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DATE: March 29, 2007

TO: Federal eRutemaking FAX NO: (866) 466-5370

FROM: Joseph Vail & Christina LeFAX NO: (713) 743-2195

RE: DHS Docket No. USCIS-2006-0044

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**MEMO:**

*Comments Re: DHS Docket No. USCIS-2006-0044*

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# U N I V E R S I T Y of H O U S T O N

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Via Certified Mail # 7005 0390 0000 3695 9239

March 29, 2007

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**RE: DHS Docket No. USCIS—2006-0044**

On behalf of the University of Houston Law Center Immigration Clinic, we are writing to strongly oppose the increase to immigration and naturalization fees and changes to the fee waiver system that U.S. Citizenship and Immigration Services (USCIS) proposed on February 1, 2007. We ask that USCIS reconsider the exorbitant fee increases, and instead, explore alternative cost cutting and efficiency measures.

The Immigration Clinic is a part of the University of Houston Law Center Legal Aid Clinic. We represent indigent clients pro bono in immigration, asylum, and removal cases.

## **Proposed Fee Increases and Stricter Fee Waivers**

Immigrants need a fee structure and a generous fee waiver system that reflect their financial reality. Many immigrants already struggle to pay immigration fees. The proposed fee increases create a financial barrier for many immigrants seeking to adjust their status, to naturalize, and to obtain employment and immigration benefits.

Drastically enhanced fees, coupled with restrictions on fee waivers, will force many hard-working immigrants into undocumented status. These otherwise-eligible immigrants will become more vulnerable to exploitation and crime victimization and less able to contribute to our communities and formal economy. This result confounds attempts at immigration reform by forcing people to become undocumented instead of encouraging them to gain secure legal status.

The proposal more than doubles the application fee for I-485 Adjustment of Status. While low-income immigrants already struggle to pay the current \$325 fee, the proposed \$905 fee and fee waiver elimination will make lawful permanent resident status completely out of reach for many individuals and especially families applying together. USCIS argues in the proposal that the fee increase is less because



applicants will no longer be charged for certain "interim benefits" while they await adjudication of their applications. However, this reasoning is lacking. The processing time for adjustment applications have been reduced to three or four months, which means most applicants are no longer applying and paying for these "interim benefits." As such, immigrants currently pay only \$325 to adjust, not the \$800 of combined fees that USCIS states in its proposal. Therefore, the proposed fee in reality will be a \$580 increase.

Similarly, residents seeking to apply for citizenship face the same financial challenges. The nearly doubled fee proposal would prevent families, who may not qualify for fee waivers, from naturalizing at the same time. At a time when immigration continues to be a highly controversial issue and many immigrant families are seeking to naturalize to become American citizens, the USCIS fee increase would cut off these families from the American dream.

Furthermore, USCIS's proposal will make immigrants vulnerable to exploitation and victimization. Hard-pressed by the increased fees, immigrants may choose to forego legal advice or may not be able to afford legal counsel. Instead, they may attempt to prepare and file the applications themselves, thus increasing the potential for errors and unintentional fraud, which will slow the application process and require more USCIS resources to adjudicate. Or worse, in an attempt to save money, immigrants may be exploited by "notarios" and defrauders who take their money without ever doing the applications. It is unlikely that working-class immigrants formally seeking to legalize their status would be able to afford counsel after paying \$1,000 or more in filing fees for their family.

As mentioned before, eliminating or restricting access to fee waivers will prevent many individuals from applying for benefits.

Specifically, although the proposal eliminates fees for VAWA applications, it also eliminates fee waivers for I-360s. This means application fees for Special Immigrant Juveniles (SIJ) will nearly double to \$375 without any hope for a fee waiver. This undermines Congress's goal to protect and provide secure status to these unaccompanied minors. USCIS must reconsider its proposal on this issue and eliminate application fees for SIJs or allow fee waivers. Unaccompanied juveniles are among the most vulnerable of immigrants and least likely to be able to pay for the heightened fees.

USCIS' suggestion that public charge concerns make fee waivers inappropriate for those seeking adjustment of status is inaccurate. Congress provided access to immigration benefits and smoothed the path to lawful permanent residence, including relaxing public charge considerations at the adjustment phase for certain applicants.

USCIS also argues that regular family-based petitioners should be ineligible for fee waivers because they must submit affidavits of support. Given the visa quota system and processing backlogs, many regular family-based immigrant applicants who need

fee waivers at the initial phase may be able to overcome public charge concerns by the time USCIS adjudicates their adjustment applications. This approach, in fact, comports with USCIS own instructions on considering public charge as a prospective test.

Applicant choice, not inaccurate USCIS assumptions, should determine access to the fee waiver system. USCIS should retain the existing fee waiver system, not restrict it.

### **Proposed Alternatives to Fee Increases**

Although USCIS explains its need to close the funding gap, the proposal does not show that USCIS has explored any alternatives to fee increases. USCIS should fall in line with other government service agencies, like the U.S. Postal Service, and first attempt to eliminate costs within the agency and enact efficiency measures, prior to increasing service costs to its customers. The proposal simply increases the USCIS bureaucracy without any guarantees of a more efficient process or specific details of increased services or backlog reduction. Case in point, some 20 years later, applicants are still awaiting lawful permanent residency under the 1986 amnesty, and fees for this benefit will increase to \$1,370, more than seven times its current amount.

Additionally, there is no guarantee fees will remain at the proposed rate. In fact, USCIS specifically states it will reassess fees at least once every two years, which means the current fee hike may be only the beginning of the watershed with no end in sight. At the current rate of excessive increases, USCIS may soon make applying for any immigration benefit out of reach for even middle class income immigrants.

If it must raise fees, USCIS is encouraged to focus fee increases in areas where petitioners can afford such raises. Generally business and employment-based visa applicants are in better positions to pay higher application fees. Also, USCIS should consider providing premium processing for more applications. This will allow applicants who can afford to pay fees for quicker processing to do so and also provide a new stream of revenue for USCIS.

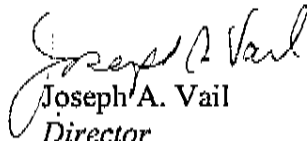
USCIS also mentioned in its proposal that it is losing revenue as applications for adjustment of status under INA § 245(i) decline. As such, USCIS should request that Congress reinstate § 245(i), which will again provide additional revenue.

Finally, USCIS should wait to see what Congress enacts in the coming year before suggesting new fees. The new law may create a new stream of money. Moreover, USCIS should not rely solely on application fees to support its operations. It should ask Congress for direct support instead, which Congress has provided in the past.

For all these reasons, the proposal to increase immigration fees and change the current fee waiver system is imprudent and ineffective in accomplishing the goals of

DHS. We urge USCIS to reconsider this proposal, to retain the existing fee waiver system and fees, and to seek other sources of funding for its operations, rather than shift the burden to selected groups of immigrants. Thank you for your consideration.

Sincerely,

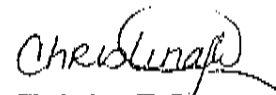


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