From: Eric Cohen [mailto:ecohen@ilrc.org]
Sent: Monday, April 02, 2007 12:47 AM
To: OSComments
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Importance: High

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:

The Immigrant Legal Resource Center (ILRC) would like to take this opportunity to express our strong opposition to the United States Citizenship and Immigration Services' (USCIS) proposal to increase several immigration and naturalization application fees, including the fees to initiate the naturalization process. The USCIS has proposed to adjust the current Examinations Fee schedule by amending 8 CFR part 103, Section 103.7 (b) (1); notice of the proposal was published in the February 1, 2007 Federal Register, Vol. 72, No. 21, DHS Docket No. USCIS 2006-0044 (hereinafter referred to as the "Federal Register notice").

The ILRC is a national non-profit immigration law and policy resource center that provides technical assistance, training, and practitioner guides to thousands of attorneys and paralegals working at hundreds of community based organizations and legal offices throughout the United States. Since 1979 the ILRC has been at the forefront nationally at helping organizations assist immigrants apply for virtually every type of immigration relief including naturalization, asylum, adjustment of status, NACARA, family visa petitions, family unity, and others. Every year the ILRC distributes over a thousand practitioner guides, educates over 5,000 practitioners and immigrants about the law, and gives individual advice on 4,000 immigration cases.

These comments are submitted in response to the USCIS Proposed Rule regarding "Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule."

I. Introduction

The ILRC's position as a national immigration law resource center with nearly 30 years of experience providing training, technical assistance, and practitioner guides to hundreds of organizations and practicing attorneys every year compels us to oppose and raise serious questions about the USCIS' fee proposal. Although we are concerned about all

the proposed increases in the fees, we are particularly concerned about the increase in the fee for filing the Form N-400 Application for Naturalization, which would raise the fee from $330 to $575.

Together with the proposed increase in the biometrics fee (from $70 to $80), the USCIS' fee hikes would raise the cost of initiating the naturalization process from $400 to $675, a 69% increase. We are deeply concerned that the USCIS has relied on questionable calculations to justify its immigration and naturalization fee hikes. We also believe that the proposed increases do not accurately reflect the cost of services being provided to applicants, and that the USCIS has taken into account costs that should not be charged to applicants. We also do not believe that the proposed increases are justified in light of the current quality of service provided by the agency or its proposed service enhancements. Finally, we believe the proposed increase in the fees for naturalization will place a significant burden on legal permanent residents pursuing U.S. citizenship, and is contrary to our national interest in promoting the integration of newcomers.

One of our goals as citizens is to build a strong democracy. In order to build a strong democracy we must include in the democratic process every person who is a U.S. citizen or is eligible to become a U.S. citizen. Yet, the DHS' proposed fee increase will make applying for naturalization impossible for thousands of would be citizens. Thus, this fee increase will have the unwanted effect of weakening our democracy. As Americans we cannot support such proposed fee increases and we ask that the DHS withdraw its proposed regulations on the fee increases. We urge the USCIS to pursue legislative changes and alternative sources of funding which will enable it to cover portions of the costs of its services before raising application fees.

II. The USCIS Has Relied on Questionable Calculations to Justify the Proposed Fee Increases, and the Increases Do Not Accurately Reflect the Cost of Services Being Provided to Applicants

The USCIS is authorized to charge fees for immigration and naturalization applications under the Section 286(m) of the Immigration and Nationality Act; in describing the legal authority to set the level of these fees, the USCIS also refers to Office of Management and Budget (OMB) Circular No. A-25, which directs federal agencies to charge the "full cost" of providing services when those services are provided to specific recipients. We are concerned that the USCIS has relied on questionable estimates and calculations in determining the level of its fee increases. We also believe that the increases proposed by the USCIS do not accurately reflect the cost of providing services to immigration and naturalization applicants, and imposes "surcharges" upon those applicants for services unrelated to the adjudication of their applications.

