



February 28, 2019

L. Francis Cissna
Director
U.S. Citizenship and Immigration Services (USCIS)
Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, D.C. 20529

Re: **Concerns Regarding Publication of New Form I-539: Application to Extend/Change Nonimmigrant Status**

Dear Director Cissna:

ASISTA is a national organization dedicated to safeguarding and advancing the rights of immigrant survivors of violence. We are nationally recognized experts on survivor-based forms of immigration benefits created through the Violence Against Women Act (VAWA) and its progeny. For over 15 years, ASISTA has worked with attorneys and advocates across the country who are helping survivors access the services and status they need to achieve safety and independence.

We write to you regarding the February 11, 2019 announcement that USCIS will be requiring a new version of Form I-539 and a new Form I-539A beginning March 11, 2019.¹ In this announcement, USCIS indicated that starting on March 11, 2019, USCIS would **only** accept the revised Form I-539 with an edition date of 02/04/19 and would reject any Form I-539 with an edition date of 12/23/16 or earlier that is received by USCIS after March 8.² This notice also indicated that there will be a mandatory biometrics fee for every applicant and co-applicant, and that USCIS would reject any Form I-539 that is missing the biometrics fees.

On February 21, 2019, our partners at the American Immigration Lawyers Association (AILA) sent you a letter requesting that USCIS implement a 90-day grace period for the effective date of

¹ Announcement available at <https://www.uscis.gov/i-539> (last updated February 20, 2019)

² *Id.* Emphasis in the original.

the revised Form I-539 and new Form I-539A and that it suspend the mandatory biometric appointment requirement.³ We write to stridently support these requests.

Provide a Grace Period

The Form I-539 is commonly used in survivor-based forms of immigration relief such as U visas and T visas, and USCIS has issued specific regulatory and policy guidance related to its use in these cases.⁴ In the U visa context, for example, the regulations provide for extensions of U nonimmigrant status if the U nonimmigrant's initial period of stay is less than four years, or in cases where a qualifying family member is unable to enter the United States timely due to delays in consular processing, or if required to assist in the investigation or prosecution of a crime.⁵

Given that the Form I-539 has widespread use for survivor-based forms of relief such as U and T visas, we are extremely concerned about the lack of a sufficient grace period to implement the new forms. As the AILA letter indicates, the lack of a reasonable transition period for these forms directly counters USCIS' long-established practice.⁶ These transition periods are especially critical for applicants who may not know where to access information regarding form updates and procedures. If an outdated Form I-539 is submitted, a survivor runs the risk of falling out of status if the application is rejected. Thus, the lack of a reasonable grace period for the new Form I-539 will have detrimental impact on survivors and the advocates who serve them.

Clarify that Fee Waivers Are Available to Survivors

We are also extremely concerned about the lack of any guidance or instruction regarding the availability of fee waivers for USCIS' mandatory biometrics fee. As you know, ensuring equal access to survivor-based immigration protections is crucial, especially for survivors who may have few financial resources of their own. For this reason, Congress codified the use of fee waivers in certain humanitarian cases in the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, specifically stating that DHS *shall* permit applicants to apply for a waiver *of any fees* associated with filing a VAWA self-petition, a T or U visa application, or other listed survivor-based remedies.⁷ Thus, a mandatory fee for a filing associated with a T or U

³ See " AILA Requests Delay to Mandatory Effective Date of Revised Form I-539 and New Form I-539A" (February 21, 2019), available at <https://www.aila.org/infonet/aila-requests-delay-to-mandatory-effective-date> (hereinafter AILA letter).

⁴ See e.g. USCIS. PM-602-0032-2 "Extension of Status for T and U Nonimmigrants", available at <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2016/2016-1004-T-U-Extension-PM-602-0032-2.pdf>

⁵ See 8 CFR 214.14(g)(2)(i) and (ii)

⁶ AILA letter at 2.

⁷ William Wilberforce Trafficking Victims Protection Reauthorization Act. Section by section 201(d)(7), Public Law No: 110-457 (December 23, 2008) (codified at 8 U.S.C. § 1255(l)(7)), available at: <https://www.congress.gov/110/plaws/publ457/PLAW-110publ457.pdf>. [Emphasis added].

visa application, without the clear opportunity for a fee waiver, runs in direct opposition to federal law. **USCIS should immediately make it clear to stakeholders that fee waivers are available for any and all fees associated with the Form I-539 and I-539A, including biometrics fees, pursuant to federal law and existing USCIS guidance.**⁸

Refrain from Requiring Biometrics for Children and Infants

Lastly, we are extremely concerned about the biometrics requirements for all applicants, including children and infants. This requirement contradicts established practice regarding biometrics for those under 14 years of age, and USCIS has not provided any rationale in support of this change in practice. Moreover, USCIS was not clear that these biometrics appointments were required for all applicants in the proposed instructions to the Form I-539.⁹ For this reason, we support AILA's request for a delay in the implementation of the mandatory biometrics requirement until stakeholders can have an opportunity to understand and address concerns with this drastic change in practice.

Respectfully submitted,



Cecelia Friedman Levin
Senior Policy Counsel
ASISTA Immigration Assistance

cc: Ms. Tracy Renaud, Acting Deputy Director, USCIS
Ms. Lora Ries, Chief of Staff, USCIS
Ms. Elissa McGovern, Chief of Policy, Office of the CIS Ombudsman, DHS

⁸ 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>

⁹ See "Instructions for Application to Extend/Change Nonimmigrant Status 2.09.2018", available at: <https://www.regulations.gov/document?D=USCIS-2007-0038-0067> (indicating on page 11, USCIS *may* require that you appear for an interview or provide biometrics (fingerprints, photograph, and/or signature) at any time to verify your identity, obtain additional information, and conduct background and security checks" (emphasis added).