

July 22, 2010

Chief, Regulatory Products Division
U.S. Citizenship and Immigration Services, Department of Homeland Security
111 Massachusetts Avenue, NW, Room 3008
Washington, DC 20529-2210

RE: DHS Docket No. USCIS-2009-0033

Proposed rule – Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule

Dear Sir or Madam:

The Catholic Legal Immigration Network, Inc. (CLINIC) and the United States Conference of Catholic Bishops (USCCB) respectfully submit the following comments to the proposed rule to adjust the USCIS application and petition fee schedule as published in 75 Fed. Reg. 112 at 33445 (June 11, 2010).

CLINIC/USCCB's Interest in the Proposed Rule

CLINIC, a subsidiary of the United States Conference of Catholic Bishops (USCCB), is a legal support agency for the nation's largest and most productive network of charitable immigration programs. CLINIC currently supports 185 programs in 290 office locations across the country. Each year these programs represent more than 600,000 low-income immigrants with applications and petitions pending before the USCIS. Additionally, CLINIC's Division of Religious Immigration Services represents hundreds of foreign-born priests, sisters, seminarians, and laypersons each year. The division's current caseload includes more than 1,000 open cases. CLINIC has developed a national citizenship plan entitled *A More Perfect Union*. This report emphasizes that the United States' strength and vitality depends on the contributions of its more than 27 million foreign-born residents, and their full integration into our society. For the reasons set forth below, we believe that the proposed fee structure will be especially burdensome for the low-income immigrants and religious workers served by our programs. In addition, the drastic increase in fees will discourage low-income immigrants from pursuing permanent resident status and citizenship, hinder their integration into U.S. society, and in the long run, be detrimental to the well-being of our nation. For its part, USCCB's Migration and Refugee Services (MRS) is the largest refugee resettlement agency in the United States. USCCB also works with trafficking victims across the country; advocates before Congress and the Executive Branch on matters affecting all immigrants and vulnerable migrants; and regularly participates in the rulemaking process on immigration issues of importance to the Catholic Church in the United States. CLINIC/USCCB submitted comments on the previous fee increase on March 22, 2007.

Comments on the Proposed Action

The greatest impact of the proposed fee increase will be borne by the most vulnerable applicants: low-income and working poor who can least afford to pay. Ultimately, they will have delayed or minimal access to immigration benefits. The working poor will suffer greatly because their income is not low enough to qualify for a fee waiver, yet too low to afford the fees, especially after the fee increase.

From the perspective of CLINIC and USCCB, the ongoing increase in fees has effectively disqualified low-income persons from the benefits of permanent residence and citizenship. The Administration must address this crisis by presenting a plan to Congress for additional funding for adjudications, so as to relieve this increasing burden on low-income persons. President Obama recently referred to these barriers,

stating: “High fees and the need for lawyers may exclude worthy applicants... we’ve stemmed the increases in naturalization fees. But here, too, we need to do more.” The Administration cannot voice one position but in reality move in the opposite direction.

We encourage USCIS to continue its work to develop a strong integration plan that would ensure that all legal permanent residents have access to citizenship, regardless of their socioeconomic class. Our nation should be encouraging individuals to become citizens and fully participate in our society, yet these high proposed fee increases will instead serve to discourage them. The proposed increase will surely lead to more fee waiver applications, while many applicants who are unaware of the availability of the fee waiver will simply forgo applications for benefits altogether.

I. Integration

The increased fees will serve as barriers that discourage low-income legal immigrants from pursuing permanent resident status and citizenship, and are contrary to integration efforts. The United States is an immigrant nation which is strengthened by the contributions of newcomers of all backgrounds. 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 the United States by learning English, gaining knowledge about American history and government, and swearing allegiance to the United States. Creating obstacles to integration, through increased application and petition filing fees, especially those for adjustment of status and naturalization, are inconsistent with our nation’s best interests. Citizenship and the increased civic participation that accompany it are public goods that benefit our entire country.

By maintaining reasonable application and petition filing fees, immigrants would be better situated to embark upon the path to citizenship and ultimately naturalize. A reasonable fee schedule and accessible pathway to permanent resident status and U.S. citizenship recognizes the important contributions and benefits of immigrant integration to our nation’s well-being. Forcing immigrants to shoulder the entire burden of USCIS operations is inconsistent with these aims.

II. Family Unification

Families will be especially hard-hit by the proposed fee increase, as they may not be able to afford the higher cost of filing multiple applications for multiple family members. The fee increase will force families to apply for legal status and other USCIS benefits on a piecemeal basis. In some cases this will further delay family reunification.

III. Applicants May be Forced to Forgo Legal Representation

Furthermore, in order to meet increased USCIS filing fees, many low-income applicants may need to divert funds they may have otherwise budgeted for legal representation to cover filing fees. Foregone representation by qualified lawyers and organizations will result in more applications being filed incorrectly or incompletely. Well-prepared and documented applications and petitions filed by community-based organizations and legal professionals lead to increased USCIS efficiency in processing. An increase in applications filed without the assistance of an experienced legal professional will result in further delays in USCIS processing, necessitate requests for additional evidence, or result in increased denials, all of which disadvantage both USCIS and the applicant.

