USCIS Fee Rule & The Impact on Survivor-Based Protections
August 4, 2020

On August 3, 2020, USCIS published the final fee rule in the Federal Register, which will go into effect October 2, 2020. This advisory discusses the provisions of the rule most relevant to survivor-based forms of immigration relief and will be updated as more information becomes available.

Background: USCIS has attempted to curtail the use of fee waivers for years, beginning with proposed changes to Form I-912, Request for Fee Waiver back in September 2018. While these proposed changes to the I-912 form are currently enjoined by litigation, the fee rule contains additional restrictions on criteria to fee waivers beyond the proposed changes to the form. Despite the new rule's repeated statement that "DHS is not intending to further harm survivors of domestic violence, human trafficking, or other crimes," this rule will create numerous barriers for survivors seeking immigration relief.

I. **Fee Increases:** The final rule will significantly increase the cost of many benefits (for full list of fee changes click here). The ones most common to survivor-based relief include:

Form	Current Fee	New Fee	% Difference
I-131: Application for Travel Document	$575	$590	3%
I-192: Application for Advance Permission to Enter as Nonimmigrant	$930	$1400	51%
I-212:Application for Permission to Reapply for Admission into the U.S.	$930	$1050	13%
I-290B: Notice of Appeal or Motion	$675	$700	4%
I-485: Application to Register Permanent Residence or Adjust Status	$1140	$1130	**
I-539 (online): Application to Change/Extend Nonimmigrant Status I-539 (paper): Application to Change/Extend Nonimmigrant Status **Note:** There currently is no online filing for U and T visa related-cases	$370 $370	$390 $400	5% 8%
I-601: Application for Waiver of Ground of Excludability	$930	$1010	9%
I-751: Petition to Remove Conditions on Residency	$595	$760	28%
I-765:Application for Employment Authorization (fee will remain $140 for DACA cases only)	$410	$550	34%
I-929: Petition for Qualifying Family Member of U-1 Nonimmigrant	$230	$1485	546%
N-400 (online): Application for Naturalization N-400 (paper): Application for Naturalization	$640 $640	$1160 $1170	81% 83%

**The final rule "unbundles" the fees currently included in an adjustment of status application package. Currently, the fee of $1140 includes a (c)(9) based I-765 application for employment authorization document and a I-131 for temporary travel. However, under the final rule, each form will require its own fee, increasing the total cost by 85%.

	Adjustment of Status[1]	(c)(9) Work Authorization	I-131 based on Advance Parole	Total
Current	$1140 + $85 biometrics	$0	$0	$1225
New Rule	$1130	$550	$590	$2270

A. **I-929 Fee:** The final rule dramatically raises the cost for I-929 applications by 546%. While commenters objected to this staggering increase, USCIS declined to adjust the fee. Instead, the final rule states the new fee "reflects the estimated full cost of adjudication, which includes the anticipated cost of fee waivers for Form I–929. DHS recognizes that this represents a significant increase of $1,255 in the fee. DHS notes that this increase is due, in part, to its commitment to preserve access to fee waivers for certain vulnerable populations. Because DHS anticipates that many filers will meet the fee waiver criteria, USCIS must charge fee-paying applicants more to recover the cost of processing fee waived forms." Again, USCIS' justification for this fee increase is deeply cynical and perverse--drastically raising the cost of family reunification under the pretext of making fee waivers more accessible.

B. **Asylum**: The final rule imposes a $50 fee on asylum applications filed with USCIS and no fee waiver is available. With regard to defensive asylum applications, the rule states, that "in immigration court proceedings, EOIR will continue to charge fees established by DHS for DHS forms, including the fees that DHS is establishing in this final rule, which include but are not limited to the fees for Form I–485, Application to Register Permanent Residence or Adjust Status; Form I–589, Application for Asylum and Withholding of Removal Fee; and Form I–601, Application for Waiver of Grounds of Inadmissibility." Asylum applicants with pending applications will also be required to submit a $30 biometrics fee along with $550 for an application for employment authorization (with no available fee waiver). *See new* 8 CFR 106.2(a)(32). However, the rule indicates that there will be a fee exemption for the initial Form I–765 for individuals who were granted asylum or who were admitted as refugees. The final rule

[1] Fee based on adult applicant

states that applications solely for withholding and CAT claims will not have a fee, nor will there be a fee for asylum for unaccompanied minor children in court. *See new* 8 CFR 106.2(a)(20).

