



NEW USCIS FEE EXEMPTIONS

For Immigrant Survivors of Abuse, Trafficking, and Other Crimes

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On January 31, 2024, USCIS Published its final rule on fee changes for applications, due to take effect on April 1, 2024 (“New Fee Rule”). The New Fee Rule can be found in the Federal Register at 89 Fed. Reg. 6,194 (Jan. 31, 2024), and USCIS has published Frequently Asked Questions at <https://www.uscis.gov/forms/filing-fees/frequently-asked-questions-on-the-uscis-fee-rule>. USCIS also published a new fee schedule reflecting the New Fee Rule, available here: <https://www.uscis.gov/g-1055>. Several forms and instructions will also be updated as a result of the New Fee Rule.

Although the New Fee Rule will result in increased fees for many applications, it eliminates most application fees for immigrant survivors of abuse, crime, and human trafficking (“survivors”), without the need to file a fee waiver request. The New Fee Rule also provides that applications filed online¹ where a fee is required are eligible for a \$50 discount.

This practice alert will explain which categories and forms will be eligible for fee exemptions under the New Fee Rule; address changes to the fee waiver policy that also benefit survivors; and identify some unknowns that need clarification. These fee exemptions are a welcome development, and the ILRC applauds USCIS for listening to our collective voices advocating to increase survivors’ access to immigration relief.

ALERT: On March 19, 2024, opponents of the New Fee Rule filed a lawsuit in Federal District Court in Colorado, challenging the regulation under the Federal Antideficiency Act and the Administrative Procedures Act. *See Moody, et al. v. Mayorkas, et al.*, Case No. 1:34-cv-00762-REB (D. Colo. Mar. 19, 2024).² At the time of writing, the New Fee Rule is still set to take effect on April 1, 2024, but practitioners should stay tuned for updates as this lawsuit progresses.

¹ A list of applications available for online filing can be found at <https://www.uscis.gov/file-online/forms-available-to-file-online>. The \$50 online filing discount is not available for Form I-821D, Consideration of Deferred Action for Childhood Arrivals, or for form I-821, Application for Temporary Protected Status.

² The lawsuit, brought by EB-5 investors and technology-sector advocates, challenges fee-hikes for employment-based visas and the Asylum Program Fee introduced by the New Fee Rule. The complaint does not appear to challenge any of the survivor-based fee exemptions discussed in this Practice Advisory.

I. How Does the New Fee Rule Expand Fee Exemptions?

The New Fee Rule makes most applications filed by survivors fee-exempt, meaning NO fee or fee waiver is required.³ These categories include:

- T Nonimmigrants (survivors of severe forms of human trafficking);
- U Nonimmigrants (survivors of certain qualifying crimes);
- Special Immigrant Juveniles (SIJS);
- VAWA Self-Petitioners;
- Applicants for VAWA Cancellation of Removal;
- Afghan & Iraqi Special Immigrants; and
- Applicants seeking benefits under other VAWA categories.⁴

This practice alert focuses on fee exemptions for T visas, U visas, SIJS, and VAWA self-petitioners, but practitioners should be aware of the New Fee Rule's benefits for the other groups as well. After the New Fee Rule goes into effect on April 1, 2024, applicants in these categories will no longer have to file a fee or fee waiver request with applications enumerated in the New Fee Rule.⁵

II. What Forms Are Fee Exempt for Survivor-Based Benefits?

Currently, most survivor-based benefits include fee exemptions for only the principal application or petition, which means that applicants must either pay the filing fee or seek a fee waiver for related applications and in subsequent application processes. For example, under the current fee schedule, although Form I-918, Petition for U Nonimmigrant Status, is fee-exempt, related forms such as the I-192, Request for Waiver of Inadmissibility, are not fee-exempt and therefore applicants must either file a fee waiver request or pay the fee. Under the New Fee Rule, applications filed in survivor-based categories are fee-exempt for all related applications through adjustment of status; only green card renewals and citizenship-related forms will require that a fee be paid, or a fee waiver be filed with the application.⁶

The chart below details which forms will be fee-exempt for survivors starting on April 1, 2024:

³ See U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 89 Fed. Reg. 6,194, 6,196 (Jan. 31, 2024). Table 5C lists the forms that will be eligible for fee exemptions and waivers starting on April 1, 2024.

⁴ These groups include conditional permanent residents filing a waiver of the joint-filing requirement based on battery or extreme cruelty; abused spouses and children adjusting status under the Cuban Adjustment Act and the Haitian Refugee Immigration Fairness Act; abused spouses and children seeking benefits under NACARA; and abused spouses of certain nonimmigrants. See 89 Fed. Reg. at 6,391 (to be codified at 8 CFR § 106.3(b) (Apr. 1, 2024)).

