



FEE WAIVERS AND THEIR IMPACT ON IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT AND OTHER CRIMES

I. Introduction

Immigration law provides several paths to legal status for immigrant survivors of domestic violence and other forms of violence. Life-changing programs such as the Violence Against Women Act (VAWA) self-petition for abused immigrant family members of U.S. citizens and lawful permanent residents, the U visa for victims of crime, the T visa for victims of human trafficking, and asylum for those seeking refuge from persecution in their home country provide access to public benefits, work authorization, safety, stability, reunification with family members, protection from harm, and a possible pathway to lawful permanent residence (a green card) and U.S. citizenship. However, these critical legal protections are meaningless without access to fee waivers that can waive prohibitive application filing fees. Recent changes to the fee waiver process, along with a proposal to dramatically increase fees and further restrict fee waivers, may prevent survivors from accessing immigration benefits intended to help them gain safety and stability.

This report outlines the established purpose and availability of fee waivers for immigration applications, examines recent USCIS proposals to limit access and create more stringent evidentiary standards, and explores the potential consequences of a more restrictive framework on domestic violence victims and other survivors of crime. It includes results of an informal survey of legal service providers assisting domestic violence and other crime victims from around the country. Finally, it offers recommendations to make fee waivers accessible and facilitate broad access to humanitarian immigration benefits.

Advocates for immigrant survivors of domestic violence, sexual assault, human trafficking and other serious crimes have raised urgent concerns that these potential changes to immigration application fees and fee waivers may substantially limit the ability of many domestic violence survivors to apply for humanitarian protections. These changes have been initiated by USCIS at the same time as a series of rule changes that serve to limit applications for humanitarian visas and other forms of legal status. The overall impact of these changes would be a dramatic reduction in immigrant survivors seeking and receiving the legal protections that Congress created to support the security and well-being of these vulnerable populations.

II. Fee Waivers: Current Process and Challenges

A. Background

Fee waivers are available for many—but not all—immigration applications and processes, and are an important tool for allowing access to immigration benefits that might otherwise be out of reach for many people, for no other reason than their lack of financial resources.¹ When a fee waiver is available for an immigration

¹ Immigration application filing fees can range from a few hundred dollars to over a thousand dollars. See USCIS Fee Schedule, available at <https://www.uscis.gov/g-1055>.

application, the legal standard the applicant must establish is that they are “unable to pay the prescribed fee.”²

Applications for many forms of legal protections for immigrant survivors of domestic violence, human trafficking and other crimes are fee exempt under federal law, meaning there is no fee and thus no fee waiver is required. However, some applications related to these protections for immigrant survivors are not fee exempt and therefore do require either payment or a fee waiver. For example, a domestic violence victim may apply for protection under VAWA by filing a self-petition that has no fee. However, the case may require an application to waive a ground of inadmissibility, without which the survivor cannot be granted VAWA status. That waiver application currently has a fee of \$930 which would have to be paid or waived for the applicant. If the same applicant wants a work permit in order to secure employment once her case is approved, the required application has a \$495 fee which must either be paid or waived. Therefore, the fee exemptions for the primary applications open the door to legal protections, but fee waivers are essential to securing them and accessing the benefits they offer.

B. Current Context

Since 2017, the federal government has made changes to the administration of immigration law that substantially impede access to lawful status provided under our federal immigration law, the Immigration and Nationality Act (INA). These restrictions include sharply limiting established asylum eligibility, notable increases in denials of applications, initiation of removal proceedings for immigrants whose applications for lawful status are denied, threats to conduct immigration raids targeted at thousands or millions of immigrants in the United States, and imposition of sudden and immediate application deadlines that make it impossible or extremely costly for some applicants to apply for lawful status. As a result, more immigrants remain in the shadows, and those who do decide to apply for lawful status find the barriers to applying too high to overcome.

