Submitted via email to dhsdeskofficer@omb.eop.gov

May 3, 2019

Department of Homeland Security (USDHS)
Citizenship and Immigration Services (USCIS)
Office of Policy and Strategy
Samantha Deshommes, Chief Regulatory Coordination Division

Re: Agency USCIS, OMB Control Number 1615-0116 - Public Comment Opposing Changes to Fee Waiver Eligibility Criteria, Agency Information Collection Activities: Revision of a Currently Approved Collection: Request for Fee Waiver FR Doc. 2019-06657 Filed 4-4-19; 84 FR 13687, 13687-13688

Dear Ms. Deshommes:

We are writing on behalf of the Center for Victims of torture (CVT) to oppose the Department of Homeland Security (DHS), United States Citizenship and Immigration Services' (USCIS) proposed changes to fee waiver eligibility criteria, OMB Control Number 1615-0116, published in the Federal Register on April 5, 2019.

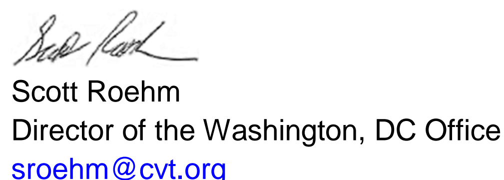
The proposed rule is designed to limit non-citizens' access to immigration benefits, imposing on them an unwarranted financial burden. By heightening qualification requirements and significantly increasing the burden on immigrants to prove they are eligible for a fee waiver, the proposed rule puts access to the legal immigration system out of reach for many survivors of torture.

For the reasons detailed in the comments that follow, DHS and USCIS should immediately withdraw their current proposal and dedicate their efforts to advancing policies that safeguard asylees, TPS and DED holders, and other vulnerable populations.

Thank you for the opportunity to submit comments on the proposed rule. Please do not hesitate to contact CVT with any questions or for further information.

Sincerely,

Andrea Carcamo
Senior Policy Counsel
acarcamo@cvt.org



Scott Roehm
Director of the Washington, DC Office
sroehm@cvt.org

DETAILED COMMENTS in opposition to USCIS, OMB Control Number 1615-0116. Public Comment Opposing Changes to Fee Waiver Eligibility Criteria, Agency Information Collection Activities: Revision of a Currently Approved Collection: Request for Fee Waiver FR Doc. 2019-06657 Filed 4-4-19; 84 FR 13687, 13687-13688

The Center for Victims of Torture (CVT) welcomes the opportunity to comment on the Notice of Proposed Rulemaking on Changes to Fee Waiver Eligibility Criteria, USCIS, OMB Control Number 1615-0116 ("the Notice" or "the proposed rule").

Founded in 1985 as an independent non-governmental organization, CVT is the oldest and largest torture survivor rehabilitation center in the United States and one of the two largest in the world. Through programs operating in the U.S., the Middle East, and Africa—involving psychologists, social workers, physical therapists, physicians, psychiatrists, and nurses—CVT annually rebuilds the lives of nearly 25,000 primary and secondary survivors. The vast majority of CVT's clients in the United States are asylum seekers and refugees.

CVT also conducts research, training and advocacy, with each of those programs rooted in CVT's healing services. The organization's policy advocacy leverages the expertise of five stakeholder groups: survivors, clinicians, human rights lawyers, operational/humanitarian aid providers, and foreign policy experts. CVT organizes a network of torture treatment programs focused on rebuilding the lives of survivors of torture across the nation. These programs serve, among others, asylum seekers, asylees, TPS and DED holders, and lawful permanent residents.

Background on Current Fee Waiver Guidance and Optional Form I-912, Request for Fee Waiver

In 2010, after extensive collaboration with stakeholders, USCIS developed Form I-912, Request for Fee Waiver, and then published the current fee waiver guidance. USCIS held public teleconferences and gathered extensive information from stakeholders before making these changes. The guidance replaced ten prior memos that contained contradictory instructions on fee waivers, and the new form for the first time allowed applicants a uniform way of applying for a fee waiver.

