



## **Notes from Fee Waiver Listening Session with USCIS 4.6.2021**

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## **I. Logistics**

The listening session was not recorded to encourage open conversation. Remarks made in the chat were included in the notes, without attribution. USCIS representatives present were from Service Center Operations (SCOPS), Office of Policy & Strategy (OP&S), and Public Engagement.

## **II. Framing**

For nearly 3 years, fee waiver adjudication for survivor-based cases has caused tremendous hardship for survivors trying to access humanitarian forms of relief. In the summer 2018, there was a drastic and unannounced shift in fee waiver adjudications at the Humanitarian Unit at VSC and NSC. As a result, practitioners and applicants now spend critical and limited resources preparing and re-submitting denied fee waiver applications, without any clear understanding of USCIS expectations on these requests. There does not seem to be any consistent rationale between which fee waivers are granted and which are denied.

While this listening session focused on survivor-based forms of relief (mainly VAWA self-petitions, U and T visas), stakeholders have also indicated they are seeing increased problems with fee waivers in SIJS adjustment applications as well as with I-765 applications filed to the lockboxes. Participants are asking for a return to flexibility in fee waivers for survivor-based protections. Specifically, that USCIS return to the adjudication process that VSC and NSC previously utilized that recognized the circumstances of crime survivors and comported with 2011 fee waiver guidance.

## **III. FOIA Litigation & Document Production on Fee Waivers**

Texas RioGrande Legal Aid submitted a FOIA request on behalf of Grassroots Leadership after the unannounced shift in fee waiver adjudications practice for VAWA, U, and T visa relief, and litigated the FOIA from mid-2019 until early 2021. Records obtained include standard operating procedures, training materials, and other documents indicating that USCIS was requiring specific types of evidence and directing how such evidence should be assessed, in conflict with the flexible 2011 fee waiver guidance. It is critical that this information be available to the public. It should not have taken this FOIA litigation in order to present this information to the public. USCIS should provide adequate notice of any changes in policy and adhere to consistent standards for fee waiver adjudications so that adjudications are non-arbitrary. [FOIA Results available here.](#)

## **IV. Impact of Fee Waiver Denials**

Before diving into the adjudication issues that survivors are facing, it is important to discuss the real world impact of these denials. The adjudication process over the last several years have very real consequences. There are those who chose to delay applying for relief for fear that their fee waiver request will be denied, as they do not have the required fees to pay.

## **A. Impact of missing deadlines**

- An attorney shared a story of four family members who all submitted identical evidence for adjustment of status applications. One family member's fee waiver was denied twice, while the others were accepted. The VSC Hotline stated they need to provide more detailed information, but by this time, his U-3 status expired. The attorney had to file a I-539 nunc pro tunc for that applicant as he was out of status due to the rejection of the U AOS after the fee waiver request denial.
- An attorney shared that a U visa holder, who was a domestic violence survivor, had a fee waiver rejected for her adjustment of status based on receipt of medical benefits, even though this evidence had been sufficient for other fee waiver requests. By the time they received the fee waiver request denial and U AOS rejection, the U visa expired, and the survivor had no work authorization nor the ability to travel abroad.
- Survivors are also harmed by fee waiver denials leading to missed I-290B deadlines, particularly given the short deadlines that prevent refiling and the regulations that do not allow for USCIS discretion to accept late-filed I-290B as appeals.

## **B. Using money for living expenses/incurring debt for immigration fees**

- In the zoom poll conducted during the listening session, **93% of survey respondents indicated that clients used limited resources meant for housing, etc to pay filing fees.**
- An attorney mentioned that the survivors she serves will find a way to pay even if they qualify for a fee waiver to avoid repercussions (like a missed deadline), and they are forgoing basic necessities in order to pay the filing fee. She has seen clients, especially trafficking survivors who were previously victimized due to financial insecurity, put themselves at risk.
- An attorney reported that she was serving a homeless client who did not want to risk missing the filing deadline for the I-290B and so used their very limited resources they had for rent and food toward immigration fees.
- Another attorney noted that fee waiver denials impact more than the applicant. Their agency represents a survivor of domestic violence whose single mother in her birth country has also incurred debt to pay fees after denial of a waiver.
- One organization had to use emergency funds that were intended for emergency COVID relief (to pay for things like rent and food) to pay the I-192 fee for a client whose fee waiver was rejected twice, and she did not have a job nor resources to pay for the fee.

