

From: Laura Burdick [mailto:LBURDICK@cliniclegal.org]
Sent: Thursday, May 28, 2015 12:26 PM
To: USCIS FR Comment
Cc: Jeanne Atkinson
Subject: OMB Control Number 1615-0116, Docket ID USCIS-2010-0008

Attached please find CLINIC's comments on the proposed Request for Fee Waiver, Form I-912.

Thank you,

Laura Burdick
Field Support Coordinator
Catholic Legal Immigration Network, Inc. (CLINIC)
8757 Georgia Avenue, Suite 850
Silver Spring, MD 20910
ph: 301-565-4815
fax: 301-565-4817
lburdick@cliniclegal.org

May 28, 2015

Laura Dawkins
Chief, Regulatory Coordination Division
USCIS Office of Policy and Strategy
20 Massachusetts Avenue, N.W.
Washington, DC 20529-2140

Submitted via email to: USCISFRComment@uscis.dhs.gov

RE: Revisions to Form I-912, Request for Fee Waiver
OMB Control Number 1615-0116, Docket ID USCIS-2010-0008

Dear Ms. Dawkins:

The Catholic Legal Immigration Network, Inc. (CLINIC) respectfully submits the following comments related to proposed revisions to Form I-912, Request for Fee Waiver.

CLINIC supports a national network of community-based legal immigration services programs. This network includes over 260 programs operating out of 397 offices in 47 states, as well as Puerto Rico and the District of Columbia. CLINIC's network employs roughly 1,400 staff, including attorneys and accredited representatives. These representatives serve over 300,000 low income immigrants each year, including many who depend on this request form to help with the high cost of USCIS application fees. Many are survivors of domestic violence, children, applicants with disabilities, and other vulnerable populations.

As an organization that works closely with both legal service providers and the United States Citizenship and Immigration Services (USCIS), CLINIC appreciates USCIS' efforts to improve the I-912 form. However, CLINIC strongly urges USCIS to reconsider some of the proposed changes, which could have a detrimental effect on the vulnerable populations we serve. Our concerns and recommendations are explained below.

General

The proposed form is too long and will serve as a strong deterrent to needy, eligible applicants and their legal advocates. USCIS has proposed to double the length of the form, from five pages to 10 pages.

For more than 10 years, CLINIC had requested that USCIS create a fee waiver application form in order to facilitate the application process for low income applicants, and provide all the information and documentation needed by USCIS to approve the request. We were pleased with the current version of the form when it was released, and have encouraged our affiliates to use the form when applying for a fee waiver, even though the form is not required by the regulations. A 10 page

application form does not facilitate the process. It is burdensome and will be extremely time-consuming to prepare.

We have never called for USCIS to create a new form; rather, we have called for better instructions, more training and oversight of adjudicators, and greater transparency, while raising concerns about improper fee waiver denials. In response to our concerns, USCIS released the helpful “Tips for Filing Form I-912” on its website in 2014. Nevertheless, we have continued to experience periodic problems with improper fee waiver denials in our network, and have brought individual cases to USCIS’ attention as needed while continuing to advocate for systemic changes.

We are very concerned about the impact of the proposed form on naturalization workshops, where our affiliates provide assistance with fee waiver applications. A 10 page form is not conducive to workshops. It will be too time-consuming and applicants will not be prepared to provide the level of detail required on the new form. It will also require a great deal of training for staff and volunteers to be prepared to use the proposed fee waiver form. The proposed form will greatly diminish our capacity to serve low income applicants through the workshop model, and will necessitate one-on-one appointments in our office for each fee waiver applicant. This will limit our ability to meet the need for assistance for low income applicants in our communities, especially if each case takes more time to complete.

The White House Task Force on New Americans recently released a report recommending ways for the U.S. government to promote and facilitate immigrant integration and naturalization. Millions of those eligible for naturalization are low income, and the high application fee presents a major barrier for them. Therefore, it is vitally important for USCIS to maintain a simple and straightforward application process for fee waivers. The proposed form is neither simple nor straightforward. It would further hinder access to citizenship for the most vulnerable, low income applicants, and would contradict the spirit of the report.

