



# MODIFICATIONS AND WAIVERS TO TAKING THE OATH OF ALLEGIANCE

*Practice Advisory*

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## I. Introduction

The final step in the naturalization process is the oath of allegiance to the United States. The oath demonstrates loyalty to the United States and the Constitution. All applicants must demonstrate that they are “attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States.”<sup>1</sup> The oath also includes statements that the applicant is willing to “bear arms on behalf of the United States,” and “perform noncombatant service in the Armed Forces” when required by law.<sup>2</sup>

Although the text of the oath is included in the naturalization application form, and a United States Citizenship and Immigration Services (USCIS) officer reviews the text of the oath with the applicant at the naturalization interview, a person is not a United States citizen until they have taken the oath.

Applicants may request modifications to the oath of allegiance in select circumstances. In other instances, applicants may request to waive taking the oath altogether. In this practice advisory, we outline the requirements for each.

### A. Waivers to the Oath Requirement

USCIS may waive taking the oath of allegiance in two instances: (1) when the applicant is a child; or (2) when the applicant has a physical or development disability or mental impairment.

#### 1. Children

In the main, a person cannot naturalize unless they are 18 years of age or older. However, there are several ways that a child can become a U.S. citizen: birth in the U.S., acquisition of citizenship, derivation of citizenship, citizenship under INA § 322, and naturalization for service during hostilities. The instances when a child may waive taking the oath of allegiance only apply in the context of acquisition of citizenship, derivation of

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<sup>1</sup> INA § 316(a)(3).

<sup>2</sup> 8 CFR § 337.1(a).

citizenship, and INA § 322 citizenship. Below is a cursory overview of when children may be required to take the oath of allegiance, and when the requirement may be waived.

- ➔ Note that the summaries below briefly describe some of the ways children can become U.S. citizens. Please refer to Chapter 12 of the ILRC’s *Naturalization & U.S. Citizenship* manual, which discusses in detail all of the ways children can become U.S. citizens. The ILRC also has three helpful charts that outline the different requirements for acquiring and deriving citizenship, which are available at <https://www.ilrc.org/acquisition-derivation-quick-reference-charts>.

**a. Acquisition and Derivation:**

Certain children born outside of the United States may *acquire* U.S. citizenship at birth through their U.S. citizen parent(s).<sup>3</sup> *Derivation* applies when a child who is a lawful permanent resident (or, in limited situations, meets certain other requirements) becomes a citizen before 18 years of age based on one parent’s U.S. citizenship.<sup>4</sup> Although a child automatically becomes a citizen through acquisition (at birth) and derivation (once the criteria are met), the child may still need to apply for a Certificate of Citizenship using a [Form N-600](#),<sup>5</sup> *Application for Certificate of Citizenship*, as evidence of the child’s U.S. citizenship if the child does not already have a U.S. passport.<sup>6</sup>

If USCIS approves the Form N-600, USCIS will issue a Certificate of Citizenship after the child takes the oath of allegiance, unless USCIS waives the requirement. It is worth emphasizing that this requirement to take the oath only arises when the child seeks a Certificate of Citizenship, and is not a necessary step before the child is a U.S. citizen. In other words, even if a child does not take the oath, but otherwise satisfies the acquisition or derivation requirements, the child is still a U.S. citizen.

**b. INA § 322 Citizenship:**

INA § 322 Citizenship applies when a child is born abroad to a U.S. citizen parent where the child did not acquire or derive citizenship.<sup>7</sup> Unlike acquisition or derivation, the process for INA § 322 Citizenship requires that an application submitted on behalf of the child be approved before the child may become a U.S. citizen. That application is the [Form N-600K](#), *Application for Citizenship and Issuance of Certificate Under Section 322*. The application for the child must be completed before the child turns 18 years of age. The child does not become a citizen until USCIS approves the application and the child takes the oath of allegiance, unless the oath requirement is waived.<sup>8</sup>

Whether a child obtains a Certificate of Citizenship through the acquisition, derivation, or INA § 322 processes, children are required to take the oath of allegiance before they obtain their certificate. But USCIS may waive taking the oath of allegiance if it determines the applicant is unable to understand its meaning.<sup>9</sup> Although the Immigration and Nationality Act (INA) does not explicitly provide an age limit, USCIS’s Policy Manual states that

<sup>3</sup> INA §§ 301, 309.