The purpose of the form and the new three-step eligibility analysis was to bring clarity and consistency to the fee waiver process. The analysis for fee waiver eligibility currently proceeds as follows:

> Step 1: the applicant is receiving a means-tested benefit; or
> Step 2: the applicant's household income is at or below 150% of the poverty income guidelines at the time of filing; or
> Step 3: the applicant suffers a financial hardship.

USCIS continued to consider applicant-generated fee waiver requests not submitted on the form. The standard for fee waiver eligibility for limited types of USCIS forms is described in the

underlying regulation as making fee waivers available when "the party requesting the benefit is unable to pay the prescribed fee."

Current Revisions

On September 28, 2018, USCIS published in the Federal Register a Notice of Agency Collection Activities; Revision of a Currently Approved Collection: Request for a Fee Waiver; Exemptions as a notice under the Paperwork Reduction Act (PRA). The notice stated that USCIS intended to eliminate the eligibility ground of receipt of a public benefit for the fee waiver, and alter Form I-912 accordingly, but would continue to allow eligibility for financial hardship or income of 150% or less of the poverty income guidelines. The agency stated that since different income levels were used in different states to determine means-tested benefits, using that standard has resulted in inconsistent adjudications. No documentation or analysis was offered. The notice also stated that if USCIS finalized this change, it would eliminate the current USCIS Fee Waiver Guidance and replace it. No new proposed guidance was published for public comment. A total of 1,198 comments were filed in response to the September 28 notice.

On April 5, 2019, the current notice was published, stating that USCIS was proceeding with the change, eliminating public benefits receipt as an eligibility ground for the fee waiver, and revising the form. Fee waivers based on "poverty income guidelines threshold and financial hardship criteria" will apparently be retained, although no details are offered. The notice also announced that the current fee waiver guidance would be rescinded and new guidance would be issued. There was no discussion of the 1,198 comments received in response to the September 28, 2018 notice.

Additional Burdens Created by the Revision

Eliminating eligibility for a means-tested benefit will place a significant burden on survivors of torture applying for immigration benefits**.**

According to the President's recent report to Congress on FY2019 refugee admissions, since 1980 the U.S. has admitted more than 3 million refugees and granted asylum status to over 683,000 individuals. Another 840,000 asylum seekers currently await a decision on their case. The Office of Refugee Resettlement at the Administration Children and Families recognizes that 44% of refugees, asylees and asylum seekers are survivors of torture.

The revision eliminates these, and other, individual's abilities to use proof of receipt of means-tested public benefits to demonstrate inability to pay the prescribed fee. However, according to 8 C.F.R. § 103.7(c), receipt of a means-tested benefit is sufficient evidence of inability to pay. Proof of receiving means-tested benefits is by far the most common and straightforward way to demonstrate fee waiver eligibility as applicants have already demonstrated the same by providing a copy of the official eligibility letter, or Notice of Action, from the government agency administering the benefit. USCIS fails to provide any evidence showing that accepting proof of receipt of a means-tested benefit has led the agency to grant fee waivers to individuals who were able to afford the fee.

USCIS purports to justify these revisions on its claim that the various income levels used in states to grant a means-tested benefit result in inconsistent income levels being used to determine eligibility for a fee waiver. Consequently, a fee waiver may be granted for one person who has a certain level of income in one state but denied for a person with that same income who lives in another state. But according to applicable regulations, the underlying legal standard for a fee waiver is the individual's ability to pay. Ability to pay isn't the same for two people with the exact same income who live in two different states with totally different costs of living. It is both arbitrary and unfair to expect somebody living in Washington, DC to have equal ability to afford a fee waiver as would a person with the same income living in Minnesota. That is arbitrary and cannot possibly be a fair measure of ability to pay. Other government programs recognize as much. For example, the Federal Per Diem Rates (meals and incidentals) for Minnesota are $55.98, as compared to $76.00 for the District of Columbia.

Individuals who have already passed a thorough income eligibility screening by government agencies with ample expertise conducting these screenings should not be required to prove their eligibility all over again to USCIS. Asylees, refugees and TPS holders who are survivors of torture face additional barriers due to the trauma they endure. By eliminating receipt of a means-tested benefit to show eligibility, the government will add yet another burden on vulnerable individuals who are already facing significant economic challenges.