<u>"Completion Rates" May Measure Current Agency Inefficiencies:</u> In determining the full cost of providing services, the USCIS convened its Workload and Fee Projection Group, which conducted a review of the activities of costs of adjudication services funded through the Examinations Fee account. In assessing the cost of "Make Determination" on applications, which the USCIS characterizes as the largest processing

activity cost, it appears that the Workload and Fee Projection Group used a modeling convention that essentially took a "snapshot" of the USCIS' practices during September 2005-August 2006. This snapshot included "completion rates" which measure the average adjudicative time needed to perform a particular activity. Thus, in determining the cost of making determinations on applications, the USCIS used the actual time it took the USCIS to perform the various immigration adjudication and naturalization activities, with no analysis of whether the agency could operate its program more efficiently and for a reduced cost to the applicant paying a fee.

The impact of this methodology is of particular concern for applications where significant fee increases are being justified as a result of a "threefold increase in completion rates," as is the case with the Form N-400 (discussed in the Federal Register notice). The USCIS attributes most of the increases in completion rates to the additional time devoted to the expansion of background checks instituted in July 2002. However, we understand that many of these checks are background checks conducted through the Interagency Border Inspection System (IBIS). The USCIS notes that these checks were instituted nearly 5 years ago – we question why the agency has not found a way to improve its efficiency in making these checks in the past five years, so that it can reduce the adjudicative time spent on them.

Moreover, in determining the amount of any increase, the USCIS should take into account any cost-savings it will realize as a result of increased productivity or efficiencies it intends to realize in the coming fiscal years, such as those which may result from its enhanced staffing model, improved staff training, and upgrades to its technology infrastructure. In Section IV(E)(3) of the Federal Register notice, the USCIS describes an ambitious program of service, security and infrastructure enhancements for which it needs additional funds. We hope that these improvements will result in better management and more efficient use of its resources. We believe that the USCIS should demonstrate that is has taken into account the cost of processing immigration and naturalization applications under its enhanced processing systems in ascertaining the appropriate application fees.

Questionable Estimates of Application Volumes: In addition, we also question the estimates of application volume presented in Table 7, Section V (B) of the Federal Register notice, which the USCIS uses to calculate application unit costs. Generally, the USCIS projects a decrease in the volume of most applications; where increases are projected, the most significant are for the Form N-400 and the Form I-485.

However, based on our own experience with naturalization applicants and their representatives, and data from the USCIS, we have seen that naturalization applications increase dramatically immediately prior to the imposition of a fee hike, followed by a decline in applications. USCIS data reveal that the number of naturalization applications filed with the agency increased from 602,972 in Fiscal Year 2005 to 730,642 in FY 2006, an increase of 21%**.** Based on our discussions with naturalization applicants and their representatives, we know that many consider the current $400 application cost to be a

serious barrier for naturalization, and based on our past experiences, we believe that there will be a significant decline in applications after the increase takes effect.

We understand that the USCIS believes that after the imposition of fee increases, the number of applications will start to increase again or level off. However, the dollar amount of the proposed increase in the fees to initiate the naturalization process ($275) is the largest ever in USCIS history, and the $675 fee represents for many newcomer families the cost of a monthly rent payment, which is usually their highest household expenditure. It is very likely that many applicants will delay their applications or forego filing them entirely. As is the case with any business that raises prices too steeply beyond what its customers can afford, the USCIS may experience a decline in fee revenue that will make it impossible for the agency to cover its estimated costs.

Concerns About "Indirect Cost" Calculations: We also question the USCIS' calculations with respect to the $924 million in "indirect costs" described in Section VI of the Federal Register notice, which the agency defines as ''the ongoing administrative expenses of a business which cannot be attributed to any specific business activity, but are still necessary for the business to function.'' While identifying the total amount of these costs, it is unclear precisely how the USCIS incorporates them into its direct costs – it appears to make them a fixed percentage of the direct costs of each application, but the amount of this percentage or how it is incorporated seems vague. We believe the USCIS should provide explicit information on the amount of this percentage so that the public can better understand the relationship of indirect and direct costs in the USCIS' calculation of the increase.

