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Submitted via www.regulations.gov

Samantha Deshommes, Chief
Regulatory Coordination Division, Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140

November 27, 2018

Re: Docket ID USCIS-2010-0008 - Public Comment Opposing Proposed Changes to Fee Waiver Eligibility Criteria, FR Doc. 2018-21101 Filed 9-27-18; 83 FR 49120, 49120-49121

Dear Ms. Deshommes:

I am writing on behalf of Empire Justice Center in opposition to the Department of Homeland Security's (DHS), United States Citizenship and Immigration Services (USCIS) proposed changes to fee waiver eligibility criteria, USCIS Docket ID USCIS-2010-0008, OMB Control Number 1615-0116, published in the Federal Register on September 28, 2018.

Empire Justice Center is a statewide provider of direct legal services, training and policy advocacy in many practice areas, including immigration and public benefits. Empire Justice has provided immigrant legal assistance in Westchester since 1997 and, more recently, on Long Island. Empire Justice Center provides legal assistance to immigrants in matters relating to Violence Against Women Act (VAWA) petitions, U-Visa for crime victims, T-Visas for victims of trafficking, family reunification efforts, Deferred Action for Childhood Arrivals (DACA), Special Immigrant Juvenile (SIJ), employment/green cards and work authorizations. Our staff attorneys also handle deportation and asylum cases. A 2015 report by Fiscal Policy Institute estimated that Nassau and Suffolk Counties have a combined total of 526,000 immigrants, or nearly 20% of Long Island's population. Of these, approximately 270,000 are not proficient in English. In addition, the immigrant population includes an estimated 76,000 unauthorized immigrants. Due to increased violence and poverty in Mexico and

Central America, many unaccompanied minors have also arrived on Long Island in the last few years in order to escape these conditions and to have a chance at a better life in the United States. Suffolk ranked third and Nassau ranked eighth nationwide for counties with unaccompanied children released to relatives or other sponsors as of the end of June 2016, according to federal statistics. The need for free immigration legal services on Long Island and in Westchester County is great, especially among children, victims of violence, and those who cannot afford the cost of applications for immigration benefits.

The proposed changes to the fee waiver eligibility criteria and accepted forms of evidence create an additional burden for immigrant communities and vulnerable individuals and would cause a significant additional burden on communities, federal agencies, and service providers. If USCIS were to make any changes to the fee waiver form, we urge the agency to expand the types of documentary evidence accepted in order to establish eligibility for a fee waiver in order to ensure the fair and efficient adjudication of these applications.

I. This proposal will place a significant burden on individuals applying for immigration benefits and will negatively impact our communities.

The proposed changes require individual applicants for immigration benefits to use Form I-912 to apply for a fee waiver, as well as each person in a family requesting a fee waiver to submit their own form. In addition, the proposal narrows the universe of evidence that can be submitted to prove eligibility for a fee waiver. These proposed changes will discourage eligible individuals from filing for both fee waivers and immigration benefits and place heavy time and resource burdens on individuals applying for fee waivers.

A. This proposal will negatively impact the ability of individuals, especially those who are vulnerable, to apply for immigration benefits for which they are eligible.

The filing fee associated with various immigration benefits can be an insurmountable obstacle for an immigration benefit or naturalization application. Any opportunity to mitigate the costs associated with filing should be designed to ease, rather than exacerbate, these obstacles.

The increased requirements and additional evidence to be collected from applicants on the proposed amended Form I-912 will extend the time and work required for applicants to complete (and adjudicators to process) the form. Requiring the additional documents will serve as a deterrent to applying for immigration benefits or naturalization. The proposed changes make the form more complex and will likely lead to individuals making more mistakes, adding to the processing time of the application and further adding to the deterrent effect of these changes. In some cases, applicants may not be able to complete the form because of a lack of required documents.

Increasing the burden of applying for a fee waiver will further limit access to naturalization for otherwise eligible lawful permanent residents. The naturalization fee has gone up 600% over the last 20 years, pricing many qualified green card holders out of U.S. citizenship.

Additionally, the proposed rule would harm the most vulnerable populations. More than 94% of domestic violence survivors also experienced economic abuse, which may include losing a job or being prevented from working. Fee waivers are critical to ensuring survivors can access relief. The proposed changes will harm survivors of domestic violence, sexual assault, human trafficking, and other crimes who are unable to meet the stricter evidentiary requirements proposed to prove eligibility. By limiting the ways a person can show they qualify for a fee waiver, USCIS is creating unnecessary burdens for survivors to access the legal protections created by Congress to ensure survivors can access safety and justice.

B. This proposal will place a time and resource burden on individuals applying for fee waivers.

By only accepting fee waiver requests submitted using the Form I-912, USCIS will limit the availability of fee waivers. Applicants must continue to be permitted to submit applicant-generated fee waiver requests (i.e., requests that are not submitted on Form I-912, such as a letter or an affidavit) that comply with 8 C.F.R. § 103.7(c), and address all of the eligibility requirements. Eliminating this currently accepted form of request places an additional and unnecessary burden on applicants to locate, complete, and submit the Form I-912, when a self-generated request that provides all of the necessary information can equally meet the requirements. The proposed requirement directly conflicts with 8 C.F.R. § 103.7(c)(2) and is therefore impermissible.