Applicants for humanitarian protections such as VAWA, U visas, T visas, and Special Immigrant Juvenile Status (SIJS) have the ability to request fee waivers, and historically U.S. Citizenship and Immigration Services (USCIS) has been reasonable in adjudicating those requests. However, in 2018 there was a marked shift. A significant percentage of fee waiver requests filed by immigrant survivors of domestic violence and other serious crimes began to be denied. Advocates for survivors throughout the country reported high numbers of fee waiver request rejections, in cases that clearly met established fee waiver eligibility criteria. Requests submitted with evidence that would have been routinely accepted in the past, began to be rejected as insufficient. This stricter, and often arbitrary, scrutiny of supporting evidence resulted in many applicants either borrowing the money to pay the fees or foregoing submitting their applications altogether. In a good faith effort to work with USCIS to correct the mistaken determinations, advocates presented USCIS with numerous examples of qualifying fee waivers that had been rejected based on clearly incorrect application of USCIS fee waiver guidance. However, the pattern of rejecting fee waiver requests filed by immigrant survivors of crime persists.

Against this backdrop, which has already created barriers to fee waivers, USCIS has issued two proposals to radically alter the fee waiver system and increase the fees charged for nearly all immigration applications. The two initiatives – the Fee Waiver Form change (Section III below) and the proposed Fee Rule (Section IV below) – will further exacerbate obstacles to legal status for immigrant survivors and other members of the immigrant community.

III. Change to Fee Waiver Form and Evidence

USCIS first proposed changes to its fee waiver guidelines that would lock in the more restrictive standards and remove an eligibility category widely used by fee waiver applicants in 2018. During two rounds of public comments, advocates provided USCIS with extensive information detailing how the restrictions would limit the number of applicants who could qualify for lawful status and reduce legal options for immigrant survivors of domestic violence and other serious crimes. However, the revised form and process retained many of the restrictions on fee waiver eligibility categories and imposed severe application and documentation requirements that will pose serious barriers for applicants to waive the fees for applications required for

² 8 CFR § 103.7(c)(1)(i).

humanitarian-based immigration status.³ Three lawsuits were filed to challenge these changes and a federal judge issued an injunction on December 9, 2019 putting these changes on hold and reverting to the prior form and requirements while the lawsuits are pending.⁴ Advocates are gravely concerned about the restrictions and predict that some people who are eligible for lawful status will not apply, and others will forego necessities to pay the fees. What follows is a summary of those potential changes and description of the impact on immigrant survivors.

Three lawsuits challenging the changes outlined below were filed in federal court in late fall 2019. For more information on the litigation and to track developments:

- *City of Seattle v. DHS* <https://protectdemocracy.org/project/city-of-seattle-v-dhs/>
- *NWIRP v. USCIS* <https://www.citizen.org/litigation/northwest-immigrant-rights-project-v-u-s-citizenship-and-immigration-services/>
- *Project Citizenship v. DHS* <https://www.ropesgray.com/en/newsroom/news/2019/11/Ropes-Gray-Project-Citizenship-Sue-USCIS-to-Protect-Access-to-Citizenship-for-Low-Income-Immigrants>

A. Elimination of Means-Tested Benefits Criteria Creates Obstacles for Applicants and their Advocates

For more than two decades, USCIS fee waiver guidance authorized waiving application fees for applicants who meet one of three criteria:

1. receive a means-tested public benefit;
2. are low-income with an annual household income of less than 150% the federal poverty level; or
3. are facing economic hardship (such as a medical emergency or other urgent situation).

However, under the revised fee waiver form and instructions, which briefly took effect December 2, 2019 and was subsequently halted by a federal court on December 9, 2019, receipt of means-tested public benefits was eliminated as a basis for a fee waiver.

The receipt of a mean-tested public benefit as a basis for a fee waiver streamlines the fee waiver process for both the applicant and USCIS. USCIS benefits from a local government agency's investigation and analysis of an applicant's financial situation. If an individual is eligible for certain means-tested benefits, they have been deemed low-income and therefore eligible or a fee waiver. Furthermore, many states grant means-tested benefits to survivors who are in the process of applying for lawful immigration status based on their victimization.⁵ This is a response to the reality that many domestic violence survivors and their children may be trapped in dangerous conditions when they are unable to financially support themselves. Providing for the basic needs of survivors and their families offers them the opportunity to leave the violence. By using this same vehicle to allow immigrant survivors to access fee waivers for applications for legal protection integrates the processes and thus reduces barriers for survivors. It also puts them on the path to greater economic self-sufficiency by allowing them to secure employment authorization and access to public benefits.