"Additional Resource Requirements" Include Atypical Processing Costs: In determining the funding needed for the enhancements described in Section IV(E)(3), the USCIS identified $524.3 million in "additional resource requirements," which involve costs above the basic resources the agency claims it needs to meet its mission responsibilities. This $524.3 million represents one-quarter (26%) of the $1.988 billion the agency assigns to FY 2007/2008 application processing activities. However, a significant number of these "resource requirements" appear to be for expenses which are unusual and atypical of a normal processing year. These expenses include the establishment of a second, full-service card production facility ($34.3 million), and upgrades to the USCIS' information technology environment ($124.3 million). These infrastructure costs essentially represent an "investment" that should not be funded by current immigration and naturalization applicants and must not be included in the fee calculation. As discussed further below, the USCIS should seek appropriated funding from Congress to pay for these large atypical funding needs, and should remove these costs from the calculation of the naturalization fee. While the list of atypical expenses identified in the preceding paragraph is not exhaustive, those expenses alone total $158.6 million. The USCIS could subtract this amount from its fee calculations and pass the savings on to the customer.

Other FY 2008/2007 Costs Which Should Not Be Covered By Applicant Fees: In addition to its proposed infrastructure investments, the USCIS also includes in the FY 2007/2008 Immigration Examination Fee Account (IEFA) costs expenses which do not

just benefit applicants, but which also benefit everyone in the nation. In some cases, these are expenses for which other government agencies receive appropriated funds, or which are simply not the type of expenses which should be paid for by user fees. These expenses include increased payments to the FBI for fingerprint, name, and security checks which benefit national security; and processing of Freedom of Information Act requests, for which every other government agency receives appropriated monies. In addition, the costs for Internal Security and Investigative Operations for the investigation of misconduct of Federal and contract employees should not be borne by immigrant applicants. As is the case with infrastructure enhancement expenses, the USCIS should seek appropriated funding to cover these costs.

USCIS Should Seek Statutory Changes to Eliminate "Surcharges": As a result of USCIS and Congressional actions, the application fees paid by immigrants reflect "surcharges" for services unrelated to the processing of their applications. For example, Congress requires the USCIS to use the IEFA to run the asylum and refugee programs; according to the Federal Register notice announcing the fee increases, these program costs amount to 8% of the FY 2007/2008 IEFA costs. In assigning amounts to various fees to cover these costs, Table 11 in Section VIII of the Federal Register notice indicates that the USCIS has allocated $42 to each application for these programs. The USCIS itself refers to this additional component as a "surcharge" to its application fees.

An additional surcharge to the asylum/refugee costs is the surcharge for cases that qualify for waivers and exemptions. The USCIS estimates that the cost associated with its waivers/exemptions is $150 million, or 6% of the FY 2007/2008 IEFA costs. Table 11 indicates that the USCIS has allocated $30 to each application for these costs.

It is entirely appropriate to provide services to these categories of people at no cost to them. Such service is a part of our foreign policy and enables the United States to be in compliance with various international human rights treaties to which the United States is a signatory. However, it is inappropriate for immigrants who are paying for other immigration and naturalization processing services to pay for these unrelated services. Congress should support the handling of refugee and asylee cases; therefore, we emphasize that under no circumstances should an application fee be charged to applicants for refugee or asylum status.

Although the USCIS does not control Congress, it is the USCIS' responsibility to present a strong case to our nation's legislators as to why the Examinations Fee Account should only be used for services for which it charges fees. The USCIS should make its case to Congress and allow Congress time to act upon it before implementing its proposed fee hikes.

III. The USCIS' Proposed Naturalization Increases Are Not Justified in Light of the Current Quality of Service Provided by the Agency or its Proposed Enhancements

The fees for initiating the naturalization process have been soaring since 1991, when newcomers paid $90 to apply for U.S. citizenship. While the USCIS has made improvements in the quality of its services, it still needs to make significant progress. The agency has definitely reduced its naturalization backlogs and processing times – in the late 1990's, applicants confronted an average wait of about two years, and the agency now estimates that the average processing time is about seven months. However, there are still a substantial number of naturalization applicants who have been waiting security clearances for years, and the agency has been subject to litigation over some of these cases.

Moreover, in USCIS materials describing the fee increase, one justification offered is that the agency will be able to reduce Form N-400 average processing times from seven to five months. To the extent that reduced processing time is one measure of the quality of service applicants receive, the USCIS is essentially proposing a 69% increase in costs to achieve a 40% increase in service. We do not believe that processing time reduction justifies the enormous burden that the fee increase will impose on naturalization applicants.

