



ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

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Submitted via www.regulations.gov

Ms. Samantha Deshombres, Chief
Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Ave. NW
Washington, DC 20529

**Re: U.S. Citizenship and Immigration Services Fee Schedule,
DHS Docket No. USCIS-2019-0010; RIN 1615-AC18**

Dear Chief Deshombres:

The Asian American Legal Defense and Education Fund (AALDEF) respectfully submits this comment on the proposed U.S. Citizenship and Immigration Services (USCIS) fee schedule, published in the Federal Register on November 14, 2019. We are concerned about a number of the fee and policy proposals in the published fee schedule, and request that USCIS withdraw all provisions that make immigration benefits less accessible to low-income and other vulnerable immigrants.

Founded in 1974, AALDEF is a national organization that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF works with Asian American communities across the country to secure human rights for all. AALDEF advocates for fair immigration policies that recognize the human rights of undocumented immigrants in the United States, promote family reunification, enforce worker protections for all, eliminate racial and ethnic profiling, and end other discriminatory practices that violate due process. AALDEF provides pro bono legal services to undocumented immigrant youth who may be or are eligible for the Deferred Action for Childhood Arrivals (DACA) program. We also represent Asian survivors of trafficking and crime who qualify for T and U visas and assist these individuals with filing their applications for nonimmigrant and immigrant status with the USCIS. We primarily serve low-income Asian immigrants—both documented and undocumented—and U.S. citizens of Asian descent.

The proposed USCIS fee schedule would disproportionately impact Asian immigrants across the United States by increasing the fees and eliminating fee waivers for the benefit

categories most commonly used by low-income individuals. Nationwide poverty rates are higher for Asian immigrants, citizens and non-citizens alike, as immigrants from Asia account for a large proportion of recent arrivals to the U.S. In recent years, three out of every 10 individuals obtaining permanent residence status have been from Asia and Pacific Island countries.¹ In New York City, Asian Americans have the highest poverty rate among foreign-born residents, with as many as seven out of 10 Asian Americans being immigrants and one out of five Asian Americans living in poverty. If these changes are implemented, immigrant and mixed-status families would experience financial hardship, incur debt to finance applications, delay or lose immigration status, and have fewer resources to access qualified legal assistance, resulting in further USCIS inefficiencies and processing backlogs.

USCIS Should Maintain Fee Waivers for All Current Categories

The fee schedule proposes to eliminate filing fee waivers for all categories except for those that are statutorily required. This proposal would make such essential benefits as citizenship, permanent resident (“green card”) status renewal, and employment authorization inaccessible for low-income immigrants. Fee waivers help families to improve their stability, financially support themselves, and fully integrate into their communities. These immigration benefits have the power to lift up and transform families, communities, and the country. Due to the benefits of naturalization—one of the form types most frequently associated with fee waiver requests²—Congress has called on USCIS to keep the pathway to citizenship affordable and accessible.³ A recent Congressional Committee report states, “USCIS is expected to continue the use of fee waivers for applicants who can demonstrate an inability to pay the naturalization fee.”⁴ USCIS’s proposed elimination of filing fee waivers would severely undermine Congressional intent, and is also a flawed and shortsighted policy. It will result in considerable harm to new Americans and the country as a whole.

Many of AALDEF’s clients are survivors of trafficking and crime. Although the proposed fee schedule would still allow applicants to request a waiver of filing fees for VAWA, T, and U visa-related applications through the adjustment of status stage, we have recently seen an increase in USCIS denials of fee waiver requests by these vulnerable populations. Combined with the USCIS’s currently enjoined changes to the Form I-912 fee waiver request form that would eliminate the receipt of means-tested benefits as a criterion for fee waiver eligibility, the proposed fee increase would make these humanitarian forms of relief cost-prohibitive for immigrant survivors and their family members.

¹ Department of Homeland Security, Yearbook of Immigration Statistics 2016, <https://www.dhs.gov/immigration-statistics/yearbook/2016>

² USCIS Fee Waiver Policies and Data, Fiscal Year 2017 Report to Congress, USCIS (Sept. 17, 2017), www.dhs.gov/sites/default/files/publications/USCIS%20-%20Fee%20Waiver%20Policies%20and%20Data.pdf.

³ H. Rep. No. 115-948 accompanying H.R. 6776, the Department of Homeland Security Appropriations Act (2019).

⁴ Id. [Emphasis added].

