March 15, 2007

Director, Regulatory Management Division
US Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Ave. NW, 3rd floor
Washington DC 20529.

RE: DHS Docket # USCIS-2006-0044
Proposed rule— Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule

On behalf of the Illinois Coalition for Immigrant and Refugee Rights (ICIRR), I am writing to strongly oppose the proposed increase to immigration and naturalization fees that US Citizenship and Immigration Services (USCIS) published in the Federal Register on February 1, 2007.

ICIRR, a coalition of more than 100 member organizations throughout the state of Illinois, advocates on behalf of immigrants and refugees on the state and federal level. This work has included administrative advocacy with USCIS (and before March 2003 with INS) regarding citizenship issues. ICIRR advocated for reduction of processing backlogs, commented on previous proposals to increase fees, and engaged in the process to redesign the naturalization test. In addition, we administer the New Americans Initiative, a three-year pilot program funded by the State of Illinois to fund local partnerships that promote citizenship, conduct outreach, and organize workshops to assist long-term legal immigrants in completing their naturalization applications. We strongly believe that immigrants should have the opportunity to gain legal status and become US citizens. We oppose the proposed fee increase because, among other reasons, it would close off this opportunity for many worthy immigrants.

The proposed fee levels are excessive, and will create walls that will hinder family reunification and prevent immigrants from gaining legal status and becoming US citizens. Many of the immigrants and refugees we work with already struggle to pay immigration fees. The steep increases proposed by USCIS, which in some cases double the current fee, would put the goals of gaining permanent resident status, reuniting with family members, and ultimately becoming a US citizen farther out of reach.

Raising fees on forms such as the I-130 alien relative petition (up to $355) and the I-129F alien fiancé petition (up to $455) will keep relatives apart longer. Nearly doubling the costs of an I-765 application for employment authorization (from $180 to $340) will create a higher up-front cost for immigrants and non-immigrant visa holders who wish to work legally. And it seems

36 S. Wabash · Suite 1425 · Chicago IL 60603
312 332-7360 · fax 312 332-7044

unreasonable to charge $290 to replace a green card or $380 to replace a naturalization or citizenship certificate.

The proposed fee for naturalization is particularly jarring. As recently as 1998, the cost to apply for citizenship was $95. In 2002, after the Bush Administration took office, the costs (including biometric fees) went up from $250 to $310. The total fees are now $400, a fourfold increase in the past eight years. Now USCIS is proposing a further increase of 70%, to $675. An immigrant working at a minimum-wage job would need to work for more than three weeks and save all of his earnings in order to pay this fee. Even higher-earning immigrants find the fees startling: One of my best friends, until recently a lawyer at a mid-size Chicago law firm, found the $390 fee she paid in 2004 already excessive, and was shocked to hear that the fee would being increasing further.

Even more startling is the proposed cost of filing for adjustment of status, which for many immigrants is the first step on the road leading to US citizenship. That application has risen from $130 in 1998 to $325 today, plus $75 for biometrics. Under the proposed rule, the price will rise to $905 plus $80 for biometrics. In other words, it will cost nearly $1,000 for an immigrant to get a green card and start the five-year countdown to citizenship. A minimum-wage immigrant worker would need to save a full month's pay to afford the proposed fee.

USCIS tries to ease this blow by not charging for interim I-765s for employment authorization and I-131s for travel documents. But this "break" only begs the further question of why I-485 filers should be asked to pay higher fees that include the costs of these interim benefits even when they do not need these benefits. Children do not need EADs, and adjustment applicants who are already here working on valid nonimmigrant visas (like H-1(b) visa holders) often will not need new work permits. By USCIS's own admission, only half of all adjustment applicants seek travel documents. Why not simply have applicants apply for the benefits they actually need, rather than trying to create a "one-size-fits-all" application that would overcharge at least half of the applicants? Better yet, why not eliminate the need for adjustment applicants to file the I-765 (which asks for information already provided in the I-485), issue EADs to these applicants as a matter of course (or provide a check box on the I-485 for those who want an EAD), and extend the validity period of EADs (e.g. to two years) to reduce the volume of renewal I-765s?