The Proposed Form

Part 1. Basis for Your Request

According to longstanding USCIS policy guidance, there are three criteria used to determine eligibility for a fee waiver: receipt of a means-tested benefit; low income; and financial hardship. An applicant only needs to meet one of these criteria in order to qualify. For example, with regard to a means-tested benefit, the policy guidance states, “If the individual provides sufficient proof of the means-tested benefit, the fee waiver will normally be approved, and no further information will be required.” The proposed form suggests that applicants should check more than one box and complete the entire form. This will cause a great deal of confusion. Recipients of public benefits are by definition low income and often have financial hardships. Therefore, they will be inclined to select two or more criteria unless it is clear, both in the form and the instructions, that they only need to meet one of the criteria to qualify.

The form states, “Select all applicable boxes.” In our experience, most applicants can qualify on two or more criteria, but we choose a single criterion that best fits their situation when applying. Therefore, the instruction should either be revised to say, “Select the box that best describes your situation” or the text, “Select all applicable boxes” should be deleted.

In addition, USCIS should keep the language in the current form that refers applicants to the relevant parts of the form for each criterion. For example, next to the box for means-tested benefits, the current form states, “Complete Sections 4 and 7.”

Part 3. Information About Your Status

The applicant’s immigration status is not relevant when determining eligibility for a fee waiver. There is no need to request this information in Part 3. This information is already available in the underlying benefit application or the applicant’s A-file. It is intimidating for an undocumented applicant to have to disclose his/her status in the fee waiver application, and will deter needy applicants, especially when coupled with the proposed language in the signature section about releasing information in the request to be used for enforcement purposes. Moreover, the question of immigration status can be very complex, and an applicant may not be sure about his/her status.

Part 5. Means-Tested Benefits

Part 5 states, “If you answer ‘Yes’ to either Item Numbers 1 or 2” but it is not clear which items 1 or 2 this clause is referring to. It should say, “If you checked Box A in Part 1, complete this section.”

The revised table is helpful.

The third column requests “Type of Benefit and Name of Agency Awarding Benefit.” The type of benefit and the name of the agency awarding benefit are two separate pieces of information and should be in separate columns.

Part 6. Income Below 150 Percent of the Federal Poverty Guidelines

The heading has a typo and should state, “Income *at or* Below...” This typo needs to be corrected on page 4 as well.

This section should have an instruction at the top that states, “If you checked Box B in Part 1, complete this section.”

The information requested in this section about household size and income conflicts with the March 13, 2011 fee waiver policy guidance by referring too broadly to “household members.” Household members could include individuals such as roommates, who do not share bank accounts or other finances with the applicant. Roommates are not counted in the household size, so USCIS should not require information about roommates’ income.

USCIS looks to the tax return listing the members of the household in determining the household size. In the absence of a tax return, the policy guidance specifies that only certain family members may be counted: a spouse; parent(s) living with the applicant; and certain unmarried children or legal wards.

The form and instructions must clearly define who can be counted in the household size, consistent with the policy guidance, and then ask for only those persons’ income. Accordingly, the section instructions for Part 6, Household Income should be changed to “Provide information about your income and the income of family members counted in your household.”

USCIS should add a question in this section about whether the applicant’s spouse lives overseas, and if so, whether the spouse provides any financial support to the applicant. In our experience, a spouse who lives overseas is rarely able to provide financial support to an applicant; usually the applicant is

supporting the overseas spouse. Yet, USCIS will often deny a fee waiver application in these cases and request documentation of the spouse's income, which can be very difficult to obtain. Adding these questions will save the agency time and the requestor undue delays.

The proposed form requests the applicant's "annual total income" rather than "average monthly wage income" on the current form. This is an improvement that makes it easier to determine an applicant's eligibility for a fee waiver, since the Federal Poverty Guidelines list annual, not monthly income.

Part 7. Financial Hardship

This section should have an instruction at the top that states, "If you checked Box C in Part 1, complete this section."

Number 2 is an improvement because it requests information about liquid assets and defines what they are. The current form only mentions assets. It would be helpful for the instructions to give examples of some things that are not considered liquid assets, such as a car or a house.

