



November 27, 2018

Samantha Deshommès
Chief, Regulatory Coordination Division
Office of Policy and Strategy
Department of Homeland Security
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, NW
Washington, DC 20529-2140
Submitted via Federal eRulemaking Portal at: <http://www.regulations.gov>

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

Dear Ms. Deshommès:

Kids in Need of Defense (KIND) appreciates the opportunity to comment on revisions proposed by U.S. Citizenship and Immigration Services (USCIS) relating to Form I-912, Request for Fee Waiver, and related guidance. Notice inviting comment on these proposed revisions (hereinafter, the “Proposed Revisions”) was published September 28, 2018 in the Federal Register.¹ If USCIS adopts the Proposed Revisions, it would modify Form I-912 (the “Proposed Form”), revise the accompanying instructions (the “Proposed Instructions”), and rescind and replace its Policy Memorandum entitled “*Fee Waiver Guidelines as Established by the Final Rule of the USCIS Fee Schedule; Revisions to Adjudicator Field Manual (AFM) Chapter 10.9, AFM Update AD11-26*”² (hereinafter, the “2011 Policy Memo”). We call on USCIS to withdraw the Proposed Revisions, which would present barriers to immigrant and refugee children and other survivors of harm who seek to regularize their status and remain safely in the United States. USCIS should instead expand the flexibility of its fee waiver policies.

KIND is a national nonprofit organization dedicated to providing free legal representation and protection to unaccompanied immigrant and refugee children in removal proceedings. Since January 2009, KIND has received referrals for over 17,300 children from 70 countries, and has collaborated with more than 570 pro bono partners to serve such children. KIND promotes protection of children in countries of origin and transit countries and works to address the root causes of child migration from Central America. KIND also advocates for laws, policies, and practices to improve the protection of unaccompanied children in the United States, by educating policymakers, the media, and the broader public about the violence that is driving children out of Central America and their need for protection.

¹ U.S. Citizenship and Immigration Service. “Agency Information Collection Activity; Revision of Currently Approved Collection: Requests for Fee Waivers; Exemptions,” Federal Register, Vol 83, No.189 49120-21, (Sept. 28, 2018), <https://www.gpo.gov/fdsys/pkg/FR-2018-09-28/pdf/2018-21101.pdf>.

² PM-602-0011.1 (March 13, 2011), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2011/March/FeeWaiverGuidelines_Established_by_the_Final%20Rule_USCISFeeSchedule.pdf.

KIND has field offices in ten locations: Atlanta, Baltimore, Boston, Houston, Los Angeles, Newark, New York, San Francisco/Fresno, Seattle, and Northern Virginia/Washington, DC.

Many children served by KIND have fled their countries of origin because of violence or other threats to their safety, and can demonstrate eligibility for humanitarian relief or other avenues to lawful immigration status. For example, many child victims of persecution and other violence are granted asylum, withholding of removal, or protection under the Convention Against Torture. Other children are eligible for Special Immigrant Juvenile Status (SIJS) on the basis of parental abuse, neglect, abandonment or similar circumstances. Children who are victims of crimes or human trafficking may be found eligible for U or T nonimmigrant status, and abused children of U.S citizens or legal permanent residents may self-petition under the Violence Against Women Act (VAWA). On the basis of such relief, many children will become eligible for lawful permanent residency, or will become entitled to remain and work lawfully in the United States for an extended period.

Appropriately, the petitions or applications for the types of humanitarian relief described above do not entail filing fees. However, filing fees frequently present a barrier to children who seek to file a motion or appeal to contest the denial of a benefit (Form I-290B), apply for adjustment of status (Form I-485), seek a waiver of grounds of inadmissibility (Form I-601), apply for employment authorization (Form I-765), or file other forms necessary to the resolution of their immigration matters. In many instances, children themselves are self-petitioners or principle applicants, rather than derivatives of an application filed by an adult. Many children are supported by caregivers who are also unable to pay the filing fees on a child's behalf.

The challenges of pursuing immigration status -- while also healing from a history of trauma or overcoming language or educational barriers -- are often compounded by poverty. Accordingly, a fair and flexible fee waiver adjudication process is an essential ingredient in ensuring that unaccompanied children and other vulnerable immigrants can access the immigration benefits for which they are eligible.

