Elizabeth Streefland
4050 Olson Memorial Hwy #245
Golden Valley, MN 55422-5353

April 2, 2007

Director, Regulatory Management Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Ave. NW, 3d Floor
Washington, DC 20529

Director, Regulatory Management Division:

As the chapter chair of the Minnesota/Dakotas chapter of the American Immigration Lawyer's association, I am writing to express my chapter's concern and disapproval of the proposed fee increases for the following reasons:

Questionable Calculations

The premises underlying the calculations shown in the Activity-Based Costing analysis in the proposed rulemaking appear to be flawed. Table 9 lists processing times for forms in locations that have no jurisdiction to process those form types. For instance, local offices no longer have jurisdiction to process Forms I-129 (.09 hours listed), I-129F (4.98 hours listed), I-140 (2.00 hours listed), I-539 (1.32 hours listed) and I-829 (4.45 hours listed), but local office completion rates are listed for those form types. Conversely, Forms N-470 are filed and processed at local offices, but 1.91 hours is listed as a completion rate for Service Centers.

At Section X, the Service discusses a threefold increase in completion rates for a number of application types, claiming that most of the increases are "associated with the additional time devoted to the expansion of background checks." This makes no sense. Are checks being run on both the I-140s and I-485s when they are filed concurrently? From a cost and efficiency standpoint, why is the Service conducting background checks on non-concurrently filed I-140 petitions? What can the Service do with that information, since the I-140 confers no benefit until an adjustment of status or immigrant visa application is filed? Is it turned over to law enforcement? If that is the case, why is that check not being funded as a law enforcement activity since, again, there is no immigration-related reason to run a check on an I-140?

It has been more than five years since IBIS checks were introduced across the board to filings. Surely the Service has found a more efficient means to conduct them now than it used in the initial, post 9/11, process? If so, a threefold increase in completion rates for I-140s, I-129Fs or I-751s hardly seems accurate.

In addition, the data for "Make Determination" costs do not appear to correspond in any logical manner with the Completion Rate data. For instance, why are the "Make Determination" costs for I-360s calculated at

$2,268 when the Completion Rates are not significantly higher than for other form types? As another example, why are I-765 "Make Determination" costs significantly higher than I-90 costs, while I-765 completion rates are much lower than I-90 completion rates? Why are I-102 and I-129 "Make Determination" costs the same when their completion rates are very different (as would be expected for these vastly different adjudication jobs)?

Also, there is some question as to whether the Service is fully accounting for its other revenues. It dismisses as a "smaller, specific" account the monies received through the anti-fraud fee. However, the agency's 2006 budget request estimated annual revenues from this fee at $44 million. The proposal requests from the Immigration Examination Fee Account (IFEA) a sum of more than $31 million to fund the Fraud Detection and National Security Division without mentioning the monies from the anti-fraud fee. Where has that money gone?

Fee Waivers

The Service announces in the rulemaking its intention to waive fees on a blanket basis for VAWA I-360 petitions. Even as the Service proposes to waive these fees, it proposes to eliminate any possibility of fee waiver for adjustment of status applications. Thus, while waiving a $375 fee, the proposal would foreclose all possibility of waiver of the higher, $905 fee (plus $805/905 per person for any children involved) for this most vulnerable group of applicants. Relief will become out of the reach of many of the people VAWA was enacted to protect.

The Service proposes to include in the adjustment of status fee increase the fees for employment authorization and advance parole applications. However, not all I-485 applicants wish to obtain these ancillary benefits.

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.

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.

The fee increases will effectively impose a means test on the ability of immigrants to attain U.S. citizenship, which is contrary to our national values. We should not be erecting monetary barriers to their achieving U.S. citizenship.

The immigration process continues to be plagued by inconsistent and inefficient adjudication. These problems result in part from the agency's inability to issue regulations on substantive issues that would provide adjudicators with clear guidance. Indeed, since its inception, USCIS has been unable to produce more than one or two regulations that were not related to revenues or required by judicial order, despite a multitude of laws that scream out for regulatory implementation.

Also, significant numbers of I-485 and N-400 cases have been awaiting security clearances for years. 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 EAJA fees).

Many foreign nationals in the United States, whether they are in status or out of status, will not be able to afford the increased filing fees and will therefore delay filing their adjustment of status applications. Many may not be able to file the adjustment applications at all or will only be able to file the applications for some family members but not all of the members of the family. For a typical family of four, filing fees for adjustment will cost approximately $3940 plus $1360 for annual employment authorization applications if there is a delay in the security checks. Consequently, these middle income families who need to save for the filing fees will remain living in the United States without undergoing any type of security check. Additionally, undocumented families will remain in hiding, possibly using false identification, because of their inability to pay the increased filing fees. Both of these situations will frustrate one of the main security concerns of the state and federal governments -- the proper identification and background checks of its residents. Increasing the filing fees will compound these security problems because large number of people will delay or avoid going through the security checks due to the expense of filing of adjustment of status.

The proposed fee increase would undoubtedly discourage immigrant communities from seeking legal solutions to their immigration circumstances. Such increases would stunt all efforts to encourage people

to naturalize and to petition for their family members already present in the United States because a significant percentage of immigrants belong to low-income households that cannot absorb any more costs associated with legalizing their family members.

The proposed fee increase would have a tremendous adverse impact on legitimate sources of immigration legal services. This is because the economic demand imposed by this fee increase on immigrant families will likely lead even greater numbers of them into the hands of predatory and unregulated sources of â€œhelpâ€ , often known as â€œnotariosâ€ , and will make more families vulnerable to cheaper, yet unreliable, services. An increase in predatory and unregulated services to the community will unequivocally result in a flood of frivolous, fraudulent and defective case filings to USCIS.

The proposed fee increase would discourage undocumented immigrants with viable immigration cases to seek legal and legitimate solutions because the economic burden of doing would make it prohibitive. In addition to proliferating predatory sources of non-legal services, this will also mean a growth in the underground markets for fraudulent and false documents, identity theft and other sources of palliative solutions to immigration problems.

Sincerely,

Elizabeth M. Streefland
612-605-1199