- One participant indicated that she hears from many private attorneys that the cost of completing the fee waiver is more than the cost of paying the fee because it takes so much attorney time. And it was not this way in the past. For service providers the extreme amount of attorney time and client time involved in fee waiver issues means fewer victims of human trafficking and domestic violence are served, in addition to the stress and hardship to clients.
- **Related comments:**
  - “These fee waiver rejections end up being exceedingly stressful for survivors, who are often single mothers, and put them in more precarious situations especially during a pandemic. Many of our clients are indigent and losing access to work permits & drivers licenses (or, as being discussed currently, missing out on an opportunity to appeal an adverse decision) is exceedingly harmful.”
  - “We had a client whose only income (well under 150% FPG) was what her daughter paid her for babysitting her grandchildren. We submitted a notarized, sworn statement from the daughter stating how much she paid her and a sworn statement from the client about her income and expenses, and received a rejection. The client ended up borrowing money from her family to pay the filing fee.”
  - “For survivors to take on debt to pay fees, the end result of these fee waiver denials creates a new vulnerability for trafficking and further victimization that didn't previously exist.”
  - “Incurring new debt is always going to make survivors even more vulnerable.”
- **Forgoing relief and opportunities for administrative review**
- Practitioners have said clients are unwilling to go through the I-290B appeal process because they can't afford the filing fees and/or afford attorney's fees and feel defeated by the system. Fee waiver issues are being compounded by faulty T visa adjudications issues. A national technical assistance provider reported seeing more and more trafficking survivors not going forward with appeals due to financial concerns.

#### **D. Risk to employment**

- The implementation of the fee waiver policy seems to have coincided with a marked delay in adjudicating I-765 applications, and that has had disastrous results for survivors. Not everyone is eligible for an I-765 category that grants an automatic extension, so any additional delay causes hardship. Employment is one of the main ways that survivors can hope to achieve stability. Without a valid EAD, a survivor is in danger of losing their employment, or unable to even apply for employment.

## **V. Current Challenges in Fee Waiver Adjudications Issues in Fee Waiver Adjudications**

### **A. Inconsistent Adjudications**

- An attorney reported she had to resubmit a fee waiver request three times with the same evidence, including taxes, which was deemed insufficient. When the applicant included other letters regarding her employment, it resulted in a grant.
- Another attorney reported that fee waivers with identical supporting documentation granted for one family member but denied for another.
- One attorney included evidence of her client's homelessness in the fee waiver submissions, which was denied the first time and then accepted the second time with no different documentation.
- An attorney at a legal aid provider submitted a fee waiver for T visa inadmissibility waivers for an applicant and their spouse. The fee waiver was denied for one spouse approved for the other spouse even though the same documentation was submitted (same tax return).
- An attorney representing a labor trafficking victim had an I-192 fee waiver approved while the I-765 fee waiver was denied for the victim's derivative, and the I-192 waiver for the victim herself was denied. The attorney is now asking the victim to go to the employer again and again to get documentation to try and appease USCIS for fee waiver adjudication - this makes the client worried about losing her job and having to go get another job which is daunting thought given prior labor trafficking. This attorney is in the process of submitting this fee waiver for the third time after two rejections.
- **Related comments:**
  - "We have had an identical packet get two different adjudications (one denial, one approval) - same packet was sent twice due to a mailing issue."
  - "We have had cases when USCIS said tax returns were not submitted, even though they were. We have also had cases when USCIS said a fee waiver was not submitted, even though it was."
  - "We filed a means tested benefit fee waiver application which was denied, we resubmitted with the same evidence stating the adjudicator was incorrect, and it was granted. However, this takes substantial time and advocacy on behalf of both the attorneys and adjudicators and re-traumatizes the survivors. It is extremely difficult to advise clients on how to move forward with these cases."

All these examples show how these adjudication practices undermine the purpose of humanitarian forms of relief.