The monthly income information is presented in a series of boxes. The table format in the current version of the form is better and easier to use. We recommend maintaining the table format.

Part 8. Requestor's Statement

The instructions state, "Each person applying for a fee waiver request must sign and date Form I-912" and "should complete Part 9." It is unclear what to do in a situation where more than one family member age 14 or older is included in the application. Part 9 only provides for one family member to sign in addition to the requestor. For ease of use, we recommend keeping all signatures on the same page. Furthermore, making children over 14 sign the lengthy statement and certification in this proposed form does not make sense. They will not have the knowledge of the family's finances necessary to certify to the accuracy of the information. Minors should either be excused from signing or given a simpler statement to sign.

The requestor's statement and certification is too lengthy and complex. This language is not found on the current I-912, so there is no need to add it to the proposed I-912. It adds significantly to the length of the proposed form, along with the lengthy interpreter's and preparer's statements in Parts 10 and 11. We recommend replacing these attestations in Parts 8, 9, and 10 with more concise attestations that are less burdensome and easier to understand.

Part 8 requires the applicant to certify, "I further authorize release of information contained in this request, in supporting documents, and in my USCIS records to other entities and persons where necessary for the administration and enforcement of U.S. immigration laws." This language is overly broad and intimidating, especially when applicants are asked to disclose if they are undocumented on page 2. This language could have a chilling effect on needy applicants, especially if they have undocumented family members living in their household, as many immigrant households are mixed-status. We recommend retaining the language in the current fee waiver form.

Part 10. Interpreter's Contact Information

We question the need for so much information about the interpreter. The N-400 does not request this level of detail, only the interpreter's name and telephone number. The level of detail increases the length of the form needlessly.

The Proposed Instructions

Page 1, List of Forms to be Considered for a Fee Waiver

USCIS has removed the list of applications and petitions that will be considered for a fee waiver, and refers applicants to the USCIS website instead. This list is very helpful and should be retained. Many low income applicants do not have easy access to a computer or the internet to view the list of forms.

Page 2, Questions and Answers

The questions and answers that begin on page 2 of the current instructions and continue throughout are very helpful and should be retained. They have been deleted from the revised instructions. If not in the instructions, they should be placed in a Fact Sheet or FAQ sheet accompanying the form on the USCIS website.

Page 3, Basis for Your Request

The instructions state, "Select an inability to pay at the time of filing by selecting all that apply." They also state, "You must provide additional details, including evidence, as explained in each part below." This language is confusing and suggests that applicants must complete the entire form. This is not consistent with the policy guidance, which states that if an individual provides sufficient proof of a means-tested benefit or low income, no further information will be required. We recommend keeping the language in the current version of the instructions at the bottom of page 6. The current language explains that only one criterion must be met to qualify and that only the section of the form pertaining to that criterion must be completed. We also recommend keeping the language on page 2 of the current instructions under "Fee Waiver Request Review Process." It explains that no further information is required if the applicant meets one of the criterion and attaches evidence of this.

Page 4, Means-Tested Benefits

Paragraph 2 states, "For purposes of this fee waiver request only, USCIS will consider federal public benefits that your household receives..." It would be helpful to provide examples of the kind of benefits USCIS is referring to here.

In paragraph 5, this sentence should be modified as follows: "Consult with your benefit-granting agency or your legal advisor to determine whether any federal, *state, or local* public benefit that you receive qualifies as a means-tested benefit."

Number 1 states that an applicant may not use a child or grandchild's receipt of means-tested benefits to qualify for a fee waiver. We object to this policy. A child or grandchild's eligibility for a means-tested benefit is based on the parent or grandparent's low income. If the child qualifies for a means-tested benefit, the parent or the grandparent who is a legal guardian should qualify for a fee waiver on that basis. By requiring applicants in this situation to apply under a different criterion, USCIS is re-adjudicating the family's low income status, which has already been determined by another government agency. This is a waste of both USCIS' and applicants' time.