Adjustment of Status Applications Should Remain Bundled and Affordable

USCIS proposes separate fees for concurrently filed Forms I-485, I-765, and I-131. Most applicants for adjustment of status who will file the I-485 form will also apply for employment authorization and advance parole travel authorization. Due to immigrant visa backlogs, adjustment applicants often face long waits before their permanent residence is granted. They rely on employment authorization so that they can continue to live and work in the United States while their application is pending. These applicants will see a 79 percent increase in the total cost of filing Forms I-485, I-765, and I-131, from \$1,225 to \$2,195. This steep increase, together with the elimination of fee waivers, will make adjustment of status unattainable for many low-income and working-class individuals who are immigrating through sponsorship by a U.S. citizen or lawful permanent resident relative. Increasing the overall cost of adjustment of status would prevent many low-income individuals from becoming permanent residents and would undermine family unity.

Fee Waivers Should Be Available to Those Subject to the Affidavit of Support

USCIS proposes making fee waivers unavailable to applicants who are subject to the public charge ground of inadmissibility, those who are subject to an affidavit of support, and those who are already sponsored immigrants. In addition, the Director of USCIS would be barred from granting a discretionary fee waiver to anyone in the above-mentioned categories. This proposal would disproportionately harm low- and moderate- income families.

Most family-based immigrants are subject to the public charge ground of inadmissibility and are required to have sponsors submit an affidavit of support on their behalf, regardless of income.⁵ Furthermore, the affidavit of support contract terminates only after specific criteria are met.⁶ The end result is that an immigrant would likely be barred from fee waiver eligibility for years, without regard to their actual need. This would create an additional barrier for low-income immigrants who seek immigration benefits that they would otherwise be eligible for, including naturalization.

The unavailability of fee waivers to individuals who are subject to the public charge inadmissibility ground and the affidavit of support would have a disproportionate impact on AALDEF's clients, who are primarily low-income Asian immigrants and U.S. citizens of Asian descent. Most Asian immigrants become permanent residents through family sponsorship and require affidavits of support.

USCIS Should Not Impose a Renewal Fee for DACA

USCIS proposes to establish a new, additional \$275 fee for Form I-821D, which would raise the new total cost for Deferred Action for Childhood Arrivals (DACA) renewal from the

⁵ INA § 212(a)(4)(C); 8 CFR § 213a.2(b)(1).

⁶ “The liability of the sponsor executing the affidavit of support terminates only when the sponsored immigrant becomes a U.S. citizen, earns or is credited with a total of 40 qualifying quarters as defined by social security law; dies; loses or abandons LPR status and departs the U.S.; or is ordered removed but readjusts status in immigration proceedings.” See 8 CFR § 213a.2(e)(2)(i).

current fee of \$495 to \$765. This 55 percent increase would create a significant barrier for young immigrants seeking protection from deportation and work authorization.

Most DACA requestors are young people who often struggle to pay the existing DACA request fee. Of the approximately 660,880 total active DACA recipients reported on June 30, 2019, approximately 544,180 are age 30 or below, and 112,160 of that number are 15 to 20 years old. In a 2015 survey of DACA recipients, nearly 70 percent of respondents indicated that they struggled to pay their monthly bills and expenses with their current incomes. However, 80.6 percent of respondents reported that they were employed, and 80.1 percent believed that DACA would help them achieve their professional goals.

Maintaining current fee levels for the I-821D DACA application form allows these young people to continue pursuing their education and to participate in the American economy. Increasing the fee for DACA renewal requests not only adversely impacts current DACA recipients' ability to earn a living for themselves and their families, but also harms the U.S. economy by increasing the financial burden on its beneficiaries.

AALDEF's Immigrant Justice Project provides pro bono legal representation to primarily Asian DACA-eligible youth from low-income immigrant families. These clients already struggle to save money to pay for the current DACA request filing fee and many would be unable to afford the proposed increase.

Naturalization Fees Should Be Affordable and Accessible

The proposed fee schedule would increase the filing fee for naturalization from \$640 to \$1,170, an 83 percent increase. This substantial increase would make naturalization less accessible for low-income and working-class people. The benefits of naturalization to individuals and the U.S. include civic engagement, political participation, employable in higher-paying jobs, and broader integration.⁷ Therefore, the application fee must not be so costly that hard-working immigrants would be prevented from naturalizing. With approximately 9 million lawful permanent residents eligible to naturalize who have not yet filed applications,⁸ and the significant benefits of immigrant integration to the United States, it is in the country's best interests to incentivize naturalization by maintaining an affordable application fee.