IV. The USCIS Should Seek Congressional Appropriations to More Effectively Fund Immigration and Application Naturalization Activities

For most of our country's history, the USCIS did not charge for immigration adjudication and naturalization services. In 1968, the INS began charging fees for such services but the fees were deposited in the General Treasury Fund until 1989. During that period, Congress appropriated funds to the USCIS for immigration adjudication and naturalization services. It has only been for the last 18 years that the fees deposited in the Examinations Fee Account have been essentially the "sole source of funding" for immigration adjudication and naturalization services.

There is no reason why Congress is prevented from appropriating funds for immigration and naturalization services, and there are many reasons why the USCIS should seek such funding from Congress. In fact, as the USCIS itself acknowledges in Section III(C) of the Federal Register notice, for the past several years, Congress did appropriate monies as part of a five-year effort to reduce application backlogs, and the agency specifically mentions appropriations in FY 2006 ($115 million), and FY 2007 (about $182 million). Yet for FY 2008, the agency is now asking for only $30 million in appropriated monies, and does not envision these funds as a significant source of revenue that will allow it to reduce application fees.

We commend the USCIS for its efforts to articulate a comprehensive vision of the infrastructure and process enhancements it believes are necessary to "Build a 21st Century Immigration Service," as described in the press materials disseminated by the agency. We agree that many of these enhancements are long overdue, and that they will involve some fundamental changes in how the agency operates its business. But we are bewildered by the agency's reluctance to approach and make its case to Congress to obtain new appropriated funding for an agency overhaul. Congress was willing to

appropriate monies when the USCIS faced the extraordinary challenge of reducing application backlogs. The USCIS now appears to face a similar challenge in making fundamental improvements that require a substantial investment, and it should demonstrate the leadership necessary to enable the agency to meet these challenges by requesting Congressional funding to supplement fee revenue. Additionally, as noted above, the USCIS should seek legislative changes that would enable appropriations to be used to cover the cost of adjudicating refugee and asylee cases, as well as waiver and exemption expenses; such costs should not be covered by "surcharges" to naturalization applicants.

We are particularly concerned about the USCIS' public characterization of the statutory "mandate" that it claims requires it to recover the full costs of application services from fees and prevents it from seeking Congressional appropriations. The USCIS refers to Section 286(m) of the Immigration and Nationality Act to support that claim; however, this section specifically states that application fees "*may* be set at a level that will ensure recovery of the full costs of providing all such services." This language does not require the agency to do so.

The USCIS also makes reference to OMB Circular No. A-25, which establishes federal policies for user fees assessed for government services that convey "special benefits" to recipients beyond those accruing to the general public. This Circular does state a general policy that that user charges must be sufficient to recover the full costs of the services, but in Section 6(c)(2)(b), it also explicitly allows agency heads to make exceptions to the general policy if any condition exists that the agency head believes justifies an exception. First, insofar as this circular is an administrative policy memorandum, it does not have the force of law. Moreover, as discussed in more detail below, we believe that the USCIS would be well-justified in making an exception to the Circular's general policy in light of the significant burden that the fee increase would impose on legal permanent residents who are pursuing U.S. Citizenship, and the positive benefits of increased naturalization to our nation.

IV. USCIS' Proposed Fee Waiver Policy is Unfair and Too Restrictive.

Under current policy, individuals and families who cannot afford filing fees can apply for fee waivers. The proposed rule, however, seeks to restrict the availability of fee waivers to only certain types of applications. In particular, adjustment applicants would no longer be able to seek waivers. USCIS' rationale for this change relies on the public charge ground for inadmissibility. This ground, however, does not apply to asylee adjustment applicants; yet these applicants would not be allowed to seek fee waivers. Nor does the public charge ground apply to adjustment applicants under section 202 of NACARA, HRIFA, or registry. Categorically barring adjustment applicants from seeking fee waivers would in effect deny indigent asylees and others who are exempt from public charge considerations the opportunity to gain adjustment of status.

On the other hand, USCIS proposes to waive fees for all VAWA self-petitions and applications for T visas. Yet, under the proposed rule, VAWA self-petitioners would still

be required to pay the fee for their adjustment of status, and could not get this fee waived. This is completely at odds with whatever humanitarian concerns may underlie the fee exemption for I-360s filed under VAWA—or reveals that these concerns have nothing to do with the change.

