

## How to Apply for a Fee Waiver

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United States Citizenship and Immigration Services (USCIS) allows for applicants to submit a fee waiver if they are unable to pay for the filing fees based on a number of factors.<sup>1</sup> By requesting a fee waiver, immigrant survivors who cannot afford to pay the filing fees are allowed to file for immigration relief without having to pay the filing fees. However, an immigration case filed with a fee waiver request is not considered formally filed, and an I-797C receipt notice is not issued, until the fee waiver is granted. Only after the fee waiver is approved is the immigrant's application considered filed, and the applicant receives a receipt notice establishing their assigned priority date. If the fee waiver is denied, the application has not been filed, and the documents related to the application will be returned to the applicant along with the fee waiver denial.

Under DHS policies implementing Violence Against Women Act (VAWA) confidentiality laws,<sup>2</sup> USCIS only enters an immigrant victim's case into the database of VAWA confidentiality protected cases when the victim's immigration case is considered filed. Thus, documents filed do not receive VAWA confidentiality protections until after the fee waiver has been granted. In cases of victims whose perpetrators are actively trying to trigger the victim's deportation,<sup>3</sup> it is only after the fee waiver is granted that the immigrant survivor's applications are red flagged in the USCIS database, which informs immigration enforcement officials that a person they are being asked to pursue is a survivor.<sup>4</sup> As a result, USCIS regulations and policies exempted the following form types related to victim-based applications from filing fees to allow immigrant survivors to file without waiting for fee waiver approval.

### I. Forms for Immigrant Survivors with Fees

#### A. Immigration Forms Exempted From Fees:

- *VAWA Confidentiality Protected Cases*
  - VAWA self-petition – Form I-360<sup>5</sup>
  - T Visa –Form I-914<sup>6</sup>

<sup>1</sup> See U.S. Citizenship and Immigration Services (USCIS), *Additional Information on Filing a Fee Waiver: Eligibility*, <https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver>; USCIS Policy Manual, Vol. 1, Part B, Chapter 4, Fee Waivers, <https://www.uscis.gov/policy-manual/volume-1-part-b-chapter-4> (the USCIS fee rule issued on August 3, 2020 (Department of Homeland Security (DHS), USCIS Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, Final Rule, 85 Fed. Reg. 46,788 (August 3, 2020)) has been enjoined by a U.S. District Court in (*City of Seattle v. DHS*), and USCIS is accepting the 10/15/2019 edition of Form I-912 as well as adjudicating fee waivers under prior rules which remain in effect).

<sup>2</sup> 8 U.S.C. Section 1367.

<sup>3</sup> Krisztina E. Szabo, et. al., *Early Access to Work Authorization for VAWA Self-Petitioners and U Visa Applicants*, 25-26 (February 12, 2014) [https://niwaplibrary.wcl.american.edu/pubs/final\\_report-on-early-access-to-ead\\_02-12](https://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12).

<sup>4</sup> Alina Husain and Leslye E. Orloff, *VAWA Confidentiality Statutes, Legislative History and Implementing Policy* (Updated April 4, 2018) <https://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history>.

<sup>5</sup> 8 C.F.R. § 106.2(a)(16)(ii).

<sup>6</sup> DEP'T OF HOMELAND SECURITY, INSTRUCTIONS FOR APPLICATION FOR T NONIMMIGRANT STATUS, FORM I-914, 12 (Expires 12/31/2023) <https://niwaplibrary.wcl.american.edu/pubs/i-914-instructions> (there are fees for derivative family members filing for work authorization and T visa applicants filing a I-192 waiver of inadmissibility, but those fees may be waived by filing a fee waiver with Form I-912 <https://niwaplibrary.wcl.american.edu/pubs/i-912>).