⁵ On April 1, 2024, USCIS will update its online fee calculator to reflect the new fees and new fee exemptions, <https://www.uscis.gov/feecalculator>.

⁶ See 89 Fed. Reg. at 6,392 (to be codified at 8 CFR § 106.3(b)).

<p>U Nonimmigrants</p> <ul style="list-style-type: none"> • Initial petitions (I-918, I-918 Supp A & B) • I-192, Application for Waiver of Inadmissibility • I-193, Application for Waiver of Passport • I-539, Application to Extend Nonimmigrant Status (only if filed before I-485) • I-485, Application to Adjust Status • I-601, Application for Waiver of Inadmissibility* • I-929, Petition for Qualifying Relative of a U-1 • I-824, Application for Action on an Approved Application or Petition • I-131, Application for Advance Parole • I-290B, Notice of Appeal or Motion to Reopen or Reconsider† • I-765, Application for Employment Authorization (includes all I-765s for all applicable categories at any stage, for principals and derivatives, including deferred action BFD, waitlist, nonimmigrant status, adjustment, renewals, and replacements) 	<p>T Nonimmigrants</p> <ul style="list-style-type: none"> • Initial petitions (I-914, I-914 Supp A & B) • I-192, Application for Waiver of Inadmissibility • I-193, Application for Waiver of Passport • I-539, Application to Extend Nonimmigrant Status • I-485, Application for Waiver of Inadmissibility • I-601, Application for Waiver of Inadmissibility • I-824, Application for Action on an Approved Application or Petition • I-131, Application for Advance Parole • I-290B, Notice of Appeal or Motion to Reopen or Reconsider† • I-765, Application for Employment Authorization (includes all I-765s for all applicable categories at any stage, for principals and derivatives, including nonimmigrant status, adjustment, renewals, and replacements)
<p>Special Immigrant Juveniles</p> <ul style="list-style-type: none"> • I-360, Petition for SIJ Classification • I-485, Application to Adjust Status • I-601, Application for Waiver of Inadmissibility • I-601A, Application for Provisional Waiver of Unlawful Presence* • I-824, Application for Action on an Approved Application or Petition • I-131, Application for Advance Parole • I-290B, Notice of Appeal or Motion to Reopen or Reconsider† • I-765, Application for Employment Authorization (includes all I-765s for all applicable categories at any stage, including deferred action, adjustment, renewals, and replacements) 	<p>VAWA Self-Petitioners</p> <ul style="list-style-type: none"> • I-360, Petition as VAWA Self-Petitioner • I-485, Application to Adjust Status • I-212, Application for Permission to Reapply for Admission • I-601, Application for Waiver of Inadmissibility • I-601A, Application for Provisional Waiver of Unlawful Presence • I-824, Application for Action on an Approved Application or Petition • I-131, Application for Advance Parole • I-290B, Notice of Appeal or Motion to Reopen or Reconsider† • I-765, Application for Employment Authorization (includes all I-765s for all applicable categories at any stage, including deferred action, adjustment, renewals, and replacements)
<p>* Form I-601 is included in the list of fee-exempt forms for U nonimmigrants, see 8 CFR § 106.3(b)(5), however, this form is not required for U nonimmigrants, either at the nonimmigrant stage or during adjustment of status. Similarly, Form I-601A is included in the list of fee-exempt forms for Special Immigrant Juveniles, however, applicants for SIJ adjustment are exempt from inadmissibility under INA § 212(a)(9)(B), the only ground that can be waived by Form I-601A. The ILRC is seeking clarification from USCIS on how or when these exemptions might apply, or if they are simply errors.</p> <p>† Form I-290B is fee exempt for survivor-based categories for all related applications filed prior to adjustment of status or for Form I-485 or an associated form.</p>	

III. Do Derivatives Also Get These Fee Exemptions?

Yes! The new survivor-based fee exemptions apply to derivatives to the same extent as principal applicants. This is true whether the principal applicant petitions for their family members at the initial stage or at any later stage through adjustment of status. Derivatives will receive the same fee exemptions for any related application filed through adjustment of status.

Example: Aiko filed a U visa petition and included her parents as derivatives by filing Forms I-918 Supplement A at the same time. Aiko later married, and she filed Form I-929 for her spouse at the adjustment of status stage. Aiko's parents and her spouse are entitled to the same fee exemptions as Aiko because they are all included as derivatives under a survivor-based benefit category.

