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Director, Regulatory Management Division
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Department of Homeland Security
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Director, Regulatory Management Division:

I am an attorney practicing in the field of immigration law, and I have significant experience with the immigration process. I am very dismayed by the Immigration Service's proposal to dramatically increase its fees. The justifications for the significant increases are founded on unsound premises. The logic is faulty and the effects will lead to more inefficiencies, delays, and unwieldy bureaucracy.

First, management and tracking of immigrants is a government function, much like police protection or fire protection and it cannot be treated as a free market sale of services to immigrants. The benefits of documenting immigrants inure to the American public as a whole, not only to the immigrants, American citizens, and businesses that petition for immigrants. The premise that the immigrants themselves must pay to be documented does not properly identify who really benefits from the immigration system. Paying some fees for the services is completely warranted, but foisting the cost of documenting immigrants on a narrow sector of American society seems more vindictive than logical.

The details of the Immigration Service's proposal reveal many inefficiencies in their processes. I will not catalogue them all here. Suffice it to say I have witnessed the inefficiencies in practice as well as seeing them in the proposal. Even if applicant fees in theory are supposed to pay for the services, the Immigration Service should not be allowed to function so inefficiently and expect to pass the costs of its inefficiency onto the victims of its inefficiency. It seems to me the Immigration Service is saying, "we can't function within our budget, so give us more."

Activities Belonging under Appropriated Funds

Despite what seems to be the Service's impression to the contrary, the statute does not require that it fund all its operations via fees. Under INA section 286(m), "fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services."

The authorizing statute limits the fee-funding scope to "providing adjudication and naturalization services" and administering the fees. It does not authorize fees to cover other activities. Many of the costs anticipated by this fee regulation do not belong in the fee account. The

Service has chosen to expand its mission beyond adjudication and naturalization and enter into the realm of law enforcement. There is no statutory mandate that applicants pay for this function.

Also, the language of the statute is permissive, not mandatory. Fees "may" be set at a level... The Service must be held accountable to justify why the fees should be set at any given level, and this the Service has failed to do.

When the Department of Homeland Security was established, Congress consciously and deliberately separated the Department's adjudicative arm (USCIS) from its enforcement arm (what has become ICE and CBP). The intent was to keep the functions separate. Even if the agency has strayed from that intent in its operations, at a minimum the funding should be kept separate.

The Service should seek appropriated funds at a level sufficient to pay for the additional services and processes that, in turn, benefit everyone.

For example, increased payments to the FBI for fingerprint, name, and security checks which benefit national security; processing of Freedom of Information Act requests, for which every other government agency receives appropriated funds; agency administration with nine headquarters offices and field locations worldwide; and information technology enhancements, should not be borne by applicants alone. In addition, funding for Internal Security and Investigative Operations for the investigation of misconduct of Federal and contract employees should not benefit from user fees.

Impact of the Fee Increases

The fee increases will also effectively impose a means test and cost barrier on the ability of immigrants to attain benefits for which they are eligible. This appears to me to be contrary to our national values. The United States is built on the principle of equality and inherent value of each individual, both native born and immigrant. No one can seriously suggest that immigrants do not fulfill a vital role in our economy and our society. We should not be erecting monetary barriers to their achieving immigration benefits and ultimately U.S. citizenship when they are eligible.

I am afraid the significant fee increase will "price immigrants out of the market." In reality many immigrants have trouble paying the fees now. I believe in practice, such expensive fees will lead many to remain illegal and undocumented, not for lack of eligibility, but simply because of cost.

In point of fact, deportations will increase and that arm of the bureaucracy including the ancillary detention function and immigration court docket will need to expand.

Another side effect will be an increase in poorly prepared applications which will increase government processing times while adjudicators become the assistants to the self represented immigrants. If the application fees are so expensive, the applicants will not be able to afford to pay someone with expertise to help them prepare applications. Adjudicators will be forced into the role of assistant preparers, or deny benefits if they are unwilling or frustrated in that role. I see this now, when those who incorrectly prepared their own applications come to me after their

first attempt. They wind up filing twice, thereby doubling the caseload of the Service for that particular immigrant. That is if they are lucky enough to get a second chance. Presumably there are those that do not get a second chance, but get put into deportation instead after a lengthy and messy adjudication process. Or they may simply believe themselves ineligible and not seek a second chance, "floating" aimlessly and undocumented. Again, the effect is an increase in eligible immigrants who will not get benefits but who are eventually diverted into the deportation channels.

Finally, the immigration process continues to be plagued by inconsistent and inefficient adjudication. There should be no fee increase until the Service is able to articulate a detailed and concrete plan which demonstrates a real commitment to the elimination of inconsistent and inefficient adjudication. Such a plan should include rulemaking and training, tracking of adjudications, and a system of accountability. The U.S. government should foot the bill for its government functions and spread the cost to the American taxpayers as a whole.

Significant numbers of residency and citizenship applications have been awaiting security clearances for years. The backlog on obtaining these clearances continues to increase, preventing larger and larger numbers of people from obtaining lawful permanent residence or U.S. citizenship. And, recently, the Service announced that it no longer will expedite clearances when mandamus actions are filed on these long-stalled applications. This, in turn, will increase overall costs for the Service in the form of costs for defending these suits (including paying attorney fees).

In sum, the Service has failed to logically and legally justify these fee increases and the whole proposal should be withdrawn and reconsidered.

Sincerely,

Michael R. Stahl
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