**Poll question 2: My agency has experienced the following inconsistencies in fee waiver adjudications:**

- **Fee waivers were denied and then later granted with identical information (80% of respondents)**
- **Identical fee waivers were both denied and approved for different family members (70% of respondents)**
- **Identical fee waivers for different forms (e.g., I-765 or I-192s) have been approved and denied for the same applicant (41% of respondents)**

**B. Lack of clarity regarding standards, criteria & process**

USCIS fee waiver adjudication practices demonstrate a lack of clarity regarding the standards and criteria for fee waivers. For example, applicants are filing fee waivers based on one criterion, but adjudicators frequently evaluate and ask for documents related to a separate basis.

**1. Conflating standards:**

- An attorney reported a fee waiver denial that asked for tax returns when the fee waiver was based on means tested benefits. The denial recommended the applicant submit taxes to show below 150% of the poverty guidelines when that was not the underlying basis for the fee waiver request. The attorney filed three separate times with the same documentation, but the last submission had a “shoutier” cover letter and was eventually approved. However, this fee waiver should have been approved the first time. This attorney also reports she has seen that marking more than one basis for eligibility will result in denial because if USCIS finds a deficiency under one ground, they won’t even look at eligibility under second basis for fee waiver.
- **Related comments**
  - “It is virtually impossible to get a fee waiver granted under "hardship.”
  - Some T visa clients who have continued presence at the time of application or who have been \*granted\* T status are eligible for benefits. These individuals do not have a problem providing proof of income when applying for means-tested benefits programs for which they are eligible. However, USCIS will not accept the

same evidence that these individuals use to verify income with benefits agencies to qualify for a fee waiver. USCIS' standard for fee waivers should not be wildly higher than other government agencies.

## **2. Problems with Documentation:**

- Fee waiver denials present challenges for survivors who are homeless or in detention. An attorney reported she submitted proof her client was in a detention facility showing no income or income of \$1/day for work in the detention facility and the fee waiver was still denied for no proof of income. Also, this attorney reported that for clients who are homeless, but not at a shelter, it is extremely difficult to obtain “proof” of homelessness and proof of lack of income. Applicant statements have not been enough. Applicants are required to refile/resubmit with the same information. The fee waivers have been approved the second time with no explanation; attorneys have no idea what works/doesn't work.
- Survivors with mental health history have tried to include corroborating evidence to show why they can't hold a job. However, these fee waivers may or may not be successful. Applicants often need to refile because it's unclear whether a different adjudicator will accept the application.
- **Related comments:**
  - “We have submitted evidence of means tested state benefits and some fee waivers are approved and some denied, usually without explanation, or a request for tax returns. One denial, however, highlighted that we needed to provide proof of a Federal means-tested benefit rather than State means-tested benefit.” This is wrong since states often control issuance of public benefits.
  - “We received an I-765 fee waiver denial for a survivor and her children, who are living in a DV shelter, and have no income. We asked for a congressional liaison to intervene and were able to get the application re-filed with a waiver, but that was over six months ago, and the survivor still does not have an EAD.”
  - “In my experience, the most vulnerable and poorest clients are unable to obtain evidence of low income or no income aside from a letter from a provider stating they are low income and receiving services. For example, they cannot file taxes due to lack of documentation and they cannot obtain wage stubs because they work inconsistently for employers who will not give them employment statements. Or their employer is/was an abuser, and it is not safe for them to request documentation. I also have clients with severe PTSD who are not capable due to their trafficking-induced trauma symptoms of completing all of the tasks necessary to file tax returns or obtain documentation relating to expenses. And these clients are very low income.”

