



WASHINGTON LAWYERS' COMMITTEE
FOR CIVIL RIGHTS & URBAN AFFAIRS

March 29, 2007

Director, Regulatory Management Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Avenue, NW, 3rd Floor
Washington DC 20529

RE: DHS Docket No. USCIS-2006-004

Public Comment on Proposed Rule regarding Adjustment of the
Immigration and Naturalization Benefit Application and Petition
Fee Schedule

Dear Director:

The Immigrant and Refugee Rights Project (the "Project") of the Washington Lawyers' Committee for Civil Rights and Urban Affairs would like to take this opportunity to comment on the DHS proposed rule to adjust the Immigration and Naturalization Benefit Application and Petition Fee Schedule. For over two decades the Project has been working to assure the rights of those who face persecution in their home countries to gain asylum. The Project refers cases to volunteer attorneys and works with these attorneys in their representation of individuals applying for political asylum, as well as post-asylum matters including applications to bring family members to the U.S., to obtain Refugee Travel Documents and to adjust to permanent resident status. Project staff also provides direct assistance to asylees with these applications.

The Project's comments will address the following: (1) the proposed elimination of a fee waiver for asylees is not justified; (2) the proposed restructuring of the fees for adjustment of status which includes an assessment for collateral interim benefits is not applicable to asylees; and (3) the increased fee assessment for a Refugee Travel Document should include an extension of the validity period for the Refugee Travel Document.

I. The proposed elimination of a fee waiver for asylees is not justified:

The proposed rule arbitrarily limits fee waivers to a few types of applicants who are considered to be a "vulnerable population." Asylees are one of many other immigrant populations who are also an extremely vulnerable population and should be allowed the opportunity to apply for a discretionary fee waiver.

The proposed rule continues to allow a few types of applicants (T visa holders and VAWA applicants) to obtain a fee waiver "for humanitarian reasons," but eliminates the fee waiver for almost all other categories including asylees. The proposal states that the population still eligible for a fee waiver has been "victims of crime who are often in an extremely vulnerable position." The distinction between those still eligible to apply for a

fee waiver and asylees is without any rationale basis. Asylees often flee political repression, arbitrary arrest, physical and mental torture and other intentional crimes and therefore should also be considered as an extremely vulnerable population.

Historically, the USCIS has acknowledged the vulnerability of asylees and has not charged them a fee for the application (Form I-589) or the petition to bring their family members to the United States (Form I-131). However, asylees, unlike refugees, are assessed a fee for the adjustment of status application. There appears to be no rationale for the distinction between asylees and refugees and the Office of Refugee Resettlement has begun to eliminate disparate treatment of the two groups. In 2000, the Office of Refugee Resettlement, recognizing that the distinction between refugees and asylees is minimal, initiated the practice of providing eligible asylees with benefits for the first eight months in the U.S., similar to the benefits provided to refugees.¹

The vulnerability of asylees does not disappear even after one year in the United States at which point asylees are eligible to apply for adjustment of status. Some of them are still suffering mentally and physically from the effects of the persecution which caused them to flee their countries. At this point, asylees are just beginning to integrate financially and psychologically into their new life in the United States. It is at the one-year point that asylees are finally able to bring their families to the United States.² Asylees, unlike refugees who are provided with loans, must pay for the airfare to bring their family members to the United States. At the same time, they have to obtain living space to accommodate them, as well as all the other costs of setting up a household for a family in the United States. It is at the one-year point when they are eligible to apply for permanent resident status that the USCIS is asking them to pay another \$1000 (fees plus medical examination) in order to begin the path to citizenship.

Although a well educated, English-speaking asylee may be able to obtain a professional job paying more than minimal wage and is able to pay the fee, there is no justification to arbitrarily eliminate a fee waiver option for those asylees whose income falls below Federal Poverty guidelines, certain elderly asylees, those on disability or those with large families. The USCIS, itself, has recognized these issues and criteria in their fee waiver guidelines.³ DHS's only justification for the elimination of a fee waiver is that "it will serve the public interest without undue cost to other applicants" and it will serve the public interest to waive fees for only "these relatively low volume applications." (See Section B. Immigrant Benefit Applications and Petitions.) The proposal arbitrarily excludes a population of individuals including asylees who are unable to pay fees.

