



**Practice Advisory:
Fee Waivers for VAWA
self-petitions, U and T visa
applications**

August 2018

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Introduction

Practitioners nationwide have recently reported significant rates of fee-waiver denials from the Humanitarian Division of the Vermont Service Center. ASISTA is pursuing advocacy efforts with USCIS to ensure that any changes in fee waiver practice reflect the goals and contours of the law. It is essential that documentary requirements not impose unnecessary burdens on applicants seeking survivor-based forms of immigration relief. While we pursue this clarification, we hope this advisory helps practitioners apply “best practice” strategies in fee waiver preparation.

I. Review of Legal Authority

Fee waivers are authorized under 8 CFR 103.7(c).¹ The regulations state that USCIS may, in its discretion, waive fees if the applicant is unable to pay them, and if the waiver request is consistent with the status or benefit sought.² The regulations further specify that to request a fee waiver, a person must submit a written request for permission to proceed without a fee, showing that they are:

- entitled to or deserving of the benefit requested;
- The reasons for their inability to pay; and
- evidence to support the reasons indicated.³

A. Fee Waivers for Humanitarian Protections

Fee waivers are critical to ensuring survivors can access VAWA self-petitions, or U or T visa relief, and USCIS has frequently approved them since first implementing the laws.⁴ Congress eventually codified this practice in the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, specifically stating that DHS shall allow

¹ These regulations were last updated in 2010, which was also when the form I-912 was created.

² 8 CFR 103.7(c)(1) (stating that discretionary waivers of fees are provided if (i) "The party requesting the benefit is unable to pay the prescribed fee. (ii) A waiver based on inability to pay is consistent with the status or benefit sought including requests that require demonstration of the applicant's ability to support himself or herself, or individuals who seek immigration status based on a substantial financial investment.)

³ 8 CFR 103.7(c)(2)

⁴ INS. "Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children" 61 Fed. Reg. 13061, 13069 (March 29, 1996), available at: <https://www.gpo.gov/fdsys/pkg/FR-1996-03-26/pdf/96-7219.pdf>; See also USCIS. "New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status" 72 Fed. Reg. 53014, 53021 (Sept. 17, 2007), available at <https://www.gpo.gov/fdsys/pkg/FR-2007-09-17/pdf/E7-17807.pdf>. See also USCIS. "Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for 'T' Nonimmigrant Status" 81 Fed. Reg. 92266, 92288 (Dec. 19, 2016) (discussing fee waiver history in T visa context), available at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-19/pdf/2016-29900.pdf>

applicants to apply for a waiver of any fees associated with filing a VAWA self-petition, a T or U visa application, or an application for VAWA cancellation or suspension of deportation.⁵

B. Fee Waiver Policy Guidance

In 2011, USCIS issued a new policy memorandum establishing guidelines on fee waivers (hereinafter “Guidelines”).⁶ While the Guidelines address fee waiver protocol generally, they echo the fee waiver regulations and contain specific provisions regarding fee waivers for humanitarian protections. The Guidelines state that “based on an inability to pay, USCIS may waive any fees associated with the filing of any benefit” requested by:

- VAWA self-petitioners
- U visa applicants
- T visa applicants
- Employment authorization for abused spouses of A, E(iii), G and H visa holders
- Temporary Protected Status applicants
- Applicants for VAWA cancellation⁷

II. USCIS Review of Fee Waiver Requests

The Guidelines outline the steps and considerations USCIS should use in evaluating requests for fee waivers, namely whether:

1. The applicant (or their spouse or head of household) is receiving a means-tested benefit.⁸
2. The applicant’s household income is at or below 150% of the Federal Poverty Guidelines at the time of filing.
3. The applicant is under financial hardship due to extraordinary expenses or other circumstances that render the applicant unable to pay the fee.⁹

⁵ William Wilberforce Trafficking Victims Protection Reauthorization Act. Section by section 201(d)(7), Public Law No: 110-457 (December 23, 2008), available at: <https://www.congress.gov/110/plaws/publ457/PLAW-110publ457.pdf>;

