

June 20, 2023

Samantha Deshommes, Chief
Office of Policy and Strategy
Regulatory Coordination Division
U.S. Citizenship and Immigration Services

Submitted via <http://www.regulations.gov>

Re: Comment on Agency Information Collection Activities; Revision of a Currently Approved Collection: Application for Naturalization; eDocket ID number USCIS–2008–0025; OMB Control Number 1615–0052

Dear Ms. Deshommes:

The undersigned LGBTQ immigration and advocacy organizations appreciate the opportunity to submit this comment in response to the request for comments on the revised Application for Naturalization. We are organizations that provide direct representation to LGBTQ immigrants and that advocate for LGBTQ communities.

We strongly support the change to Part 2, Question 5 of the Form N-400, Application for Naturalization, which adds the category of “Another Gender Identity” to the existing categories of “Male” and “Female.” This change is necessary to accurately reflect the gender of applicants for naturalization who are intersex and/or non-binary, gender non-conforming, or another gender.

On the current Form N-400, many applicants cannot truthfully and accurately represent their gender when applying to naturalize. Essentially, they must “willfully subscribe[] as true a[] material matter which [they] do[] not believe to be true,” in apparent violation of the federal perjury statute.¹ Recently, a federal court in a related context has declared similar policies arbitrary and unconstitutional. In May 2020, a federal appeals court held that the U.S. Department of State’s (“DOS”) requirement that U.S. passport applicants select an “M” or “F” designation on their passport was arbitrary and capricious.¹ The U.S. Department of State (“DOS”) recently issued the first U.S. passport with an “X” designation to the plaintiff in that case, who is both non-binary and intersex.¹ Based in part on this growing body of case law, and in part on the recommendations of groups like the American Medical Association,¹ over twenty states have moved to ensure that individuals are not limited to a binary option when indicating gender, and can select an M, F, or X marker on IDs.¹ Here, USCIS is right to follow suit and update the Form N-400 to add a third gender option. This approach is in alignment with the recently updated DOS passport policy and application forms (DS-11, D-82, and DS-5504), which use similar language.

Naturalization is often a profound and momentous occasion for immigrants to the United States. This is especially true for applicants like our clients, who have fled persecution in their home countries precisely because of who they are as members of the LGBTQ community. Now, when these applicants fill out their naturalization application they will be met with a clear message from USCIS that the U.S. government will honor their true and accurate gender identity. The addition

of an “X” gender marker will allow non-binary, intersex, gender non-conforming or applicants of another gender to enjoy the full experience of becoming a U.S. Citizen without the painful shadow caused by an inaccurate gender marker.

This change, along with USCIS’ recent policy implementation of self-designation for gender markers across nearly all forms, represent tremendous progress towards eliminating unnecessary and inequitable burdens for transgender, non-binary, and intersex people.

The corresponding Form N-400 instructions should be updated to provide additional clarity. On page 17, Item Number 5 of the instructions, we recommend that USCIS add language to explain that selection of “Another Gender Identity” will result in the appearance of an “X” gender marker on the Naturalization Certificate. It should also make clear that an applicant may select this, or any other gender designation, regardless of the gender marker on birth certificates or other documents. USCIS can use language similar to the Department of State passport form:

Gender: The gender markers used are “M” (male), “F” (female) and “X” (another gender identity). The gender marker that you check on this form will appear on your Naturalization Certificate regardless of the gender marker(s) on your supporting documents.

Finally, we applaud USCIS’ change in language at Page 1 of Form N-400, from “biological or legal adoptive mother or father” to “parent (including legal adoptive parent).” This change brings the form into alignment with the legal requirements under the Immigration and Nationality Act. It also honors the fact that not all parents are biological parents, and the gendered terms of “mother” and “father” are easily replaced by the gender neutral and more inclusive term of “parent.”

We appreciate the ability to provide feedback on Form N-400 and its corresponding instructions. We commend USCIS for making these changes and for its efforts to accurately record gender and respect the dignity of all applicants for naturalization. We strongly encourage USCIS to implement this change across all USCIS applications and corresponding forms. Please do not hesitate to contact Bridget Crawford at bcrawford@immigrationequality.org if you have any questions or need any further information.

Sincerely,

Immigration Equality
American Civil Liberties Union
Los Angeles LGBT Center
Santa Fe Dreamers Project
Oasis Legal Services
InReach