Another related consequence will be that applicants who do seek assistance from community-based organizations will face significant difficulties paying the organization’s fees for legal services and may

request that their legal fees be waived. This will either cause the organizations to deny services because they are not able to reduce or waive their charges, nominal to begin with, or community-based organizations will waive their fee and as a consequence forego or reduce other services to clients to make up the difference in cost. Either result becomes a hardship for applicants because services are either compromised or forfeited.

IV. Religious Workers

Priests and nuns who are members of religious orders take vows of poverty, and diocesan priests make promises to live simply. As such, the increased fees will be especially prohibitive for religious workers. The smaller dioceses and religious communities represented by CLINIC's Division of Religious Immigration Services will be particularly burdened by the proposed fee increases. Foreign-born religious workers comprise an essential part of the workforce of religious orders, organizations, and dioceses in the United States. They fulfill vital roles such as hospital chaplains, prison chaplains, religious teachers, parish priests, school administrators, and social workers. They engage in ministry to vulnerable populations such as the deaf, physically and mentally challenged, elderly, ill, low-income, single mothers, and various newcomers and ethnic groups. Smaller dioceses and religious organizations whose religious workers serve border communities tend to employ a greater percentage of foreign-born religious workers. These dioceses and communities will be especially disadvantaged by the fee increases.

Religious workers provide important services not only to religious denominations and communities, but also to local communities. Among their contributions are work in social service programs and community projects which benefit local communities as a whole and immigrant communities in particular. These additional benefits to our nation cannot be underestimated.

USCIS' proposed fee structure, coupled with a religious worker's inability to request a fee waiver for the I-485 application, fails to recognize the financial reality of most religious workers. Under the new fee structure, the minimum cost of lawful permanent resident status for a religious worker would be \$2,415 (\$405 for the I-360; \$985 for the I-485; \$85 for biometrics, \$200 for a medical examination with vaccinations, \$380 for the I-765 Application for Employment Authorization and \$360 for the I-131 Application for Travel Document). The increased costs and lack of fee waiver would put permanent residence out of reach of many religious workers.

V. Prohibitive Fees

Many of the immigrants and refugees served by our programs already struggle to meet current USCIS filing fees. Our clients must often save for months to collect enough money for USCIS filing fees. The proposed fee increases will put application filing beyond the reach of many low-income immigrants.

Given that every immigrant must fill out multiple applications, a form's fee increase cannot be examined in isolation. Instead it should be viewed in conjunction with other forms' fees increases. For example the I-130 is filed along with the I-485, biometrics and Medical Exam; or with the I-824, DS-230, and now the Immigrant Visa fee. The increase in a single form's fee may not seem drastic, but given the fact that many applications are filed at the same time, that families must file multiple applications for each family member, a \$65 fee increase is therefore multiplied several times creating a significant financial impact.

I-130:

Under the proposed rule the fee for this petition will rise from \$355 to \$420. The \$65 increase is detrimental to families filing for multiple members. Furthermore, as it is often used in connection with an I-485 form, the fees will be increased doubly as the I-485 fee has increased as well.

I-485:

Under the proposed rule, the I-485 filing fee will rise from the current fee of \$905 to \$985. An additional \$85 biometric fee would bring the I-485 filing fee to \$1,070. This does not include the cost of the medical examination, which must be filed with the I-485 application. Medical examination fees range from \$100 to \$200. Therefore, at a minimum, an applicant would need \$1,170 (excluding the cost of legal services) to file an I-485 form. The current federal minimum wage is \$7.25 per hour. A minimum wage worker would need to work 161 hours (over four weeks at 40 hours per week) to meet the \$1,170 fee. For many of the clients served by our programs, savings after meeting monthly living expenses are minimal, and our clients would require years to save sufficient funds to file an I-485 application at the proposed cost.

Under the current rule, applicants for family-based adjustment of status would not be able to request fee waivers. These applicants should not be precluded from accessing benefits to which they are entitled but simply cannot afford. Coupled with the increased I-485 filing fee, the inability of I-485 applicants to apply for a fee waiver would prevent many low-income adjustment applicants from applying for adjustment of status once they become eligible. To protect these and other vulnerable, low-income adjustment applicants, the prior fee waiver structure, which allows for special consideration in cases involving humanitarian concerns, family unity, and the public interest, should be maintained.

N-600/N-600K:

The N-600/N-600K Certificate of Citizenship is used as evidence that a child has derived U.S. citizenship from a parent and only requires verifying that a child meets the legal requirements. No new adjudication is involved in the application process. The increase of \$140 will cause hardship to the vulnerable population of children and will delay family integration.

A passport is an alternative document that can be used as evidence of citizenship, and the State Department conducts the same verification process for a fraction of USCIS' cost. The most a passport costs for a minor child is \$95.

Furthermore, adopted children must file this application in order to receive citizenship status through an adopted parent. The high fee increase will discourage people from filing this application altogether.

