

**UNITED STATES OF AMERICA
BEFORE THE DEPARTMENT OF HOMELAND SECURITY
U.S. CITIZENSHIP AND IMMIGRATION SERVICES**

Agency Information Collection Activities;)	
Revision of a Currently Approved Collection:)	OMB Control Number 1615-0116
Request for Fee Waiver; Exemptions)	Docket ID USCIS-2010-0008

**Comments of Whitman-Walker Health Opposing Proposed Changes to Eligibility for Fee
Waivers, FR Doc. 2019-11744 Filed 6-5-19; 84 FR 26137, 26137-26140**

Submitted via dhsdeskofficer@omb.eop.gov.

Attention:
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Pursuant to the notice and request for comments published on June 5, 2019, 84 Fed. Reg. 26,137, Whitman-Walker Health (Whitman-Walker or WWH) hereby submits these comments to the changes proposed by USCIS in the eligibility requirements to obtain waivers from the very substantial filing fees for applications for relief under the immigration laws. The proposal to eliminate receipt of means-tested benefits, as one ground for a fee waiver, will make waivers much more difficult to obtain, and make forms of relief that our immigration laws and policies intend to provide essentially unobtainable for many individuals of limited means. There is no economic or sound policy basis for this harsh result, and we urge USCIS to continue to adhere to the well-established fee waiver guidelines in Policy Memorandum PM-602-0011.1¹

¹ *Fee Waiver Guidelines as Established by the Final Rule of the USCIS Fee Schedule; Revisions to Adjudicator's Field Manual (AFM) Chapter 10.9, AFM Update AD11-26 (Mar. 13, 2011).*

Expertise and Interest of Whitman-Walker Health

Whitman-Walker is a federally qualified health center providing primary medical care, HIV specialty care, mental health care and substance abuse treatment services, dental care, community health services (including HIV testing and counseling, sexually transmitted infections testing and counseling, breast health and other women's health services), youth and family services, and legal services to individuals and families throughout the Washington, DC metropolitan area. Although our patients and clients come from every income level, substantial numbers are lower-income. Moreover, significant numbers of our patients and others receiving health-related services are foreign-born. Because of our commitment to holistic health care, which includes addressing the legal and social determinants of health (and ill-health), for more than three decades our in-house Legal Services Department, with the assistance of hundreds of volunteer attorneys throughout the area, has provided a wide range of immigration-related services to WWH patients, to individuals living with HIV, and to foreign-born lesbian, gay, bisexual and transgender (LGBT) individuals and families. Because of the difficult circumstances in which they have come to the U.S. – for instance, fleeing persecution in their countries of birth because of their sexual orientation or gender identity – many if not most of our immigration clients and foreign-born health care patients have limited means, particularly until their lawful immigration status is established and they are able to make new lives for themselves and becoming fully contributing members of our society. Our immigration lawyers have substantial experience with the guidelines and processes for obtaining waivers from the – generally very high – fees required for obtain immigration relief.

USCIS Failed to Adequately Respond to Previously Submitted Comments

In its new request for information, USCIS has failed to respond to many of the points made in our initial comments submitted on November 27, 2018. We reiterate our earlier comments in this submission along with additional arguments in opposition to the proposed change.

USCIS Should Continue to Approve Fee Waivers When Applicants Have Received Means-Tested Public Benefits

Filing fees for many forms of relief available under our immigration laws are quite substantial, and beyond the means of many if not most lower-income individuals and families. Although guidelines provide for waivers for persons whose income does not exceed 150% of federal poverty guidelines (FPG), even persons with incomes of 200% FPG – currently \$24,280 for a household of one, \$32,920 for a household of two and \$50,200 for a household of four – can barely afford to meet basic living expenses in many areas of the U.S. and thus qualify for and rely on local means-tested benefits. Filing fees of \$500+, up to \$1,000 or more, which must be paid up front, can be prohibitively expensive, particularly for those living on very modest incomes in urban areas with high costs of living. Many filing fees were substantially increased in December 2016.² The financial barrier is especially formidable for many lesbian, gay, bisexual and transgender (LGBT) individuals, who are entitled to the protection of our immigration laws as asylees or refugees who have fled persecution due to their sexual orientation or gender identity. Many of these individuals do not have family networks on which they can rely for financial assistance, and many of them reside in larger urban areas, which are more receptive to LGBT people, but which also have much higher costs of living.³

² <https://www.uscis.gov/forms/our-fees>.

³ For instance, the 2015 US Transgender Survey found that 29% of transgender respondents were living in poverty, compared to 12% of the general population of US adults. LGBT people experience higher

Providing fee waivers for persons who are receiving a means-tested public benefit ameliorates these hardships, because such benefit programs at the state and local level take account of varying costs of living. In many higher-cost states and local jurisdictions, income limits for various benefits, particularly medical benefits, are set at 200% FPG or higher. The June 5 notice from USCIS expresses a concern that “the various income levels used in states to grant a means-tested benefit result in inconsistent income levels being used to determine eligibility for a fee waiver.” 84 Fed. Reg. at 26,139. However, this variation is a strength, not a weakness, of current waiver guidelines, because it considers variances in the cost of living around the country in a way that an across-the-board threshold of 150% FPG does not.

