IMMIGRANT LEGAL ADVOCACY PROJECT

April 2, 2007

Sent by E-mail to OSComments@dhs.gov.

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 Immigrant Legal Advocacy Project (ILAP), I am writing to strongly oppose the proposed increases of immigration and naturalization fees contained in the proposed rule that US Citizenship and Immigration Services (USCIS) published in the Federal Register on February 1, 2007. 72 FR 4888 (Feb. 1, 2007) ("Proposed Rule").

ILAP is Maine's only nonprofit provider of immigration legal aid, and serves over 2000 low-income Maine residents statewide each year. It is a core concern of ILAP's that all immigrants and their U.S. citizen family members, not just wealthy ones, have access to the ability to apply for naturalization, lawful permanent resident status, employment authorization, and other immigration and naturalization benefits.

Immigration filing fees are already a barrier to ILAP's low-income clients who seek our help to apply for immigration benefits for which they are eligible, even at the current fee structure. The extraordinary and unprecedented fee increases of the proposed rule would have a devastating impact on the ability of low-income immigrants and their family members to apply for immigration and naturalization benefits. The magnitude of the increases, considered by themselves and even more so in conjunction with past increases, cannot be considered fair or reasonable by any standard. Moreover, the rule proposes that going forward, fees will again increase at least once every two years. Even under the fee schedule now in effect, ILAP's low to middle income immigrants already must sometimes save money for months before they can afford the filing fees for many USCIS applications. The proposed fees will effectively cause many immigrants to delay or give up on improving their immigration status, and their concommittant ability to function as fully enfranchised members of their United States community.

For example, the fee for the N-400 application for naturalization would jump from $330 to $595, an increase of over 80 percent. The new fee would be a 526 percent increase over the $95 fee for this application just ten years ago, and almost a ninefold increase over the $60 1990 fee, even without taking into account the biometrics fee that did not exist then.

Under the proposed rule fees for most other benefits would go up in a comparable fashion. The proposed increases for the I-485 adjustment of status application is particularly

outrageous, increasing nearly threefold, from $325 to $905. These increases would place huge obstacles in the way of families seeking to obtain citizenship, permanent residence, or other critical benefits for which they are eligible.

Moreover, the methods used to arrive at the fee increases appear to include a number of flawed assumptions that violate the general principles of the Independent Offices Appropriations Act (IOAA), 31 U.S.C. § 9701, that fees must be fair and related to the cost of providing a benefit. While Congress has provided that fees collected should ensure recovery of the full costs of providing adjudication and naturalization services, including the costs of services provided free of charge to asylum applicants or other immigrants (INA § 286(m)), the proposed rule's calculations exceed these limits and instead serve to grossly inflate the fee.

For example, USCIS's compilation of costs to be offset by fees includes a long wish-list of "enhancements" that require massive investment. See, e.g., Section IV.D.3 of the proposed rule. While these improvements may be desirable, they also will take time to realize, and will provide no benefit at all to the immigrants who will be forced to invest in them when they apply for benefits once a new fee schedule is put in effect. These kind of long-term improvements are precisely the kinds of expenditures that should come from congressional appropriations of public funds, rather than from fees. To expect today's applicants for immigration benefits to shoulder the costs of every long-term improvement that the agency deems desirable, despite the fact that no benefit will accrue to them, is wholly unreasonable. This method of fee calculation in effect imposes a tax, rather than a reasonable fee.

Another defect in the calculation is illustrated in the rationale for the particularly great increase in the fee for the I-485 adjustment of status application. USCIS proposes to have this fee encompass the cost of "interim benefits" – adjudication of applications for employment authorization and grants of advance parole for trips abroad while the adjustment application is pending – rather than continuing to charge separate fees for these adjudications. There is a kernel of merit in the concept underlying this proposal – were the agency to provide adjustment applicants with employment authorization and permission to travel immediately upon receipt of the I-485 applications for the duration of the time their adjustment applications are pending, it would greatly streamline costs and workload. But this proposal fails to realize that concept, instead retaining the requirement that adjustment applicants apply for these interim benefits as needed. Thus the workload remains, and the cost remains.

Moreover, the proposed rule, by incorporating the cost of "interim benefits" into the I-485 fee, would charge <u>all</u> adjustment applicants for the costs of adjudicating employment authorization and advance parole applications, when many adjustment applicants never use these benefits. For example, asylees who adjust are employment authorized incident to their asylee status and do not need a work permit while their I-485 application is pending. Similarly children under 14 years old, or elderly adjustment applicants may only rarely apply for an EAD. And many VAWA self-petitioners may already have work permits based on deferred action status that are valid for sufficient duration that they do not need to request another EAD while their adjustment applications are pending. In addition, unlike those adjusting through employment or wealthy adjustment applicants, in ILAP's experience, only a very small percentage of low-income adjustment applicants ever apply for advance parole so that they can travel while their I-485 applications are pending. Nonetheless, under the proposed fee increase, all adjustment applicants will have to pay for this interim benefit, even if they have no

need for it. The proposed rule's methodology violates the principle of connecting the fee to the cost of providing the benefit to the applicant. It would be far more fair for the I-485 fee increase to reflect an increase associated with the costs of adjudicating the I-485 only, not related interim benefits' costs. USCIS should continue to charge a separate fee for interim benefits, so that those who do not need interim benefits are not charged for them.