Nonprofit organizations that serve immigrant survivors observe that qualifying for a fee waiver by showing receipt of a means-tested benefit has been the least burdensome for applicants to document. This option involves visiting a familiar agency located near their residence with which the applicant already has regular contact. Moreover, unlike the category 150% of the federal poverty level, means-tested benefits take a state's cost of living into account in determining an applicant's "inability to pay." Without this eligibility category,

³ USCIS, News Release, "USCIS Updates Fee Waiver Requirements," (October 25, 2019), <https://www.uscis.gov/news/news-releases/uscis-updates-fee-waiver-requirements>.

⁴ Materials related to the injunction and the underlying court case can be found here: <https://protectdemocracy.org/project/city-of-seattle-v-dhs/>

⁵ For example, in September 2006, the California state legislature passed SB 1569 which allows noncitizen survivors to access cash assistance, employment social services, food stamps, Medi-Cal and more.

residents of New Orleans, Las Cruces, and Memphis will qualify for fee waivers that residents of Newark, Minneapolis, and Oakland will not.

The elimination of the receipt of means-tested benefits basis for a fee waiver creates an undue burden on applicants, provides no accessible local agency that applicants can work with to secure needed documentation, and eliminates parity across states by imposing a single standard for showing an applicant is low-income despite the cost of living in their place of residence.

B. Burdensome Documentation of Low-Income Status Will Result in Filing Delays and Uneven Adjudications

The revised fee waiver application, which briefly took effect December 2, 2019 and was subsequently halted by a federal court on December 9, 2019, would require applicants to prove eligibility under either the low income or hardship category. Previously, fee waiver requests based on income at or under 150% of the poverty level could be documented with evidence such as a copy of a tax return Form 1040, W-2s, or other financial documents an individual would likely have among their personal records. However, the new fee waiver application form requires most applicants in this category to present an IRS tax return transcript or an IRS verification that no tax return was filed. These IRS documents can be secured through an online request with the IRS or via mail.

The IRS website estimates that those who make the request online with a Social Security Number (SSN) or Individual Tax Identification Number (ITIN) will receive the transcript 5-10 days later. The vast majority of applicants for humanitarian forms of relief are undocumented and do not have an SSN or ITIN and therefore must file a paper Form IRS 4506-T, by mail to request a tax transcript. This process is estimated to take about 10 days from the time the IRS receives the request. However, those requesting proof of non-filing status who do not have an SSN or ITIN can likely expect further delays in receiving the required documentation due to the fact that IRS officials would have to search databases with less identifying information.

In the alternative, under the revised fee waiver application process, individuals whose underlying applications are based on “victimization,” such as VAWA, T and U applications, and have income below the legal filing threshold due to the victimization must also explain in a separate declaration how having “no income” or “inability to provide evidence of income” is *due* to the victimization suffered. They must also provide documentation of any income received and/or affidavits from organizations verifying the receipt of support services and attesting to their financial situation. Collecting this type of evidence creates additional burdens on the time and resources of the legal service provider. This results in delays of the filing of applications for relief of an individual applicant and limits the capacity of the service provider to assist other clients due to the additional time required.

Uneven Standards

While flexibility with the forms of evidence showing low-income status and victimization is critical for fee waiver requests filed by survivors, the unclear evidentiary standard leaves considerable discretion in the hands of USCIS officers. An individual USCIS officer’s determination about the sufficiency of the evidence provided may differ from another officer’s assessment in a case with similar facts and documentation. This would lead to a lack of clarity for survivors and their advocates about whether requests, even where similar documentation is provided, would be approved. The stricter adjudication of fee waiver requests currently taking place has already led to confusion and increased burdens on advocates. Every legal service provider queried about the fee waiver process reported that most fee waiver requests that require an eligibility assessment by USCIS are rejected at least once. In some cases, applicants are able to try different things, and obtain enough documentation to demonstrate eligibility for a fee waiver. These fortunate applicants and their advocates may have needed to dedicate between three to six hours to prepare, submit, and resubmit the fee waiver request. Further blurring the standard would lead to even more confusion and demand on the time and resources of legal service providers and their clients.