As an example of the harsh consequences of the proposed change to current fee waiver policy, consider an asylee couple who is eligible to apply for adjustment of status, one year after having received asylee status. If their monthly income is \$2,100, they would not be eligible for waiver of the I-485 filing fees based on the 150% FPG eligibility ground, but they might be receiving much-needed means-tested public benefits under DC law – such as the District of Columbia Healthcare Alliance program. If that eligibility test were removed, they would be facing filing fees of \$1,225 per person for the I-485 and biometric fees, plus medical exam fees of \$300-500 per person – a total of \$3,050 - \$3,440, approximately 50% greater than their total monthly income, if not more. Saving \$3,050 for a filing fee presents an insurmountable obstacle to such newly-immigrated asylees on the edge of poverty. The means-tested benefit waiver recognizes that state laws are uniquely crafted to address the needs of state residents, ultimately helping to speed integration of new members into our communities.

levels of poverty as a result of widespread discrimination in education, housing, healthcare, and employment. James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M., The Report of the 2015 U.S. Transgender Survey, pg 5 (Center for Transgender Equality 2016), *available at* <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

USCIS Fails to Adequately Justify Limiting Access to Fee Waivers

USCIS seeks to justify limiting access to fee waivers for those in economic hardship through estimates of lost revenue from fee waivers. USCIS's information comparing forgone revenue from FY2010/2011 and FY2016/2017 (84 Fed. Red. at 26139) is meaningless absent information about the change in volume and type of immigration filings, and the substantial fee increases that occurred during that period. Moreover, this argument places responsibility for generating revenues for USCIS on exactly the type of applicant the USCIS should be accommodating with fee waivers. Furthermore, USCIS has provided no information about how the proposed revisions will improve the "consistency" of fee waiver adjudication – as noted above, a cutoff of 150% FPG is substantially more unfair to someone living in a major urban area than in a small town – nor evidence that the fee waivers were erroneously granted under the current framework. This suggests that the actual purpose of this policy is to make it more difficult for applicants to receive a benefit for which they would otherwise be eligible.

The United States is party to international treaties that seek to protect people fleeing their countries in times of crisis, and our immigration system should remain grounded in these humanitarian principles.⁴ Erecting barriers to those who would seek to legally live and work in our communities accomplishes just the opposite result. Eliminating receipt of means-tested public benefits as a ground for fee waivers would undercut the intent of our immigration laws and policies, which provide a number of avenues for relief for deserving foreign nationals of

⁴ 1967 U.N. Protocol Relating to the Status of Refugees, incorporating the 1951 Refugee Convention, states: "considering that, in the moral, legal and material spheres, refugees need the help of suitable welfare services, especially that of appropriate nongovernmental organizations, [The Conference] recommends Governments and inter-governmental bodies to facilitate, encourage and sustain the efforts of properly qualified organizations." Protocol Relating to the Status of Refugees, Oct. 4 1967, 606 U.N.T.S. 267 *available at* <https://treaties.un.org/doc/Publication/UNTS/Volume%20606/v606.pdf>

every income level while offering assurance that strict documentation of income for these programs is met.

The impact will be particularly harsh for survivors of persecution, trafficking and other forms of violence, who are entitled to immigration relief on humanitarian grounds. Our immigration laws and policies are particularly solicitous of such persons, who very often face tremendous challenges as survivors of physical abuse, persecution and other trauma that have disrupted their lives. Congress has exempted immigrants who have received status based on humanitarian grounds from the five-year waiting period for eligibility for most means-tested federal benefits, including: asylees; refugees; Cuban and Haitian entrants; persons paroled into the U.S. for at least one year (long-term parole is usually only granted for compelling humanitarian reasons); battered non-citizens, spouses, children, or parents; victims of trafficking and his or her spouse, child, sibling, or parent or individuals with a pending application for a victim of trafficking visa; and persons granted withholding of deportation for humanitarian reasons. Fee waivers for lower-income individuals eligible for humanitarian relief are an important element of these policies. For instance, applicants for permanent residence or to adjust status (I-485) are only eligible for fee waiver if based on a humanitarian ground for relief. 8 CFR 103.7(c). The Form I-912 Instructions provide (page 1):

Form I-485, Application to Register Permanent Residence or Adjust Status. A fee waiver is only available if you are applying for lawful permanent resident status based on:

- A.** Special Immigrant Status based on an approved Form I-360 as an Afghan or Iraqi Interpreter, or Afghan or Iraqi National employed by or on behalf of the U.S. Government;
- B.** An adjustment provision that is exempt from the public charge grounds of inadmissibility of the Immigration and Nationality Act (INA) section 212(a)(4), such as the Cuban Adjustment Act, the Haitian Refugee Immigration Fairness Act, continuous residence in the United States since before January 1, 1972, (“Registry”), Asylum Status, Special Immigrant Juvenile Status, or similar provisions [including VAWA, U Visas and T Visas]

It would be inconsistent with the intent of our immigration laws and policies to impose on such individuals substantial new documentation requirements for fee waivers, who are receiving public benefits based on their limited means.