USCIS's proposed fee waiver policy is too restrictive.

Under current policy, individuals and families who cannot afford filing fees can apply for fee waivers. The proposed rule, however, seeks to restrict the availability of fee waivers to only certain types of applications. In particular, adjustment applicants would no longer be able to seek waivers. USCIS' rationale for this change relies on the public charge ground for inadmissibility. This ground, however, does not apply to asylee adjustment applicants; yet these applicants would not be allowed to seek fee waivers. Nor does the public charge ground apply to adjustment applicants under section 202 of NACARA, HRIFA, or registry. Categorically barring adjustment applicants from seeking fee waivers would in effect deny indigent asylees and others who are exempt from public charge considerations the opportunity to gain adjustment of status.

On the other hand, USCIS proposes to waive fees for all VAWA self-petitions and applications for T visas. At his February 28, 2007, meeting with community organizations in Chicago, Michael Aytes of USCIS asserted that these categorical waivers are justified by the high rates of waiver requests by individual applicants and the cost of adjudicating these requests. If the rates are so high and the costs so significant, we would ask that USCIS provide actual numbers of waiver request rates and adjudication costs so that commenters can evaluate this proposal with full knowledge of the rationale.

Incidentally, under the proposed rule, VAWA self-petitioners would still be required to pay the fee for their adjustment of status, and could not get this fee waived. This is completely at odds with whatever humanitarian concerns may underlie the fee exemption for I-360s filed under VAWA—or reveals that these concerns have nothing to do with the change.

More generally, USCIS should explain in more detail why fee waivers should no longer be available for each specific application for which it proposes to close off waiver availability. Why would waivers no longer be available for I-821 applications for TPS, when the public charge ground may be waived for TPS applicants? What is the justification for closing off fee waivers for I-824s? Again, a more detailed explanation would allow commenters to provide a more informed evaluation of the proposal.

USCIS's methodology, as presented in the proposed rule, is seriously flawed.
Rather than provide sound explanations for the proposed fee levels, the rule raises still more questions.

Starting from FY 2007 budget instead of zero-based budgeting
USCIS starts its cost analysis with the FY 2007 Immigration Examination Fees Account budget, $1.76 billion, then removes nonrecurring costs, adjusts for inflation, and adds "additional resource requirements" to come up with the total amount it needs to recover, $2.329 billion. 72 Fed. Reg. 4898-4902, section IV(E). This methodology stumbles at the very first step: it incorporates the current IEFA budget uncritically, without examining carefully how this money is being spent. It starts with a budget that could involve inefficient expenditures that waste time and money and disserve immigrants and families who have filed applications. For example, the last time USCIS raised fees substantially, in April 2004, its proposed rule mentioned that it hoped to recover the cost of litigation settlements through that fee increase. 69 Fed. Reg. 5089. (February 3, 2004). If USCIS intends to conduct a truly comprehensive review of its costs, it should have engaged in zero-based budgeting. Only then can we truly know how much USCIS services should cost, and how much the agency can legitimately ask applicants to pay in fees.

Additional resource requirements
USCIS' planned service improvements, as described in section IV(E)(3), are for the most part urgently needed. Too often immigrants are stuck in processing backlogs, including months-long (even years-long) delays caused by security check requirements imposed as an unfunded mandate on an under-resourced FBI. Last October's Government Accountability Office report that the agency had lost track of 110,000 files needed to process citizenship cases highlighted the need for improved file tracking and other infrastructure. And immigrants and their families still have difficulty getting accurate information about their cases. We do not question the need for

more resources to make USCIS service faster, more reliable, more secure, and more responsive to applicant needs.