Delays and Missed Deadlines

The possibility of having an application rejected due to denial of the fee waiver request may pose too great a risk to some applicants where time constraints are a factor in their cases. Some examples of situations that require a survivor to promptly file an application include the following:

- U visa applications must be filed shortly after a law enforcement agency certifies that the applicant was helpful in a criminal investigation or prosecution.
- Applications for permanent residence or extensions of humanitarian-based lawful status must be filed before the underlying status expires, sometimes in urgent circumstances.
- Applicants in removal proceedings before an immigration judge may be asked to provide a copy of a receipt notice that an application for immigration relief has been filed with USCIS. Only upon approval of the fee waiver will the application be processed by USCIS and a receipt notice generated.
- An individual filing an appeal of a USCIS decision, which is subject to strict filing deadlines (usually 33 days from receipt of the decision), may risk not meeting the deadline if the fee waiver request is denied.

For these and many other applicants, the consequences of delay to their legal options may be grave, including denial of the benefit sought. In many cases, the applicant's only recourse will be to pay the fees for the required applications, which can typically total \$1,000 or more. This can strain the stability survivors who may already be facing immense financial challenges. Some advocates reported paying out of pocket for their clients' costly application fees in order to ensure that applications were filed in a timely manner and would not face possible rejection.

USCIS routinely takes approximately four to six weeks to determine that a fee waiver request is insufficient and to return the application. At that point, an applicant would have to re-file the fee waiver request with additional evidence or the required fee. Most applicants who face a deadline within two months may decide to pay the application fee rather than risk denial of the application for lawful status. Advocates interviewed for this report believe that thousands of survivors will be unable to present a sufficient case for a fee waiver or get the money needed to pay the fee. They expect that a significant number of applicants for survivor-based legal status will ultimately not apply for status. In these scenarios not only are survivors delayed in receiving legal protection, but that lack of legal protection may keep them in unsafe situations. These increased evidentiary standards on applicants undercut Congressional intent to provide access to relief for victims.

C. Mandatory Use of Standard Form by Each Applicant Burdens Clients and Advocates

Beyond the substantive changes outlined above, the revised fee waiver form would require that all individuals requesting a fee waiver submit their request using Form I-912. USCIS would no longer accept informal, "applicant-generated" fee waiver requests, even though the regulations do not require such a standardized process.⁶ Requiring use of a single form by victims of domestic violence and other vulnerable groups places undue barriers to the legal benefits designed to protect them. In particular, this would present unnecessary obstacles for individuals preparing applications without the assistance of a legal service provider, while in immigration detention, or in other non-traditional settings where internet access, printers or other infrastructure is not available.

In addition, each individual seeking a benefit would have to submit their own fee waiver request even if they are members of the same family, including parents and minor children. The new form would not allow multiple applicants to be included on the same Form I-912 request even if they are seeking relief as a family unit. While one individual can still request to waive the fees for several applications with a single Form I-912, USCIS would no longer accept joint requests. This would again create an additional burden on applicants and their legal

⁶ See 8 CFR § 103.7(c)(2). The regulation requires that a person requesting a fee waiver for an immigration benefit "submit a written request for permission to have their request processed without payment of a fee with their benefit request. The request must state the person's belief that he or she is entitled to or deserving of the benefit requested, the reasons for his or her inability to pay, and evidence to support the reasons indicated." 8 CFR § 103.7(c)(2).

service providers when an applicant is including minor children or other eligible relatives in an application for relief. Form I-912 is a nine-page application and preparing individual requests for multiple family members filing for relief as a family unit creates a burden for both the legal service provider and the USCIS adjudicator. For example, a mother of three minor children applying for a U visa will need to ensure the individual applications for status and associated documents are prepared as well as four separate fee waiver requests, despite the fact that the income or hardship information would be identical for each family member. These types of administrative requirements, combined with substantive restrictions to eligibility, make the application process more cumbersome and will negatively impact survivors. Such measures undercut Congressional intent to provide access to relief for victims.

