

Submitted via www.regulations.gov

December 27, 2019

Ms. Samantha Deshommès
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

Re: Public Comment Filed Opposing the U.S. Citizenship and Immigration Services Fee Schedule, DHS Docket No. USCIS-2019-0010, RIN 1615-AC18

Dear Chief Deshommès:

Immigration Equality submits this comment in strong opposition to the proposed U.S. Citizenship and Immigration Services (“USCIS”) Fee Schedule (the “Fee Schedule”), published on November 14, 2019. We are deeply concerned about a number of proposals in the published Fee Schedule, including those set forth in greater detail below, and request that USCIS withdraw all provisions that make immigration benefits less accessible to vulnerable immigrants, such as the lesbian, gay, bisexual, transgender, queer (collectively, “LGBTQ”) and HIV-positive clients we serve.

I. Immigration Equality

Immigration Equality is a national organization providing free legal services and advocacy for LGBTQ and HIV-positive immigrants. In more than 80 countries, it is either a crime or profoundly dangerous to be LGBTQ. Immigration Equality’s mission and expertise are centered around securing safety and freedom for these LGBTQ and HIV-positive individuals, as well as reuniting LGBTQ bi-national couples and families. Many of Immigration Equality’s clients have endured extreme violence in their countries of origin, and deportation carries with it a viable threat of death. Our in-house legal team and pro bono network of 130+ law firms in 150+ offices nationwide are currently providing full legal representation to more than 600 individuals seeking asylum or other related benefits. In addition, our in-house team answers thousands of inquiries annually regarding LGBTQ and HIV-related immigration issues. Immigration Equality also offers assistance, support and training to other attorneys and community members, publishes a comprehensive manual on the preparation of asylum claims related to sexual orientation, gender identity, and HIV-status, and provides training on the adjudication of LGBTQ asylum cases to Asylum Officers within DHS.

Immigration Equality's client population is extremely vulnerable. Many of our clients have endured persecution in their countries of origin on account of their sexual orientation, gender identity and/or HIV status. They have fled to the United States, with no safety net to speak of, in order to pursue asylum claims and a better future free from harm. Obtaining permanent legal status in the U.S. is a crucial lifeline. Moreover, the ability to work while awaiting a determination on an asylum application is critical for survival. However, the Fee Schedule dramatically increases fees and eliminates fee waivers for benefit categories commonly used by our clients, namely asylum applications, green card applications and work authorizations.

Immigration Equality strongly opposes shifting the burden of USCIS' own mismanagement of resources onto our clients. Despite the fact that USCIS has increased filing fees substantially since 2010, it has not improved processing times, backlogs, or customer service at a commensurate level. In fact, USCIS' backlog has increased by more than 6,000 percent,¹ the overall average case processing time increased 91 percent between 2014 and 2018.²

By increasing fees and eliminating most fee waivers, USCIS's new proposed Fee Schedule would create a significant barrier for our clients. Thus, we urge USCIS to withdraw the proposed Fee Schedule in its entirety. Highlighted below are some of the changes that will impact our organization and our clients most profoundly, and the reasons for our opposition.

a. There Should Be No Fee to Apply for Asylum and Employment Authorization Document Applications Should Be Affordable for Asylum Seekers

Under the Fee Schedule, USCIS plans to charge a \$50 fee for affirmative asylum applications and does not provide for fee waivers or deferred or instalment payments. (Fee Schedule at 63219). The U.S. has never previously charged a fee for asylum applications. (Fee Schedule at 62318). Indeed, only three other countries in the world charge a fee for initial asylum applications and, unlike in the proposed Fee Schedule, those three countries allow for fee exemptions in at least some circumstances. (Fee Schedule at 62319). While \$50 may seem like a minor fee, for many of Immigration Equality's clients even that amount is an insurmountable barrier, especially given that the fee is not waivable even where extreme hardship can be established.

¹ 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).

² 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>.

The Fee Schedule also requires applicants who have applied for defensive asylum before EOIR or filed an affirmative asylum application with USCIS to pay a \$490 fee for an initial employment authorization document (“EAD”). Currently, USCIS exempts applicants with pending asylum applications who are filing their first EAD application under the 8 C.F.R. section 274a.12(c)(8) eligibility category from the EAD application fee if the applicant submits evidence of a pending asylum application and follows other instructions. The agency has not previously charged a fee for initial EAD applications by asylum applicants. The proposed Fee Schedule would also make this fee unwaivable for asylum applicants. The exemption from paying for this initial EAD is critical for most asylum seekers, including our clients.

Ninety-nine percent of our clients live at or below 250% of the poverty line when they are accepted into our legal services program, with a substantial portion living at or below the poverty line. Forty-four percent are under the age of 30. Further, LGBTQ and HIV-positive individuals sometimes seek asylum in the United States as a result of persecution by their own families and communities. Thus, our clients often cannot rely on family or community networks in the United States for financial support.

