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Samantha Deshommes, Chief

Regulatory Coordination Division, Office of Policy and Strategy

U.S. Citizenship and Immigration Services

Department of Homeland Security

20 Massachusetts Avenue NW

Washington, DC 20529-2140

Re: Docket ID USCIS-2010-0008 - Public Comment Opposing Proposed Changes to Fee Waiver Eligibility Criteria, FR Doc. 2018-21101 Filed 9-27-18; 83 FR 49120, 49120-49121

Dear Ms. Deshommes:

I am writing on behalf of [organization name if applicable] in opposition to the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS) proposed changes to fee waiver eligibility criteria, USCIS Docket ID USCIS-2010-0008, OMB Control Number 1615-0116, published in the Federal Register on September 28, 2018.

[INSERT paragraph describing your organization and why this is particularly urgent to you, plus the expertise that you have on issues raised. If you are an immigration legal service provider, consider including specific data on the populations you serve.  If you are a state/local organization, consider including demographic information.]

The proposed changes to the fee waiver eligibility criteria and accepted forms of evidence create an additional burden for immigrant communities and vulnerable individuals and would cause a significant additional burden on communities, federal agencies, and service providers. If USCIS were to make any changes to the fee waiver form, we urge the agency to expand the types of documentary evidence accepted in order to establish eligibility for a fee waiver in order to ensure the fair and efficient adjudication of these applications.

**I. This proposal will place a significant burden on individuals applying for immigration benefits and will negatively impact our communities.**

The proposed changes require individual applicants for immigration benefits to use Form I-912 to apply for a fee waiver, as well as each person in a family requesting a fee waiver to submit their own form. In addition, the proposal narrows the universe of evidence that can be submitted to prove eligibility for a fee waiver. These proposed changes will discourage eligible individuals from filing for both fee waivers and immigration benefits and place heavy time and resource burdens on individuals applying for fee waivers.

**A. This proposal will negatively impact the ability of individuals, especially those who are vulnerable, to apply for immigration benefits for which they are eligible.**

The filing fee associated with various immigration benefits can be an insurmountable obstacle for an immigration benefit or naturalization application. Any opportunity to mitigate the costs associated with filing should be designed to ease, rather than exacerbate, these obstacles.

The increased requirements and additional evidence to be collected from applicants on the proposed amended Form I-912 will extend the time and work required for applicants to complete (and adjudicators to process) the form. Requiring the additional documents will serve as a deterrent to applying for immigration benefits or naturalization. The proposed changes make the form more complex and will likely lead to individuals making more mistakes, adding to the processing time of the application and further adding to the deterrent effect of these changes. In some cases, applicants may not be able to complete the form because of a lack of required documents.

Increasing the burden of applying for a fee waiver will further limit access to naturalization for otherwise eligible lawful permanent residents. The naturalization fee has gone up 600% over the last 20 years, pricing many qualified green card holders out of U.S. citizenship.

Additionally, the proposed rule would harm the most vulnerable populations. More than 94% of domestic violence survivors also experienced economic abuse, which may include losing a job or being prevented from working. Fee waivers are critical to ensuring survivors can access relief. The proposed changes will harm survivors of domestic violence, sexual assault, human trafficking, and other crimes who are unable to meet the stricter evidentiary requirements proposed to prove eligibility. By limiting the ways a person can show they qualify for a fee waiver, USCIS is creating unnecessary burdens for survivors to access the legal protections created by Congress to ensure survivors can access safety and justice.

NOTE: Include any additional information from your personal experience or work. You may want to include or discuss:

* How the current filing fees are cost prohibitive for some/many of the individuals you work with;
* How the people you serve benefit from a fee waiver and the impact of a change in immigration status including naturalization can have on their upward trajectory;
* Provide specific examples of how your clients would struggle if they are not able to get a fee waiver.
1. **This proposal will place a time and resource burden on individuals applying for fee waivers.**

By only accepting fee waiver requests submitted using the Form I-912, USCIS will limit the availability of fee waivers. Applicants must continue to be permitted to submit applicant-generated fee waiver requests (i.e., requests that are not submitted on Form I-912, such as a letter or an affidavit) that comply with 8 C.F.R. § 103.7(c), and address all of the eligibility requirements. Eliminating this currently accepted form of request places an additional and unnecessary burden on applicants to locate, complete, and submit the Form I-912, when a self-generated request that provides all of the necessary information can equally meet the requirements. The proposed requirement directly conflicts with 8 C.F.R. § 103.7(c)(2) and is therefore impermissible.

Second, requiring each applicant to submit their own form will be a huge resource and time burden on applicants. Currently, family members can submit a single fee waiver application. This simplifies the filing process because all relevant data is collected in one location. This is particularly beneficial when families apply for immigration benefits with minor children, or when couples apply for naturalization at the same time. According to this proposal, every applicant must now gather the required documentation being requested, including an Internal Revenue Service (IRS) transcript, documentation showing they are not required to file federal taxes, and verification of the non-filing from the IRS to list a few. This increases the burden on the applicant and duplicates information needed for a family who could have submitted their request together.