⁶ PM-602-0011.1 “Fee Waiver Guidelines Established by the Final Rule of the USCIS Fee Schedule: Revisions to Adjudicator Field Manual (AFM) Chapter 10.9, AFM Update AD11-26.(March 13, 2011), available at: <http://bit.ly/2011USCISFeeWaiverGuidelines> (hereinafer “Fee Waiver Guidelines”

⁷ Fee Waiver Guidelines at 4. Emphasis in the original. This language is also found in the fee waiver regulations at 8 CFR 107.3(c)(3)(viii).

⁸ See note 15 *infra* for definition of means-tested benefit. Note that most crime victim applicants are not eligible for such benefits, at least not until their applications are approved, so if your clients are using them, you should explore the underlying facts.

The I-912 instructions indicate that applicants may select one or more bases for which they may qualify for the fee waiver.¹⁰

A. Supporting Documentation:

The 2011 USCIS fee waiver guidance also states that applicants *may* submit additional documents to prove their inability to pay.¹¹ It also indicates that “a fee waiver request may be approved *in the absence* of additional documentation if the applicant’s request is sufficiently detailed to substantiate his or her inability to pay.”¹²

While it appears from the guidance and the regulations that the submission of supplemental documents to support the request is not mandatory, the Guidelines suggest that applicants should submit additional materials as proof of eligibility for the fee waiver, as discussed below.¹³ We recommend that practitioners submit these supplemental documents wherever possible and only resort to sworn statements when the suggested evidence is non-existent or unobtainable.¹⁴

1. Receipt of Means Tested Benefit:¹⁵

- a. A letter, notice or other document that has the name of the agency granting the benefit, the name of the applicant, the name of the benefit received, the date the benefit was granted, and the date the benefit expires or needs to be renewed.¹⁶

⁹ Fee Waiver Guidelines pages 5-7.

¹⁰ I-912 Instructions, page 3 available at: <https://www.uscis.gov/sites/default/files/files/form/i-912instr.pdf>

¹¹ Fee Waiver Guidelines at 4.

¹² Fee Waiver Guidelines at 4 and 5.

¹³ While the Guidelines permit approval of requests for fee waiver without supplemental documentation, the Form I-912 instructions do require supporting evidence. See, e.g., I-912 Instructions, page 4 (“You must attach supporting documentation”), available at <https://www.uscis.gov/sites/default/files/files/form/i-912instr.pdf>

¹⁴ See Section 3.c, *infra*, “If documentation is not available”). Also see Gail Pendleton, “Practice Pointers: Ensure Your Evidence is Credible,” available at http://www.asistahelp.org/documents/resources/Pendleton_Practice_Pointers_on_Best_5DB2111087A2B.pdf

¹⁵ Fee Waiver Guidelines at 5. (defining a means-tested benefit as “a benefit where a person’s eligibility for the benefit, or the amount of the benefit, or both, are determined on the basis of the person’s income and resources, including those that may lawfully be deemed available to the person by the benefit-granting agency. Examples of means-tested benefit programs are Supplemental Nutrition Assistance Program, Medicaid, Supplemental Security Income, and Temporary Assistance for Needy Families.”)

¹⁶ I-912 Instructions, page 5, available at: <https://www.uscis.gov/sites/default/files/files/form/i-912instr.pdf>