The Proposed Revisions would decrease the flexibility of the fee waiver application process, and envision documentation requirements that would heavily burden indigent persons and the nonprofit organizations that assist them. There is no showing that existing deficiencies necessitate these changes, nor that the Proposed Revisions would significantly enhance the information available to adjudicators. Further, USCIS proposes rescinding the 2011 Policy Memo, without describing the guidance that would replace it. Given KIND's extensive experience serving indigent applicants for adjustment of status and other immigration benefits, we believe the following comments will assist USCIS in maintaining the integrity, flexibility, and fairness of the fee waiver application and adjudication process.

I. The Proposed Revisions Would Impose Documentation Requirements That Will Serve as a Barrier to Applying for Fee Waivers and Benefits Without Meaningfully Enhancing the Information Available for Fee Waiver Adjudication

The Proposed Instructions would make Form I-912 the exclusive vehicle for requesting a fee waiver, foreclosing the option to establish eligibility through a letter or affidavit with supporting documentation. Notably, the regulations do not mandate the use of any particular form, requiring only that the applicant make a "written request" that sets forth "the reasons for his or her inability to pay, and evidence to

support the reasons indicated.” 8 C.F.R. § 103.7(c). Unaccompanied children, survivors of violence, and others enduring hardships should be permitted to address the eligibility requirements in a self-generated request, which should be granted if the standard is satisfied.

Flexible options for supporting a fee waiver request are essential for children and youth, for whom the reasons behind the inability to pay application filing fees are many and varied. Many children are refugees who fled their countries of origin under emergency circumstances, arriving without assets or resources. Others are victims of trafficking or other crimes who were exploited or harmed during their journey to the United States or after arrival. Some study full-time, while others seek to complete an education through part-time or continuing education programs. Some children live with caregivers or families who are themselves in economic distress. Others lack familial support and struggle to support themselves despite limited earning capacity. Many children and families have incurred heavy debts to finance travel to the U.S. or extricate themselves from harmful situations. Others are burdened by expenses for healthcare, family emergencies, legal services, immigration bonds, or other needs. Making the fee waiver application process more complex and less flexible will deter children from filing not only fee waiver requests, but also requests for adjustment of status and employment authorization, steps that are vital for children to acquire safety, stability, and permanent status.

As one example, USCIS has long employed flexible fee waiver practices with respect to ancillary filings by survivors of violence seeking protections provided under the TVPA or VAWA. This flexibility is vital to children whose parents or siblings are seeking derivative U or T nonimmigrant status. Derivative status for parents enhances the safety and stability of the previously victimized child, while derivative status for siblings protects children who could otherwise be vulnerable to violence or abuse. Under current policy, a single fee waiver request may cover all derivative parents and siblings. This simplifies the adjudication process by organizing all relevant data in a single submission. In contrast, the Proposed Revisions would require each derivative applicant to submit his or her own Form I-912 along with any fee-based ancillary forms. This change would impede stability for children and supportive family members, and unnecessarily increase USCIS’ workload.

The Proposed Instructions call for most fee waiver applicants to provide “[a] transcript of your most recent Federal tax return,” specifying that “USCIS may later request a certified copy” and that “[p]ay statements (stubs) alone are not sufficient evidence.” Proposed Instructions at 7. Complying with these heightened documentation requirements will increase the time and workload of child applicants and adjudicators alike. Children and survivors of domestic violence or trafficking may have lost control of their original documents to the individuals who abused or exploited them. These survivors may be further impeded from gathering the enumerated documents if they lack ready internet access, affordable transportation, or financial resources. The increased complexity of the Proposed Form would likely result in more errors by children or their advocates, increasing processing times and potentially resulting in denial where a fee waiver is merited.

Such elevated filing and documentation requirements would also strain the limited resources of service providers who assist unaccompanied children, survivors of crimes and trafficking, and their families. This will in turn diminish the availability of low-cost or free services for individuals in need. In addition, it will make it harder for legal service providers to assist children who cannot afford the filing fees to apply for

immigration benefits that ultimately make them more stable and productive community members, such as employment authorization and adjustment of status.

