

April 2, 2007

Director, Regulatory Management Division
United States Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Ave., NW 3rd Floor
Washington, D.C. 20529

RE: DHS Docket No. USCIS 2006-0044

Dear Director of Regulatory Management:

On behalf of the Michigan Commission on Spanish Speaking Affairs, I am writing to oppose the proposed increases for immigration and naturalization fees and the changes to the fee waiver system that were proposed by the U.S. Citizenship and Immigration Services on February 1, 2007. We are also opposed to the elimination of the VAWA (Violence Against Women Act) filing fees to the extent that the fee elimination is being subsidized by the proposed fee increases and more restrictive fee waiver system.

The Commission on Spanish Speaking Affairs is created by Michigan statute, and its members are appointed by the Governor. The purpose of the Commission is to develop a unified policy and plan of action to serve the needs of Michigan's Hispanic people.

Of particular concern to the Commission is the proposal to eliminate access to fee waiver for persons submitting certain applications. For example, the proposal would eliminate access to fee waivers for persons submitting Form I-485 (application for permanent residence) and Form I-765 (application for employment authorization). The stated justification for this restriction is that, in certain situations, a fee waiver "contradicts the basic benefit or service being requested" and that a fee waiver would be "wholly or largely inconsistent with the status held or benefit or service sought." In its proposal, USCIS concludes that a fee waiver for a family-based I-485 application, for example, implies that the applicant would be subject to being considered a public charge, a potential ground of inadmissibility.

USCIS' conclusion ignores the reality of many applicants' situations and attempts to impose a rigid "one size fits all" analysis to an issue that requires a case-by-case analysis. Currently, an applicant could conceivably receive a fee waiver for a family-based adjustment case and then obtain employment authorization, which would improve her and her family's financial situation to the extent that a public charge concern could be allayed.

In addition, for a VAWA-based adjustment of status application, the victim of domestic violence could potentially be eligible for immediate public benefits and employment authorization that would also improve her financial situation to the point that she would no longer be considered a risk for public charge. Congress has already eased the path to permanent residence for VAWA beneficiaries by removing the Affidavit of Support

requirement. Elimination of access to fee waivers in an across the board decision would frustrate the progress that has already been made for VAWA beneficiaries.

In its discussion of fee waivers in the proposal, USCIS also mentions that when a fee is waived in one situation, it transfers the costs of that fee waiver to all other fee-paying applicants. We understand this reasoning, and we believe that the reasoning should be extended to the proposal to eliminate the filing fees for VAWA applicants (Form I-360). The elimination of this filing fee seems to imply that all VAWA applicants lack the ability to pay. This is another example of a “one size fits all” conclusion that would benefit from a case by case analysis.

It is unlikely that all VAWA applicants would be unable to pay the required fees. Eliminating all VAWA filing fees simply transfers the costs to other applicants. An across the board elimination of fees for a certain application should be rare. A more appropriate solution would be to increase access to fee waivers by making the I-360 petition eligible for fee waivers by VAWA applicants. This should decrease, at least to a small extent, the large fee increases that are proposed for most applications. Those applicants who can afford to pay the filing fees should pay their fair share.

We also request that the same increased access to fee waivers be extended to applicants who are filing Form I-751 under the battery or extreme cruelty waiver, the U Visa when the application becomes available, and the I-765 by dependents of certain non-immigrants who were recently made eligible under the Violence Against Women Act of 2005.

For the above reasons, we believe that USCIS should reconsider its proposals to increase most immigration application fees, eliminate the VAWA I-360 filing fee, and change the current fee waiver system.

Thank you for your consideration.

Sincerely,

Benjamin D. Inquilla
Commissioner
Michigan Commission on Spanish Speaking Affairs