

March 22, 2007

Director, Regulatory Management Division
U.S. 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

Dear Sir or Madam:

The Catholic Legal Immigration Network, Inc. (CLINIC) and the United States Conference of Catholic Bishops (USCCB) respectfully submit the following comments to the proposed rule to adjust the USCIS application and petition fee schedule as published in 72 Fed. Reg. 21 at 4888 (Feb. 1, 2007).

CLINIC/USCCB's Interest in the Proposed Rule

CLINIC, a subsidiary of the United States Conference of Catholic Bishops (USCCB), is a legal support agency for the nation's largest and most productive network of charitable immigration programs. CLINIC currently supports 159 programs in 260 office locations across the country. Each year these programs represent more than 100,000 low-income immigrants with applications and petitions pending before the USCIS. Additionally, CLINIC's Division of Religious Immigration Services represents hundreds of foreign-born priests, sisters, seminarians, and laypersons each year. The division's current caseload includes more than 900 open cases. CLINIC recently published a national citizenship plan entitled *A More Perfect Union*. The report emphasizes that the United States' strength and vitality depends on the contributions of its more than 27 million foreign-born residents, and their full integration into our society, including citizenship. For the reasons set forth below, we believe that the proposed fee structure will be especially burdensome for the low-income immigrants and religious workers served by our programs. In addition, the drastic increase in fees will discourage low-income immigrants from pursuing permanent resident status and citizenship, hinder their integration into U.S. society, and in the long run, be detrimental to the well-being of our nation. For its part, USCCB regularly participates in the rulemaking process on immigration issues of importance to the Catholic Church in the United States. CLINIC/USCCB submitted comments on the previous fee increase on March 4, 2004.

Comments on the Proposed Action

The greatest impact of the proposed fee increase will be borne by the most vulnerable applicants: low-income and working poor who can least afford to pay. Ultimately, they will have delayed or minimal access to immigration benefits. Families will be especially hard-hit by the proposed fee increase, as they may not be able to afford the higher cost of filing multiple applications. The fee increase will force families to apply for legal status and USCIS benefits on a piecemeal basis. In some cases this will further prolong family reunification. In others, it will delay a family's full integration into our society. Finally, religious workers, especially those from small religious organizations and dioceses will struggle to meet the increased fees. The increased fees may hinder the ability of such religious organizations to maintain the desired number of religious foreign-born workers, who are often central to an organization's functioning.

I. Religious Workers

Religious order priests and nuns take vows of poverty, and diocesan priests make promises to live simply. As such, the increased fees will be especially prohibitive for religious workers. The smaller dioceses and religious communities represented by CLINIC's Division of Religious Immigration Services will be particularly burdened by the proposed fee increases. Foreign-born religious workers comprise an essential part of the workforce of religious orders, organizations, and dioceses. They fulfill vital roles such as hospital chaplains, prison chaplains, religious teachers, parish priests, school administrators, and social workers. They engage in ministry to vulnerable populations such as the deaf, physically and mentally challenged, elderly, ill, low-income, single mothers, and various new comers and ethnic groups. Smaller dioceses and religious organizations whose religious workers serve border communities tend to employ a greater percentage of foreign born religious workers. These dioceses and communities will be especially disadvantaged by the fee increases.

Religious workers provide important services not only to religious denominations and communities, but also to local communities. Among their contributions are work in social service programs and community projects which benefit local communities as a whole and immigrant communities in particular. These additional benefits to our nation cannot be underestimated.

II. Prohibitive Fees

Many of the immigrants and refugees served by our programs already struggle to meet current USCIS filing fees. Our clients must often save for months to collect enough money for USCIS filing fees. The proposed fee increases will put application filing beyond the reach of many low-income immigrants. We are especially concerned about the proposed I-485 and N-400 fee increases.

I-485 Fee

Under the proposed rule, the I-485 filing fee will rise from the current fee of \$325 to \$905. An additional \$80 biometric fee would bring the I-485 filing fee to \$985. This excludes the cost of the medical examination, which must be filed with the I-485 application. Medical examination fees range from \$100 to \$200. Therefore, at a minimum, an applicant would need \$1,100 (excluding the cost of legal services) to file an I-485 form. The current federal minimum wage is \$5.15 per hour. A minimum wage worker would need to work 214 hours (nearly five and a half weeks at 40 hours per week) to meet the \$1,100 fee. For many of the clients served by our programs, savings after meeting monthly living expenses are minimal, and our clients would require years to save sufficient funds to file an I-485 application at the proposed cost.

N-400 Fee

The naturalization fee increase will pose similar problems to low-income applicants. A study by the Urban Institute found that 41 percent (2.4 million) immigrants now eligible to naturalize have incomes under 200 percent of the poverty level, including 17 percent with income under the federal poverty level.¹ The proposed rule would increase the combined N-400 and biometrics fees from a total of \$400 to \$675. An immigrant working at a minimum-wage job would need to work for more than three weeks and save all of his/her earnings to pay this fee. The steep N-400 filing fee would prohibit many deserving immigrants from filing naturalization applications upon becoming eligible.

