December 26, 2019

*Submitted via www.regulations.gov*

Ms. Samantha Deshommes, Chief

Regulatory Coordination Division

Office of Policy and Strategy

U.S. Citizenship and Immigration Services

Department of Homeland Security

20 Massachusetts Ave. NW

Washington, DC 20529

**Re: U.S. Citizenship and Immigration Services Fee Schedule, DHS Docket No. USCIS-2019-0010; RIN 1615-AC18**

Dear Chief Deshommes,

Oasis Legal Services respectfully submits this comment on the proposed U.S. Citizenship and Immigration Services (USCIS) Fee Schedule, published on November 14, 2019. We are deeply troubled by a number of the fee and policy proposals in the published fee schedule, and request that USCIS withdraw all provisions that make immigration benefits less accessible to low-income and other vulnerable immigrants.

[Oasis Legal Services](https://www.oasislegalservices.org/home) is a 501(c)(3) nonprofit organization that proudly provides legal immigration services to under-represented low-income groups, with a focus on LGBTQIA+ communities. Oasis Legal Services is the leading provider of representation to affirmative asylum seekers who are LGBTQIA+ and living on the West Coast. As such, Oasis is uniquely positioned to comment on the impact that these proposed changes will have on the low-income, LGBTQIA+ and HIV+ immigrant communities.

1. General Comments

The proposed USCIS fee schedule is part of a systemic move to make our lawful immigration benefits accessible only to the rich, white, and highly educated. This proposal disproportionately increases fees and eliminates fee waivers for the benefit categories most commonly used by low-income immigrants, leaving essential immigration benefits accessible primarily to the affluent. These unreasonable changes would result in financial hardship for immigrants, delay or loss of immigration status due to financial hardship, increased dependence on debt to finance applications, and decreased involvement of qualified legal assistance— resulting in inefficient USCIS processing and adjudication.

Oasis Legal Services opposes USCIS’ attempt to place the burden of its own mismanagement on hard-working immigrants simply trying to access their lawful immigration benefits. USCIS is first and foremost a customer service agency, and its customers’ money should be used to provide the best service possible. Oasis is particularly outraged by USCIS’s proposal to increase the money received through affirmative applications in order to fund border enforcement efforts by DHS. Such a move prioritizes enforcement over the rights of lawfully present immigrants, their families, and the companies that rely on them.

We describe below how some of these changes will impact our organization and our clients, and the reasons for our opposition. Omission of any proposed change from this comment should not be interpreted as tacit approval. We oppose all aspects of the proposed fee schedule that would act as a barrier between low-income immigrants and the immigration benefits for which they qualify.

**USCIS Should Not Impose a Fee to File for Asylum**

USCIS plans to impose a $50 fee for those filing for affirmative asylum. As a signatory to the 1967 Protocol of the 1951 Convention Relating to the Status of Refugees, the U.S. has an obligation to accept asylum seekers who seek protection.

Imposing a fee for asylum *will* prevent many asylum seekers from applying, thus practically violating the U.S.’s obligation to accept these applications. Refusing asylum applicants for the inability to pay would effectively cause the U.S. to break its treaty obligations and flies in the face of the basic intent of the 1980 Refugee Act. In fact, the vast majority of countries who are signatories to the 1951 Convention or 1967 Protocol do not charge a fee for an asylum application.[[1]](#footnote-1) The United States has long been a world leader in refugee protection, but the imposition of an asylum fee will set a example for the world at large. If the United States imposes a filing fee for asylum, other countries may begin to do the same. This could have disastrous effects on refugee resettlement when the number of refugees and displaced people are at historic highs.

**Adjustment of Status Applications Should Remain Bundled and Affordable**

USCIS proposes separate fees for concurrently filed Forms I-485, I-765, and I-131. Many of Oasis’ applications for adjustment of status who file Form I-485 also request employment authorization and advance parole travel authorization. Employment authorization cards are required for asylees to obtain a REAL ID and to obtain certain classes of driver’s licenses in California.

Due to USCIS processing delays, applicants for adjustment often face long waits before their permanent residency is granted. Asylees who are applying to adjust are put at the very back of the line when USCIS determines which applicants to interview first, thus substantially increasing the wait time for asylee adjustment.

Adjustment of status applicants will see an enormous 79 percent increase in the total cost of filing Forms I-485, I-765, and I-131. The devastating increase, from $1,225 to $2,195, and the elimination of fee waivers will make adjustment of status unattainable for almost of all of Oasis’ low-income and middle-class clients. Many applicants will be incentivized to utilize more lending services or credit cards to pay for fees, thus incentivizing predatory lending practices and forcing this vulnerable population into debt. A minimum-wage worker who is likely already living paycheck-to-paycheck would have to work an extra 134 hours just to cover the increase in the application fees.