Refusing asylum applicants for their inability to pay this fee undermines our obligations under international and domestic law and ignores the very real fact that often asylum seekers do not have the economic resources to pay such a fee. For survivors of violence, including asylum seekers, access to immigration benefits is essential to escape abusive situations and gain self-sufficiency following victimization. This new fee serves only to create additional invisible barriers to relief.

II. Fee Waivers

Applications for VAWA self-petitions, U and T visas, and work authorization granted to principal applicants upon approval do not have a fee.[2] However, VAWA self-petitioners, and U and T visa applicants must often file ancillary forms that do have significant fees, which would rise exponentially as noted above. In addition, many of these individuals later file applications for adjustment of status or naturalization, for which they are required to pay filing fees. The availability of fee waivers for Temporary Protected Status[3] (TPS) and for survivor-based immigration protections under the Violence Against Women Act (VAWA), including VAWA self-petitioners[4] and T and U visa applications, are statutorily protected and cannot be eliminated by DHS.[5]

The final rule now includes provisions related to the availability of fee waivers for I-485 and associated forms to SIJS applicants who, at the time of filing, have been placed in out-of-home care under the supervision of a juvenile court or a state child welfare agency. It also allows for fee waivers to Special Immigrant visas (Afghan and Iraqi translators). **Table 3** in the final rule has the full list of forms these applicants and petitioners may apply for that are either exempt from fees or eligible for fee waivers.

A. Limited Fee Waiver Criteria and Eligibility

The new Section 8 CFR 106.3 provides that fee waivers are not available to those who are subject to the affidavit of support requirements or subject to the public charge grounds of inadmissibility. While neither provision applies to survivor-based relief, these provisions disproportionately harm low and moderate income families. Further, the final rule eliminates the means-tested benefit and financial

[2] There is no fee, for example for an I-360 application for a VAWA self-petitioner or Applicant for Special Immigrant Juvenile Status. *See* https://www.uscis.gov/i-360. Similarly, there is no fee for an application for U nonimmigrant status or T nonimmigrant Status, See also, https://www.uscis.gov/i-918 and https://www.uscis.gov/i-914.
[3] See INA sec. 244, 8 U.S.C. 1254a.
[4] As defined by INA 101(a)(51)
[5] *See* 8 U.S.C. 1255(l)(7)

hardship criteria for fee waivers, and **limits fee waivers only to those who can demonstrate they are at or below 125% of the federal poverty guidelines (FPG).**

Commenters to the final rule opposed lowering the "income limit for fee waivers to 125 percent of the FPG as it would disqualify many immigrants, including survivors of crime who are statutorily protected, from receiving fee waivers for immigration benefits." The final rule also noted that "many commenters stated that the proposed rule fails to acknowledge that immigrants, especially survivors of crimes, often do not have access to financial documents or proof of their income for various reasons, including informal jobs (e.g., babysitting or yard work) that pay cash; the fact that limited earnings do not require taxes to be filed; and that abusers often have control of all financial documents, destroy records, or prevent victims from attaining financial independence."

In response to these concerns, the final rule states, "DHS acknowledges that some applicants may no longer qualify for fee waivers if their income was higher than 125 percent of the FPG but lower than 150 percent of the FPG. However, many applicants may otherwise have income below 125 percent and, therefore, still qualify."

We strongly disagree that this is an appropriate measure as it would mean that thousands of individuals would become ineligible to apply for fee waivers. Individuals above 125% of FPG frequently still have a demonstrable financial need, as evidenced by the fact that other means tested benefits utilize income limits above that level.[6] By limiting access to fee waivers, fewer people will have access to immigration relief for which they otherwise may be eligible. The criteria for fee waivers should be based upon ***an applicant's*** economic need, and not USCIS' budgetary goals.