- U Visa – Form I-918<sup>7</sup>
- Work Authorization for Abused Spouses of A, G, E-3, or H visa holders – Form I-765V<sup>8</sup>
- *Other Cases Involving Humanitarian Relief Including Protection from Abuse Exempted*
  - Special Immigrant Juvenile Status – Form I-360<sup>9</sup>
  - Refugee – Form I-485<sup>10</sup>
- *Application for Employment Authorization for Certain Humanitarian Immigrants*
  - Application for Employment Authorization – Form I-765<sup>11</sup>
    - VAWA self-petitioners
    - U visa cases
    - T visa cases
    - Abused spouses of A, E-3, G and H visa holders
    - Refugees
    - Asylees

## **B. Fee Waivers Available in Cases of Immigrant Survivors<sup>12</sup>**

When an immigrant crime victim needs to file a form with USCIS in connection with their crime-victim-related immigration case, and the form is not exempted from fees, there are two different categories of fee waivers available to immigrant survivors. The first category is crime-victim-related humanitarian fee waivers, which are described in this section. The second category is form-dependent where the fee waivers are available to all immigrants depending on the form (discussed in Section C below).

In addition to exempting immigrant survivors of crime and abuse from application fees in VAWA self-petition, U visa, T visa, and SIJS cases and exempting these applicants and the abused spouses of certain types of work visa from work authorization application fees, USCIS regulations make immigrant survivors specifically eligible to apply for “*a waiver of any fees for an immigration benefit and any associated filing up to and including an application for adjustment of status.*”<sup>13</sup> Humanitarian access to fee waivers was created specifically to offer help to immigrant victims of crime and abuse in addition to the fee waivers that all immigrants who are economically eligible can receive.<sup>14</sup>

<sup>7</sup> DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR FORM I-918 PETITION FOR U NONIMMIGRANT STATUS, 3 (Expires 01/31/2016) <https://niwaplibrary.wcl.american.edu/pubs/formi918-instructions> (the survivor may incur a fee if they are required to file a I-192 waiver of inadmissibility, but this fee may be waived by filing a fee waiver with Form I-912 <https://niwaplibrary.wcl.american.edu/pubs/i-912>).

<sup>8</sup> 8 C.F.R. § 106.2 (a)(32)(v); DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR APPLICATION FOR EMPLOYMENT AUTHORIZATION FOR ABUSED NONIMMIGRANT SPOUSE, FORM I-765V, 4 (Expires 07/31/2025) <https://niwaplibrary.wcl.american.edu/pubs/i-765vinstr>.

<sup>9</sup> 8 C.F.R. § 106.2 (a)(16)(iii).

<sup>10</sup> DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS, FORM I-485, 16 (Expires 10/31/2025) <https://niwaplibrary.wcl.american.edu/pubs/form-i-485-instructions>.

<sup>11</sup> DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR APPLICATION FOR EMPLOYMENT AUTHORIZATION FOR ABUSED NONIMMIGRANT SPOUSE, FORM I-765V, 25-26 (Expires 07/31/2025) <https://niwaplibrary.wcl.american.edu/pubs/i-765vinstr> (exemptions specifically for VAWA self-petitioners, U and T visa holders, asylees, and refugees).

<sup>12</sup> See generally 1 USCIS-PM B.4 <https://www.uscis.gov/policy-manual/volume-1-part-b-chapter-4>.

<sup>13</sup> 8 C.F.R. 106.3 (a)(1).

<sup>14</sup> Discussed below in section C.

The following groups of immigrant survivors are entitled to seek a fee waiver of *any fee associated* with any form they are required to file related in any way to adjudication of any of the following immigration case types:<sup>15</sup>

- VAWA self-petitioners<sup>16</sup> including VAWA NACARA, VAWA HRIFA, VAWA Cuban Adjustment Act Applicants, and battered spouse waiver applicants;
- T visa applicants;<sup>17</sup>
- U visa applicants;<sup>18</sup>
- Abused spouses of A, E-3, G and H visa holders;<sup>19</sup>
- VAWA cancellation of removal applicants;<sup>20</sup> and
- Special Immigrant Juveniles (SIJs) who have been placed in out-of-home care under the supervision of a juvenile court or a state child welfare agency at the time of filing.<sup>21</sup>