- “Many survivors have zero proof of income and are in precarious and vulnerable situations where they are unable or should not be required to obtain it. In my experience, those who are often the most in need of a fee waiver are those who USCIS would currently find ineligible due to lack of proof.”
- “We get routine fee waiver denials for applicants in immigration detention. If they are employed by ICE for \$1/ day, they do not meet the threshold to file federal income taxes, and therefore, do not have returns. The denial notices say, "file your current tax forms."
- “In many cases for our most vulnerable clients, we have been using funding for trafficking survivors to help them become stable that should be going towards rent, medical care, or food to pay fees because we know there is insufficient evidence for a fee waiver and no option to get the evidence. We end up caving and paying even though it can be 1/5 to 1/2 of the total money available to the client depending on the family size.”
- “One issue that comes up with us are cases where a spouse has gone to a shelter and is in hiding. Their family income in previous years was above the limit because their spouse filed their taxes and was high income. Now that they are in shelter, we cannot use their previous tax filings (because they were jointly filed), and other than the client's statement, we have no proof that the person currently is in hiding and does not have an income.
- “We had a client whose only income (well under 150% FPG) was what her daughter paid her for babysitting her grandchildren. We submitted a notarized, sworn statement from the daughter stating how much she paid her and a sworn statement from the client about her income and expenses, and received a rejection. The client ended up borrowing money from family to pay the filing fee.”
- “The current policy also leads to issues of access and equity. At my previous non-profit, we had some discretionary funding we could use to help with fees when fee waivers were rejected (or we knew they would be and had a deadline). So, while some applicants may have access to resources that should likely be put towards basic needs, it leaves others who are more marginalized and unconnected out in the cold.”
- “USCIS policy states that no further information should be required if the applicant provides sufficient proof of receiving a means-tested public benefit. But on the fee waiver denial notices, it "suggests" that the applicant files their tax returns.”



- “During the last year, we have tried to argue that the circumstances of the COVID-19 pandemic should be considered under financial hardship (i.e., lost wages, medical expenses), but we are still seeing routine denials.”
- “We work with many immigrant survivors who are employed in the informal economy (i.e., cleaning private homes, selling food out of carts on the street, etc.) and they are unable to provide any formal documentation but can certainly provide a self-declaration. They are eligible for a fee waiver and among the most vulnerable however their fee waivers are regularly denied.”
- “Very frustrating experience in our agency was the denial of a couple of minors who were dependent on the state and were living in a juvenile shelter. They were not working because of their age. Fee Waivers were denied even when a letter from the shelter was attached.”
- “Other examples of not being able to prove a negative where clients are not able to document their lack of income include: 1) clients who are applying from abroad but need to file an I-192 and are engaging in subsistence agriculture or are not working or are working in the informal economy so they are not able to provide documentation of their lack of evidence. 2) clients in the United States who have no income or work but are not paid by check or who do not earn enough to have to file taxes or are unemployed but are not eligible for unemployment benefits.”
- “Another example of over-emphasis on tax documents was for a single mother client whose first fee waiver was rejected because her 2018 taxes were included, and the comment on the G1054 suggested that the deadline to file 2019 taxes was then upon us by the time of the rejection so she "may" want to submit updated taxes. The client had not yet had the resources to file and faced stress of having to pay/try to file 2019 taxes in order to get a fee waiver considered on the second try.”
- “I filed a fee waiver request for a mom and minor daughter in connection w/ their I-192's with their I-914's. Single mom, indigenous, illiterate, working in agriculture for very low pay, shared housing and WELL under the FPG. Minor daughter had suffered labor trafficking. Mom had no formal evidence of her income, but we submitted a detailed account of her expenses and income, as well as evidence of her rental payment. Fee waivers denied, though their income/resource-level was among the lowest of any indigent client I have represented.”
- “Also, when a fee is required for applicants or derivatives abroad, it is very challenging to get evidence that will be accepted for a fee waiver. Those clients aren't eligible to file taxes and very rarely have regular employment. For example, many of my clients are subsistence farmers.”

### **C. Fee Waiver Denials Impact Limited Resources**

It is not a good use of resources to re-adjudicate the same fee waivers multiple times. Many attorneys commented how fee waiver denials impact their practice, their ability to place pro bono cases and take on new matters themselves.

