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Director, Regulatory Management Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Avenue, NW, 3rd floor
Washington D.C. 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:

On behalf of Legal Services of New Jersey, I am writing to oppose the increase to immigration and naturalization fees that U.S. Citizenship and Immigration Services (USCIS) proposed on February 1, 2007. Legal Services of New Jersey provides legal representation in civil cases for low-income New Jersey residents with income below 200% of the federal poverty line including many immigrants seeking regularize their status in the United States.

While we applaud USCIS efforts to increase the quality and efficiency of services as well as streamline applications and eliminate unnecessary fees, they do not justify the prohibitive fee increases proposed. These fee increases will create significant hardships for low income immigrants and create what would often amount to insurmountable barriers to filing the necessary applications.

Of particular concern are the proposed fees for naturalization and adjustment of status. The proposed increase in the naturalization fee from $330 to $595 means an increase of 80 percent. For a single adult living at 100 percent of the federal poverty line (FPL), the new naturalization fee—not including the biometrics fee required of each applicant—amounts to six percent of his or her yearly income or the entire earnings for a three week period.

More alarming still is the proposed increase in the adjustment of status fee from its current rate of $305 to $905. With the proposed fee increase and the biometric fee included in the cost to an applicant, the total fee is close to $1,000.

For a family of four with two children and an estimated income of 130 percent of the FPL, the cost of one application would cost nearly four percent of their annual income or two weeks of family paychecks. If such a family were to have to apply for three family members, one adult and two children, the proposed fees would consume in excess of ten percent of their annual income or five and half weeks of paychecks. Even at an income at 200 percent of FPL the application fee for one adult would constitute roughly two and a half percent of the family's annual income. If they were to apply for three family members, it would account for almost seven percent of their annual income—nearly three and a half weeks of work. Unfortunately, for many families this level of expenditure is unrealistic and families choose to apply for one family member at a time and wait until they can save the money needed to send for the rest of the family. The likely impact of such an expense and separation on the quality of life of a child is particularly alarming, especially if the family is already living paycheck-to-paycheck.

Indeed, New Jersey families at 130 and 200 percent of the federal poverty line are already living with incredible low-incomes given the cost of living in the state. A study prepared by LSNJ's Poverty Research Institute shows that the real cost of living for a family of three in New Jersey (composed of two adults and an infant) is around $41,000 a year or 255% of the federal poverty line. For a family of four (with two adults, one school-aged and one preschool aged child) the real cost of living in New Jersey is around $50,000 a year or 245% of the federal poverty line.

Without a doubt, these proposed fee increases impose an undue burden on legal and lawful immigrants eager to acquire permanent residency and citizenship in the United States. At the same time, immigrants are unlikely to be discouraged from continuing to look for economic opportunities in the U.S. It is, therefore, of no small concern that the imposition of these increased fees could prevent immigrants from seeking lawful and legal means to working and living within the United States. In effect, the proposed fees would likely counteract USCIS' intent of providing added safety and security for these immigrants.

USCIS argues that there it has no option but to raise fees in order to cover its costs. There are, however, no laws that require USCIS to fund operations entirely through fees. Indeed, USCIS has sought and received Congressional funding several times. Given the concerns for safety and security as well as the adverse impact and serious barriers the proposed fee increases will create for low-income immigrants it seems imperative that USCIS not ignore Congress as a source of funds.

Additionally, applicants for adjustment of status and other benefits under the INA are in need of a generous fee waiver system that reflects their financial reality as outlined above in the case of New Jersey's immigrant population. Such a system should apply not just to self-petition applications and naturalization, but to fees for work authorization, adjustment of status and other applications. This should include obtaining adjustment of status and permanent residence for those seeking to apply based on the following provisions:

1) Approved self-petitioners;
2) Registry applicants under INA §249;
3) Special Immigrant Juvenile applicants;
4) Approved Widow/er of U.S. citizens;
5) Asylees; and
6) T and U visa applicants.

The current system provides for such waivers, and it is crucial that these provisions not be abolished. Eliminating or restricting access to fee waivers for these applications will undermine Congress' goal to protect and provide secure status to immigrant survivors of domestic violence, unaccompanied minors, registry applicants, asylees, and survivors of other crimes.

USCIS' contention that public charge concerns make fee waivers inappropriate for those seeking adjustment of status is misplaced and inaccurate. Not only did Congress mandate access to self-petitioning for domestic violence survivors, it also smoothed the path to lawful permanent residence, including relaxing public charge considerations at the adjustment phase. Self-petitioners, those seeking Special Immigrant Juvenile status, U and T visa applicants, asylees and others should be able to overcome public charge concerns even if they obtain fee waivers.

USCIS also argues that regular family-based petitioners should be ineligible for fee waivers because they must submit affidavits of support. Given the visa quota system and processing backlogs, many regular family-based immigrant applicants who need fee waivers at the initial phase may be able to overcome public charge concerns by the time USCIS adjudicates their adjustment applications. This approach, in fact, comports with USCIS own instructions on considering public charge as a prospective test. Applicant choice, not inaccurate USCIS assumptions, should determine access to the fee waiver system. USCIS should retain the existing fee waiver system and not restrict it.

USCIS should wait to see what Congress enacts in the coming year before suggesting new fees. The new law may create a new stream of money. Moreover, USCIS should not rely solely on fees to support its operations. It should ask Congress for direct support instead, which Congress has provided in the past.

For all these reasons, the proposal to increase immigration fees and change the current fee waiver system is imprudent and will prove ineffective in accomplishing the goals of the DHS. Rather than shift the burden to selected groups of immigrants, we urge USCIS to reconsider this proposal, to retain the existing fee waiver system and fees, and to seek other sources of funding for its operations. Thank you for your consideration.

Sincerely,

Melville D. Miller, Jr.
President and General Counsel

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