### C. Immigration Forms with Waivable Fees

Any immigrant who files any of the following immigration forms may seek a waiver of the otherwise mandatory fee if the immigrant is income-eligible for a fee waiver. Immigrant survivors have the same access to fee waivers for the following form types as other immigrants. This list includes forms for which fee waivers are available and are forms-specific to immigrant survivor cases (e.g., a.-e. below) as well as forms that are filed by many immigrants, including immigrant survivors (e.g. f.-m. below). Fee waivers are available for the following immigration court and USCIS forms:

- a) VAWA Cancellation of Removal – Form EOIR-42A and Form EOIR-42B<sup>22</sup>
- b) VAWA Suspension of Deportation – Form EOIR-40<sup>23</sup>
- c) VAWA NACARA – Form I-881<sup>24</sup>
- d) VAWA Cuban Adjustment Act – Form I-485<sup>25</sup>

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<sup>15</sup> The regulation covers a few other case types, but this publication discusses those most relevant to cases of immigrant victims of crime and abuse.

<sup>16</sup> 8 C.F.R. 106.3 (a)(1)(i).

<sup>17</sup> 8 C.F.R. 106.3 (a)(1)(ii).

<sup>18</sup> 8 C.F.R. 106.3 (a)(1)(iii).

<sup>19</sup> 8 C.F.R. 106.3 (a)(1)(iv).

<sup>20</sup> 8 C.F.R. 106.3 (a)(1)(v).

<sup>21</sup> 8 C.F.R. 106.3 (a)(2)(i).

<sup>22</sup> DEP'T OF JUSTICE, APPLICATION FOR CANCELLATION OF REMOVAL FOR CERTAIN PERMANENT RESIDENTS, FORM EOIR-42A, 4 (Revised 01/01/2022) <https://niwaplibrary.wcl.american.edu/pubs/EOIR-42a> (requiring both filing and biometric fees for EOIR-42A cancellation of removal for permanent residents); DEP'T OF JUSTICE, APPLICATION FOR CANCELLATION OF REMOVAL AND ADJUSTMENT OF STATUS FOR CERTAIN NONPERMANENT RESIDENTS, FORM EOIR-42B, 4 (Revised 02/01/2022) <https://niwaplibrary.wcl.american.edu/pubs/EOIR-42b> (requiring both filing and biometric fees for EOIR-42B cancellation of removal for nonpermanent residents).

<sup>23</sup> DEP'T OF JUSTICE, APPLICATION FOR SUSPENSION OF DEPORTATION, FORM EOIR-40, 3 (Revised 02/02/2022) <https://niwaplibrary.wcl.american.edu/pubs/EOIR-40-form> (requiring both filing and biometric fees for EOIR-40 suspension of deportation).

<sup>24</sup> DEP'T OF HOMELAND SECURITY, APPLICATION FOR SUSPENSION OF DEPORTATION OR SPECIAL RULE CANCELLATION OF REMOVAL, FORM I-881, 11 (Expires 12/31/2023) <https://niwaplibrary.wcl.american.edu/pubs/vawa-nacara-form-instructions-i-881>.

<sup>25</sup> DEP'T OF HOMELAND SECURITY, INSTRUCTIONS FOR APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS, FORM I-485, 16 (Expires 10/31/2025) <https://niwaplibrary.wcl.american.edu/pubs/form-i-485-instructions>.