Proposed Change Places Undue Burdens on Low-Income Applicants

Individuals whose incomes are less than 150% FPG often will find it very difficult if not impossible to document their income under the proposed USCIS guidelines. Many if not most people who lack any income cannot prove that fact, unless they are in a shelter. Lesbian, gay, bisexual and particularly transgender people experiencing housing insecurity are more likely to avoid shelters due to widespread experiences of violence and mistreatment in shelters, making it even more difficult to obtain a fee-waiver absent the means-tested benefit option.⁵

The documentation USCIS requests as proof of income, primarily pay-stubs and tax receipts, are often unavailable for unemployed clients or clients who are day laborers or who work in cash economies. Many public benefit programs allow documentation of lack of income by means of a sworn certification from the applicant, or a statement from a nonprofit providing services to the individual or family in question, and may involve an in-person interview as part of the initial assessment. These means of documentation are not accepted for proving fee waiver eligibility under current USCIS guidelines. Alternative documentation requested by USCIS, such as unemployment payments and letters from nonprofit service providers, is burdensome to collect and are often rejected by the Lockbox processing fee waiver rejections. Therefore, low-income applicants and their representatives generally rely on proof of receipt of public benefits

⁵ According to the US Transgender Survey, seventy percent (70%) of respondents who stayed in a shelter in the past year reported some form of mistreatment because of being transgender. James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M., The Report of the 2015 U.S. Transgender Survey, pg 176 (Center for Transgender Equality, 2016), *available at* <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

to obtain fee waivers. Removing the means-tested benefit fee waiver eligibility determination creates a de facto barrier for low-income immigrants, especially those like LGBT immigrants who often face multiple additional barriers due to social stigma or chronic health conditions, and are in most need of a fee waiver. The result is an arbitrary standard inconsistent with the basic principles of our immigration policy.

A Means-Tested Benefits Receipt Test Is an Efficient Use of Government Resources.

The means-tested benefits receipt test has benefits for USCIS as well as for applicants. Because the applicant's income has already been reviewed by the applicable state or local government agency, the clearer documentation of an applicant's receipt of means-tested benefits saves USCIS resources that would otherwise be required to evaluate a fee waiver application based on income or financial hardship, which require more time for Lockbox staff to calculate an applicant's income or review more extensive financial hardship documents. Elimination of the means-tested benefits receipt standard from fee waiver eligibility would have no significant public or agency benefit. The proposed change eliminates a reliable and useful method of demonstrating financial need. The revenues to the U.S. Treasury from additional fees collected would be small – and certainly insignificant in comparison to the burden imposed on individuals and families eligible for the forms of immigration relief in question – and many eligible persons would likely be unable to apply for immigration relief altogether. The financial barrier that many would face to obtaining an immigration status otherwise available to them would harm our Nation as well as the individuals and families in question. It would prevent them from becoming fully employed, tax-paying, and otherwise contributing members of our society. Furthermore, this policy change directly conflicts with the United States' long-standing commitment to protecting the most vulnerable, particularly those fleeing violence and seeking safety and

protection. Individuals fleeing crisis may understandably need to rely on means-tested benefits for subsistence, and receipt of such programs is both an appropriate and efficient metric to gauge financial need.

USCIS Underestimates the Burden of the Proposed Information Collection.

USCIS estimates that form I-912 will take 1.17 hours, approximately 70 minutes, to complete. 84 Fed. Reg. at 26,140. The vast majority of our immigrant clients request fee waivers from USCIS. Based on our experience with low-income clients seeking fee waivers for immigration filings, the 11-page I-912 and the accompanying 11 pages of instruction will take a minimum of four hours, or 240 minutes, to complete. This estimate of four hours assumes the assistance of a skilled immigration attorney and that the client brings proper documentation to complete the form in a single appointment. More realistically, low-income clients will take several visits to collect sufficient documentation and prepare the statements and affidavits necessary to meet USCIS burden of proof if limited to income and economic hardship. The average time to complete the I-912 form with proposed changes is likely to be much longer than 4 hours. This time represents a substantial drain on the resources of our legal services team and would drastically curtail the number of clients we are able to assist with immigration matters and limit the overall numbers of clients we assist, a result detrimental to the physical and economic wellbeing of our community.

Conclusion

For the above reasons, Whitman-Walker Health requests that USCIS continue to adhere to the well-established fee waiver guidelines in Policy Memorandum PM-602-0011.1.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "B. Brooks". The signature is fluid and cursive, with the first letter being a large capital "B".

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July 5, 2019