II. The Proposed Revisions Would Reduce Applicants' Options for Demonstrating Eligibility for a Fee Waiver

Under previous policy, an applicant could demonstrate eligibility for a fee waiver using any of three alternative tests: receipt of a means-tested benefit³, household income level, or financial hardship. *See, e.g.,* 2011 Policy Memo at 2. The Proposed Revisions “will not permit a fee waiver based on receipt of a means-tested benefit,” 83 FR 49121. By stating that the Proposed Revisions “would reduce the evidence required for Form I-912” and will “no longer require proof of whether or not an individual receives a means-tested benefit,” *id.*, the Federal Register notice misleadingly implies a beneficial change that would relieve applicants of a common burden. In reality, this proposed change would foreclose a pathway previously available to a limited number of applicants. In so doing, it would inflate documentation requirements, and decrease adjudicatory efficiency, all without addressing any demonstrable limitation in the current adjudication policy.

As described above, documentation of income level or financial hardship may not be readily available to children and youth, particularly those who are unaccompanied. By channeling all fee waiver requests into those two categories only, the Proposed Revisions would make both application and adjudication more labor-intensive, which in turn will increase processing delays and backlogs beyond current levels. In contrast, under the 2011 Policy Memo, a fee waiver request may be supported by “a letter, notice, or other official document(s)” naming the benefit, the agency granting the benefit, and the recipient. 2011 Policy Memo at 5. Eliminating this basis for the fee waiver request will effectively increase the burden of documenting and reviewing eligibility, and reduce the likelihood of success for some applicants, without any showing that it could serve to curb fee waiver approvals for applicants capable of paying.

Further, the proposed change would sacrifice efficiencies available under the current policy. A fee waiver applicant who has received a means-tested benefit has already satisfied screening requirements for that benefit, obviating the need for a new screening in the fee waiver adjudication process. Rather than utilizing the results of state-specific expertise, the Proposed Revisions reject this method on the basis of “inconsistent income levels being used to determine eligibility for a fee waiver,” 83 FR 49121. The regulatory standard of “inability to pay” is not confined to income levels or recent hardships, but may encompass factors such as the cost of living or the significant burdens associated with pregnancy, early childhood, disability, or old age. The receipt of a means-tested benefit may reflect these factors more efficiently than the remaining alternatives permitted under the Proposed Revisions.

III. The Proposed Revisions Would Undermine Statutory Protections for Unaccompanied Immigrant Children and Survivors of Violence in the Home

Recognizing that survivors of domestic violence, sexual violence, or human trafficking often lose control of or access to many forms of supporting evidence, Congress prescribed an “any credible evidence”

³ Means-tested benefits include the Supplemental Nutrition Assistance Program, Medicaid, Supplemental Security Income, and Temporary Assistance for Needy Families. 2011 Policy Memo at 5.

standard for these forms of relief.⁴ DHS regulations elaborate the application of this statutory standard to applications for survivor-based protections like VAWA self-petitions and U and T visa applications.⁵ The Proposed Revisions would in effect impose a stricter evidentiary standard on a fee waiver request than on the underlying petition for protection. This change would contravene bipartisan legislation establishing appropriate evidentiary standards for such cases, as well as statutory measures designed to ensure that victims of violence are not precluded from seeking status due to inability to pay fees.⁶

A fair and robust fee waiver application and adjudication process must accommodate the fact that financial instability exacerbates the special vulnerabilities of unaccompanied children, asylum seekers, and survivors of violence. The Proposed Revisions would instead increase the barriers facing these vulnerable immigrants and their service providers. We urge USCIS to rescind the Proposed Revisions, and to instead to expand the flexibility of its fee waiver policies to better realize the protections that Congress established for unaccompanied immigrant children and others eligible for humanitarian protections.

Thank you for the opportunity to provide input on the Proposed Revisions. I can be reached at csmith@supportkind.org or (202) 361-1442 if you have questions or need any further information or explanation.

Respectfully submitted,

/s/

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Kids in Need of Defense (KIND)

⁴ INA § 204(a)(1)(J), INA § 214(p)(4).

⁵ 8 CFR § 204.2(c)(2)(i); 8 CFR § 214.14(c)(4); 8 CFR § 214.11(d)(2)(ii), (3).

⁶ *See, e.g.*, 8 USC § 1255 (l)(7).