Yet we wonder how USCIS calculated these costs. The proposed rule provides only a description of the additional resource and a bottom-line cost estimate. What assumptions went into these calculations? How closely were these costs scrutinized before being published? Just as USCIS incorporates the FY 2007 IEFA budget uncritically, it appears to include the costs of these improvements just as uncritically.

We also question how quickly USCIS can implement all of these measures. Can the agency really hire all 1,004 new staffers it seeks to "enhance adjudications and support staff" within one year—not to mention all of the other new personnel described elsewhere in section IV(E)(3)? Would USCIS be able to implement the $124.3 million worth of IT improvements described in section IV(E)(3)(d) by the end of FY 2008? For that matter, how much of the costs of these and other improvements be ongoing, and how much would be one-time expense? Would it not make more sense to phase in these initiatives, and phase in the stream of added revenue needed to pay for them?

Finally, we question whether USCIS service will in fact improve with the proposed fee hike. Past fee hikes have come with assurances that the additional revenue would help improve service. Yet service issues, such as those described above, persist. What assurance do immigrants and families have that they will get what they pay for? And who will hold USCIS accountable if USCIS fails?

Overhead v. direct costs

The proposed rule identifies and describes $924 million in indirect costs, which it defines as "ongoing administrative expenses of a business which cannot be attributed to any specific business activity, but are still necessary for the business to function." 72 Fed. Reg. 4905; Section VI(A). Such costs, in other words, are not connected to actually moving an application forward, unlike the "direct costs" associated with processing an application. But after briefly discussing these overhead costs, the agency pulls a sleight-of-hand by incorporating them as an (unstated) fixed percentage of the processing activity unit costs (i.e. the direct costs) for each application. USCIS thus makes these indirect costs disappear as an explicit factor in calculating its fees, rather than honestly stating how it is making immigrants and families pay for its overhead. USCIS should at very least make clear what fixed percentage it is using to fold its overhead expenses into its unit costs.

"Make determination" cost estimates

How did USCIS calculate the "make determination" cost estimates (72 Fed. Reg. 4908-9, section VII(B), Table 10)? USCIS states that these costs are related to the complexity of the application, but does not explain how this complexity is measured, or what formulas were used to derive the cost estimates from such measures of complexity. One would think that the completion rates set forth in Table 9 (72 Fed. Reg. 4908) are somehow related to these calculations, but USCIS does not explain how. In particular, USCIS does not discuss its assumptions about its personnel costs per unit of touch-time. Indeed, comparing these completion rates with the make determination costs reveal several disparities:

- The total completion rate is 3.21 hours for an I-360 and 3.39 hours for an N-470, yet the make determination cost for an N-470 is only $428, while for an I-360 that cost is $2,268. Why are the make determination costs for two applications with similar touch-times so different?
- The completion rates for an I-539 are 1.32 hours at the local office and .39 hours at the service center. For an I-751, the completion rates are 1.36 hours at the local office and .46 hours at the service center. Yet the make determination cost is $84 for an I-539, but $210 for an I-751. Why the difference of $126 for applications with nearly identical completion rates at each office?

Volume estimates

Even the volume estimates set forth in Table 7 (72 Fed. Reg. 4904-5, section V(B)) are questionable. USCIS assumes that the total annual fee-paying volume of applications will decline by 960,204 for FY 2008/2009. Of this drop, however, 88% is accounted for by decreases in fee-paying volume for the I-131, I-765 and I-90. (While USCIS explains that the fee-paying volume for I-131s and I-765s will fall because it will not charge adjustment applicants for these forms, it never explains why it anticipates a drop of 130,000 (nearly 20%) for I-90s.) USCIS assumes a relatively minimal impact on filing volume for nearly all other applications.