IV. Will Fee Exemptions Be Available If a Fee or Fee Waiver Has Already Been Submitted?

Yes! After April 1, 2024, if an applicant falls into one of the fee exempt categories, future applications will be fee exempt even if the applicant paid fees at an earlier stage or if a fee waiver was submitted with an application. For applications filed before April 1, 2024, that remain pending after the New Fee Rule takes effect, however, applicants who paid the fees will not be refunded.

Example: In 2020, Sandra filed her T visa application along with Form I-192 and a fee waiver request for the I-192. Her T visa was granted, and she now wants to apply for adjustment of status after being a T nonimmigrant for three years. Sandra's adjustment of status application and all related application fees will be fee exempt under the New Fee Rule, meaning that Sandra does not have to file a fee or fee waiver request for any application in her adjustment process.

Additionally, where a fee waiver was denied previously for an application that will be fee exempt after April 1, 2024, and where re-filing is available, the applicant can re-file that application under the New Fee Rule without a fee or fee waiver request.

V. Do The Fee Exemptions Still Apply If the Applicant Later Proceeds on A Non-Fee-Exempt Track?

Language throughout the New Fee Rule strongly suggests that USCIS intends that the fee exemptions will not apply if the person "switches tracks," i.e., if someone previously sought relief as a survivor but is now applying for status in a category that is not fee-exempt, such as family-based adjustment of status. For some survivor-based categories, the new regulatory text is clear that the fee-exemptions will only apply as long as the applicant proceeds on the survivor-based track.⁷ For other categories, the new regulatory text is less clear but still

⁷ For U visas, T visas, SIJS, and Afghan and Iraqi Special Immigrants, the regulatory text limits fee exemptions to forms "related to" the survivor-based benefit and for adjustment of status filed under the applicable subsection of INA § 245 for that category of survivors. 89 Fed. Reg. at 6,392 (to be codified at 8 CFR § 106.3(b)(1), (2), (3), (5)).

strongly suggests this same limitation.⁸ At the time of writing, it is unclear how USCIS will treat these applicants who “switch tracks.” The ILRC plans to seek clarification from USCIS and will share out new information as it becomes available.

Example: Jorge entered the US with a tourist visa, was granted SIJS in 2022, and is waiting for his priority date to become current. He recently married his U.S. citizen husband and is now eligible to adjust status based on marriage under INA § 245(a). Even though he has an approved I-360, Jorge would not be eligible for a fee exemption because the fee exemptions for SIJ petitioners are limited to adjustment of status under INA § 245(h), and Jorge will now adjust under INA § 245(a) as the spouse of a US citizen.

VI. What About Forms That Still Require a Fee?

For any applications filed after the adjustment stage—including green card renewals (Form I-90), and applications related to citizenship and naturalization—immigrant survivors will still have to either pay the filing fee, apply for a fee reduction (which is only available for naturalization applications), or apply for a fee waiver if available for the application.⁹ The New Fee Rule does not expand eligibility for a fee waiver, but it does strengthen existing fee waiver policy and practice. These changes include:

- **Codifying fee waiver policy.**¹⁰ In the past, fee waiver policy has been set by USCIS agency memoranda, which could be easily revoked or superseded depending on the political climate and whims of the administration. With the policy now codified in the regulation, future administrations will need to go through the administrative process of amending the regulation, rather than simply issuing a new memorandum.
- **Expanding the “means-tested benefit” category to include benefits received by a household child.** Under previous policy, USCIS only considered evidence that the applicant or their spouse was receiving a means-tested benefit to determine if the applicant merited a fee waiver based on receipt of a means-tested benefit. While not codified in the regulations, the instructions for Form I-912 (Request for Fee Waiver)¹¹ will now allow for consideration of means-tested benefits being received by a household child—such as Medicaid, SNAP, TANF, or SSI—because the child’s eligibility for these benefits is dependent on household income.¹²

⁸ For VAWA self-petitioners, for example, the new regulatory text is less explicit, but still limits the fee exemptions only to forms “related to the benefit.” See *id.* (to be codified at 8 CFR § 106.3(b)(6)).

⁹ Note that the fee waiver is not available for every application. Some applications, such as family-based adjustment of status, remain ineligible for a fee waiver, meaning applicants must pay the fees to apply. 89 Fed. Reg. at 6,392 (to be codified at 8 CFR § 106.3(a)(3)(iv)).