USCIS is taking the position that it cannot tell which public benefit programs are means-tested and which ones are not. Given that the largest means-tested programs are federal programs such as Medicaid or SNAP, this assertion appears more pretense than reality.

Currently, applicants can submit a copy of their most recent federal tax returns to demonstrate eligibility for the fee waiver. 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. 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 file. The proposed requirement will 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.

By placing heavy time and resource burdens on asylees, refugees and TPS holders—including the many torture survivors among them—when seeking to adjust status or renew their TPS application, these proposed changes will discourage eligible individuals from filing fee waivers and immigration benefits. Indeed, they appear to be designed precisely for that purpose.

The proposed modification that would no longer allow filing of the waiver through methods outside Form I-912 will place a time and resource burden on individuals eligible for fee waivers.

Eliminating the currently accepted applicant-generated fee waiver requests will place yet another unnecessary burden on applicants to locate, complete, and submit Form I-912 when a self-generated request that provides all of the necessary information can equally meet the requirements.

By only accepting fee waiver requests submitted using 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.

<u>This revision will negatively impact survivors of torture eligible for immigration benefits</u>.

The filing fee associated with various immigration benefits can be an insurmountable obstacle for an immigration benefit or naturalization application, especially for survivors of torture, who face additional obstacles posed by ongoing trauma. Any adjustment or revision of the costs associated with filing should be designed to ease, rather than exacerbate, these obstacles.

Increasing the burden of applying for a fee waiver will further limit access to adjustment of status for otherwise eligible asylees and refugees. USCIS asserts, without any supporting evidence, that individuals can merely “save funds” and apply later if they do not have the funds to apply today. This both fails to consider the harm to individuals resulting from the delay in applying and unjustifiably assumes individuals applying for fee waivers have disposable income that could be set aside. Most CVT clients can barely afford to pay for their basic needs. They often rely on the limited support CVT is able to provide and on support from friends or acquaintances from their home countries who often have little extra to give.

Many survivors suffer from long-term mental and physical health problems as a result of the torture they suffered, and these changes will harm them directly. Thirty percent of adults receiving government assistance have a disability. For most, that disability limits their ability to work. Eliminating the ability to use receipt of a mean-tested benefit as proof of fee waiver eligibility, or any new requirements that make the process more onerous or complicated, will further burden those with disabilities in accessing immigration benefits for which they qualify.

The proposed rule will also negatively affect U.S. citizen children: low income immigrants who are parents of U.S. citizen children may be forced to choose between pursuing adjustment or naturalization with the added security it brings and spending limited resources on their children’s needs. This could have devastating consequences for the wellbeing of children and families in the United States.

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

The revisions detailed above will strain immigration attorneys and in so doing limit the number of clients they can serve, including survivors of torture.

Fee waiver preparation for low-income immigrants demands hours of work from legal services providers. The fee waiver based on receipt of a means-tested benefit is efficient in that the provider knows which document will be sufficiently probative for USCIS. The other grounds for a fee waiver, financial hardship and a threshold of the poverty income guidelines, are much less clear and require far more time to gather sufficient documentation. Increasing the work needed to file a fee waiver will require attorneys to pass the cost through their attorney fee, while

attorneys providing pro-bono representation will be unable to serve as many clients due to added time constraints.

Conclusion

The proposed rule would have devastating consequences for asylees, refugees and other vulnerable populations. For torture survivors in particular, among those consequences is the peace of mind that accompanies the ability to adjust status and become naturalized, which helps them along their healing journey.

USCIS should review the development of the current fee waiver standards and engage in a reasoned analysis of how it arrived at its current proposal. Nothing in the current notice indicates an understanding of how and why the current form and guidance were created in 2010, which is critical to planning any changes. The Form I-912 request for fee waiver with its three-step eligibility formula, and the 2011 guidance, were specifically created to simplify the fee waiver adjudication process. The eligibility for receipt of a means-tested benefit was the linchpin of that simplified process.

We urge USCIS, rather than implement the revision, to perform public outreach to gather information, and then engage in full notice and comment procedures on all substantive changes proposed in order to ensure the fair and efficient adjudication of immigration benefits and naturalization.