



March 13, 2023

Samantha Deshommes  
Chief, Regulatory Coordination Division  
Office of Policy and Strategy  
U.S. Citizenship and Immigration Services,  
Department of Homeland Security  
5900 Capital Gateway Drive  
Camp Springs, MD, 20746

**Re: USCIS -2021-0010, U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefits Request Requirements**

Dear Ms. Deshommes:

Kids in Need of Defense (KIND) submits the following comments in response to U.S. Citizenship and Immigration Services' (USCIS) biennial fee review, published on January 4, 2023.<sup>1</sup> We welcome the return of a more balanced model for assessing application fees, one that takes ability to pay into account. KIND is particularly pleased to see that USCIS has consequently expanded the number of applications which are fee-exempt, covering many of the applications most frequently used by our clients, unaccompanied children seeking humanitarian protection. We acknowledge, however, that this balancing of equities is an imperfect system in which some applicants for certain types of benefits are considered inherently more able to pay, and that this can create unintended consequences and cost barriers for individual applicants. We encourage USCIS to continue to pursue all avenues for streamlining processes and reducing fees, including pursuing additional appropriations from Congress.

KIND is an international nonprofit organization headquartered in Washington, D.C., with programming in the United States, Mexico, Central America, and Europe. With 17 locations in the United States, KIND plays a pivotal role in the representation of unaccompanied and separated immigrant children throughout the immigration process. KIND's core program focus is on the delivery of legal and social services to children through our vast private-sector pro bono network and in-house legal team, including work to reunify families and providing psychosocial support services to address the trauma often experienced by children who have been forcibly displaced. KIND also delivers legal training and technical assistance to empower lawyers, and engages in impact litigation and policy advocacy to

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<sup>1</sup> U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefits Request Requirements, 88 Fed. Reg. 402 (January 4, 2023).

<https://www.federalregister.gov/documents/2023/01/04/2022-27066/us-citizenship-and-immigration-services-fee-schedule-and-changes-to-certain-other-immigration>.

promote laws and policies that protect migrant children. KIND also works to address the root causes of child migration from Central America; and advocates for laws, policies and practices to improve the protection of unaccompanied children in the United States. Our work serving children directly informs our policy work and provides us with a unique vantage point from which to consider holistically the needs of these children.

Our comments address support for abandoning the draconian beneficiary-pays model employed in the 2020 fee revision, support for the expansion of fee-exempt application categories, objection to the decision to charge a fee for work authorization applications regardless of age, and observations on the balancing test employed to set fees.

**A. KIND supports the use of the ability-to-pay model in assessing fees, as it is more equitable and better serves children navigating the immigration system on their own.**

As DHS acknowledges in its preamble, a discussion of the current proposed fee schedule and regulatory changes requires significant context, as the proposed rule is essentially a repudiation of the philosophy espoused in the proposed fee schedule published on November 14, 2019<sup>2</sup> and subsequently published as a final rule on August 3, 2020 (2020 Rule).<sup>3</sup> Although the final rule was enjoined and the fees it established have never been enforced, we welcome DHS's explicit rejection of the 2020 Rule's approach to assessing fees and a return to realistically assessing applicants' ability to pay in setting the USCIS fee schedule.

KIND vigorously opposed the 2020 Rule, noting that the resulting astronomical fee increases would make many benefits unavailable to immigrants, describing in particular the impact on the unaccompanied children we serve.<sup>4</sup> DHS's return to an ability-to-pay philosophy is consistent with the historic practice of balancing ability to pay with USCIS's authority to spread the cost of humanitarian applications across its fee schedule. At the same time, we recognize that because USCIS is required by law to recover its costs, the ability-to-pay model will shift a part of the costs of adjudicating humanitarian applications to those paying higher fees for services, particularly for those who are seeking employment-based and other business-focused visas. We support continued efforts to make the process more equitable for all, and encourage USCIS to pay careful attention to suggestions for ensuring access to all benefits, including seeking additional appropriations to subsidize more costly adjudications.

We also encourage USCIS to further reinforce its rejection of the 2020 Rule by formally withdrawing the 2020 Rule as a part of the publication of the final rule. If, for any reason a court were to find that some portion of the new fee proposal is unlawful, the result should not be a return to the 2020 fee schedule. Rather, by formally withdrawing the 2020 Rule, USCIS can ensure that the result would be a return to the current status quo, which is the 2016 Fee Schedule now in effect. Also, USCIS should state that its withdrawal of the 2020 Fee Schedule is severable from the remainder of the current proposal, so that

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<sup>2</sup> U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 62,280 (Nov. 14, 2019) (proposed rule). <https://www.govinfo.gov/content/pkg/FR-2019-11-14/pdf/2019-24366.pdf>.

<sup>3</sup> U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 85 Fed. Reg. 46788 (Aug. 3, 2020) (final rule). <https://www.govinfo.gov/content/pkg/FR-2020-08-03/pdf/2020-16389.pdf>.

any judicial invalidation of any portion of the current proposal would not endanger the lawful and appropriate decision to withdraw the 2020 Fee Schedule.

