



ASIAN AMERICANS
**ADVANCING
JUSTICE**

AAJC

November 27, 2019

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
Submitted via www.regulations.gov

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 write on behalf of Asian Americans Advancing Justice | AAJC to oppose the Department of Homeland Security (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. We urge USCIS to withdraw this proposed rule on fee waivers.

Asian Americans Advancing Justice | AAJC (Advancing Justice | AAJC) is a national non-profit, non-partisan organization founded in 1991. Our mission is to advance the civil and human rights of Asian Americans, and build and promote a fair and equitable society for all. Our wide-ranging efforts include promoting civic engagement, forging strong and safe communities, and creating an inclusive society.

Since the summer of 2015, Advancing Justice | AAJC has served as the site leader for the New Americans Campaign in the D.C. metropolitan area. In this role, Advancing Justice | AAJC convenes D.C. area organizations that provide citizenship assistance in order to coordinate activities so that we can more effectively reach and serve eligible legal permanent residents in applying for naturalization. The eligible-to-naturalize population in the D.C. metropolitan area is large (222,279 individuals) and diverse, encompassing immigrants from all over the world.

As an organization dedicated to serving Asian American, Native Hawaiian and Pacific Islander communities, we also note that as of the 2010 Census, there are nearly 750,000 Asian Americans and over 17,000 Native Hawaiians and Pacific Islanders (NHPI) in the D.C. metropolitan area.¹

¹ Asian Americans Advancing Justice, *A Community of Contrasts: Asian Americans, Native Hawaiians and Pacific Islanders in the South*, 2014, 59.

Since almost two-thirds of Asian Americans are foreign-born,² the Asian American population is a majority immigrant community that will be significantly impacted by the proposed changes. In addition, while Native Hawaiians are an indigenous population and therefore not immigrants to the United States, 2,400 NHPI in the D.C. area are foreign-born.³

Asian Americans Advancing Justice | AAJC strongly objects to the proposed changes that will result in additional barriers to U.S. citizenship and other immigration benefits and we urge that USCIS withdraw its proposed rule on fee waivers.

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, rather than limiting the forms of documentation it accepts, we would urge the agency to expand the types of documentary evidence accepted 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.

² *Id.* at 63.

³ Asian Americans Advancing Justice, *A Community of Contrasts: Asian Americans, Native Hawaiians and Pacific Islanders in the South*, 2014, 63.



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.

The Washington D.C. metropolitan area is home to immigrants from all over the world, and Advancing Justice | AAJC is proud to be part of immigrants' path to establishing permanent roots in the United States through naturalization. We believe that the government should be affirmatively encouraging and supporting legal permanent residents in their path to U.S. citizenship. At a cost of \$725, the fees to apply for naturalization are burdensome to many of the individuals assisted by our New Americans Campaign partners, and the availability of a fee waiver has helped many to decide to take the step of applying for naturalization. Without the fee waiver, it would be a struggle for working individuals and families in low-wage jobs, particularly living in an expensive metropolitan area, to be able to afford to apply for U.S. citizenship or other forms of immigration benefits.

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.

Through our experience gained through many Citizenship Workshops over the last few years, we know that it can be challenging for applicants to compile the documentation necessary to complete the naturalization application. For immigrants with limited resources who may not speak English well, obtaining additional documentations from government agencies can be daunting. About 30% of Asian Americans have limited English proficiency, and LEP rates are significantly higher among some ethnic groups.⁴ In the D.C. metropolitan area, 55% of Burmese Americans are LEP, as are 47% of Vietnamese Americans, 43% of Korean Americans, 38% of Nepalese and Thai Americans, 36% of Cambodian Americans, and 35% of Chinese and Taiwanese Americans.⁵ Further, many of the individuals we serve do not have computers or ready access to the internet, and would find it difficult to submit document requests or access forms online. In addition, many limited-English proficient individuals would have difficulty navigating websites that are not available in their preferred language. The IRS website is accessible only in Chinese, Korean, Spanish, Russian, and Vietnamese at this time. While the USCIS website has resources in more languages, it appears that information about Form I-912 (but not the form itself) is available only in Spanish.