B. Documentation Requirements

An applicant seeking a fee waiver **must use the I-912 Form,** as required under the final rule.[7] Thus, there will no longer be the option of submitting an "applicant-generated" fee waiver request outlining income and expenses. Furthermore, each applicant and derivative will be required to submit their own I-912.

The new regulations at 8 CFR 106.3 define the criteria for fee waivers and the documentary requirements including tax transcripts, W-2 form, or other documentation from the IRS. 8 CFR

[6] For example, eligibility for Supplemental Nutrition Assistance Program (SNAP) in FY2020 required applicants to show they were at or below 130% of FPG. See https://fns-prod.azureedge.net/sites/default/files/media/file/FY20-Income-Eligibility-Standards.pdf

[7] See 8 CFR 106.3(d).

103.6(f)(5) states that VAWA self-petitioners, U and T visa applicants who do not have any income or cannot provide proof of income may:

"(i) Describe the situation in sufficient detail as provided in the form and form instructions prescribed by DHS to substantiate that he or she has income at or below 125 percent of the Federal Poverty Guidelines as well as the inability to obtain the required documentation; and

(ii) Provide pay statements (stubs) or affidavits from religious institutions, non-profits, or other community-based organizations verifying that he or she is currently receiving some benefit or support from that entity and attesting to his or her financial situation as documentation of income, if available."

The proposed I-912 instructions published in November 2019 noted that if you are applying for VAWA benefits or T or U nonimmigrant status, "*and due to your victimization*, you do not have any income or cannot provide proof of income for yourself or your household members as required above, describe your situation in sufficient detail to substantiate your inability to pay as well as your inability to obtain the required documentation." ASISTA opposed this language as it appeared to place an additional burden on survivors to prove the lack of income had a nexus to victimization. In response to this concern, the final rule states:

> "USCIS indicates that fee waiver applicants "need only provide sufficient information to establish why the documentation is not available and not that it is unavailable directly or indirectly as a result of the victimization." The form provides space for explanations and attachments are accepted, but a separate declaration is unnecessary. Although not required by statute, USCIS has provided flexibilities in the instructions for the VAWA, T, and U populations permitting them to submit information regarding their inability to obtain documentation on their income with their fee waiver request. DHS will presume that the inability of this group of applicants to submit certain evidence is the result of the victimization and abuse and **not require proof of a nexus between victimization** and the inability to pay, but the request must demonstrate inability to pay to the extent necessary for USCIS to grant a discretionary fee waiver.
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> All applicants for a fee waiver are subject to the evidence requirements as provided in the revised form instructions, which include more flexible rules with respect to the groups these comments mention. If individuals are unable to obtain documents without contacting the abuser, they can explain why they are unable to obtain such documentation and submit other evidence to demonstrate their eligibility. **Obtaining information from the IRS in transcripts, a W-2, or proof of non-filing, if applicable, is sufficient documentation to establish the necessary income or lack of income."** [Emphasis added]

As we mentioned **in our comment to the fee rule,** obtaining documentation from the IRS is often an arduous process. For example, to request a transcript online, the IRS requires an applicant to have an SSN and "access to your email account; your personal account number from a credit card, mortgage,

home equity loan, home equity line of credit or car loan; and a mobile phone with your name on the account."[8] Survivors and other applicants often do not possess or have access to this information. To apply for a transcript by mail, applicants need less information, but will need to wait an additional 5-10 days, which may impact critical filing deadlines.[9] Fee waiver applicants who may be in emergency or transitional housing, or do not have the language or technology access to obtain these transcripts will face additional burdens obtaining this information.

Over the last several years, USCIS has increasingly denied fee waiver applications for survivor-based cases even where the applicant demonstrated eligibility under the existing criteria. Not only does the final rule ignore the impact of these rejections on survivors, but it also does nothing to ameliorate the harm caused. The final rule reflects USCIS disingenuous view that *the availability* of fee waivers means that survivors will be able to *meaningfully access* them, which advocates recent experience does not support.

We will include additional practice pointers when or if this rule goes into effect.