IV. Future Threats

While the recent changes outlined above already threaten to create hurdles for immigrant survivors in their efforts to secure legal status, a proposed rule further threatens their access to immigration protections. On November 14, 2019, the Department of Homeland Security (DHS) announced a proposed rule to dramatically increase fees for numerous immigration applications and eliminate fee waivers altogether for any immigration application where such a waiver is not required by federal statute.⁷ A 45-day public comment period runs through December 30, 2019 after which time DHS and USCIS will review the comments and eventually publish a final rule. There is no clear date when the final rule will be published or when it might be implemented, or if the final version will include all the elements of the proposal. DHS will likely publish a final version of the fee rule in 2020, at which point it may go into effect, or litigation may be filed that delays its implementation. While the fee rule changes are only a proposal at this point, below are some of the most critical aspects of this harmful proposal.

A. Increases Most Fees and Imposes New Fees

The new fee rule would dramatically increase application costs for nearly every type of immigration benefit. While most forms of humanitarian protection continue to require no fee as mandated by federal law, such as the U visa, T visa, VAWA self-petition, and SIJS petition, the ancillary forms associated with those applications would be subject to a substantial fee increase.

For example, U visa applicants will likely need a waiver in order to be approved for and receive a U visa. The waiver application, Form I-192, currently costs \$930, with a fee waiver option available. Under the proposed rule, the fee would increase to \$1415 and the fee waiver would be adjudicated under the stricter standard outlined below. In addition, U visa holders can petition to include certain family members in that form of protection. Currently, that petition, Form I-929, has a filing fee of \$930 but that would dramatically increase under the proposal to \$1515. Finally, U visa recipients are eventually be eligible to apply for lawful permanent residence (also known as a green card). Currently, such an applicant would pay a filing fee of \$1225 or file a fee waiver request for the green card application as well as for a work permit while the green card application is pending. Under the proposed rule, the applications for those benefits will total \$1610. While the fee waiver would again be available in this instance, stricter standards and more burdensome evidentiary requirements may make such a waiver more difficult to secure, leaving survivors with the option of either finding the funds to pay the fee or forgoing the benefit they are otherwise eligible to receive.

Significantly, for the first time in our nation's history and marking a notable exception in the global community, a \$50 fee will be charged to asylum applicants, with limited exceptions for unaccompanied minors. For some survivors, domestic violence prompted their flight to the United States, and asylum offers the best option to securing status and protection from abuse in their home country. A \$50 fee would prejudice all asylum seekers, who are among the most vulnerable members of immigrant communities. This proposed fee is especially harsh given that immigration law already punishes those who do not present their claim for asylum within the first year of their presence in the United States, when recently arrived asylum seekers are less likely to have established themselves and have financial stability.⁸

⁷ Federal Register <https://www.federalregister.gov/documents/2019/12/09/2019-26521/us-citizenship-and-immigration-services-fee-schedule-and-changes-to-certain-other-immigration>.

⁸ See [INA § 208\(a\)\(2\)\(B\)](#).

B. Eliminates Most Fee Waivers

The proposal would eliminate all fee waivers, except for the small number of applications where they are guaranteed by statute. Applications under VAWA, U visa, T visa, and TPS continue to have no associated fee as mandated by federal law.⁹ Fee waivers for associated filings of VAWA self-petitioners, T visas, U visas, battered nonimmigrant spouses (A, G, E-3, H), VAWA cancellation, or TPS would continue to be available. But with stricter standards for fee waiver eligibility, as outlined in Section III, many eligible applicants will find it harder to prove they qualify. However, other applications that survivors may need to access along their path to lawful status would no longer offer a fee waiver option. Some important examples of applications that would no longer have a fee waiver are the Form I-90 to renew or replace a green card and the Form N-400 for naturalization to become a U.S. citizen.