USCIS's own numbers, however, show that applications surge in anticipation of fee increases, then plummet. Such a surge is already happening with citizenship applications: Nationwide, 772,416 immigrants filed N-400s in calendar 2006, up 28% from calendar 2005. N-400s filings rose 37% from October-December 2005 to October-December 2006. In Chicago alone, N-400 filings rose 67% from October-December 2005 to October-December 2006. In December 2006 alone, 4,358 N-400s were filed, compared to 1,773 in December 2005. In Los Angeles, 10,694 N-400s were filed in December 2006, compared to 5,411 in December 2005. If the historical pattern holds true, application rates will drop sharply when the fee increase take effect.

USCIS has argued that historically, even with such surges and plunges, application rates eventually level off after a few months. (Mr. Aytes stated as much in his meeting with Chicago CBOs on February 28.) But this fee increase could have a much more severe impact. Past increases never involved such high baseline fees before the increase, or such large increases by dollar amount. It is not enough to argue, as USCIS does, that past increases were larger than the current proposal by percentage, because again this time the baseline is much higher, just as 50% of $100 is more than 75% of $50. The large overall fee amounts will surely cause many applicants to delay their applications (especially for those forms for which fee waivers are not available), and cause applications rates to fall accordingly.

If such a drop were to happen, where will USCIS turn to recover its costs? Indeed, if current fees are too low to recover costs, as USCIS argues, USCIS is losing money on each application now being filed in advance of the increase. How will USCIS make up the loss? Indeed, is the proposed fee increase (paradoxically) intended to make up for this loss?

Comprehensive fee study

Most basically, where is USCIS' comprehensive fee study? We would hope that this fee review would provide a more complete, more coherent, and more honest look at USCIS costs. Anyone

concerned with those costs, including Congress, advocates, and the American people, needs to see it. USCIS should at very least publish information on how interested parties can access the study, or better yet make the study available on its website..

USCIS is not compelled by law to recover its costs of operation on the backs of immigrants and families.

USCIS also argues that it has no other option than raising fees if it wants to cover its costs. This is patently false. USCIS cites section 286(m) of the Immigration and Nationality Act (8 USC § 1356(m)) to claim that it must recover its full costs through fees. But this section states merely that the agency "*may* be set at a level that will ensure recovery of the full costs of providing all such services." The statute is permissive, not mandatory.

USCIS also cites Circular A-025 issued by the Office of Management and Budget. The circular states as federal policy that the federal government should impose user charges on recipients of "special benefits" that would be sufficient to recover the full cost of providing the benefit. This document, however, is a policy guidance that lacks the force of law. Furthermore, even by its own terms, the circular provides for exceptions to this general policy. Such exceptions can be made when "any other condition exists that, in the opinion of the agency head or his designee, justifies an exception." OMB Circular A-025, section 6(c)(2)(b). In other words, USCIS can make exceptions to the "recovery of full cost" policy *for any reason*. Certainly the burden that the fees would impose on immigrants moving toward citizenship should be reason enough to break with this policy.

Indeed, in the proposed rule itself, USCIS is already setting fees for several forms at levels that would not recover its full costs. The most frequently used of these forms is the I-360 self-petition, which by USCIS calculations has a unit cost of $2,480. 72 Fed. Reg. 4909-10; Section VIII, Table 11. Yet rather than charge the full unit cost, which would increase the fee by 1205%, USCIS decided to increase the fee by only 96%, the average percentage fee increase. 72 Fed. Reg. 4910; Section IX(B). Although USCIS asserts that the costs not recovered through fees for these forms were prorated to other applications, this pro-rating is not obvious from the fee table. It is difficult to believe that simply rounding up the unit cost of each of these other applications to the next higher increment of $5 makes up all these costs.

As a matter of public interest and good business sense, USCIS should pursue Congressional appropriations and other revenue to fund its operations and ease the burden on fee-paying immigrants and families.

A broader public interest more than justifies a fee structure that does not impose excessive fees on immigrants and their families. Immigration and citizenship are public goods that benefit our entire country and that we as a nation should help pay for. Immigrants bring their talent and hard work to our economy. They pay taxes and help revitalize our communities. In becoming citizens, immigrants demonstrate their strong commitment to their new home country by learning English, gaining knowledge about American history and government, and swearing allegiance to the United States. We should be encouraging immigrants to become part of our community by gaining legal status and becoming citizens, not setting up barriers that block their path and keep them out.