¹ See Office of Refugee Resettlement State Letter SLOO-12, "These early months after the grant of asylum are critical, as asylees attempt to find work, adapt to their new culture and, in many cases, bring their families from countries at war and from other unsafe situations. With this policy change, asylees, who make up one of the most vulnerable populations of immigrants to the United States, will be assisted during this critical period."

² The asylee is able to file for family members immediately after the final grant of asylum. Based on current processing times which are about 4 to 6 months and the overseas processing time by the Department of State, it is usually at least one year before an asylee family is approved to come to the U.S.

³ See Memo from William Yates, Associate Director of Operations, USCIS, Subject: Field Guidance on Granting Fee Waivers Pursuant to 8 CFR 103.7(c), March 4, 2004.

New Model for Fee Waivers: Instead of arbitrarily curtailing all fee waivers, we would like to suggest an alternative procedure for granting fee waivers. This procedure would eliminate the current cumbersome system which is costly for both the government and the NGO's that prepare the fee waivers requests.

The proposed rule (Section XL) provides an analysis of the costs of granting fee exemptions and mentions that "the process of considering a fee waiver request itself has a significant associated adjudication cost." NGO's also devote its own limited resources to preparing fee waivers. Before undertaking a fee waiver, the Project screens the individual, keeping in mind the USCIS guidelines. It is our practice to obtain extensive documentation to support the need for the fee waiver and to complete an affidavit from the individual explaining his financial situation and financial need.

The solution is to create a bright-line test for fee waivers which would require a minimum of documentation. The categories would include persons on disability as determined by a government agency, certain elderly persons in nursing homes with fixed incomes, those falling below 125% of the Federal Poverty Guidelines and those with medical expenses which comprise a predetermined amount of their annual income, and other unique criteria. Thus, both the NGO community and the USCIS would save time and costs without the need to prepare and adjudicate extensive fee waiver requests.

For those individuals who do not fall into the specific categories, we suggest there should be a family cap to alleviate the hardship of the fees on large families. This would account for another situation described in the fee waiver guidelines. It would also alleviate a situation we have noted in which large families or the working poor are forced to file applications for individual members sequentially. A family cap would allow members of a family to reach the goal of U.S. citizenship as a unified group.

II. The proposed restructuring of the fees for adjustment of status which includes an assessment for collateral interim benefits is not applicable to asylees:

According to the proposal (Section C. Part 5), "the applicant for adjustment of status will pay a single fee. If the USCIS is able 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." These interim benefits include employment authorization and travel documents.

This fee adjustment model for adjustment of status applications is relevant to those applying under the employment-based or family-based categories. The model is not relevant to asylees and they should not be charged for the costs of processing interim benefits.

First, asylees do not require employment authorization documents because their eligibility to work is inherent in their asylee status.⁴ Asylees may elect to file for an

⁴ See 8 CFR274(a.12(a).

employment authorization document; however, in 2006, DHS began to issue two-year cards to asylees and this longer validity period will "allow many applicants to pursue adjustment of status without having to apply for a renewal of their EADs."⁵

Secondly, asylees need to apply for a Refugee Travel Document ("RTD") in order to travel; however, their need for the RTD does not terminate when they become a legal permanent resident. Thus, even if the USCIS is able to process the asylee adjustment of status applications more efficiently as suggested in the proposed rules, asylees will still need a travel document even after receiving green cards. Unlike immigrants with pending adjustment applications that need to apply for permission to reenter the United States (advance parole), asylees need the RTD to both reenter the United States and as their passport. An asylee must have the RTD because their use of a passport from their country of persecution would have a serious impact on their asylee status and the possibility of the cessation of refugee status.⁶

Asylees who do not need to apply for employment authorization documents and who must use a RTD for more than a limited period should not have to pay a fee based on a general model based on the provision of these collateral benefits. A fee structure for asylee adjustment of status should be formulated.

III. The increased fee assessment for a Refugee Travel Document should include an extension of the validity period for the Refugee Travel Document

The proposed rule emphasizes the virtues of fairness, service and efficiency. These values are not found in the current system of applying for and processing a RTD. Under the current system, an asylee needs to reapply for a RTD with a one-year period of validity. In order to do so, the asylee must return the current RTD. Therefore the actual time in which an asylee can use the Refugee Travel Document may be only 7 to 8 months based on a 4 or 5 month processing time.⁷ Even if the USCIS could process the RTD more quickly, certain countries will not place a visa stamp in RTDs within 3 months of expiration. (See attached affidavit from asylee)

Also, asylees need to use a RTD until they become a citizen which could take from five and a half years or longer.⁸ Therefore, an asylee must continually plan their travel

⁵ Interoffice Memorandum from Dr. Emilio T. Gonzalez, Director, USCIS, "Response to Recommendation #25, Employment Authorization Documents," June 20, 2006.

