NAFSA

NAFSA: Association of International Educators

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Director
Regulatory Management Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
Washington, DC 20529

~~Ref: DHS Docket No. USCIS-2006-0044~~

Dear Director:

I write on behalf of NAFSA: Association of International Educators—the world's largest association of international education professionals, with more than 9,000 members nationwide and around the world—in opposition to the February 1, 2007, proposed rule, "Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule."

International students and scholars, and campus officials that employ them, file tens of thousands of petitions and applications with USCIS annually. The excessive fees in the proposed fee schedule will act as disincentives for students and scholars—today's talent and tomorrow's leaders—to come to our country. Not only can *they* not afford it; *our country* cannot afford for these desirable people to exercise the myriad options that they have in today's world to take their talents elsewhere.

As an American, I am offended by the image, which the proposed rule conveys, that immigration benefits in my country are open to the highest bidder. Although U.S. citizenship is undoubtedly of great value, it is simply not true that the most desirable future citizens are necessarily found in those families that can manage to scrape together the thousands of dollars that would be required to purchase citizenship under this rule.

That said, the fees that would most directly affect international students and scholars, and the universities that employ them, are the primary concern of this association. These include:

- The near-doubling of the I-765 fee for international students in F status to apply for work authorization for Optional Practical Training, from $180 to $340.

- The increases in the fees required in connection with change of status from F to H-1B, including the increase from $200 to $300 (a 50 percent increase) in the I-539 application to change nonimmigrant status for dependents, and the increase from $190 to $320 (a 68 percent increase) in the I-129 petition for nonimmigrant worker. These fees are on top of the required data collection and fraud prevention fee, which is not part of the fee schedule.

- The huge increases in the fees required to adjust status from H-1B to legal permanent resident (green-card status), including: the near-tripling of the I-485 application fee for permanent residence, from $325 to $905; and the increase from $195 to $475 (143 percent) in the I-140 immigrant petition for alien worker. (The proposed increase in the I-485 fee is partly offset by the fact that it is accompanied by the elimination of additional filing fees for work authorization and for permission to re-enter after traveling abroad. However, the inclusion of those fees in the proposed new I-485 fee means that they would have to be paid even by those who do not expect to require the benefit.)

I understand that USCIS is permitted by law to recover the full cost of its services through fees, and indeed has no other option so long as Congress is unwilling to appropriate funds for the operation of the agency. Therein, however, lies the problem. This proposed fee schedule demonstrates quite dramatically that the United States has passed the point where it can afford to fund its immigration system exclusively through user fees. Indeed, these are not user fees by any reasonable definition of the term.

Our comment is that the proposed fees should be reduced to the actual cost of processing the application or petition. For that to be a viable solution over the long term, however, Congress must step up to its responsibility to create a viable immigration policy structure and fund it. In itself, reducing the fees, while necessary, gets us nowhere toward that necessary goal.

The proposed rule—and the obsolete system that underlies it—suffer from several fundamental defects.

These excessive fees are contrary to clearly expressed U.S. policies.

At the policy level, the President, the Secretary of State, and indeed the Secretary of Homeland Security have expressed clearly and often the high value that the United States places on attracting international students and scholars to this country. Yet at the regulatory level, we too often place unnecessary barriers and disincentives in their way. This proposed rule is another step in the wrong direction. The United States reaps immeasurable benefits—for our foreign policy, our students' education, our economy, our competitiveness, and our public diplomacy—from attracting the best and brightest minds and the next generation of world leaders to America's educational institutions. At a time when competitor nations are easing work requirements for international students and scholars, we can ill afford to price these benefits out of reach for those who want to come here.

The fees compensate for the absence of a strong U.S. immigration policy and agency.

In this day and age, the United States requires a comprehensive immigration policy and a strong immigration agency to carry it out. We have never had either one, and we do not have them today. As such a policy and such an agency are public goods that serve the national interest, they should be taxpayer-funded. It is quite appropriate for applicants to pay the specific costs of processing their requests for the specific benefits bestowed by such an agency pursuant to immigration policy. By definition, however, the "user fees" required to be paid by immigrant and nonimmigrant applicants far exceed the actual costs of providing the benefits. In the absence of an immigration agency with any policy-driven claim on the public treasury, these fees fund the agency. That is one factor that drives them so high.

The fees place on the backs of users the cost of unfunded congressional mandates.

USCIS inherited the arcane systems and processes of the Immigration and Naturalization Service, which was chronically under-funded, understaffed, and technologically challenged. The INS became a textbook failed agency as Congress increased its mandates but refused to fund them. To meet its statutory requirements, USCIS is turning to its only steady source of funding, its filers and petitioners, to finance the required modernization of its systems. That is another factor driving the fees. While that is understandable, it is not acceptable as a matter of public policy, because it prices statutory benefits out of the reach of those who need them. The solution is not to keep raising fees in a futile attempt to finance a twenty-first century agency. The solution is for Congress to face up to its responsibility for financing the requirements that it places on it the immigration agencies.

The fees subsidize inefficiency.

When they created the Department of Homeland Security and transferred immigration-related functions to it, Congress and the administration had a golden opportunity to construct an agency that could implement a coherent immigration policy. Regrettably, instead of doing this, they simply transferred the inefficiencies and dysfunctionalities of the INS to DHS. In fact, they exacerbated them by breaking the INS up into three separate entities with no institutionalized means of relating to each other and no overarching policy construct to guide them. In this context, it borders on the impossible to modernize, to create efficient systems, to develop coherent policy to guide the determination of what needs to be done and what does not. The fees fund this inefficiency, and that is another factor that drives them so high. Congress must step up to its responsibility for rationalizing the immigration bureaucracy and for creating structures that can fulfill the mandates it imposes.

The fees subsidize unnecessary work.

In the absence of policy, it is difficult to tell the difference between necessary and unnecessary work. Indeed, the fact that USCIS operates on a fee-funded basis creates a built-in incentive to require USCIS approval for things; that way, you can charge a fee for processing the request, which provides necessary income to finance your broader operations. However, it is far from clear that all of the work USCIS does, and charges for, needs to be done. The I-765 fee for Optional Practical Training is a classic example. It used to be possible for school officials designated by the INS to approve OPT in accordance with agency regulations. The benefits of reinstituting and expanding this process speak for themselves: no application, no processing, no fee, one less task to be performed by the agency, more time to devote to what the agency really needs to do. There is no obvious public policy reason for USCIS to require agency approval for OPT today. With the Student and Exchange Visitor Information System (SEVIS) now fully in place, it would be easy to devolve this responsibility back onto the schools. Yet the cost of processing this unnecessary application process continues to drive up the fee.

The fees subsidize services to other users.

Several categories of users are exempt from fees. Under the current system, these exemptions are entirely appropriate; I fully support them. My point is not to debate the exemptions. My point is that these exemptions exist as a matter of public policy; therefore, the public should pay for them. I get back, then to the problem of the absence of a publicly funded immigration policy. In this situation, the rest of the users subsidize the exemptions, and that is another factor that drives up the fees.

Conclusion

We ask that the fees be reduced to the actual cost of processing the application or petition. Meanwhile, we ask Congress to step up to its responsibility for fixing the untenable situation that drives these fee increases.

Thank you for the opportunity to comment.

Sincerely,

Marlene M. Johnson
Executive Director and CEO