Increasing the overall cost of adjustment of status would prevent many low-income individuals from becoming permanent residents and undermine family unity.

**Naturalization Fees Should Be Affordable**

The proposed fee schedule would increase the filing fee for Naturalization from $640 to $1,170, an 83 percent increase. This substantial increase would make naturalization less accessible for low-income and working class people. The benefits of naturalization to individuals and the U.S. society cannot be overstated and the application must not overpriced in order to avoid suppressing access to the benefits. “Citizenship can serve as a catalyst for immigrants to become more: dedicated to democratic principles; informed about the Constitution; engaged in political elections; represented in the political system; proficient in the English language; unified as families; employable in higher paying jobs; and integrated within a wider circle of people and institutions.”[[2]](#footnote-2)

With approximately 9 million Lawful Permanent Residents, or LPRs, eligible to naturalize who have not yet filed,[[3]](#footnote-3) and the significant benefits that immigrant integration brings to the United States, it is in the country’s best interests to incentivize naturalization by maintaining a low application fee. Many of Oasis’ clients have gone on to give back to the U.S. by providing support to newly arrived refugees, investing in new companies, and pursuing work in government. Increasing this fee will prevent increased civic engagement within immigrant communities.

In combination with the elimination of the fee waiver, the fee increase for Naturalization would make citizenship unattainable for low-income immigrants. Congress has called on USCIS to keep the pathway to citizenship affordable and accessible.[[4]](#footnote-4) This proposed fee rule would charge the actual cost of naturalization to applicants, disregarding the agency’s previous concern for incentive and the affordability of naturalization. The proposed fee increase is contrary to Congressional intent, and contrary to the interests of the United States society and economy.

Almost all of Oasis’ clients have paid full price for their naturalization applications as their income exceeds the limits set under the fee waiver qualifications. However, if forced to pay this substantially greater fee, the majority of Oasis’ clients who are eligible for naturalization will be forced to delay applying. Asylees in particular are eligible to apply for naturalization just four years after obtaining residency, an acknowledgement of the year they must wait after obtaining asylum. This policy indicates Congress’ intent to allow asylees and refugees to obtain citizenship as quickly as possible. Refugees are practically stateless as they cannot claim the benefits of their country of origin. Imposing this further barrier in terms of fees would prevent refugees from finding permanent refuge and situate the United States as yet another abusive barrier in the lives of refugees.

**USCIS’ Proposal to Limit Payment Types Will Disadvantage Low-Income Immigrants**

USCIS proposes to make the method of fee payment changeable form-by-form through a designation in the form instructions. This would allow USCIS to prohibit the use of certain types of payment, like cashier’s checks or money orders, for certain application or petitions in favor of other methods of payment such as online payments. This proposed limitation would cause hardship to low-income applicants and petitioners, as reliable internet access, U.S. bank accounts, and well-established credit scores are assets that may only be available to more wealthy immigrants.

Many recently arrived immigrants, especially asylum seekers, are unfamiliar with U.S. banking practices, or formalized banking practices in general. As such, they are ignorant of or mistrusting of these avenues for payment. Many of our clients work jobs where they are paid in cash and live in remote areas with little access to banking institutions. The vast majority of Oasis’s clients choose to pay their initial immigration fees, such as for I-765 or I-485 filing fees, using money orders. Requiring immigrant applicants to pay UCIS fees via credit or debit card will force them to pay for bank or credit card accounts, thus increasing the fee and practical barrier to their lawful immigration benefits. Immigrant applicants must be allowed to use their hard-earned cash, in the form of cashier’s checks or money orders, to pay USCIS fees.

The vast majority of our clients do not possess work authorization in the United States when they first seek our assistance in applying for asylum. This lack of work authorization prevents them from obtaining lawful and fruitful employment. Imposing a fee for asylum applications will cause further hardship to the lives of asylum seekers who have already suffered so profoundly in their countries of origin. Similarly, imposing a fee for asylum applicants’ EAD will prevent many of them from accessing legal employment, thus further burdening them and their families. This will disincentivize legal representation as asylum applicants will no longer be able to obtain EADs and begin lawfully earning money to pay for legal representation.

Asylum seekers are often the victims of human trafficking and fraudulent filing practices by scam artists as they are desperate to find safety in the U.S. and escape persecution in their home countries. Imposing a fee for asylum will simply incentivize *coyotes*, *notarios*, and other scam artists to charge higher prices to account for USCIS’s fees. This change puts more money in the pockets of criminals.