Third, the proposal eliminates an individual’s ability to use proof of receipt of means-tested public benefits to demonstrate inability to pay the prescribed fee. Receipt of a means-tested benefit is sufficient evidence of inability to pay, which is what 8 C.F.R. § 103.7(c) requires. USCIS fails to provide any evidence that accepting proof of receipt of a means-tested benefit has led the agency to grant fee waivers to individuals who were able to pay the fee. This proof is by far the most common and straightforward way to demonstrate fee waiver eligibility as applicants have already proven current receipt of benefits by providing a copy of the official eligibility letter, or Notice of Action, from the government agency administering the benefit. Individuals who have already passed a thorough income eligibility screening by government agencies should not have to prove their eligibility all over again to USCIS. By eliminating receipt of a means-tested benefit as a way to show eligibility, the government is adding an additional burden on immigrants who already are facing the economic challenge of paying for application fees.

Fourth, under the proposed changes, the applicant must procure additional new documents including a federal tax transcript from the Internal Revenue Service (IRS) to demonstrate household income at less than or equal to 150% of the federal poverty guidelines. Currently, applicants can submit a copy of their most recent federal tax returns to meet this requirement. The government does not provide any reason as to why a transcript is preferred over a federal tax return. Federal tax returns are uniform documents and most individuals keep copies on hand. The proposed requirement will place an additional burden on individuals for more documents and does not account for those individuals who might need assistance obtaining a transcript due to lack of access to a computer or for delays involving delivery of mail.

NOTE: Describe the time and resource impact these changes will have on applicants. Include any additional information from your personal experience or work. You may want to include or discuss:

* Evidence that directly contradicts assertions made by the proposed change (e.g. USCIS asserts that the estimated time burden per response is 1.17 hours, but your experience helping applicants file fee waivers has shown you that proving annual income takes significantly more time than demonstrating receipt of means-tested benefit);
* Circumstances and situations that would warrant different treatment for different parties (e.g. you work with different populations of indigenous language speakers living in rural areas who should not have to submit IRS tax transcripts because they do not have easy access to the internet and would not be able to request an IRS tax transcript without assistance);
* Any other relevant and important factors (e.g. you are a benefit granting agency and have data on risk of inaccurate determinations of eligibility for public benefits and the rigorous review applicants go through to receive those benefits);
* Data supporting the point that an individual who receives a means-tested benefit would not have disposable income to afford an immigration fee. In making this point, avoid characterizing low-income immigrants as destitute (or likely to be considered a public charge) and focus instead on the ways in which even self-sufficient families may lack disposable income for expenses such as an immigration fee.

**II. The proposed changes will increase the inefficiencies in processing fee waiver requests while further burdening government agencies.**

USCIS claims the proposed changes will standardize, streamline, and expedite the process of requesting a fee waiver by clearly laying out the most salient data and evidence necessary to make the decision. Instead, these proposed changes will slow down an already overburdened system, delaying and denying access to immigration benefits or naturalization for otherwise eligible immigrants. The government estimates that the total number of responses for Form I-912 is approximately 350,000. With nearly 6 million pending cases as of March 31, 2018, DHS has conceded that USCIS lacks the resources to timely process its existing workload. These operational demands would be levied upon an agency that already suffers profound capacity shortfalls.

This proposal also places an unnecessary burden on the IRS and fails to address whether the IRS is prepared to handle a sudden increase in requests for documents. Under the proposed rule, almost every person who applies for a fee waiver based on their annual income must also request the required documentation from the IRS in order to prove their eligibility. Moreover, all changes in employment, or non-employment, inability to work, or need to file will require an IRS verification. An unclear number of applicants will have to return to the IRS for certified copies of their transcripts. This will increase the production and duplication of documents for information that can be proven by evidence the applicant already has (e.g. with their federal tax returns or pay stubs), in a different manner (affidavits from service organizations), or through a different agency (verification of receipt of a means-tested benefit).

NOTE: Include any additional information from your personal experience or work. You may want to include or discuss:

* The impact of delays in the adjudication of Form I-912 would have on applicants;
* Any experiences you have procuring documents from the IRS or other non-immigration agencies that have delayed your ability to timely file applications.

**III. The proposed changes will place a time and resource burden on legal service providers and reduce access to legal services, especially in under-resourced locations.**

The proposed changes detailed above will increase the burden on non-profit legal service providers and limit access to immigration legal services for individuals in need. In addition, it will make it harder for legal service providers to help immigrants who cannot afford the fee apply for immigration benefits and naturalization. Currently, non-profit immigration legal service providers, including those in remote areas of the United States, organize workshops as the most efficient model to help eligible applicants apply for immigration benefits and naturalization. Workshops are helpful to both applicants and USCIS because it allows for a reduction in errors and minimizes the fraudulent provision of immigration services.

With the proposed changes to the fee waiver form, it will become harder for non-profit legal service providers to complete applications in the workshop setting. Organizations may stop providing assistance with fee waivers in the workshop setting. This would cut off access to legal support and immigration relief for vulnerable populations, particularly for those in remote or other hard-to-reach areas.

NOTE: Include any additional information from your personal experience or work. You may want to include or discuss:

* How these changes would increase your workload and how that would impact the number of clients you serve, the services you provide, programs you are able to fund, etc.

The proposed changes to the fee waiver eligibility criteria, as well as the greater evidentiary burden on applicants and their families, will create perhaps insurmountable barriers for those seeking to secure their immigration status, be together in their communities, and naturalize so that they can participate fully in American life and be civically engaged. We urge USCIS, rather than implement the proposed rule change, to work instead to expand the types of documentary evidence accepted in order to establish eligibility for a fee waiver in order to ensure the fair and efficient adjudication of immigration benefits and naturalization. This will bring us closer to an inclusive process that honors our country’s commitment to welcoming immigrants.

Sincerely yours,

[Insert name and contact information]