The proposed rule also approaches fee waivers in a fashion that ignores the reality of how our immigration statutes play out in practice. The rule proposes to eliminate the possibility of a case by case determination of whether a fee waiver is warranted for several application types, including Form I-102, Form I-130, Form I-360 (except for VAWA self-petitioners, who would receive a blanket fee waiver), and Form I-485. The proposed rule justifies this change by stating that '(t)he current rule permits application for a fee waiver even when such an application contradicts the basic benefit or service being requested." 72 Fed. Reg. 4912. However, the further rationales given for certain applications proposed for elimination for possible fee waiver consideration do not give full consideration to the context in which each application is used under the INA.

For example, to justify elimination of individualized fee waiver requests for Form I-485, the proposed rule states that "(a)pplicants for permanent residence must demonstrate that they can support themselves and will not become a public charge." *Id.* However, asylees who apply for adjustment of status are not subject to the public charge ground of inadmissibility, and many who are starting their lives anew after leaving everything behind are indeed low-income and may need waivers of the I-485 fee, <u>especially if the proposed rule does not create new family fee caps in conjunction with the fee increases proposed.</u>

To justify removing the possibility of seeking a fee waiver for Form I-130, the Petition for Alien Relative, the propose rule states that "those seeking to sponsor the immigration of a relative must commit to providing a financial safety net to the relative if necessary to ensure the alien does not become a public charge." *Id.* However, the proposed rule ignores the fact that in the family-based preference categories, waits from five to a dozen years are common, and the financial position of a petitioner at the time of filing a petition may be completely different (and improved) by the time the beneficiary reaches the top of the waiting list. A common example is the permanent resident petitioner who is low-income while attending college full-time with student loans, who will be able to enter the full-time work force with enhanced economic prospects upon completing her degree, prior to the beneficiary's priority date bcoming current. In addition, ILAP frequently assist U.S. citizen petitioners who are disabled and for whom paying the I-130 filing fees can be out of reach. Meanwhile, their relatives, once able to immigrate, would be able to support these petitioners and reduce the petitioners' need for dependence on public benefits. To raise a barrier to initiating the immigration process for an able- bodied prospective family immigrant by eliminating the possibility that the petitioner could apply for an I-130 fee waiver is short- sighted and punitive of low-income individuals living in our midst. This is especially true if <u>the proposed rule does not create new family fee caps in conjunction with the fee increases proposed</u>.

The proposed rule also proposes eliminating the possibility of applying for a waiver of the Form I-102 fee to replace an I-94 card. For refugees, the I-94 card is often their only form of identification. Refugees are starting their lives over, typically with nothing, when they come to the United States. The INA recognizes this by making them not subject to the public charge

ground of inadmissibility. However, refugees do need to sometimes replace their I-94 cards. Eliminating the possibility that they could request a fee waiver if their economic circumstances would make it difficult to pay the proposed $320 fee is too harsh.

In addition, the proposed rule would exempt VAWA self-petitioners from having to file the I-360 filing fee, but would eliminate the ability for any others to seek a fee waiver. The I-360 form is used by many categories of special immigrants, including widow(er)s of United States citizens and special immigrant juveniles. Widow(er)s may be struggling to survive economically without their deceased spouse, and special immigrant juveniles, who have been placed in a foster care setting due to having been abused, neglected or abandoned, may be residing in households that are safe and nurturing but not financially well-off. To eliminate the possibility of applying for a fee waiver for all but VAWA self petitioners ignores the compelling circumstances of many of the individuals who use the I-360 form.

The proposed rule also tries to soften the blow of eliminating fee waivers by exempting T visa-eligible persons and VAWA self-petitioners from the filing fees applicable to filing I-914 applications or I-360 petitions, respectively. The proposed rule states that these applications "are filed by victims of crime who are often in an extremely vulnerable position." 72 Fed. Reg. 4903. However, no mention is made of U visa applicants, who are also crime victims in extremely vulnerable positions. At the moment, potential U applicants cannot apply for a U visa since regulations detailing that procedure have yet to be implemented. Instead, they currently apply for deferred action. However, once they U visa regulations issue, there will likely be a Form that must be filed that is <u>not</u> one of those included in the proposed rule's list of forms for which fee waiver applications could be considered. Without specific mention of U visa applicants in the rule, they will be denied the possibility of asking for a fee waiver, but they also will not be exempt from paying the fees, unlike T visa applicants and VAWA self-petitioners, despite their compelling vulnterability as crime victims.

The proposed fee increases are so high that they compel a recognition that many people will be unable to afford the fees. The proposed rule should allow for individualized determinations as to whether a fee waiver request should be granted for all types of applications. Requests that are not considered meritorious for whatever reason, as is the case currently, can be denied. However, the proposed rule should not take away, on a blanket basis, the ability to at least apply for fee waivers for certain types of applications if an individual truly believes s/he cannot afford the fee.

Moreover, the proposed rule should include family caps for all application types, particularly for Form I-130, Form I-360, and Form I-485. Without a cap, many large families will simply be forced to not file the paperwork for a status or benefit to which they are entitled under the INA. Some of these individuals will be undocumented and will be unable to come out of the shadows simply because they can't afford the fees. Fees for USCIS benefits should be established in a manner that allows persons who are beginning new lives here to be encouraged to improve their legal status, rather than pushing them to remain on the fringes of society because they are poor.

As a policy matter, 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.

For all these reasons, the proposal to increase immigration and naturalization fees is legally flawed, misguided, and counterproductive. We urge USCIS to reconsider this proposal, and to seek other sources of funding for improvements and other operations, rather than add more burdens on immigrants. Thank you for your consideration.

Sincerely,

Beth Stickney

Beth Stickney, Esq.
Executive Director