<sup>4</sup> INA § 320 as amended by the Child Citizenship Act of 2000.

<sup>5</sup> See U.S. Citizenship & Immigration Servs., 12 USCIS Policy Manual pt. H, chs. 3(D), 4(D) (May 2, 2018), available at <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartH.html> (last visited: May 2, 2018).

<sup>6</sup> Note that an individual may be required to obtain and submit a Certificate of Citizenship when applying for certain benefits, such as: social security benefits, a state issued identification card (including a driver’s license or learning permit in some states), some forms of financial aid, and U.S. passport renewal. See USCIS, N-600, Application for Certificate of Citizenship Frequently Asked Questions (Oct. 28, 2014), available at: <https://www.uscis.gov/forms/n-600-application-certificate-citizenship-frequently-asked-questions>.

<sup>7</sup> See INA § 322.

<sup>8</sup> See INA § 322(b); and 12 USCIS Policy Manual, pt. H, ch. 5(G).

<sup>9</sup> INA § 337(a).

children **under 14 years of age** are “generally unable to understand the meaning of the oath.”<sup>10</sup> Therefore, USCIS waives the oath requirement for children younger than 14-years-old. If USCIS waives taking the oath, USCIS will issue a Certificate of Citizenship after the officer approves the application. Whether the child’s inability to understand the oath results from “mental incapacity or young age,” USCIS will waive the oath requirement just the same.<sup>11</sup>

If USCIS does not waive the oath requirement, or if the child is over 14 years of age, USCIS will schedule the child to appear at a USCIS office to take the oath if the oath is not conducted on the same day as the interview.

## 2. Individuals with Certain Disabilities

All applicants, including applicants with disabilities, are required to show that they understand the oath. However, for people with a physical or developmental disability or mental impairment, USCIS may provide an accommodation by modifying the oath requirement, or waive the oath requirement altogether if necessary. (An accommodation is distinct from a waiver. While an accommodation simply modifies the manner in which an applicant meets the oath requirement<sup>12</sup>, a waiver completely exempts the applicant from taking the oath.) USCIS may grant a waiver for an applicant with a disability or impairment when the person is unable to understand the meaning of the oath, or to communicate an understanding of the meaning of the oath.<sup>13</sup>

Note that the process to request an oath waiver is *separate* from the process to obtain an exception to the English and civics requirement.<sup>14</sup> There is no specific form to request an oath waiver, and the applicant may submit the request at any point of the naturalization process until the time of the oath ceremony.<sup>15</sup> To request a waiver for the oath requirement for an applicant with a disability or mental impairment, the applicant needs to: (1) submit a written request; and (2) provide a written evaluation by a certified medical professional that explains the need for the waiver.

The applicant likely will have a guardian, surrogate, or representative who acts on behalf of the applicant with the disability, and who can help obtain the necessary documentation for the waiver.

Note that expedited ceremonies are also possible for those who are seriously ill, need accommodation, or present urgent or compelling reasons related to travel or employment.<sup>16</sup>

- ➔ Please refer to Chapter 7 of the ILRC’s *Naturalization & U.S. Citizenship* manual, which discusses in detail the various options and considerations for those with disabilities who seek an oath waiver.

## B. Modifications to the Oath Requirement

An applicant may request to modify the oath requirement based on religious grounds or moral convictions. The most common parts of the oath that applicants wish to modify are: “I will bear arms” and “so help me God.” In both instances, an applicant must request a modification from USCIS. However, only requests to modify statements related to armed conflict require evidence to support the request. Requests to modify “so

<sup>10</sup> 12 USCIS Policy Manual pt. J, ch. 3(C)(1).

<sup>11</sup> 8 CFR § 341.5(b).

<sup>12</sup> USCIS may provide accommodations such as simplifying the language of the oath, expediting the schedule for the oath, and providing off-site oath ceremonies.