- b. **Practice pointer for child applicants:** If a child is the sole applicant, then practitioners may provide proof of their individual means-tested benefit or a custodial parent’s means-tested benefit, if living together in the same household.¹⁷
- c. **Practice pointer:** The I-912 instructions state that applicants may not use a means-tested benefit **received by a child or household member, other than a spouse**, as the basis for eligibility under this section.¹⁸ Similarly, if applicants are 21 years old or older, they may not use a parent’s means-tested benefits (such as SSI), even if the parent is living with them, as evidence of eligibility for a fee waiver under this section.¹⁹ However, these benefits can be used to support a fee waiver request based on income at or below 150% of the federal poverty guidelines or financial hardship.²⁰
- d. **Practice Pointer:** The Administration’s executive orders and subsequent policy guide shows that public benefits fraud is a priority area for immigration enforcement.²¹ Receipt of federal means-tested benefits should be a red flag because many U and T applicants and VAWA self-petitioners are not eligible for these benefits; however, state-funded programs may have more expansive eligibility criteria. Practitioners should familiarize themselves with the public benefits eligibility laws in their state. In addition, it is anticipated there will be upcoming changes in policy around public charge issues that practitioners should be aware of. Although VAWA self-petitioners and T and U visa applicants are exempt from the public charge ground of inadmissibility, this policy could still impact survivors’ family members who may be adjusting status via family-based petitions.²²

¹⁷ I-912 Instructions, page 4,

¹⁸ I-912 instructions at page 5.

¹⁹ *Id.*

²⁰ *Id.*

²¹ White House. “Executive Order: Enhancing Public Safety in the Interior of the United States” (January 25, 2017), available at: <https://www.whitehouse.gov/presidential-actions/executive-order-enhancing-public-safety-interior-united-states/>

²² Also note that applicants for T-based adjustment of status are subject to the public charge ground of inadmissibility. INA 245(l)(2). If the public charge ground of inadmissibility applies at the adjustment phase for T visa holders, it must be waived. For more information on the impact of the public charge issues, visit National Immigration Law Center’s excellent resources, including “Access to Health Care, Food, and Other Public Programs for Immigrant Families under the Trump Administration *Things to Keep in Mind When Talking with Immigrant Families*. (April 12, 2018), available at: <https://www.nilc.org/issues/health-care/exec-orders-and-access-to-public-programs/>

2. Income at or below 150% of federal poverty guidelines

Current federal poverty guidelines change yearly and depend on the number of individuals in an applicant's family/household.²³ For fee waiver determinations, USCIS maintains a chart showing 150% of the federal poverty guidelines, available here: <https://www.uscis.gov/i-912p>. For example, 150% of the poverty guidelines for a family of four is \$37,650.²⁴ Documents to use as proof under this provision may include:

- a. Pay stubs, statements from applicant's employer, tax returns;²⁵
- b. Documents related to other forms of support such as child support, scholarships, or alimony;
- c. Applicants with Special Immigrant Juvenile Status must support their fee waiver requests with either 1) a recent court order establishing dependency or the custodial arrangement of the applicant; 2) a letter from a foster care home or other agency that describes an applicant's inability to pay fees for ancillary forms to the I-360, or 3) or a I-360 approval notice.²⁶

Practice Pointer: Practitioners should check that social security numbers on pay statements and tax returns are legitimate numbers.

3. Financial hardship

The Guidelines suggest a wide range of documents that may be used to demonstrate financial hardship, and state that applicants should demonstrate that they have suffered a "sufficiently negative impact as a result of [financial] hardship in a reasonably recent period preceding the filing of the fee waiver."²⁷ Documents to support this request include but are not limited to:

- a. Documentation of assets owned, such as real estate or bank accounts;²⁸
- b. Documentation of expenses such as rent, cost of food, child care, medical expenses, commuting costs, utilities, etc.;²⁹

²³ The U.S. Department of Health and Human Services maintains the federal poverty guidelines and can be accessed here. <https://aspe.hhs.gov/poverty-guidelines>.

²⁴ U.S. Department of Health and Human Services has a useful table that can show the poverty guidelines at certain percentage levels. You can view the 2018 version here: <https://aspe.hhs.gov/system/files/aspe-files/107166/2018-pctpovertytool.xlsx>

²⁵ For a full list of documents that can be used to show income levels, see Fee Waiver Guidelines at 6.

²⁶ Fee Waiver Guidelines at 6.

²⁷ Fee Waiver Guidelines at 7.

²⁸ For a more detailed list of supporting documents to show financial hardship, see Fee Waiver Guidelines at 7.