- “Adding to the point about a filing/advocacy being doubly resource intensive knowing the fee waiver rejections are a palpable problem, I have spoken to private practitioners who cite this as a factor in their hesitation to take on pro bono cases at times.”
- “The time it is taking for attorneys to prepare, ponder, submit, and re-submit these applications is excessive. While we haven’t stopped filing the requests, it is affecting our ability to prepare/file/accept other cases.”
- “Rather than taking on more substantive cases, we are spending more time on each client because of the fee waiver applications.”
- “It also takes a pretty significant mental toll -- with a T visa or U visa, it becomes a case that has to be sent in multiple phases. Free forms first, then whatever forms the clients could get money together to pay for, and then the other ancillary forms linger and stay on the to-do list, fee waivers rejected over and over again...”
- “I think many nonprofits are experiencing the same. We’re unable to assist many indigent survivors because we’re spending so much time on things like N/A rejections, repeated fee waiver denials, etc. That leaves more folks who are eligible for relief w/out access to representation.”
- “We are all spending just as much time if not more on the fee waiver applications than we do on our client’s principal applications; whether it’s in the initial preparation of them or responding to the denials.”

### **D. Lack of Meaningful Review**

- An attorney reported a case in which a fee waiver request was submitted three different times. She filed a I-290B on the fee waiver denial and USCIS was told that the fee waiver was not an application or petition therefore not subject to appeal on I-290B. She reported having several extremely strong fee waivers; however, the denial notices came back only with a checkbox marking “insufficient evidence” despite over 100 pages of fee waiver evidence, including eviction letters/debt letters/utilities cut off etc. This was submitted with the same evidence with an ask for supervisory review, but later was kicked back with another denial notice suggesting that the applicant include tax returns. There does not appear to be any supervisory review. This attorney reported that she is the only attorney in her office still attempting fee waivers. This is at a legal aid agency that ONLY serves

indigent victims. Their agency no longer routinely file fee waivers given the high denial rate and the organization doesn't have enough resources to keep filing and re-filing.

- “If I could suggest treating fee waivers as an adjudication and providing a receipt number, which could allow us to use that as a submittal date to remove filing deadline issues and allow for possible review of the fee waiver denial while the underlying application is being adjudicated.”

#### **E. Denials Lack Specificity**

- One attorney noted that she doesn't know how to respond to fee waiver denials because there is no clarity on the reason for denial. She shared a case of a VAWA filing a fee waiver related to an extension of I-765. This survivor qualified under the financial hardship and under 150% FPG criteria. The denial notice was left completely blank except said denied - no reason checked off. This survivor was going to lose her job because of an expired work permit, so had to borrow from anyone she could for real fear of losing her job - was going to be fired.
- **Related comments:**
  - “The most frustrating part of this is that even when we follow the guidelines in the fee waiver memo, as well as the instructions providing the evidence that is stated acceptable for example check stubs, letters from employer, etc. and being denied for lack of ability to determine income. Not following your own guidelines, instructions and then not providing sufficient explanation as to what documentation is missing or required makes no sense.”
  - “Even when a lot of evidence is submitted with a fee waiver request, the rejection just has the box checked saying "insufficient" doesn't provide any additional information about reasoning for rejection. It's unworkable and very stressful. Also, getting rejections undermines the attorney-client relationship and trust. And that's really hard for survivors of trauma.

Polling question 3: I have received a fee waiver denial that provided detailed explanation for the denial.

Yes (5%)

No (95%)

## **F. Timeliness issues**

The wait for adjudication of a fee waiver can be 3-6 months. There are clear delays in issuing receipt notices where applicants requested fee waiver (additional delay beyond the usual receipt notice delays being experienced). For U visa petitions, the I-918 will be accepted, even if fee waiver for I-192 is kicked back. For U adjustment of status applications, one attorney indicated her agency often has to submit applications 6 months early in case of fee waiver denial before the U visa expires. This is more work and delay for everyone.

## **VI. Concluding Remarks**

All these examples show that inconsistent, restrictive fee waiver policies must be changed so that they are not a barrier for victims to access relief. Participants expressed gratitude for USCIS's presence, for listening to these concerns and for the opportunity to comment on the topic. As one participant wrote, "Thank you for the opportunity to share our experiences so we can improve the fee waiver process for the most vulnerable."

USCIS community relations officers indicated that everything participants shared was appreciated. They will take back these comments for consideration. If have more information, examples, or questions, please send to [public.engagement@uscis.dhs.gov](mailto:public.engagement@uscis.dhs.gov)