More generally, USCIS should explain in more detail why fee waivers should no longer be available for each specific application for which it proposes to close off waiver availability. Why would waivers no longer be available for I-821 applications for TPS, when the public charge ground may be waived for TPS applicants? What is the justification for closing off fee waivers for I-824s? Again, a more detailed explanation would allow the public to provide a more informed evaluation of the proposal. The ILRC proposes that fee waivers be expanded, not curtailed, as part of any proposed fee increase.

V. The Proposed Increase in Naturalization Fees Will Place a Significant Burden on Legal Permanent Residents Pursuing U.S. Citizenship, and is Contrary to the Public Interest in Newcomer Integration and Building a Stronger Democracy

The proposed increase will impose a prohibitive financial burden on countless immigrant families. According to 2000 U.S. Census data, about one out of three of our nation's non-citizen households (36%) have annual incomes of less than $25,000. According to a March 2007 report released by the Pew Hispanic Center, "Growing Share of Immigrants Choosing to Naturalize," 24% of legal permanent residents eligible to naturalize - or one out of four – have family incomes below the poverty line. Mexican newcomers eligible to naturalize face even more significant financial challenges: 32%, or nearly one out of three, have family incomes below the poverty line. With the increase proposed by the USCIS, a family of four would confront a bill amounting to $2,700.

Applicants for U.S. citizenship already incur substantial costs in completing the naturalization process - they must pay for such costs as application assistance, legal services, photographs, and English and civics educational services. Currently, many newcomers simply cannot afford to become U.S. citizens; the proposed fee increase will put naturalization beyond the reach of far more immigrants, including many of the most vulnerable members of our community such as the elderly and the disabled.

The USCIS is proposing to raise the fees to initiate the U.S. citizenship process by 69% at a time when greater naturalization is critical to the future of our nation. Legal permanent residents who embrace U.S. citizenship are motivated by a desire to demonstrate their commitment to this country, and when they gain the right to become full participants in the political process, our democracy becomes stronger and more representative. Greater naturalization also makes a wider group of skilled and talented workers available in our workforce for positions that are barred to non-citizens.

President George W. Bush and the USCIS recognize that the naturalization of legal permanent residents is in the best interests of this country. In his State of the Union address, the President emphasized the value of upholding the nation's tradition that

welcomes and "assimilates" new arrivals. In June 2006, by Executive Order, the President established that Task Force on New Americans, in order to strengthen the efforts of the Department of Homeland Security and federal, state, and local agencies to help "legal immigrants…fully become Americans." The Executive Order charges the Task Force with making recommendations to the President on actions that will enhance cooperation between federal agencies and among federal, state and local authorities responsible for the integration of legal permanent residents. However, placing naturalization beyond the reach of many of our nation's newcomers is completely contrary to the spirit of the Administration's civic integration efforts, and will ultimately undermine them. We cannot claim that we are truly committed to encouraging legal permanent residents to embrace American civic values when we simultaneously impose an exorbitant and unfair price tag on the cost of U.S. citizenship.

V. Conclusion

As our nation looks to its future, the economic, social and civic contributions of immigrants will play a key role in our growth and prosperity. The fees that we charge immigration and naturalization applicants are an important component of our overall immigration policies – policies which should be fair and which should further our nation's interest in a vibrant and vital democracy. However, the USCIS' proposed fee increases are a serious obstacle to achieving these goals. The magnitude of the fee hikes are not justified in light of the quality of services received by applicants. The agency has not pursued available alternatives to more effectively fund its activities. The fee increases would impose an unfair burden on newcomer families with limited resources who would have to defer or even forego their dream of U.S. citizenship. In light of the foregoing concerns, we believe that the USCIS cannot justify its increases in immigration and naturalization fees, and we urge the agency to withdraw or reconsider its proposal.

Thank you for considering our comments. Please do not hesitate to contact me at 415-255-9499, extension 264 or ecohen@ilrc.org if you have any questions or if we can be of further assistance during the comment process.

Sincerely,

Eric Cohen
Legal Director