nations High Commissioner for Refugees (UNHCR) interviews refugees outside their country of origin to determine eligibility for UNHCR protection. If UNHCR decides a refugee cannot be safely returned to his or her home country or cannot remain in a country of first asylum, he or she is referred by UNHCR for resettlement in another country. If a refugee is referred to the United States for resettlement, an INS officer interviews the person outside the United States in order to determine whether he or she may be granted refugee status under U.S. law. If granted refugee status, the refugee may enter the United States. One year after entry into the United States, a refugee can apply for lawful permanent residence.

Removal Proceedings. The process during which an Immigration Judge determines whether a non-citizen may remain in the United States or must be removed. Prior to the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, these proceedings were referred to as deportation or exclusion proceedings.

Visa. The official document issued by the U.S. Department of State at a U.S. Embassy or Consulate abroad that grants an individual legal permission to enter the United States for a particular purpose.

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