

April 2, 2007

Director, Regulatory Management Division
US 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

On behalf of Bay Area Legal Aid, we are writing to strongly oppose the proposed changes in immigration and naturalization fees, the elimination of VAWA self-petitioning fees, and changes to the fee waiver system that US Citizenship and Immigration Services (USCIS) proposed on February 1, 2007.

Bay Area Legal Aid, the largest non-profit legal services program in the San Francisco Bay Area, provides direct legal services to low-income individuals in domestic violence, sexual assault, immigration, housing, public benefits and health access-related matters through offices in Alameda, Contra Costa, Marin/Napa, San Francisco, San Mateo and Santa Clara counties. Through our regional offices as well as through court-based temporary restraining order clinics we operate, we represent hundreds of abused immigrants each year, and while some are able to maintain employment during their crises, the vast majority of them at least temporarily suffer from economic hardship, particularly as they take the initial steps in trying to escape their abusive relationships. Assisting these individuals in becoming financially self-sufficient is one of our greatest priorities, since one of the primary reasons that domestic violence victims remain in (or return to) abusive relationships is their economic dependence upon their abusers.

Eliminating Fees for VAWA Self-Petitioners

Despite the fact that it would appear to benefit the immigrant survivors of domestic violence with whom we work, we oppose eliminating the self-petition fee, particularly in relationship to eliminating fee waivers as an option outside of the self-petitioning context, particularly because of the insurmountable obstacles the elimination of fee waivers would present in their obtaining other immigration benefits as they seek to legalize their status and improve their financial situation, such as I-765 employment authorization requests and/or I-485 adjustment of status petitions.

In addition, many victims of domestic violence gain status outside of the self-petitioning context, including through family-based immigration and employment. Further, self-petitioners who separate from their abusers may find protection in families and communities that will be harmed by the general fee increases, which in turn harms self-petitioners. Finally, some of our self-petitioners can afford to pay the fees. Since USCIS argues that it needs fees to ensure efficient adjudication, self-petitioners who can afford to pay the fees should do so. Those that cannot should be able to request a fee waiver.

Fair Fee and Waiver Structure

What self-petitioners need, like other immigrants, are a fee structure and a generous fee waiver system that allow a consideration of each applicant's individual financial reality. These principles should apply not just to self-petitioning, but to fees for work authorization, adjustment of status and other matters associated with obtaining self-petitioning status and permanent residence. This is how the current system works, and it works well for self-petitioners. Eliminating or restricting access to fee waivers for all related applications will undermine Congress' goal to protect and provide secure status to immigrant survivors of domestic violence and other crimes.

USCIS' suggestion that public charge concerns make fee waivers inappropriate for those seeking adjustment of status is inaccurate. Congress didn't just 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, refugees, asylees and others may be able to overcome public charge concerns even if they obtain fee waivers, particularly if they are able to obtain the employment authorization that is a critically important tool in their achieving financial self-sufficiency.

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, not restrict it.

Do Not Erect a Financial Fence to Regularizing Status

Many immigrants already struggle to pay immigration fees. The proposed increases in these fees, sometimes double the current fee, will create a financial fence to legalizing thousands of immigrants. Drastically enhanced fees, coupled with restrictions on fee waivers, will force many hard-working immigrants into undocumented status. These otherwise-eligible immigrants will become more vulnerable to exploitation and crime victimization and less able to contribute to our communities and formal economy. This result confounds attempts at immigration reform by forcing people to become undocumented instead of encouraging them to gain secure legal status.

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. Many organizations writing in opposition to the fee changes today would likely support your direct appropriations efforts.

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

Sincerely,

BAY AREA LEGAL AID

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