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The is a Comment on the **U.S. Citizenship and Immigration Services (USCIS) Notice: Agency Information Collection Activities; Revision of a Currently Approved Collection: Notice of Appeal or Motion**

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Comment

I. Applying an "Abuse of Discretion" Review of Discretionary Decisions Promotes Arbitrary Decisionmaking and Violates Equal Protection.

Because the BIA applies "de novo" review to discretionary decisions, USCIS should not violate equal protection principles by changing its standard of review in AAO matters. See 8 C.F.R. 1003.1(d)(3).

Moreover, USCIS matters are conducted either in secret or only in the presence of the applicant(s), as opposed to immigration judge proceedings that are open to the public by default. Forcing the AAO to functionally rubber-stamp decisions by individual USCIS officers, who may not even be lawyers, would undermine the goal of creating a uniform discretionary standard across all USCIS components.

Furthermore, applying a standard of review that usually applies to trial management issues fails to recognize that discretionary decisions on immigration benefits are often dispositive and can lead to denial of benefits to otherwise eligible. For example, USCIS could find that a waiver applicant meets and "extreme hardship" standard and still deny on discretion for a single minor criminal offense that occurred more than 10 years ago.

Finally, discretionary decision are generally completely insulated from federal court review. Therefore, applying a highly deferential standard to discretionary decisions in administrative appeals essentially denies the applicant the right to appeal.

II. Deemed Unraised Issues to Be Failed Promotes Mechanistic Jurisprudence, Disadvantages Pro Se Applicants, and Allows the AAO to Ignore Obvious USCIS Error.

Immigration practitioners have noticed a marked increase in USCIS RFE's, which are often boilerplate, conclusory, and incorrectly recite the facts of the case. In instances where those RFE's lead to denials, the AAO would be compounding this error by dismissing appeals that fail to point out patent errors. Federal courts generally apply generous waiver analysis to pro se litigants, and the AAO should not unfairly

disadvantage non-citizens by doing differently in the USCIS context.

III. USCIS Should Not Insulate Arbitrary Adam Walsh Act Decisions from Review.

The application of the Adam Walsh Act implicates important family rights, as it has the potential to deny long-rehabilitated citizens the right to petition for family members. Allowing individual USCIS officers to make often inconsistent and conclusory decisions with no avenue for administrative appeals arguably violates due process.