USCIS should therefore actively seek Congressional funding to help underwrite its costs. It is far too easy and glib to say that the costs of immigration services should not be imposed on American taxpayers. Such rhetoric ignores the basic fact that immigrants themselves pay taxes, and indeed become more productive as they learn English, develop roots in the US, and ultimately become citizens. Imposing ever-increasing fees on immigrants slights their contributions to their new home country—and indeed may deny them the opportunity to contribute more.

USCIS has in fact requested and received funding for Congress in the recent past, including most recently funding for backlog reduction. The agency could easily do so again. Indeed, in light of the shift in control of Congress to leadership that is more favorably disposed toward immigrants, it is likely that such a funding request would find support.

Yet USCIS stubbornly insists that it must recover all of its costs through fees. Part of USCIS's argument is that it operates like a business, and accordingly must charge enough for its products if it is to remain solvent. But USCIS *does not carry this business analogy far enough*. In the private sector, businesses distinguish between operating costs and capital investments. Rather than relying just on sales revenues and profits to fund infrastructure and other capital improvements, businesses pursue other funding sources: loans, bonds, sales of stock and other equity. And often businesses cover operating costs through other means, such as selling advertising and paraphernalia beyond their usual product lines. Even the US Postal Service no longer relies on just selling postage.

Just as businesses do not rely solely on sales revenue, particularly for infrastructure costs, USCIS should not rely just on fees. There is no reason why USCIS could not seek Congressional funding or other funding to underwrite (at least) the overhead costs it describes in Section Section VI(A). Yet USCIS is not only renouncing Congressional funding, but is also pushing aside another potential funding source: premium processing fees. 72 Fed. Reg. 4893-4; Section III(C)(4). When Congress approved premium processing in 2000, many advocates raised concerns that premium processing would in effect create two tiers of service, one for businesses that pay the premium, and another, worse one for the overwhelming majority of applicants who do not. In implementing premium processing, INS offered assurances that it would use the premium "to hire additional adjudicators, contact representatives, and support personnel to provide service to *all its customers*" and to fund infrastructure improvements. 66 Fed. Reg. 29683 (June 1, 2001) (*emphasis added*).

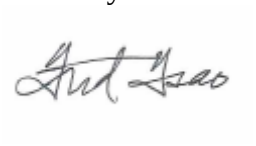
Now USCIS proposes to isolate premium processing revenue, and use this revenue to "transform USCIS from a paper-based process to an electronic environment." 72 Fed. Reg. 4894. While this initiative may benefit some applicants, particularly those who have access to the internet, they will be of little or no use to those who do not have such access. These applicants include many who lack formal education or adequate income—indeed, the very immigrants and families who will most likely be delayed or deterred from filing by the fee increase. In other words, significant numbers of immigrants and families will not benefit from, and indeed will be harmed by, USCIS's decision to isolate premium processing revenue. Rather than using the premiums "as envisioned by Congress," USCIS's proposal contradicts this vision. USCIS should reconsider this sequestration and allocate at least part (if not all) of the premium processing

revenue to its budget calculations. Factoring this revenue and other sources of funding as well as using honest, closely scrutinized cost figures, USCIS should completely review its fee calculations.

Conclusion

For all these reasons, the proposal to increase immigration fees is flawed, misguided, dishonest, and counterproductive. We urge USCIS to reconsider this proposal, scrutinize its cost calculations, seek other sources of funding for its operations, and come up with a new fee proposal, rather than add more burdens on immigrants. Thank you for your consideration.

Sincerely



Fred Tsao
Policy director

cc: US Senator Barack Obama
US Senator Richard Durbin
US Representative Luis Gutierrez
US Representative Jan Schakowsky