¹ Fix, M., Passel, J.S., & Sucher, K., *Trends in Naturalization*, (Washington, DC: Urban Institute, September 2003.), p. 6.

III. Integration

The increased fees will serve as barriers that discourage low-income legal immigrants from pursuing permanent resident status and citizenship, and are contrary to integration efforts. The United States is an immigrant nation which is strengthened by the contributions of newcomers of all backgrounds. 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 the United States by learning English, gaining knowledge about American history and government, and swearing allegiance to the United States. Newly naturalized citizens, eager to participate in our democracy, consistently vote at higher rates than other citizens.² Creating obstacles to integration, through increased application and petition filing fees, especially those for adjustment of status and naturalization, are inconsistent with our nation's best interests. Citizenship and the increased civic participation that accompany it are public goods that benefit our entire country.

By maintaining reasonable application and petition filing fees, immigrants would be better situated to embark upon the path to citizenship and ultimately naturalize. A reasonable fee schedule and accessible pathway to permanent resident status and U.S. citizenship recognizes the important contributions and benefits of immigrant integration to our nation's well-being. It is consistent with President George W. Bush's June 2006 plan to create a new Americans task force to help immigrants integrate into American society.³ Forcing immigrants to shoulder the entire burden of USCIS operations is inconsistent with these aims.

IV. The impact on national security

The prohibitive application costs may prevent undocumented individuals who are eligible for certain benefits, including adjustment of status, from coming forward to apply. This would sustain an underclass of undocumented immigrants, which conflicts with our country's national security interests. The United States has a vested interest in maintaining reasonable fees, as this would better enable low-income applicants to file applications as soon as they are eligible to do so. Bringing eligible applicants out of the shadows and allowing the United States to run identity and security checks on them benefits our national security.

V. Applicants may be forced to forego legal representation

Furthermore, in order to meet increased USCIS filing fees, many low-income applicants may need to divert funds they may have otherwise budgeted for legal representation to cover filing fees. Foregone representation by qualified lawyers and organizations will result in more applications being filed incorrectly or incompletely. Well-prepared and documented applications and petitions filed by community-based organizations and legal professionals lead to increased USCIS efficiency in processing. An increase in applications filed without the assistance of an experienced legal professional will result in further delays in USCIS processing, necessitate requests for additional evidence, or result in increased denials, all of which disadvantage both USCIS and the applicant.

² Passel, J.S., *Election 2004: The Latino and Asian Vote*, (Washington, DC: Urban Institute, July 2004).

³ Executive Order, "Task Force on New Americans," June 7, 2006, available at <http://www.whitehouse.gov/news/releases/2006/06/print/20060607-4.html>.

VI. The inclusion of interim benefits costs in the I-485 fee is inequitable

The proposed rule states, "Under the proposed fee structure, an applicant for adjustment of status will pay a single fee. If USCIS is unable to process the base application within the established processing goals, the applicant will not pay separate fees for interim benefits, no matter how long the case remains pending." (4894). This provision is problematic and its reasoning is flawed. Not all adjustment of status applicants file for interim benefits such as applications for advance parole and employment authorization. Many applicants, especially the low-income immigrants served by our programs, do not travel outside the United States during the pendency of their adjustment of status applications. In fact, for many, such travel would trigger three and ten year inadmissibility bars. Similarly, many elderly and child applicants do not work while their I-485 applications are pending and have no need to file employment authorization applications. To impose the costs of advance parole and employment authorization applications upon all I-485 applicants is unfair and contrary to USCIS' stated desire to "fairly allocate costs" (4891). For low-income applicants, the current system of paying for interim benefits on an as needed basis while the I-485 is pending is more equitable. The current system makes the application process more accessible to low-income immigrants as it results in a lower, initial I-485 application fee.

Another population unfairly penalized by this proposal includes asylees who file for adjustment of status. When granted asylum, asylees can apply for and obtain a two-year employment authorization document (EAD). USCIS has stated that it plans to reduce the asylee I-485 processing time to six months by the end of FY 2007. For asylee I-485 applicants who file as soon as they become eligible (one year after a grant of asylum), this goal, if reached, would eliminate the need for an EAD renewal during the pendency of the adjustment of status application. Forcing such individuals to pay a higher I-485 application fee for a benefit of which they will not need to take advantage is hardly equitable.

VII. Fee Waivers

The proposed rule limits the list of applications for which an individual fee waiver may be granted. We request that USCIS retain the existing fee waiver structure, which allows for fee waivers to be granted for any application or petition listed in 8 CFR 103.7(b). A less prohibitive fee waiver system is necessary to ensure that all deserving individuals have the opportunity to apply for benefits for which they are eligible.

