



February 10, 2019

Samantha Deshommes  
Chief, Regulatory Coordination Division  
Office of Policy and Strategy  
U.S. Citizenship and Immigration Service  
Department of Homeland Security  
20 Massachusetts Ave., NW  
Washington, DC 20529-2140

RE: "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements"  
DHS Docket No: USCIS-2019-0010; RIN: 1615-AC18  
*Submitted via www.regulations.gov*

Dear Ms. Deshommes:

On behalf of ASISTA, I submit this additional comment in response to "U.S. Citizenship and Immigration Services (USCIS) Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements" initially published in the Federal Register on November 14, 2019<sup>1</sup> (hereinafter "proposed rule") and then reopened on January 24, 2020 for a 17 day period for comment.<sup>2</sup>

The mission of our agency is to advance the dignity, rights, and liberty of immigrant survivors of violence. For over 15 years, ASISTA has been a leader on policy advocacy to strengthen protections for immigrant survivors of domestic violence, sexual assault, human trafficking and other crimes created by the Violence Against Women Act (VAWA) and the Trafficking Victims Protection Act (TVPA). We assist advocates and attorneys across the United States in their work on behalf of immigrant survivors, and submit this comment based on our guiding principles and our extensive experience.

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<sup>1</sup> U.S. Citizenship and Immigration Service. "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements"(hereinafter "proposed rule") 84 FR 62280 (November 14, 2019), available at <https://www.regulations.gov/document?D=USCIS-2019-0010-0001>

<sup>2</sup> U.S. Citizenship and Immigration Service. "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements" Proposed rule; reopening of the comment period." (January 24, 2020), available at <https://www.regulations.gov/document?D=USCIS-2019-0010-10938>

## I. General Comment

Our continued position is that USCIS' proposed rule is extremely problematic in both substance and in form. Executive Order 12866 provides that agencies "should afford the public a **meaningful opportunity** to comment on any proposed regulation, which in most cases should include a comment period of **not less than 60 days**."<sup>3</sup> Initially, USCIS only provided a 30-day comment period for the proposed rule. The agency eventually extended the deadline an additional 15 days after releasing new information related to transfer of funds to ICE.<sup>4</sup> This new deadline, December 30, 2019, fell between two federal holidays, and created administrative and personal hardship to ensure that our concerns were noted on the record for this proposed rule.

Stakeholders concerned about DHS law and policy, including ASISTA, had to quickly pivot to address other major policy issues and concerns, including but not limited to:

- On December 30, 2019, USCIS placed an alert on its website announcing that USCIS may reject Form I-918: Petition for U Nonimmigrant Status or Form I-918 Supplement A: Petition for Qualifying Family Member of U-1 Nonimmigrant if there is a blank field unless the field is optional.<sup>5</sup> This significant shift in policy and practice creates enormous hardship for survivors and their families, and strains valuable resources for advocates, service providers and U visa certifying agencies. USCIS posted the I-918 alert to their website on December 30th, 2019--during the holidays--and without any advance warning or announcement. The agency did not provide any grace period before implementing the provisions of the I-918 alert, as it normally does with form changes, including those for survivor-based forms of relief.<sup>6</sup> ASISTA has had to increase its technical assistance activities to address this drastic and unannounced shift in practice and policy.
- Stakeholders, including ASISTA, also provided comment in response to the Department of Homeland Security (DHS) and Department of Justice's (DOJ) Joint Notice of Proposed Rulemaking Procedures for Asylum and Bars to Asylum Eligibility published in the

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<sup>3</sup> [Emphasis added]. Executive Order 12866 58 Fed. Reg. 190 (September 30, 1993), available at <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>

<sup>4</sup> USCIS. "Proposed rule; extension of comment period; availability of supplemental information" (December 9, 2019), available at <https://www.regulations.gov/document?D=USCIS-2019-0010-2237>

<sup>5</sup> USCIS, "I-918, Petition for U Nonimmigrant Status" available at : <https://www.uscis.gov/i-918>.

<sup>6</sup> See e.g. USCIS. "Grace Period Extended for Previous Edition of Form I-918" (June 21, 2019) available at <https://www.uscis.gov/news/alerts/grace-period-extended-previous-edition-form-i-918>

Federal Register on December 19, 2019.<sup>7</sup> This proposed rule contained sweeping changes to U.S. asylum law to which the public only had 30 days to provide comment, again failing to provide meaningful review.<sup>8</sup> As U.S. Senator Richard Blumenthal indicated in his letter to DHS and DOJ leadership, “Given the complexity of the legal and policy issues implicated by this rule, including the potential violation of the United States’ domestic and international legal obligations, a thirty day comment period is simply inadequate, especially when those thirty days include two federal holidays.”<sup>9</sup>

- USCIS announced on January 30, 2020 that it would start to implement the devastating inadmissibility on public charge grounds final rule, which would go into effect February 24, 2020.<sup>10</sup>
- USCIS also sought public comment with regard to the proposed revisions to Form I-290B published in the Federal Register on December 6, 2019, with a comment deadline of February 4, 2020.<sup>11</sup> These revisions contain harmful and substantial changes to the USCIS motions and appeals processes. These proposed revisions required significant time to review and provide comments.