<sup>13</sup> INA § 337(a).

<sup>14</sup> An applicant requests a disability exception for the English and civics requirement by submitting a Medical Certification for Disability Exceptions ([Form N-648](#)).

<sup>15</sup> 12 USCIS Policy Manual pt. J, ch. 3(C)(1) and (2).

<sup>16</sup> INA § 337.3.

help me God” do not require evidence. USCIS will not allow modifications to the clause, “to perform work of national importance under civilian direction when required by the law.”<sup>17</sup>

## 1. Modifying Statements Related to Armed Conflict

Where an applicant holds a particular religious belief or moral conviction that precludes them from any type of service in the armed forces, the applicant may request to state a modified oath that does not contain one or both of the following clauses:

- “To bear arms on behalf of the United States when required by law”
- “To perform noncombatant service in the U.S. armed forces when required by the law”<sup>18</sup>

An applicant can request an oath modification based on either a deeply held moral conviction, or a religious training or belief. Regardless of the basis, applicants must demonstrate that they are unwilling to make these statements based on **clear and convincing evidence**.<sup>19</sup>

It helps first to have an understanding of how USCIS interprets what qualifies as a religious belief or moral conviction. USCIS looks to the courts, which have explored the scope of religious beliefs within the context of conscientious objectors requesting exemptions from military service.<sup>20</sup> The U.S. Supreme Court has noted that an individual may hold a moral or ethical belief about what is right and wrong with the “strength of traditional religious convictions.”<sup>21</sup> The Court continued:

If an individual deeply and sincerely holds beliefs that are purely ethical or moral in source and content but that nevertheless impose upon him a duty of conscience to refrain from participating in any war at any time, those beliefs certainly occupy in the life of that individual a place parallel to that filled by [] God in traditionally religious persons.<sup>22</sup>

Based on this language, a sincerely held moral or ethical conviction is legally equivalent to a traditionally held religious conviction. Indeed, in 2015, the USCIS Policy Manual explicitly clarified that an applicant “may be eligible for modifications on religious training and belief, or conscientious objection arising from a deeply held moral or ethical code.”<sup>23</sup> An applicant’s moral code, however, cannot be essentially a political, sociological, or philosophical view.<sup>24</sup> Further, an applicant’s objection to war cannot merely be based upon “opinions or beliefs about public policy and the practicality or desirability of combat.”<sup>25</sup> The applicant also cannot base their objection on opposition to a specific war.

For those who request an oath modification based on a religious belief or training, USCIS notes that they are *not* required to:

<sup>17</sup> INA § 337(a)(5)(C).

<sup>18</sup> Noncombat services may include duties such as being a combat medic or chaplain.

<sup>19</sup> INA § 337(a)(5)(C); see also 12 USCIS Policy Manual pt. J, ch.3(A)(1).

<sup>20</sup> 12 USCIS Policy Manual pt. J, ch. 3(A)(2) (referring to INA 337; *Welsh v. U.S.*, 398 U.S. 33 (1970); *U.S. v. Seeger*, 380 U.S. 163 (1965).

<sup>21</sup> *Welsh*, 308 U.S. at 340.

<sup>22</sup> *Id.* (internal quotation marks omitted).

<sup>23</sup> Policy Alert from USCIS (July 21, 2015) (available at: <https://www.uscis.gov/policymanual/Updates/20150721-OathModifications.pdf>) (last visited: Apr. 27, 2018) (emphasis added).

<sup>24</sup> 12 USCIS Policy Manual pt. J, ch. 3(A)(2).