⁶ See Memorandum for Michael Pearson, Executive Associate Commissioner, Field Operations from Bo Cooper, General Counsel, Subject: Readmission of Asylees and Refugees Without Travel Documents," November 23, 1999 with Attachment (Attachment is an earlier memo from David Crosland, General Counsel with a citation to Paragraph 118 of the UNHCR Handbook, September 11, 1979.)

⁷ In the proposed rule, Table 3- Application and Petition Process Times, says that the processing time for Form I-131 is 1.97 months. In our experience, this is not a realistic processing time for RTDs, which is 1 of the 3 types of travel documents issued by the submission of the Form I-131.

⁸ Under the most generous estimated processing times it would take one year for the adjustment of status to be approved; four years wait until an application for citizenship is filed and then another six months for the approval of citizenship. Based on more realistic time frames, it is currently taking asylees two to three years to gain legal permanent residence status and at least a year to become citizens. Thus, an asylee possibly would have to use a RTD for a period of seven to eight years.

schedule and frequently incur the costs of a travel document. (See attached affidavit from asylee) A multi-year RTD would alleviate many of these problems.

On June 10, 2005 the USCIS Ombudsman, Prakash Khatri, recommended that USCIS revise the CFR to extend the validity for refugee travel documents from 1 to 10 years and establish a policy of adjudicating the I-131 within 6 weeks. In his recommendation, he mentioned some of the same issues as discussed above - the amount of time that asylees must wait to become citizens and the delays in processing requests for RTD which creates a need to frequently apply for a RTD and submit the card in advance, in effect limiting the use of the RTD.

The December 27, 2005 USCIS response to the recommendation rejected the recommendation for a multi-year document based on a misconception about the asylees's need for a card. Also, USCIS cited their intention to improve their processing time which would eliminate the need for a multi-year card.

The USCIS response fails to directly address the argument that asylees need to use a RTD not only when they are in asylee status, but also when they are lawful permanent residents. The Ombudsman's recommendation says that "maintaining asylum and refugee status prohibits an individual from using a passport issued by the country from which the individual has been granted protection."⁹

The government response rejects the use of a multi-year RTD and seems to ignore that asylees need to use the RTD until citizenship. The government response seems to imply that with the elimination of the cap on asylee adjustment, the process to gain permanent residence status will go much faster and therefore there is no need for a multi-year RTD.¹⁰ As mentioned above in Part II, asylees must continue to use a RTD until they achieve citizenship.¹¹

The other USCIS argument for rejecting a multi-year card is a promise of speedier processing times for the RTD. In our experience these goals have not been met. Even if they reach the 1.8 months average processing time mentioned in the USCIS response, asylees will continue to experience problems inherent in the use of a one-year card: lack of acceptance by some countries close to its expiration date, inability to use a card for the

⁹ Recommendation from the CIS Ombudsman to the Director, USCIS, "Recommendation to USCIS to (i) revise 8 CFR Section 223(a)(2) to extend the period of validity for refugee travel documents from 1 year to 10 years and (ii) establish the period of validity for application for refugee travel documents and reentry periods within 6 weeks, the same amount of time it takes a U.S. citizen to acquire a passport," June 10, 2005

¹⁰ "Again, however, having this document extend beyond their status could confuse customers as to when they need to file their applications for permanent residence. Many customers already do not file promptly and the resultant confusion a longer travel document might cause could exacerbate this problem. A delay in filing creates potential issues with respect to status in the interim." Letter to Mr. Prakash I. Khatri, USCIS Ombudsman, from Robert Divine, Acting Deputy Director, USCIS on December 27, 2005)

¹¹ See Bo Cooper Memo, FN 3. See also USCIS Fact Sheet, "Traveling Outside the US as an Asylum Applicant, an Asylee, or a Lawful Permanent Resident Who Obtained Such Status Based on Asylum Status," January 4, 2007.

full one year because of the need to return the card for renewal; and difficulty in traveling in emergencies.

Another argument that the NGO community has heard in discussions of multi-year RTDs is that there are security considerations. On February 15, 2007, USCIS announced a new RTD with enhanced security features which are counterfeit resistant.¹² Hopefully these improvements based on advances in the latest security technology will enable the USCIS to issue a secure multi-year card.