- c. **If documentation is not available:** The Guidelines state that if applicants cannot show proof of income, then they should provide a description of the financial hardship and **why** they cannot show any evidence of income.³⁰ The Guidelines suggest letters from faith-based organizations or other community-based organizations stating that the applicant is currently receiving some sort of benefit may be evidence of income.³¹

Documentation Practice Pointers

Many non-profit agencies have guidelines that they only provide legal services to individuals below a certain percentage of the federal poverty guidelines. Agencies with this practice may consider drafting a supporting letter that outlines this policy and indicates how applicants are eligible for services from this agency. In addition, applicants who are applying for survivor-based relief may be receiving assistance from other service providers such as shelters or other service providers, who may be able to write a supporting letter outlining the current financial hardship of the applicant.

Applicants applying for VAWA self-petitions, or U or T visas are often escaping violent and abusive situations. For this reason, they may not have access to documentation that proves their income or expenses. In such cases, applicants may write [either in the I-912 or in a separate statement] why they do not have, or have access to, documentation related to their benefits, income or expenses. For example, a VAWA self-petitioner could write

“I am applying for a VAWA self-petition based upon domestic violence committed by my U.S. citizen spouse. I do not have any information related to income and assets because my spouse did not allow me to have access to bank accounts, or tax information, nor am I listed on the lease of our apartment. I am not working at the moment and currently living at a shelter as I try to find more stable housing for me and my child.” I am receiving services through [Legal Service Agency]. My lack of income qualifies me for their services.”

This statement could then be supported by a letter from the legal service agency or statement from the shelter if available.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

III. Form I-912 or Applicant Statement?

The 2011 Guidelines states that while the I-912 fee waiver application was created to help standardize requests, the use of a USCIS form is NOT mandated by regulation, so USCIS will continue to consider "applicant-generated" fee waiver requests that comply with 8 CFR 103.7(c).³² Nevertheless, although we recognize that many applicants have been able to receive fee waivers without using the I-912 form in the past, ASISTA suggests it is now prudent to use the I-912 Fee Waiver form. This should help avoid procedural fee waiver denials which, in turn, may result in an application's denial for lack of "proper filing."

The benefit of the I-912 form is that one form can cover many different types of applications for both principals and derivatives. For example, if a woman and her two children are applying for a U visa and all will need to submit an I-192 waiver for inadmissibility, they may submit one I-912 form requesting fee waivers for three I-192 waivers and five I-765 applications for employment authorization (based on deferred action and the eventual U grant for the derivatives).

As mentioned above, the Guidelines permit but do not require that the applicant provide supporting documentation, so an affidavit or declaration under penalty of perjury may be sufficient, provided that it establishes eligibility for a fee waiver. If using an applicant statement for a fee waiver, practitioners should ensure that it mirrors one of the three criteria set out in the 2011 Guidelines (means tested benefit, 150% of the poverty guidelines or financial hardship). Practitioners may include supporting documents, if available, or a detailed description of the financial hardship and why the "best" documentation is not available.³³

IV. Advocacy Update

Starting in July 2018, there have been reports nationwide of VSC denying fee waiver requests whose format and content were similar to requests that had been approved in the past. On July 30, 2018, ASISTA officially inquired whether this was a change in policy or practice.³⁴ As of this writing, we have not heard back from USCIS but we will continue our advocacy efforts urging USCIS to reinstate its prior fee waiver practice that

³² Fee Waiver Guidelines at 2.

³³ See Appendix I for a sample fee waiver statement created by the Nebraska Coalition to End Sexual and Domestic Violence. While this statement has been successful in recent weeks, we remind practitioners that it is still unknown whether there's been an official change in policy/practice within USCIS with regard to fee waiver adjudication.

³⁴ See ASISTA's July 30, 2018 letter to USCIS here: <http://bit.ly/ASISTAJuly30FeeWaiverletter>

helped ensure crime survivors have access to critical protections and eliminated unnecessary barriers to status as Congress intended.