⁴ Asian Americans Advancing Justice, *A Community of Contrasts: Asian Americans, Native Hawaiians and Pacific Islanders in the South*, 2014, 64.

⁵*Id.*



Many working families would find it challenging to afford the naturalization application and other immigration fees. A worker earning the current minimum wage of \$13.25 in the District of Columbia would need to devote significantly more than a week's wages, \$530 before deductions for taxes, to pay for the fees to apply for naturalization. Without the fee waiver, it would be a struggle for working individuals and families in low-wage jobs, especially living in a high-cost city like Washington, D.C., to be able to afford to become U.S. citizens or apply for other forms of immigration benefits. Again, we oppose the proposed changes that would limit immigrants access to fee waivers.

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.

Many of the immigration legal service providers Advancing Justice | AAJC works with only process fee waiver applications at their Citizenship Workshops when applicants have the documentation to apply based on receipt of a means-tested public benefit. Applicants who need to document their household income or detail financial hardship are often asked to make individual appointments at a later date so that they can receive one-on-one attention from trained legal service providers rather than the volunteers who generally staff workshops.

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 may even result fewer individuals assisted with fee waiver applications in one-on-one settings due to the increased work needed to help clients obtain the required documentation.

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.

IV. Naturalization Benefits All Americans

Residents across the country depend upon USCIS to administer benefits fairly and efficiently. When USCIS fulfills this important component of its mission, it helps our families, employers, and civic institutions thrive by ensuring that U.S. citizenship is open to all people who qualify under the law. The agency also honors our nation's values when it recognizes that U.S. citizens and our communities benefit greatly from immigrants' contributions and access to visas, work permits, and naturalization.

The economic benefits and opportunities naturalization affords cannot be overstated. Naturalized citizens earn more than legal permanent residents and are more likely to be employed. The Center for the Study of Immigrant Integration (CSII) at the University of Southern California found in 2012 that when people naturalize, their earnings increase by an average of 8-11%. In other words, a 10% increase in earnings would mean an extra \$3,765 each year for a family of four at 150% of the federal poverty line.

Naturalized citizens are engaged members of their communities. Many of the individuals we assist through Citizenship Workshops express their enthusiasm for voting. Further, a person who knows that she or he will remain in the U.S. for life is one who can put down roots with confidence, and who is therefore more likely to start a business or buy a home, and thereby further contribute to the economy.

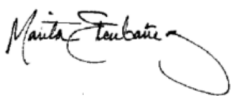
This proposal also departs from the federal government's longstanding appreciation of the special benefit that naturalization confers by making our nation stronger and more prosperous. As numbers of naturalized citizens and organizations assisting them have grown, researchers have amassed more extensive data that have sharpened our understanding of the many benefits that flow from individuals' decisions to naturalize. Increasingly, Congress and other policymakers have responded by calling on USCIS to promote naturalization, make it more accessible to eligible LPRs, and encourage English language learning and civics instruction. USCIS, in turn, has created the Office of Citizenship, administered grants, and undertaken extensive community education to achieve these goals. It is in the best interests of all Americans and consistent with our nation's values to make naturalization and other immigration services more accessible to eligible newcomers. The agency's proposed changes are inconsistent with USCIS' mission and run counter to the naturalization goals it has otherwise pursued.

In summary, naturalized Americans make us a more prosperous and secure nation through their deeper involvement in economic and political affairs. All policies on naturalization should support as many qualified LPRs as possible in choosing to become U.S. citizens. Abandoning the most straightforward evidence for qualification for a fee waiver, without justification, would accomplish the opposite, to the detriment of all Americans.

V. Conclusion

We appreciate your consideration of these comments and stand ready to work with USCIS to further streamline application procedures while preserving robust access to naturalization and other services that increase the prosperity and well-being of communities across the country. 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,



Marita Etcubanez
Director of Strategic Initiatives