Second, requiring each applicant to submit their own form will be a huge resource and time burden on applicants. Currently, family members can submit a single fee waiver application. This simplifies the filing process because all relevant data is collected in one location. This is particularly beneficial when families apply for immigration benefits with minor children, or when couples apply for naturalization at the same time. According to this proposal, every applicant must now gather the required documentation being requested, including an Internal Revenue Service (IRS) transcript, documentation showing they are not required to file federal taxes, and verification of the non-filing from the IRS to list a few. This increases the burden on the applicant and duplicates information needed for a family who could have submitted their request together.

Third, the proposal eliminates an individual's ability to use proof of receipt of means-tested public benefits to demonstrate inability to pay the prescribed fee. Receipt of a means-tested benefit is sufficient evidence of inability to pay, which is what 8 C.F.R. § 103.7(c) requires. USCIS fails to provide any evidence that accepting proof of receipt of a means-tested benefit has led the agency to grant fee waivers to individuals who were able to pay the fee. This proof is by far the most common and straightforward way to demonstrate fee waiver eligibility as applicants have already proven current receipt of benefits by providing a copy of the official eligibility letter, or Notice of Action, from the government agency administering the benefit. Individuals who have already passed a thorough income eligibility screening by government agencies should not have to prove their eligibility all over again to USCIS. By eliminating receipt of a means-tested benefit as a way to show eligibility, the government is adding an additional burden on immigrants who already are facing the economic challenge of paying for application fees.

Fourth, under the proposed changes, the applicant must procure additional new documents including a federal tax transcript from the Internal Revenue Service (IRS) to demonstrate household income at less than or equal to 150% of the federal poverty guidelines. Currently, applicants can submit a copy of their most recent federal tax returns to meet this requirement. The government does not provide any reason as to why a transcript is preferred over a federal tax return. Federal tax returns are uniform documents and most individuals keep copies on hand. The proposed requirement will place an additional burden on individuals for more documents and does not account for those individuals who might need assistance obtaining a transcript due to lack of access to a computer or for delays involving delivery of mail.

II. The proposed changes will increase the inefficiencies in processing fee waiver requests while further burdening government agencies.

USCIS claims the proposed changes will standardize, streamline, and expedite the process of requesting a fee waiver by clearly laying out the most salient data and evidence necessary to make the decision. Instead, these proposed changes will slow down an already overburdened system, delaying and denying access to immigration benefits or naturalization for otherwise eligible immigrants. The government estimates that the total number of responses for Form I-912 is approximately 350,000. With nearly 6 million pending cases as of March 31, 2018, DHS has conceded that USCIS lacks the resources to timely process its existing workload. These operational demands would be levied upon an agency that already suffers profound capacity shortfalls.

This proposal also places an unnecessary burden on the IRS and fails to address whether the IRS is prepared to handle a sudden increase in requests for documents. Under the proposed rule, almost every person who applies for a fee waiver based on their annual income must also request the required documentation from the IRS in order to prove their eligibility. Moreover, all changes in employment, or non-employment, inability to work, or need to file will require an IRS verification. An unclear number of applicants will have to return to the IRS for certified copies of their transcripts. This will increase the production and duplication of documents for information that can be proven by evidence the applicant already has (e.g. with their federal tax returns or pay stubs), in a different manner (affidavits from service organizations), or through a different agency (verification of receipt of a means-tested benefit).

III. The proposed changes will place a time and resource burden on legal service providers and reduce access to legal services, especially in under-resourced locations.

The proposed changes detailed above will increase the burden on non-profit legal service providers and limit access to immigration legal services for individuals in need. In addition, it will make it harder for legal service providers to help immigrants who cannot afford the fee apply for immigration benefits and naturalization. Currently, non-profit immigration legal service providers, including those in remote areas of the United States, organize workshops as the most efficient model to help eligible applicants apply for immigration benefits and naturalization. Workshops are helpful to both applicants and USCIS because it allows for a reduction in errors and minimizes the fraudulent provision of immigration services.

With the proposed changes to the fee waiver form, it will become harder for non-profit legal service providers to complete applications in the workshop setting. Organizations may stop providing assistance with fee waivers in the workshop setting. This would cut off access to legal support and immigration relief for vulnerable populations, particularly for those in remote or other hard-to-reach areas.

The proposed changes to the fee waiver eligibility criteria, as well as the greater evidentiary burden on applicants and their families, will create perhaps insurmountable barriers for those seeking to secure their immigration status, be together in their communities, and naturalize so that they can participate fully in American life and be civically engaged. We urge USCIS, rather than implement the proposed rule change, to work instead to expand the types of documentary evidence accepted in order to establish eligibility for a fee waiver in order to ensure the fair and efficient adjudication of immigration benefits and naturalization. This will bring us closer to an inclusive process that honors our country's commitment to welcoming immigrants.

Sincerely yours,

Michelle Caldera-Kopf
Senior Attorney
Empire Justice Center