Under the proposed rule, applicants for adjustment of status would no longer be able to request fee waivers. Entire categories of applicants (such as I-485 applicants) should not be precluded from accessing benefits to which they are entitled but simply cannot afford. As a basis for excluding adjustment of status applicants from fee waivers, the proposed rule states, "Applicants for permanent residence must demonstrate they can support themselves and will not become a public charge..." (4912). This assertion is not true of all adjustment of status applicants. Asylee adjustment of status applicants are exempt from public charge grounds of inadmissibility.⁴ Similarly, additional adjustment of status applicants, including individuals eligible for adjustment based on the Cuban Adjustment Act⁵, the Nicaraguan Adjustment and Central American Relief Act⁶, and the Haitian Refugee Immigration Fairness Act⁷ are also exempt from the public charge ground of inadmissibility. Coupled with the increased I-485 filing fee, the inability of I-485 applicants to apply for a fee waiver would prevent many asylees and other low-income adjustment applicants from applying for adjustment of status once they become eligible. To protect these and other vulnerable, low-income adjustment applicants, the existing fee waiver structure,

⁴ 8 C.F.R. § 209.2(a)(1)(v).

⁵ See *Matter of Mesa*, 12 I&N Dec. 432 (INS 1967).

⁶ 8 C.F.R. § 245.13(a)(3).

⁷ 8 C.F.R. § 245.15(e).

which allows for special consideration in cases involving humanitarian concerns, family unity, and the public interest should be maintained.

Recognizing that religious workers fulfill vital roles and serve vulnerable populations with little or no personal compensation, the State Department allows consular officers to waive nonimmigrant visa application and issuance fees to persons who will engage in charitable activities for charitable organizations.⁸ USCIS' proposed fee structure, coupled with a religious worker's inability to request a fee waiver for the I-485 application, fails to recognize the financial reality of most religious workers. Under the new fee structure, the minimum cost of lawful permanent resident status for a religious worker would be \$1560 (\$375 for the I-360; \$905 for the I-485; \$80 for biometrics, and \$200 for a medical examination with vaccinations). The proposed regulation would not allow for a fee waiver of the I-485 application, the most expensive step along the road to permanent residence. The increased costs and lack of fee waiver would put permanent residence out of reach of many religious workers.

VIII. Alternative Solutions

After more than two years of research, writing, and interviewing more than 108 experts and community advocates, CLINIC recently published a national citizenship plan entitled, *A More Perfect Union*. The report finds that the United States lacks a coherent immigrant integration policy, and makes several recommendations that would result in a more coordinated effort to promote citizenship and prepare immigrants for naturalization. One of the report's recommendations is that Congress should appropriate sufficient funding so that USCIS does not need to depend entirely on fee revenue to adjudicate applications. Adequate funding would allow USCIS to halt annual fee increases, reduce its backlogs, and improve the technology for application processing and customer services. Unlike the fee increase proposal, an adequate integration plan would ensure that all legal permanent residents have access to citizenship, regardless of their socioeconomic class. We are prepared to work with USCIS to find viable alternatives to this onerous fee increase, including working with the agency to seek congressional funding for adjudication services and infrastructure costs.

The proposed rule states that, among other things, increased fees are needed to reduce processing times and provide better customer service. While we applaud these goals, we believe that the burden of paying for such improvements should not rest solely with immigrants who already struggle to pay agency filing fees. Over the last five years, through the use of "temporary appropriated dollars" (4893), USCIS has demonstrated that it can significantly reduce processing times without drastic fee increases. Nothing prevents USCIS from seeking and using additional appropriations.

Instead of relying entirely upon user fees to fund its operations, USCIS could seek targeted appropriations to subsidize the cost of certain applications, such as naturalization applications. This would facilitate low-income immigrants' ability to become U.S. citizens, and would be more consistent with the principles of immigrant integration discussed above. Additionally, appropriations could also be made to cover improvements in infrastructure and technology, as well as overhead and administrative costs that applicants should not be forced to pay.

⁸ 22 CFR 41.107(c)(2)

Conclusion

As stated, CLINIC and USCCB are gravely concerned with the proposed hike in fees for these immigration benefits. Alternatives to these fee increases are available, including congressional funding to cover adjudication and infrastructure costs. We should not create an immigration system which prevents otherwise qualified immigrants who can contribute much to this nation from accessing the fruits of citizenship because of a lack of adequate financial resources. For these reasons and those described above, we urge USCIS to reconsider this proposal, and to seek other sources of funding for its operations, rather than force immigrants to shoulder all of the agency's costs. Thank you for your consideration of our views.

Sincerely,



Donald Kerwin
Executive Director, CLINIC



Carlos Ortiz Miranda
Associate General Counsel, USCCB