From: Susana Martinez [mailto:SMartinez@lafla.org]
Sent: Monday, April 02, 2007 11:27 AM
To: OSComments
Subject: Docket #USCIS-2006-0044

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 the Legal Aid Foundation of Los Angeles, I am writing to strongly oppose the increase to 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.

The Legal Aid Foundation of Los Angeles (LAFLA) is the frontline law firm for low-income people in Los Angeles. LAFLA promotes access to justice, strengthens communities, fights discrimination, and effects systemic change through representation, advocacy, and community education. LAFLA assists undocumented victims of crime with immigration relief that is available to them; specifically we assist victims with petitions under the Violence Against Women Act (VAWA), U visas, T visas, asylum and naturalization.

Eliminating Fees for VAWA Self-petitioners
While we work with immigrant survivors of domestic violence and other crimes, we oppose eliminating the self-petition fee, particularly in relationship to eliminating fee waivers as an option outside of the self-petitioning context.

First of all, 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 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.

Do Not Erect a Financial Fence to Legal Immigration Status

Many of the immigrants and refugees we work with on a daily basis already struggle to pay immigration fees. The steep increases proposed by USCIS, which in some cases double the current fee, would put the goals of gaining permanent resident status, reuniting with family members, and ultimately becoming a US citizen farther out of reach. 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.

The proposed fee for naturalization is particularly jarring. As recently as 1998, the cost to apply for citizenship was $95. In 2002, after the Bush Administration took office, the costs (including biometric fees) went up from $250 to $310. The total fees are now $400, a fourfold increase in the past eight years. Now USCIS is proposing a further increase of 70%, to $675. An immigrant working at a minimum-wage job would need to work for more than three weeks and save all of his earnings in order to pay this fee.

Even more startling is the proposed cost of filing for adjustment of status, which for many immigrants is the first step on the road leading to US citizenship. That application has risen from $130 in 1998 to $325 today, plus $75 for biometrics. Under the proposed rule, the price will rise to $905 plus $80 for biometrics. In other words, it will cost nearly $1,000 for an immigrant to get a green card and start the five-year countdown to citizenship. A minimum-wage immigrant worker would need to save a full month's pay to afford the proposed fee.

Part of the justification for such a huge increase in the cost of obtaining a green card is that USCIS will no longer charge fees for "interim benefits" associated with an application for a green card, such as employment authorization and permission to travel abroad. Because of the costs of these interim benefit applications, USCIS estimates that the real cost of an adjustment application is currently $800 and therefore, the increase is only $105 over what persons pay today. These interim benefits were necessary when USCIS took several years to process adjustment applications. However, USCIS states that it "has already substantially improved service levels, achieving the President's goal of six months processing times for immigration applications in October of 2006." (Building an Immigration Service for the 21st Century). If this is true that USCIS has achieved a six month processing time, the need for interim benefits has been eliminated, for the most part and the real cost of an adjustment application is not $800 as USCIS states. The cost is much less and therefore, the increase in the fee is not $105 as USCIS states, it is much greater. Additionally, the experience at our office is that USCIS has decreased its processing time and is processing most adjustment applications within 6 months. Therefore, as previously stated, USCIS's statement that the fee increase for adjustment applications is only $105 is not accurate.

USCIS claims that the fee increase is necessary to improve service. USCIS definitely needs to improve service, as shown by the continuing backlogs in application processing

and the months-long (even years-long) delays caused by security checks. Last October, the Government Accountability Office reported that the agency had lost track of 110,000 files needed to process citizenship cases. We applaud USCIS's efforts to improve service. We nevertheless believe that the burden of paying for such improvements should not rest solely with immigrants who are already struggling to pay agency costs and receiving poor service.