<sup>25</sup> *Id.*

- Belong to a specific church or religious denomination;
- Follow a particular theology or belief; or
- Have religious training.<sup>26</sup>

While membership in a particular religion or organized religious group can provide evidence of one's religious beliefs, membership alone will not automatically qualify the applicant for a modification to the oath. USCIS looks at a number of factors. The USCIS Policy Manual outlines a three-part test to qualify for a modification based on religious training and belief, or deeply held moral code.<sup>27</sup> An applicant must establish all of the following criteria:

1. They are **opposed to bearing arms** in the armed forces or opposed to any type of service in the armed forces;
2. The objection is **grounded in their religious principles, to include other belief systems similar to traditional religion or a deeply held moral or ethical code;** and
3. Their beliefs are **sincere, meaningful, and deeply held.**

If the applicant believes they can satisfy all three criteria, they will mark their intent to modify the armed conflict clauses of the oath on the N-400 form. Given the high standard of proof to establish the criteria by clear and convincing evidence, the ILRC recommends the applicant also submit supporting documentation with the application. The applicant will want to provide a signed statement explaining the nature and conviction of their beliefs, and an attestation of their beliefs.

When developing the declaration, it may be helpful to ask the applicant to explain how they formed their belief system. The applicant may also want to explain how they study, practice, or express their belief system. Expressions of one's belief do not need to take the form of traditional religious rituals. Instead, the applicant can explain how they abide by their beliefs through their life experiences and decisions, such as raising children with the same beliefs. If the applicant formed their beliefs through self-contemplation or exploration, it will be important to make sure they can explain the sincerity of their moral code or religious beliefs.<sup>28</sup>

During the interview regarding the oath modification, the USCIS officer may ask whether the applicant studies their religion or beliefs at home or with an organization. The applicant should also be prepared to speak about their participation in activities that demonstrate their beliefs, such as religious ceremonies. Essentially, the officer is checking the sincerity of the applicant's beliefs by looking at the applicant's experiences and pattern of relevant conduct. Note, however, that USCIS officers may not question the validity of the applicant's beliefs, or the existence or truth of the concepts in which the applicant believes.<sup>29</sup>

It is also helpful to provide additional supporting documents such as a baptismal certificate, or an attestation from a religious (or similar) organization. An attestation is not required to satisfy eligibility for the modified oath, but can bolster the legitimacy and sincerity of the applicant's beliefs. The attestation should highlight

<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> See *U.S. v. Seeger*, 380 U.S. 163 (1965) (noting that the test for whether a particular belief qualifies one for an exemption is "whether a given belief [] is sincere and meaningful [and] occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption"); see also *In re Thomsen*, 324 F.Supp. 1205, 1210-11 (N.D. Georgia 1971) (citing *Welsh v. U.S.*, the court affirmed that the petitioner should be allowed to take an alternative oath because while the "petitioner's belief is purely ethical or moral in source," the court does not "doubt [the] petitioner's sincerity in attempting to state her true beliefs").

<sup>29</sup> 12 USCIS Policy Manual pt. J, ch. 3(A)(2).

the religious basis of the applicant's beliefs, and the applicant's membership in good standing within the organization.

If the officer is satisfied that the applicant qualifies for an oath modification, the applicant will be able to recite an Oath of Allegiance that omits mention of bearing arms in the Armed Forces and, depending on the request, the performance of noncombatant services in the Armed Forces. If the applicant does not qualify for the modification, they are required to take the full oath in its original form.**2. Modifying “on oath” and “so help me God”**

Modifications are also available for those who are unable or unwilling to take the oath with the words “on oath” or “so help me God.” This group of applicants may include Quakers, Jehovah's Witnesses, or other individuals opposed to taking loyalty oaths. Individuals may request to substitute the words “solemnly affirm” for “on oath.” Applicants may also refrain from saying, “so help me God” altogether. Requests to modify the oath in this way may be made for any reason, and do not need a religious or moral basis.<sup>30</sup> USCIS refers to this process as requesting to state an “affirmation” instead of an “oath.”

Applicants requesting this type of modification do not need to provide any documentary evidence or testimony, but a letter explaining their request can be helpful. If the request is based on the applicant's participation in a religion that forbids loyalty oaths, the ILRC recommends the applicant include a letter from the religious organization explaining the principle and affirming that the applicant is a member in good standing of the religion.



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#### About the Immigrant Legal Resource Center

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<sup>30</sup> See INA § 337(a); see also 12 USCIS Policy Manual pt. J, ch. 3(B).