**USCIS Should Maintain Fee Waivers for All Current Categories**

The fee schedule proposes to eliminate filing fee waivers for all categories except those that are statutorily required. This proposal will make lawful and necessary immigration benefits inaccessible for low-income immigrants. Without fee waivers, many of Oasis’ clients will be forced to delay adjustment of status, naturalization, and access to work authorization potentially indefinitely. For many of our clients, it is simply impossible to save enough money to pay these application fees because of their physical and mental disabilities, the high cost of living, and the needs of their family members.

These immigration benefits have the power to lift up and transform families, communities, and the country as a whole. Because of the benefits of naturalization—one of the form types most frequently associated with fee waiver requests[[5]](#footnote-5)—Congress has called on USCIS to keep the pathway to citizenship affordable and accessible.[[6]](#footnote-6) A recent Congressional Committee report states, “USCIS is expected to continue the use of fee waivers for applicants who can demonstrate an inability to pay the naturalization fee.”[[7]](#footnote-7) USCIS’ proposed elimination of filing fee waivers would flouts Congressional intent, and is also a flawed and shortsighted policy.  It will result in considerable harm to new American families and the nation’s democracy as a whole.

**USCIS’ Proposal to Transfer Applicant Fees to ICE Is Improper**

In the proposed fee schedule, USCIS seeks over two years to transfer several hundred million dollars in applicant fees held in the Immigration Examinations Fee Account, or IEFA, to Immigration and Customs Enforcement, or ICE, for enforcement purposes. Oasis Legal Services strongly opposes this flagrant misuse of applicant fees.

Congress codified in the Immigration and Nationality Act, that the applicant-funded IEFA is USCIS’s “primary funding source” used “to fund the cost of processing immigration benefit applications and petitions”—that is, “to adjudicate applications and petitions for benefits under the Immigration and Nationality Act and to provide necessary support to adjudications and naturalization programs.” Despite this clear statutory instruction, however, USCIS seeks to transfer those funds to serve another purpose. By unnecessarily and wrongfully transferring funds from IEFA to ICE, USCIS is betraying not only its own mission but also Congress’s clear statutory intent.

USCIS has claimed that increased fees will improve processing times, but this justification for increased fees is unfounded when so many millions of dollars will be diverted to immigration enforcement. We find it wholly improper to accept payments from immigrants intended for adjudication of their immigration benefits, and to redirect those funds to be used for enforcement against their communities.

**CONCLUSION**

For the reasons provided here, USCIS should promptly withdraw the provisions of its proposed fee schedule that would make immigration benefits less accessible to hard-working LGBT+ asylum recipients and other immigrants. USCIS has not used the filing fees applicants have already paid to USCIS efficiently, and they must not be expected to bear a significant increase in fees without improvement in processing times, backlogs, and customer service.

Thank you for the opportunity to submit comments on the proposed fee schedule. Please do not hesitate to contact legal@oasislegalservices.org to provide further information.

Ari Jones

Staff Attorney & Outreach Coordinator

925-322-0885

Ari.jones@oasislegalservices.org

Oasis Legal Services

1900 Addison St, Suite 100

Berkeley, CA 94704

1. *See* Zolan Kanno-Youngs and Miriam Jordan, *New Trump Administration Proposal Would Charge Asylum Seekers an Application Fee*, N.Y. Times, Nov. 8, 2019, <https://www.nytimes.com/2019/11/08/us/politics/immigration-fees-trump.html> (Noting that the United States would be only the fourth country in the world to charge a fee for asylum). [↑](#footnote-ref-1)
2. Jeff Chenoweth and Laura Burdick, Catholic Legal Immigration Network, A More Perfect Union: A National Citizenship Plan, at vii, <https://cliniclegal.org/resources/guides-reports-publications/more-perfect-union-national-citizenship-plan>. [↑](#footnote-ref-2)
3. Robert Warren and Donald Kerwin, *The US Eligible-to-Naturalize Population: Detailed Social and Economic Characteristics*, 3 J. Migration & Hum. Security 306, 306 (2015). [↑](#footnote-ref-3)
4. H. Rep. No. 115-948 accompanying H.R. 6776, the Department of Homeland Security Appropriations Act (2019). [↑](#footnote-ref-4)
5. USCIS Fee Waiver Policies and Data, Fiscal Year 2017 Report to Congress, USCIS (Sept. 17, 2017), www.dhs.gov/sites/default/files/publications/USCIS%20-%20Fee%20Waiver%20Policies%20and%20Data.pdf. [↑](#footnote-ref-5)
6. H. Rep. No. 115-948 accompanying H.R. 6776, the Department of Homeland Security Appropriations Act (2019). [↑](#footnote-ref-6)
7. Id. [Emphasis added]. [↑](#footnote-ref-7)