Fair Fee and Waiver Structure

The proposal to increase fees by such large percentages is especially alarming given that USCIS has never developed an application form for needy persons to request a fee waiver. USCIS states that it proposes to modify and clarify eligibility for an individual fee waiver but it does not clarify anything. It does not propose to develop an application form. And it does not state anything different than what has been stated in past field guidance memoranda. See Interim Field Guidance on granting fee waivers pursuant to 8 CFR 103.7(c) issued by Michael A. Pearson. This field guidance issued in 1998 lists the factors that USCIS will consider in adjudicating fee waiver requests. These are the same factors that USCIS lists again in this most current fee increase proposal. The only modification that USCIS proposes with regards to fee waivers is the elimination of them for certain applications.

USCIS gives no information about how many fee waivers it grants nor any information on how it adjudicates fee waivers. Given that USCIS states that there has been an increase in fee waivers, both in volume and as a percentage of applications filed and it states that it expects to receive more fee waiver requests after fees are increased, it is incumbent on USCIS to establish a clear manner for persons to request fee waivers and clear standards on how it grants fee waiver requests.

The proposal to eliminate fee waivers for certain applications is also particularly alarming. USCIS proposes to eliminate few waivers for form I-485, applications to adjust status. Our agency handles hundreds of cases a year that are filed under the immigration provisions of the Violence Against Women Act and many of these clients cannot afford to pay the fee for form I-485. When appropriate, applicants request a fee waiver. The elimination of fee waivers for adjustment applications would eliminate the ability of many of these vulnerable immigrants to adjust their status and continue on their path of self-sufficiency and citizenship and is a mistake. USCIS argues, in the proposed rule that it is inconsistent to allow for fee waivers for adjustment applications because applicants must establish that they are not a public charge. This argument does not apply to persons who have approved I-360s as battered spouses or children. Such persons are VAWA self-petitioners and under INA section 212(a)(4)(C)(i) applicants who are adjusting based on an approved self-petition are exempt from the public charge ground of inadmissibility. In fact, Congress has specifically allowed VAWA self-petitioners to qualify and receive public benefits, including cash aid, in order to aid in their escape of the battering situation. Further, their receipt of public benefits is not a factor to be considered when determining admissibility or eligibility for an immigrant visa. INA section 212(s).

Refugees, asylees, and registry applicants are also exempt from establishing that they are not likely to become a public charge.

USCIS states that a fee waiver based on inability to pay implicates the public charge ground of inadmissibility. This is not necessarily true. Establishing inability to pay and obtaining a fee waiver does not necessarily mean that the applicant will not be able to establish that he is not a public charge. This principle was recognized in the Interim Field Guidance on granting fee waivers pursuant to 8 CFR 103.7(c) issued by Michael A. Pearson. Determination of whether someone is likely to become a public charge is a prospective test. Because someone cannot pay a fee now does not necessarily mean that he will not be self-sufficient in the future. Given the visa quota system and processing backlogs, many regular family-based immigrant applicants who need fee waivers at the time of application may be able to overcome public charge concerns by the time USCIS adjudicates their adjustment applications.

What self-petitioners need, like other immigrants, are a fee structure and a generous fee waiver system that reflect their 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 should retain and improve the existing fee waiver system, not restrict it.

Most basically, immigration and citizenship are public goods that benefit our entire country and that we as a nation should help pay for. Immigrants bring their talent and hard work to our economy. They pay taxes and help revitalize our communities. In becoming citizens, immigrants demonstrate their strong commitment to their new home country by learning English, gaining knowledge about American history and government, and swearing allegiance to the United States. It is little wonder that newly naturalized citizens, eager to participate in our democracy, consistently vote at higher rates than other citizens. We should be encouraging immigrants to become part of our community by gaining legal status and becoming citizens, not setting up barriers that block their path and keep them out.

USCIS argues that it has no other option than raising fees if it wants to cover its costs. In fact, there are no laws that require USCIS to fund all of its operations through fees. Nothing prevents USCIS from pursuing other sources of revenue, including asking Congress for appropriations. Indeed, USCIS has sought and received Congressional funding several times in the past

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,

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