C. Fee Waivers for Naturalization for Survivors

Generally, there is no fee waiver available for naturalization, which puts low-income legal permanent residents escaping violence in the unconscionable position of having to choose between expending resources to become a U.S. citizen or cover basic necessities for their families.

However, the final rule permits those who obtain immigration benefits as a VAWA self-petitioner, T nonimmigrant, U nonimmigrant and certain SIJS applicants[10] and Special Immigrants (Afghan and Iraqi translators) to apply for a fee waiver for Form N-400, Application for Naturalization, Form N-600, Application for Certificate of Citizenship, and Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322. See 8 CFR 106.3(a)(3).

The rule ignores the reality that survivors of domestic violence, sexual assault and human trafficking may pursue other routes to secure immigration status which lack such explicit protections--for example, survivors may seek lawful permanent residence or naturalization without ever having been granted a U or T visa or self-petition (e.g. work-based visas).

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[8] Internal Revenue Service. "Tax Record: Transcript" available at https://www.irs.gov/individuals/get-transcript

[9] *Id.*

[10] DHS will allow petitioners for and recipients of SIJ classification who, at the time of filing, have been placed in out-of-home care under the supervision of a juvenile court or a state child welfare agency, to submit requests for fee waivers for Form I-485 and associated forms, as well as Forms N-400, N-600, and N-600K.

D. Fee Waivers for I-751s

The final rule clarifies that applicants filing a I-751 waiver based on domestic violence will be eligible for fee waivers as they are included as "VAWA self-petitioners" as defined by INA 101(a)(51)(C). See new 8 CFR 106.3(a)

E. Discretionary Fee Waivers

The new regulations at 8 CFR 106.3(c) give the Director of USCIS discretionary authority to waive a form fee that isn't otherwise waivable "if the Director determines that such action is an emergent circumstance, or if a major natural disaster has been declared in accordance with 44 CFR part 206, subpart B." The Director may not waive the criteria for the fee waivers nor the requirement to submit a I-912 form. Furthermore, the Director cannot waive the fees if the individual requesting it is subject to the public charge ground of inadmissibility, subject to the affidavit of support requirements or a sponsored immigrant[11] (unless seeking a I-751 waiver based on abuse).

It is unclear how/when this discretionary authority will be exercised by the USCIS Director in practice. The regulations make clear that applicants are NOT permitted to send individual requests for fee waivers to the Director for consideration under this provision.[12] The final rule states that "USCIS will notify the public of the availability of fee waivers for specific forms under this provision through external policy guidance, website updates, and communication materials."[13]

III. Continued Advocacy

The final rule contains significant discussion regarding survivor-based forms of relief under the Violence Against Women Act and the Trafficking Victims Protection Act. For example, in one section, DHS responds to commenters' concerns that the proposed fee increases will jeopardize immigrant survivors' ability to file for immigration relief independent of their abusers by stating:

> **Response**: In this final rule, VAWA self-petitions, applications for T nonimmigrant status application, petitions for U nonimmigrant status and applications for VAWA cancellation or suspension of deportation are fee exempt, and fee waivers will remain available for all ancillary forms associated with those categories. DHS believes that these fee exemptions and waivers mitigate concerns that other provisions of this final rule may harm victims of abuse and domestic violence. DHS declines to make changes in this final rule in response to these comments.

[11] See 8 CFR 213a.1
[12] See Final rule at 46824
[13] See Final Rule at 46814.

USCIS justifies that because fee waivers and exemptions are available to survivors of violence, that there will be no harm caused by the new fee rule. This is a deeply flawed and cynical view, as this new rule drastically increases fees while simultaneously restricting the criteria for fee waivers. Overall, the changes in the final rule creates financial barriers for low income immigrant survivors, and may place them in an unconscionable position of having to choose between delaying or falling out of legal immigration status or providing for their families' necessities.

We will send out updates of our continued advocacy efforts to challenge this harmful fee rule as well as provide additional information and practice pointers. If you are interested in helping with our advocacy on this issue, we welcome you to contact us at questions@asistahelp.org. Please also reach out with any questions or concerns about this advisory.