

**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. 2018-21101 Filed 9-27-18; 83 FR 49120, 49120-49121

Submitted via www.regulations.gov

Attention:
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Pursuant to the notice and request for comments published on September 28, 2018, 83 Fed. Reg. 49,120, 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 public 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-602-0011.1.¹

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,

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).*

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 – 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 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 who 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. 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. Indeed, 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 from persecution. 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.

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 September 20 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.” 83 Fed. Reg. at 49,121. 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.

Even individuals whose incomes are less than 150% FPG often find it very difficult if not impossible to document their income under USCIS guidelines. Many if not most people who lack any income cannot prove that fact, unless they are in a shelter. Many public benefit programs allow documentation of lack of income by means of a sworn certification from the

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

applicant, or a statement from a nonprofit providing services to the individual or family in question. These means of documentation are not available under current USCIS guidelines. Therefore, low-income applicants and their representatives generally rely on receipt of public benefits to obtain fee waivers.

Eliminating receiving means-tested public benefits as an eligibility 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 every income level. The impact is likely to 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. For instance, Congress has exempted immigrants who have received status based on humanitarian applications 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). 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.

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 state law – such as Medicaid. 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.

The means-tested benefits receipt test also has benefits for USCIS. 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 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 forego applying 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.

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 cursive script that reads "Daniel Bruner".

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November 27, 2018