Thus, when USCIS reopened the proposed revisions for an additional 17 days on January 24, 2020, many stakeholders were already expending considerable resources responding to other critical issues. Having a comment period with seemingly random and disparate starts and stops is **NOT** the same as having a continuous 60 day period to comment on the proposed rule, especially given other important policy developments and form revisions that required attention. USCIS has still failed to provide a meaningful opportunity for review for the proposed rule.

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<sup>7</sup> Executive Office for Immigration Review, Department of Justice; U.S. Citizenship and Immigration Services, Department of Homeland Security. “Procedures for Asylum and Bars to Asylum Eligibility” (hereinafter “proposed rule”); 84 FR 69640 (December 19, 2019), available at: <https://www.federalregister.gov/documents/2019/12/19/2019-27055/procedures-for-asylum-and-bars-to-asylum-eligibility>

<sup>8</sup> These comments were due January 21, 2020.

<sup>9</sup> Letter to Attorney General William A Barr, Acting DHS Secretary Chad Wolf, Acting USCIS Director Ken Cuccinelli et al (January 6, 2020), available at <https://www.blumenthal.senate.gov/imo/media/doc/01.07.20%20-%20DOJ%20-%20Asylum%20Bar%20Comment%20Period.pdf>

<sup>10</sup> USCIS. USCIS Announces Public Charge Rule Implementation Following Supreme Court Stay of Nationwide Injunctions (Jan. 30, 2020), available at <https://www.uscis.gov/news/news-releases/uscis-announces-public-charge-rule-implementation-following-supreme-court-stay-nationwide-injunctions>

<sup>11</sup> See USCIS, *Agency Information Collection Activity; Revision of Currently Approved Collection: Notice of Appeal or Motion*, 84 Fed. Reg. 66,924 (Dec. 6, 2019) (“proposed revisions” or “Notice”).

## II. The Proposed Rule Burdens for Immigrant Families and Limits Access to Immigration Benefits

As we state in our initial comment, we firmly oppose the proposed rule as it diminishes access to immigration benefits for thousands of individuals, including crime survivors. The excessive fee increases, coupled with the harsh limitations on fee waivers, create barriers to access citizenship and other immigration benefits, and “disproportionately restrict access to working class, low-income, elderly and other immigrants who would otherwise be able apply.”<sup>12</sup>

The proposed rule also undermines the bipartisan Congressional goals to make humanitarian immigration relief accessible to victims. In addition, it fundamentally contravenes the purpose of USCIS to serve as a *benefit-granting* agency, not one focused on enforcement through its proposed transfer of millions of dollars to Immigration and Customs Enforcement (ICE).<sup>13</sup> As we did in our initial comment, we urge USCIS to immediately withdraw the proposed rule, and instead work to ensure that low-income and other vulnerable immigrants can obtain immigration relief for which they are eligible.

We incorporate by attachment our previous comments to the proposed rule submitted December 30, 2019 as well as our prior comments related to revisions to the Form I-912; Request for Fee Waiver, which was initially issued on September 28, 2018.<sup>14</sup> These revisions

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<sup>12</sup> Letter to Acting DHS Secretary Chad Wolf and Acting USCIS Director Ken Cuccinelli. “Re: U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request DHS Docket No: USCIS-2019-0010; RIN: 1615-AC18” (November 19, 2019). Available at: <https://meng.house.gov/sites/meng.house.gov/files/Letter.pdf>

<sup>13</sup> Congress specifically designated USCIS as the immigration benefits and adjudications agency in the Homeland Security Act in 2002 See, Section 451(b) Pub. L. No. 107–296, 116 Stat. 2135) (November 25, 2002), available at: [https://www.dhs.gov/xlibrary/assets/hr\\_5005\\_enr.pdf](https://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf)

<sup>14</sup> DHS. USCIS. “Agency Information Collection Activities; Form I-912; Request for an Individual Fee Waiver,” USCIS-2010-0008 (September 28, 2018) available at: <https://www.regulations.gov/document?D=USCIS-2010-0008-0144> (hereinafter “September 2018 Announcement”)

opened for comment again on April 5, 2019<sup>15</sup> and on June 5, 2019<sup>16</sup> and relate to diminished access to fee waivers, and the impact immigrant survivors of crime and their families.

For the reasons mentioned above, we hold that USCIS has not provided a meaningful opportunity for review of the proposed rule by relevant stakeholders. We also firmly believe the proposed rule will impose an unjustified cost on immigrants eligible for benefits to help them gain stability and thrive. It also will impose an unjustified cost on survivors who seek critical pathways to obtain justice and safety.

USCIS should promptly withdraw the proposed rule as it makes immigration benefits less accessible and runs counter to its mission as established by Congress.

Respectfully submitted,



Cecelia Friedman Levin  
Policy Director  
ASISTA

Attachments

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<sup>15</sup> DHS. USCIS. “Agency Information Collection Activities; Form I-912; Request for an Individual Fee Waiver,” USCIS-2010-0008, 84 FR 13687 (April 5, 2019), available at: <https://www.federalregister.gov/documents/2019/04/05/2019-06657/agency-information-collection-activities-revision-of-a-currently-approved-collection-request-for-fee> (hereinafter “April 2019 Announcement”)

<sup>16</sup> U.S. Citizenship and Immigration Services, Department of Homeland Security. “Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions” 84 FR 26137 (June 5, 2019), available at <https://www.federalregister.gov/documents/2019/06/05/2019-11744/agency-information-collection-activities-revision-of-a-currently-approved-collection-request-for-fee> (hereinafter “June 5th Announcement”)