¹⁰ See *generally* 89 Fed. Reg. at 6,391-6,393 (to be codified at 8 CFR § 106.3(a)(1)).

¹¹ Office of Mgmt. & Budget, Dep’t of Homeland Sec., U.S. Citizenship & Immigration Servs., OMB No. 1615-0116, *Table of Changes—Instructions, Form I-912, Request for Fee Waiver* (Jan. 31, 2024), available at <https://www.regulations.gov/document/USCIS-2021-0010-8214>.

¹² Even though immigrant survivors are generally not subject to the public charge rule, it is important to remind clients that the 2022 public charge rule clarified that receipt of public benefits by one’s child cannot be considered in the public charge analysis. See 8 CFR § 212.23(a) (2022).

Example: Leila filed an I-360 as a VAWA self-petitioner many years ago after surviving abuse by her LPR spouse. She is now applying to renew her green card. Leila does not receive any means-tested benefits, but her two children both receive SNAP benefits (food stamps). Leila may include evidence of her children’s SNAP benefits when seeking a fee waiver under the “means-tested benefit” category.

- **Income of abuser-household member may not be considered.** The new Form I-912 instructions state that applicants seeking benefits based on a pending or approved petition for VAWA, U, or T status, may exclude the income of a household member who is or was their abuser or human trafficker from Form I-912.¹³ At the time of writing, it is unclear how USCIS will apply this guidance, since most survivor-based applications will already be fee-exempt under the New Fee Rule.
- **Limited clarification of the “financial hardship” category.** The new Form I-912 instructions will provide a non-exhaustive list of factors that may be considered in determining whether someone qualifies for a fee waiver based on “financial hardship.” While the previous instructions included only “medical expenses of family members, unemployment, eviction, and homelessness,” the new instructions list thirteen factors, including victimization; medical emergency or illness, including mental or physical illness; divorce; and “situations that could not normally be expected in the regular course of life events.”¹⁴ The instructions will also list examples of evidence that might be included to demonstrate financial hardship, including receipt notices for victim-based immigration benefits.¹⁵
- **Expansion of N-400 Fee Reduction Eligibility.** Under previous policy, naturalization applicants seeking to pay a reduced fee for the N-400 had to show that their household income was at or below 200% of the federal poverty guidelines; this meant that a reduced fee was only available to a very small group of applicants who did not qualify for a full fee waiver but who still had relatively low incomes compared to the general population. The New Fee Rule increases this eligibility to 400% of the federal poverty guidelines.¹⁶ This increase will lessen the financial barrier to naturalization for many survivors and others who may not fall below 150% of the federal poverty guidelines but for whom the filing fee is still burdensome.

Example: Marlon survived a violent crime and was granted U nonimmigrant status 8 years ago. Marlon is now a lawful permanent resident, married with three children, and his household income is \$85,000. Marlon wants to apply for U.S. citizenship. Under previous guidance, Marlon would not qualify for either a fee waiver or fee reduction, because his income is above \$73,160, or 200% of the federal poverty guidelines for a

¹³ Office of Mgmt. & Budget, Dep’t of Homeland Sec., U.S. Citizenship & Immigration Servs., OMB No. 1615-0116, *Table of Changes—Instructions, Form I-912, Request for Fee Waiver* (Jan. 31, 2024), available at <https://www.regulations.gov/document/USCIS-2021-0010-8214>.

¹⁴ *Id.*

¹⁵ In recent years, many fee waiver requests have been denied in the “financial hardship” category. The ILRC is hopeful that this additional information for applicants, as well as forthcoming guidance for adjudicators on how to analyze this category, will eliminate erroneous denials in this category. See 89 Fed. Reg. at 6,259.

¹⁶ 89 Fed. Reg. at 6,236 (to be codified at 8 CFR §106.2(b)(3)(ii)).

household of five. Under the New Fee Rule, Marlon qualifies for a half-fee reduction because his income is less than \$146,320.

Naturalization applicants who do not qualify for a fee waiver or fee reduction can still take advantage of the \$50 filing fee discount if they choose to file their applications online.

VII. Conclusion

The New Fee Rule will expand fee exemptions for immigrant survivors who are particularly vulnerable and often face barriers to accessing immigration benefits, including financial barriers. The New Fee Rule will also strengthen and clarify fee waiver eligibility where a fee or fee waiver is required. Practitioners working with immigrant survivors should familiarize themselves with the New Fee Rule and should discuss with clients how it might impact their application process. The ILRC will publish additional alerts and information on the New Fee Rule as it becomes available: www.ilrc.org.



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About the Immigrant Legal Resource Center

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