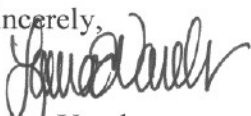
If the USCIS is truly serious about fairness, service and efficiency, it will extend the period of validity for refugee travel documents for the period of time, based on accurate processing time statistics that will allow asylees to gain citizenship.

On behalf of the asylum population we serve, we make the following recommendations:

- I. Continue fee waivers for asylees and other vulnerable populations using a bright-line fee waiver process; and institute a family cap for asylee families to enable them to become legal permanent residents and asylees as a family unit.
- II. Formulate a fee assessment for asylee adjustments that recognizes the type of collateral benefits they actually use.
- III. Issue a multi-year Refugee Travel Document so that USCIS's proposed fee increase reflects value, efficiency and fairness to its customers.

Thank you very much for allowing us the opportunity to comment on the proposed rule.

Sincerely,



Laura Varela
Director
Immigrant and Refugee Rights Project



Ruth Spivack
Outreach Coordinator

¹² USCIS Press Release: USCIS Reveals a New Look for Travel Booklets, February 15, 2007

Attachment from Comments of Washington Lawyers' Committee for Civil Rights and Urban Affairs on Docket No. USCIS 2006-06 (March 29, 2007)

Please note: Our client has asked that his name not be included on any public records, so we have prepared this version for use in the public record in addition to original signed affidavit which identifies him.

I, B.T., being duly sworn depose and say that the following is true and correct to the best of my knowledge and belief.

I am a seventy two year old man born in Addis Ababa, Ethiopia. I was granted political asylum on April 27, 2001 and received my green card in December 2004. I am eligible to apply for citizenship in September 2008 and hope and pray that I can do so before I die. My attorney has advised me that I must continue to use a Refugee Travel Document until I am a naturalized citizen. I am still working because I have two daughters in college.

I have applied for and received several Refugee Travel Documents since my grant of asylum. The first one was valid from June 1, 2001 until June 1, 2002. My latest Refugee Travel document is valid from February 2, 2007 until February 1, 2008.

I have had many difficulties with the Refugee Travel Document because it is expensive to maintain a valid Refugee Travel Document and the government processing time is unpredictable. It often takes four or five months to obtain a RTD and it makes it difficult to make plans.

When I came to the United States, my wife was very ill and living with my married daughter in Germany. After my grant of asylum, I was unable to see her before she died because I was unable to obtain a Refugee Travel Document in time. (I was unaware of the possibility of expedited processing.) She died in 2001 and I have always felt bad because it was not possible to travel to see her because I did not have a Refugee Travel Document.

When I applied for my latest Refugee Travel Document on December 7, 2006, I believed that I had sufficient time in order to receive it prior to my intended pilgrimage to the Holy Land scheduled for April 2007. However, I learned from my travel agent that in order to obtain a visa from Israel, I had to send a passport/travel document in February or I would not be able to join the group for the pilgrimage and I would lose some of my travel deposit. According to the on-line processing information, the application had not been approved and probably would not be approved until the end of April. I feared the worst, but fortunately, I was able to learn through an NGO inquiry at the Nebraska Service Center that my I-131 application had just been approved and would be delivered in time to enable me to obtain the necessary visa.

I still have family in Germany and Canada and always need to plan ahead in order to see them. Based on my prior experiences during my wife's final illness, I would like to

always have a Refugee Travel Document in hand so that I can travel in family emergencies and without having to plan trips months ahead. For me, even the current cost of to renew a Refugee Travel Document is expensive and I am unable to afford to maintain a valid Refugee Travel Document. With the anticipated fee increase, it will become even more difficult to do so.

When I use the Refugee Travel Document, I have found that some countries will not issue a visa if there is only three months validity remaining. In 2005, Germany, for instance, did not allow me to enter because my Refugee Travel Document was to expire in three months. Recently, the Netherlands would not issue me a transit visa for one night without financial guarantees because I was using a Refugee Travel Document.

Also, I find it troublesome that I need to turn in my old travel document four to five months ahead; thus limiting the use of the costly travel document to seven or eight months. A Refugee Travel Document of longer duration would solve many of the problems that I have described. With the increased fee for a Refugee Travel Document, I as a "customer" of the U.SCIS should receive more value for my money.

____(original signed)_____

____03/28/3007_____
Date