I-824:

The proposed fee increase for the I-824 Application for Action on an Approved Application or Petition will raise the fee from \$340 to \$405. Given that the underlying application has already been approved, increasing the fee for this form by \$65 creates an unnecessary hardship for applicants who only seek to, for example, obtain a duplicate copy of a notice or mark their application for consular processing instead of adjustment of status. This high of an increase is not warranted for an application which entails no adjudication and only minimal action, such as transferring a file or producing a duplicate copy of a document.

Immigrant Visa:

The new fee of \$165 imposed on immigrant visas processed through the State Department will be borne by applicants in addition to the \$70 fee for the I-864 Affidavit of Support and \$355 for the DS-230 visa application forms. The total immigrant visa application will therefore cost \$590 if the proposed new fee is established. This is a high fee for another application which is not adjudicated by USCIS.

VI. Fee Waivers

We appreciate that USCIS has issued a proposed fee waiver application form and look forward to its implementation, as well as to seeing guidance for adjudication of the applications that will be consistent throughout the country. These are important steps, as the current process for requesting a fee waiver is cumbersome and necessitates that applicants seek legal assistance to properly request. CLINIC has seen many examples of improper denials of fee waiver requests that contained more than enough information to establish the individual's inability to pay. The improper denials cause lengthy delays and barriers for the applicants. For low-income applicants, accessibility of benefits will increasingly depend on their ability to obtain fee waivers.

USCIS must automatically and consistently waive fees for individuals who have already been found eligible by other government agencies for means-tested federal benefits such as SSI, food stamps, or TANF. These applicants should *not* be required to re-submit all their income and expenses information and go through an entire re-determination process all over again. This is not only a heavy burden on low-income applicants, but also a waste of USCIS staff time.

The list of applications for which an individual fee waiver may be granted is limited. We request that USCIS retain the prior fee waiver structure, which allows for fee waivers to be granted for any application or petition listed in 8 CFR 103.7(b). A less prohibitive fee waiver system is necessary to ensure that all deserving individuals have the opportunity to apply for benefits for which they are eligible.

VII. Accountability

If USCIS application fees will be increased, the agency must also be held accountable for meeting its long-term goals, including providing improved service especially with regard to customer care and information updates, consistent application processing, faster processing times, and improved backlogs. The agency should commit to a way to demonstrate its progress on improved service, by developing a set of metrics that can be used to show stakeholders the progress that has been made at various intervals.

Each week CLINIC makes several inquiries to USCIS Headquarters on behalf of its network of affiliates. Most are regarding cases that have been pending much longer than the anticipated posted processing times. In addition to reducing the processing delays, USCIS must continue to make improvements to the processes by which applicants and their representatives can get information about a case. Contractors at the National Customer Service Center generally only take referrals – they cannot answer questions. Most of the time, CLINIC's affiliates do not receive a response or any further information, requiring that they reach out to CLINIC's national office to email to the service centers and to headquarters, further delaying resolution of the problem.

Additionally, while processing times for initial review of many applications have improved recently, the Administrative Appeals Office (AAO) is still an area of concern. An appeal of a decision on an I-601 Waiver of Inadmissibility takes over two years. Processing times still exceed eight months for appeals of I-129 petitions on behalf of religious workers; the appeal of an I-360 for a religious worker takes ten months. We request that USCIS demonstrate additional steps to improve processing in this area so that appeals may be resolved expeditiously.

VIII. Alternative Solutions

Congress should appropriate sufficient funding so that USCIS need not depend entirely on fee revenue to adjudicate applications. Adequate funding would allow USCIS to minimize annual fee increases, reduce backlogs, and improve the technology for application processing and customer services.

The proposed rule states that increased fees are needed in part to reduce processing times and provide better customer service. While we applaud these goals, we believe that the burden of paying for such improvements should not rest solely with immigrants who already struggle to pay agency filing fees. Prior to the 2007 fee increase, USCIS demonstrated that it can significantly reduce processing times without drastic fee increases, through the use of “temporary appropriated dollars.”

Instead of relying entirely upon user fees to fund its operations, USCIS should seek targeted appropriations to subsidize the cost of certain applications. This would facilitate low-income immigrants’ ability to become permanent residents and citizens, and would be more consistent with the principles of immigrant integration discussed above. Additionally, appropriations could also be made to cover improvements in infrastructure and technology, as well as overhead and administrative costs that applicants should not be forced to pay.

Conclusion

As stated, CLINIC and USCCB are gravely concerned with the proposed hike in fees for these immigration benefits. Alternatives to these fee increases are available, including congressional funding to cover adjudication and infrastructure costs. We should not create an immigration system which prevents otherwise qualified immigrants who can contribute much to this nation from accessing the fruits of permanent residence and citizenship because of a lack of adequate financial resources. For these reasons and those described above, we urge USCIS to reconsider this proposal, and to seek other sources of funding for its operations, rather than force immigrants to shoulder all of the agency’s costs. Thank you for your consideration of our views.

Sincerely,

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