Together with the elimination of the fee waiver, the fee increase for naturalization would make citizenship unattainable for low-income immigrants. Congress has called on USCIS to keep the path to citizenship affordable and accessible.⁹ Based on this expectation, USCIS has historically redistributed a portion of the cost of naturalization applications among other application fee types to subsidize affordable naturalization and encourage immigrant

⁷ JEFF CHENOWETH AND LAURA BURDICK, CATHOLIC LEGAL IMMIGRATION NETWORK, A MORE PERFECT UNION: A NATIONAL CITIZENSHIP PLAN, at vii, <https://cliniclegal.org/resources/guides-reports-publications/more-perfect-union-national-citizenship-plan>.

⁸ Robert Warren and Donald Kerwin, *The US Eligible-to-Naturalize Population: Detailed Social and Economic Characteristics*, 3 J. Migration & Hum. Security 306, 306 (2015).

⁹ H. Rep. No. 115-948 accompanying H.R. 6776, the Department of Homeland Security Appropriations Act (2019).

integration.¹⁰ This proposed fee rule would abandon that historic practice and charge the actual cost of naturalization to applicants, without regard for the agency's previous concern for the affordability of naturalization. The proposed fee increase is contrary to Congressional intent, and contrary to the interests of the United States society and economy.

AALDEF has assisted many low-income clients with applying for naturalization. These include the elderly and people with disabilities, who would be economically and physically harmed if they were forced to try to save funds for the filing fee and apply in the future.

USCIS's Proposed Transfer of Applicant Fees to ICE Is Improper

Finally, AALDEF strongly opposes the proposed transfer of more than \$200 million in application fees out of USCIS to U.S. Immigration and Customs Enforcement (ICE). This proposal defies the Congress's statutory mandate that USCIS function as a service-oriented immigration benefits agency that is distinct from the immigration enforcement missions of ICE and U.S. Customs and Border Protection. We believe this diversion of funds from immigration processing to enforcement would improperly shift resources from processes that allow immigrants to attain citizenship and full economic and political participation to prioritization of enforcement against vulnerable communities.

AALDEF opposes USCIS's attempt to support the continued implementation of backlog-expanding policies and practices at the expense of hard-working immigrant families. Since 2010, USCIS has increased filing fees by weighted averages of 10 percent and another 21 percent, but has not achieved any related improvement in processing times, backlogs, or customer service. During that same period, USCIS's backlog has increased by more than 6,000 percent,¹¹ the overall average case processing time had increased 91 percent between 2014 and 2018,¹² and the agency has removed language from its resources that stated any commitment to customer service.¹³ In fact, the rule assumes that lengthy delays will continue.

For the foregoing reasons, we request that USCIS promptly withdraw its proposed fee schedule that would make immigration benefits less accessible to hard-working families and vulnerable people. USCIS has not used the filing fees that applicants have already paid to USCIS efficiently, and they cannot be expected to bear a significant increase in fees without an improvement in processing times, backlogs, and customer service.

¹⁰ See, e.g., U.S. Citizenship and Immigration Services Fee Schedule, 75 Fed. Reg. 58,975, www.govinfo.gov/content/pkg/FR-2010-09-24/pdf/2010-23725.pdf.

¹¹ See *Policy Changes and Processing Delays at U.S. Citizenship and Immigration Services: Hearing before the House Subcomm. on Immigration of the H. Comm. On the Judiciary*, 116th Cong. (2019) (joint written testimony of Don Neufeld, Associate Director, Service Center Operations Directorate, USCIS, and Michael Valverde, Deputy Associate Director, Field Operations Directorate, USCIS).

¹² Am. Immigr. Law. Assoc., AILA Policy Brief: USCIS Processing Delays Have Reached Crisis Levels under the Trump Administration (2019), <https://www.aila.org/advo-media/aila-policy-briefs/aila-policy-brief-uscis-processing-delays>.

¹³ See Max Greenwood, *Immigration Agency Removing 'Nation of Immigrants' from Mission Statement*, THE HILL, Feb. 22, 2018, <https://thehill.com/homenews/administration/375112-us-immigration-agency-to-remove-reference-to-us-as-nation-of>; see also Policy Alert: USCIS Public Services No. PA-2019-03 (May 10, 2019).

Thank you for the opportunity to submit comments on the proposed fee schedule. For further information, please do not hesitate to contact Annie Wang at awang@aaldef.org.

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