**B. KIND supports the elimination of the asylum fee and initial work authorization fee adopted in the 2020 fee schedule, in recognition of the vulnerable position of asylum applicants, particularly children.**

KIND opposed DHS's proposal to impose an application fee on asylum-seekers, as set forth in the 2020 Rule. Although most unaccompanied children would have been exempt from the asylum application fee, they would have been required to pay the full fee to apply for employment authorization, which would have been out of reach for many of the children we serve. As KIND's comments explained, an Employment Authorization Document (EAD) has a critical role in children's health and well-being. An EAD provides older children and young adults access to lawful employment and thereby provides significant protection from the risk of unsafe working conditions and labor exploitation. Even for children who do not work or are too young to do so, an EAD is often critical to accessing basic services. Unaccompanied children frequently rely on the EAD as proof of identity in accessing state healthcare programs, obtaining driver's licenses or state identification documents, foster care assistance and other benefits and services.

Eliminating the asylum application fee and exempting the initial EAD application fee for asylum-seekers are critical to providing a pathway towards protection and self-reliance. We fully support these revisions.

**C. KIND supports the expansion of fee exemptions for humanitarian categories, recognizing that unaccompanied minors and other youth are generally unable to afford application fees.**

Many of the children served through KIND are found eligible for special immigrant juvenile status (SIJS), while others qualify for T or U nonimmigrant status. Many clients will qualify for adjustment of status on those bases. Under the 2016 Fee Schedule currently in operation, there is no fee to petition for SIJS or for a T or U visa, but once granted those benefits, the individual must apply for a fee waiver when unable to pay the I-485 application fee. In our experience, the children we serve are almost always found eligible for a fee waiver, given a combination of tender age, indigence, and dependence on court-appointed caregivers or foster care providers for their care and protection. Consequently, the fee waiver request creates an unnecessary step in seeking adjustment of status and work authorization, sometimes resulting in delays, but always adding an additional layer of anxiety and uncertainty to the application process.

We are therefore pleased that the proposed rule would exempt a range of humanitarian applications *and* related filings such as adjustment applications, from filing fees, particularly adjustment applications based on SIJS or a T-visa. Given the proposed increase in the cost of filing the I-485, this exemption will ensure that access to permanent residence for children already determined to need protection will not be barred because of financial concerns. It will also reduce the paperwork and the anxiety associated with applying for fee waivers, allowing both the applicant's counsel and the adjudicator to focus more efficiently on the underlying application for relief. This decision will thereby save time and resources within USCIS, eliminating extra steps that impede efficiency.

At the same time, we urge DHS to reconsider its decision to withhold the adjustment application fee exemption from U-visa holders, for whom DHS argues that the volume of I-485 applications would make the cost of an outright exemption too high. While a fee waiver remains available to U-visa holders,

applicants in this category have by definition suffered substantial abuse, and in many cases, ongoing trauma will affect not only the applicant's physical and mental health but also, consequently, their earning power. Accordingly, many of the same concerns about ability to bear the application cost and the stress and uncertainty of applying for a fee waiver are relevant for adjustment applicants who have been victims of crimes. If volume is accepted as a primary criterion, it would undermine the ability-to-pay philosophy on which exemptions are based and perpetuate barriers for vulnerable applicants for humanitarian relief.

**D. KIND opposes the decision to eliminate employment authorization application fee exemptions for applicants under 14 or over 65, given the role of EADs as legal identification.**

In keeping with the above discussion, we urge DHS to reverse its decision to charge EAD application fees for individuals under 14 and over 65. As noted above, in KIND's experience, an EAD may be the only identity document available to an unaccompanied child, and thus it plays a vital role in securing health care, health insurance, and other benefits. Imposing a proposed fee of \$555 (online) or \$650 (paper) on children too young to work and adults who may have retired or may be disabled is not in keeping with the balancing of equities used throughout this proposed rule to set other fees. We urge you to retain the current exemption to facilitate access to critical supports for some of the most vulnerable immigrants.

KIND appreciates the opportunity to comment on the proposed fee schedule and its impact on our clients. We are grateful to DHS for recognizing the value of streamlining the application process for many children by eliminating the extra steps entailed in both applying for and adjudicating fee waiver applications, particularly in the context of asylum, T visas, and SIJS. In addition to the cost-saving function of these actions, it reduces the anxiety and uncertainty experienced by children as they navigate the confusing and often unpredictable immigration process.

We would be remiss, however, if we did not acknowledge that these waivers and exemptions are made possible by other applicants, many of whom may also face financial and other obstacles to submitting applications. We are particularly concerned that significant fee increases to applications for permanent residence, and even modest fee increases for naturalization, may make these vital benefits inaccessible to individuals and families. We support efforts to further reduce the costs of applications, including greater appropriations to supplement critical immigration benefits.

Sincerely,



Jennifer Podkul  
Vice President of Policy and Advocacy