In number 2, the instructions state that the letter granting the means-tested benefit must have an expiration date or indicate the length of the benefit. In our experience, these letters do not contain this information. Public benefit agencies have informed us that they are not able to provide this information because the benefits will continue until financial changes occur, either due to a change in the recipient's situation or a benefit change from the awarding agency. Agencies conduct mandatory, periodic reviews in which they re-assess eligibility. Therefore, the letters merely show that the

person is currently receiving the benefit. If a start date is specified, it is generally the date of the most recent review, and does not reflect the actual initiation of the benefit. It is already very difficult for some of our affiliates to get letters from the benefit-granting agency that meet the current requirements, for the reasons mentioned below. The expiration date or length of the benefit is an additional burden and will make it even more difficult for applicants and their advocates to meet the documentation requirements. The guidance states that the person must be currently receiving the benefit. Therefore, USCIS should accept letters that do not explicitly state an expiration date or length of benefits, as long as they are recent.

We note that it is already very difficult in many cases to obtain the type of evidence of means-tested benefits required by USCIS. Some local public benefits offices are not responsive to applicants' requests, or refer them to online account information that does not meet USCIS' requirements for documentation. The offices do not have the staffing power to provide a special letter just for the fee waiver application. Applicants in this unfortunate situation are stuck between two government bureaucracies. We urge USCIS to continue past efforts to reach out to HHS and public benefit offices as needed to educate them on the fee waiver documentation requirements.

Page 5, Income Below 150% of the Federal Poverty Guidelines

There is a typo in the heading above. It should say, "Income *at or* Below 150 percent of the Federal Poverty Guidelines."

In the second to last paragraph, applicants are instructed to provide their "total income before any deductions" as the annual total income. We have been told by USCIS in the past that it looks at adjusted gross income on the Federal tax return, which is the taxable income minus exemptions and deductions. We strongly urge USCIS to continue looking at the adjusted gross income, as this would be the most generous interpretation of the poverty guidelines. For those who do not have a tax return and are submitting pay stubs, we urge USCIS to look at the net income after taxes. We note that many working poor families have total income that is slightly above 150% of the poverty level, but still too low to afford the application fees.

Page 6, Documentation of Annual Income

There is a typo in number 4. Instead of "income at or above 150 percent of the Federal Poverty Guidelines" it should say, "income *above* 150 percent of the Federal Poverty Guidelines." The same typo needs to be corrected in number 4 at the bottom of this page.

Page 7, Item Number 5

Item number 5 states, "If a person living with you contributes financial support to your household, you must include this person's income when calculating household income." These instructions are not consistent with the March 13, 2011 policy guidance, which on page 6, Step 2 lists specific family members. The policy guidance does not include roommates or other relatives not specified. The Adjudicator's Field Manual (Chapter 10.9 (b) (2) Step 2) also lists the specific family members to be counted in determining household size, consistent with the policy guidance. An applicant may be living with a roommate who contributes to the rent, but who does not share finances, such as bank accounts, car payments, or other expenses with the applicant. In these situations, it does not make sense for USCIS to request information about a roommate's income such as tax returns, and the roommate would likely be unwilling to share this personal information. We recommend removing this instruction.

Page 7, Financial Hardship

In item number 1, the mention of medical expenses under financial hardship is helpful.

The instructions should explain what to do specifically in cases where the applicant is homeless. These cases are very compelling, but especially difficult to get approved in our experience, due to the inability to obtain documentation of income and expenses when the applicant has no job, no rent, and no assets. USCIS should add a question to the proposed form in Part 7 asking if the applicant is homeless, to better identify these vulnerable applicants.

Page 10, Requests for More Information

We have never seen USCIS request originals of copies submitted. This appears to be something new. Given the problems we have seen with fee waiver adjudications, we question USCIS' ability to return original documents from a fee waiver request in cases where the request is approved.

Thank you for your consideration of these comments. Please do not hesitate to contact me at 301-565-4829 or jatkinson@cliniclegal.org, with any questions or concerns about our recommendations.

Sincerely,

A handwritten signature in cursive script, reading "Jeanne M. Atkinson".

Jeanne M. Atkinson
Executive Director