The availability of fee waivers does not track the real life struggles that domestic violence survivors confront. Research has recognized the long-term financial impact of domestic violence on survivors.¹⁰ The marginalization of immigrants, particularly undocumented immigrants, only compounds these challenges. While the immediate applications filed by an immigrant survivor will continue have no fees or have the fee waiver option available, albeit with stricter evidentiary standards, the applications that individuals must file to obtain a more permanent status will not benefit from such protections. For example, the abused spouse of a U.S. citizen may be able to file for protection under VAWA without a fee and for a fee waiver for the applications related to that status. At a later date, however, that individual would be able to apply for U.S. citizenship through the naturalization process, which currently costs \$725 but also provides a fee waiver option. Under the proposed rule, the fee waiver for naturalization would no longer be available, and the fee would be increased to \$1140. Many eligible green card holders would simply not be able to afford that cost, forgo their application altogether and remain a lawful permanent resident. However, the cost of renewing a green card, which is done every ten years, would no longer have a fee waiver available. Not fully integrating immigrant survivors is to leave them at the margins of society and does not fulfill the promise the humanitarian forms of relief are designed to offer survivors.

C. Reduces the Annual Income Limit Allowed to Qualify for a Fee Waiver

The proposal would reduce the maximum annual income to qualify for a fee waiver from 150% to 125% of the Federal Poverty Guidelines.¹¹ For example, the 2019 guidelines set the poverty level for a family of four at \$25,750. Currently, an applicant with a household of four would qualify for a fee waiver if their annual income was 150% or less than that amount, or a maximum of \$38,625 for the family. Under the proposal, the same applicant would only qualify if their annual income was at or below 125% of that amount, or a maximum of \$32,187.50 for the family. This new calculation means fewer applicants would qualify for a fee waiver, and applicants applying from areas with a higher cost of living would be even further prejudiced by these benchmarks. Survivors who have been able to secure employment would be less likely to qualify for a fee waiver under this metric and as a result would either be prevented from seeking legal protections due to the prohibitive costs of the associated application fees or have to redirect limited resources to cover application costs rather than investing in their family's well-being.

V. Conclusion and Recommendations

Federal immigration law provides legal pathways for survivors of domestic violence and other crimes. But without meaningful access to fee waivers to allow these applications to be reviewed and the corresponding protections granted, it is an empty promise. The Trump administration's proposals to increase fees and restrict access to fee waivers is an attack on all low-income immigrants but will be particularly harmful to vulnerable groups, like asylum seekers, domestic violence survivors, and other crime victims. These dangerous changes

⁹ The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPR), Section 201(d)(3), [Pub. L. 110-457 \(PDF\)](#), 122 Stat. 5044, 5054 (December 23, 2008) (adding [INA § 245\(i\)\(7\)](#)).

¹⁰ *Dreams Deferred: A Survey on the Impact of Intimate-Partner Violence on Survivors' Education, Careers, and Economic Security*, Institute for Women's Policy Research, October 24, 2018. Available at: <https://iwpr.org/publications/dreams-deferred-domestic-violence-survey-2018/> (last visited Dec. 2019).

¹¹ The Federal Poverty Guidelines are available at <https://aspe.hhs.gov/poverty-guidelines> (last visited Dec. 2019).

can be reversed through administrative or Congressional action to ensure that financial status does not determine an individual's immigration status.

In response to these threats and proposals, the following recommendations are made:

For USCIS:

1. Rescind the proposed rule that seeks to increase required fees to levels that put immigration options out of reach for vulnerable immigration populations
2. Maintain a streamlined fee waiver process that allows for clear application and adjudication procedures
3. Return to a generous interpretation of eligibility for fee waivers that facilitates access to existing immigration options

For Community Members and Advocates:

1. Submit comments demanding reasonable fees and access to waivers to be preserved with specific examples of how the changes would affect otherwise eligible immigrants from seeking and maintaining safety. For guidance on this process, see <https://cliniclegal.org/fee-schedule-changes>.
2. Educate members of Congress about USCIS's proposed changes to the fee waiver rule and fee increase and demand that they hold USCIS accountable.
3. Collect stories and maintain a story bank to demonstrate how crucial access to fee waivers is to those seeking safety.

For Policy Makers:

1. Pass legislation that enshrines fee waivers in federal law in order to protect and prioritize their availability.
2. Exercise oversight over UCSIS to ensure policies and procedures align with Congressional intent.