Studies show that asylum seekers who lack community support are likely to become “homeless, live in overcrowded or unsafe conditions, and lack basic needs like food and clothing.”³ This has been true for many of our clients who routinely face homelessness and hunger. For example, our client M.S. is a gay man from Chad who was viciously beaten and tortured on account of being gay. Fearing for his life, M.S. fled Chad with virtually no financial resources and no safety network to speak of. M.S. is currently preparing his asylum application, but after being turned out of the apartment he was sharing with an acquaintance, he is now homeless. He desperately wants to work so that he can secure housing and provide for himself. However, he cannot yet apply for his work authorization. Under the new Fee Schedule, M.S. will not be able to apply for asylum or secure employment authorization documents since he does not have the resources to pay for his most basic necessities much less the required fees.

Immigration Equality provides legal services to asylum seekers free of charge. Unfortunately, while we do not charge for our services, like most other similar non-profits, we cannot pay filing fees for our clients. Thus, the drastic fee increases proposed in the Fee Schedule would be detrimental to our organization, severely curtailing Immigration Equality’s ability to provide services to our clients.

In short, the proposed changes in fees would result in extreme financial hardship for asylum seekers like M.S., and would likely result in immigrants delaying or losing immigration status due to financial considerations, increased dependence on debt to finance applications, and decreased involvement of qualified legal assistance, among many other problems. In addition, under

³ Human Rights First, Callous and Calculated: Longer Work Authorization Bar Endangers Lives of Asylum Seekers and Their Families, (Apr. 29, 2019), https://www.humanrightsfirst.org/sites/default/files/Work_Authorization.pdf.

domestic and international law, the U.S. is obligated to accept asylum seekers fleeing persecution. Denying asylum for applicants who cannot pay will cause the U.S. to violate its treaty obligations. Moreover, imposing a wealth test on humanitarian protection is unconscionable.

b. The Fee Schedule's Limitation of Payment Types Will Severely Disadvantage Our Clients

USCIS proposes to make the method of fee payment changeable form-by-form through a designation in the form instructions. This would allow USCIS to prohibit the use of certain types of payment, like cashier's checks or money orders, for certain applications or petitions in favor of other methods of payment such as online payments. This proposed limitation would cause hardship to low-income applicants and petitioners, as reliable internet access, U.S. bank accounts, and well-established credit scores are assets that are often only available immigrants with financial and other resources and support. This would severely disadvantage many asylum seekers fleeing persecution, like most of our clients, who do not have access to these other methods of payment. Accordingly, USCIS should accept cashier's checks and money orders as methods of payment for all applications and petitions.

c. The Availability of Fee Waivers Is Critically Important for Our Clients

Immigration Equality's clients are already struggling to pay USCIS immigration fees at current levels. We assist many clients with applications for fee waivers. The Fee Schedule proposes to eliminate filing fee waivers for all categories except those that are statutorily required. This proposal would make essential benefits such as citizenship, green card renewal, and employment authorization inaccessible for many asylum seekers. Fee waivers enable our clients to financially support themselves and fully integrate into their communities.

II. USCIS' Proposal to Transfer Applicant Fees to ICE Is Improper

In the proposed Fee Schedule, USCIS seeks to transfer \$415.2 million in applicant fees held in the Immigration Examinations Fee Account, or IEFA, to Immigration and Customs Enforcement ("ICE"), for enforcement purposes. This misuse of applicant fees is unconscionable.

Congress codified in the Immigration and Nationality Act ("INA"), that the applicant-funded IEFA is USCIS's "primary funding source" used "to fund the cost of processing immigration benefit applications and petitions"—that is, "to adjudicate applications and petitions for benefits under the Immigration and Nationality Act and to provide necessary support to adjudications and naturalization programs." Despite this clear statutory instruction, however, USCIS seeks to transfer those funds to serve another purpose. By unnecessarily and wrongfully transferring funds from IEFA to ICE, USCIS is betraying not only its own mission, but also Congress's clear statutory intent. We find it wholly improper to accept payments from immigrants intended for adjudication

of their immigration benefits, and to redirect those funds to be used for enforcement against their communities.

III. Conclusion

By increasing fees and eliminating most fee waivers, USCIS's new proposed Fee Schedule will create a significant and unjust barrier for our clients, delaying or preventing many of them from obtaining status or other benefits and causing others to lose status, based solely on the inability to pay. We urge USCIS to withdraw the proposed Fee Schedule in its entirety.

Thank you for the opportunity to submit comments on the Fee Schedule. Please do not hesitate to contact Bridget Crawford at bcrawford@immigrationequality.org to obtain further information.

Sincerely,

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