Many survivors need fee waivers to access the vital immigration protections Congress created. They may be fleeing abusive situations, may not have resources to pay for fee-based ancillary forms, nor have "primary documentation" (pay stubs, taxes, bank accounts) to demonstrate their economic need. Congress recognized this barrier when it created the special "any credible evidence" standard for these forms of relief,³⁵ and USCIS has acknowledged and explained how and why they must apply it.³⁶ The Humanitarian Division's implicit adoption of this flexible evidentiary standard in fee waiver practice has meant that thousands of survivors could safely access crucial protections. Their apparent application of a more restrictive standard is now jeopardizing both crime survivors and the Congressional goals, including holding perpetrators accountable.

Contact us for help

If you have a fee waiver denial you feel has violated the regulations and 2011 Guidelines, please fill out this ASISTA form here: <http://bit.ly/FEEWaiverDenials2018>. We also encourage you to submit a CIS Ombudsman case assistance form here: <https://cisomb.dhs.gov/oca/form7001.aspx>. This is especially important if you now have missed a deadline due to the denial of the fee waiver (e.g. denials of I-290B motions or U-based adjustment of status). If you do make a case inquiry with the CIS Ombudsman's office, please let ASISTA know so we can keep track by emailing questions@asistahelp.org with the subject line "Fee Waiver Denial Case Inquiry."

³⁵ INA 204(a)(1)(J)

³⁶ Paul Virtue. INS General Counsel. HQ 90/15-P. "Extreme Hardship and Documentary Requirements Involving Battered Spouses and Children," (No date on Document), available at: <http://bit.ly/INSCredibleEvidenceMemo>

Appendix 1

REQUEST FOR FEE WAIVER³⁷

Applicant Name: _____ A#: _____

Derivative applicants who also need fee waivers based on information in this request:

Derivative Applicant Name: _____ A#: _____

Derivative Applicant Name: _____ A#: _____

Derivative Applicant Name: _____ A#: _____

Application Form(s): _____

Statement of Eligibility: I believe I am entitled to/deserving of [VAWA self-petition; U visa; T visa] based on having suffered [battery/extreme cruelty; qualifying crime; trafficking].

I request a fee waiver pursuant to 8 C.F.R. 103.7 for the filing and any biometrics fees required for the enclosed application(s). I am unable to pay the filing and biometrics fee(s) because of my financial and special circumstances described below.

___ Means-tested benefits: I receive the following benefits: _____

___ Income 150% below federal poverty guidelines: My monthly income is \$ _____

___ Dependents – I have ___ dependent(s) that depend on me for financial support

___ My children receive the following means-tested benefits:
(Medicaid/TANF/SNAP/other): _____

___ I have a financial hardship: [Include description of hardship]

³⁷ Fee waiver sample is based on fee waiver statement created by Nebraska Coalition to End Sexual and Domestic Violence. ASISTA thanks NCESDV for their partnership and contribution to this advisory. For an editable version of this form, click: <http://bit.ly/FeeWaiverSampleStatement>

OVERALL FINANCIAL PICTURE

Information about my household and family members:

Name	Age	Relationship to me	Employed (yes/no)	Income

Information about my income:

Source	Amount per month
Wages / salary	
Child Support	
Other income:	
TOTAL	

Information about my and my household's public benefits:

Source	Amount per month
Food Stamps	
Medicaid/other medical assistance	
TANF/ADC	
SSI	
Other public benefits: _____	

Information about my assets:

Source	Amount
Cash / checking / savings	
Real estate	
Personal property (specify)	
Other assets (specify)	
TOTAL	

Information about my expenses:

Source	Amount per month
Housing (rent / mortgage)	
Food	
Utilities	
Transportation / car loan	
Auto insurance	
Medical	
Telephone	
Childcare	
Clothing	
Spousal / child support	

Credit cards	
Other debts or loans	
Other expenses (specify)	
TOTAL	

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Signature

Date

Signatures of family members requesting a fee waiver:

Name

Signature

Date

Name

Signature

Date

Name

Signature

Date