- e) VAWA HRIFA – Form I-485<sup>26</sup>
- f) Petition to Remove Conditions on Residence (including but not limited to the Battered Spouse Waiver) – Form I-751<sup>27</sup>
- g) Application for Waiver of Grounds of Inadmissibility - Form I-601<sup>28</sup>
- h) Application for Adjustment of Status to Lawful Permanent Residency – Form I-485<sup>29</sup>
- i) Application for Naturalization – Form N-400<sup>30</sup>
- j) Application for Advance Permission to Enter as a Nonimmigrant – Form I-192 (to be used along with T and U visa applications)<sup>31</sup>
- k) Application for Permission to Reapply for Admission into the United States After Deportation or Removal – Form I-212 (to be used in VAWA Self-Petitioners and Battered spouses of A, G, E-3, or H visa cases)<sup>32</sup>
- l) Request for replacement of a lost, stolen or destroyed Employment Authorization Document – Form I-765<sup>33</sup> (except DACA)<sup>34</sup>
- m) Application to Extend or Change Nonimmigrant Status – Form I-539<sup>35</sup>

## II. Applying for the Fee Waiver

Immigrant victims will need to file their fee waiver applications with the agency adjudicating their application. When the victim’s application and the required forms associated with that application are all being filed with USCIS, the victim’s fee waiver application, with all of its accompanying evidence, should be filed with USCIS using Form I-912.<sup>36</sup> USCIS will also accept a letter with all of the necessary information, which states the survivor’s request for a fee waiver, signed by everyone

<sup>26</sup> DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS, FORM I-485, 16 (Expires 10/31/2025) <https://niwaplibrary.wcl.american.edu/pubs/form-i-485-instructions>.

<sup>27</sup> DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR PETITION TO REMOVE CONDITIONS ON RESIDENCE, FORM I-751, 8 (Expires 12/31/2019) <https://niwaplibrary.wcl.american.edu/pubs/i-751instr> (a new version of this form will be published soon; in the meantime, USCIS is accepting the form from 2019).

<sup>28</sup> DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR APPLICATION FOR WAIVER OF GROUNDS OF INADMISSIBILITY, FORM I-601, 19 (Expires 07/31/2023) <https://niwaplibrary.wcl.american.edu/pubs/i-601instr-inadmissibility-waivers-va-wa-nacara-hrifa>.

<sup>29</sup> DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR REQUEST FOR FEE WAIVER, FORM I-912, 2 (Expires 09/30/2024) <https://niwaplibrary.wcl.american.edu/pubs/fee-waiver-instructions>.

<sup>30</sup> DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR APPLICATION FOR NATURALIZATION, FORM N-400, 15-16 (Expires 11/30/2025) <https://niwaplibrary.wcl.american.edu/pubs/n-400instr>.

<sup>31</sup> The term “nonimmigrant” used in the title of this form refers to a person seeking a visa that would allow them to live and work in the United States; DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR REQUEST FOR FEE WAIVER, FORM I-912, 8 (Expires 09/30/2024) <https://niwaplibrary.wcl.american.edu/pubs/fee-waiver-instructions>.

<sup>32</sup> DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR REQUEST FOR FEE WAIVER, FORM I-912, 2 (Expires 09/30/2024) <https://niwaplibrary.wcl.american.edu/pubs/fee-waiver-instructions>.

<sup>33</sup> DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR APPLICATION FOR EMPLOYMENT AUTHORIZATION, FORM I-765, 24-25 (Expires 10/31/2025) <https://niwaplibrary.wcl.american.edu/pubs/i-765instr>.

<sup>34</sup> DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR REQUEST FOR FEE WAIVER, FORM I-912, 2 (Expires 09/30/2024) <https://niwaplibrary.wcl.american.edu/pubs/fee-waiver-instructions>.

<sup>35</sup> The term “nonimmigrant” used in the title of this form refers to an application from an immigrant who is a visa holder to extend the duration of their visa or to switch to a different type of visa; DEP’T OF HOMELAND SECURITY, INSTRUCTIONS FOR APPLICATION TO EXTEND/CHANGE NONIMMIGRANT STATUS, FORM I-539, 14 (Expires 12/31/2024) <https://niwaplibrary.wcl.american.edu/pubs/i-539instr> (for U and T visa holders).

<sup>36</sup> DEP’T OF HOMELAND SECURITY, REQUEST FOR FEE WAIVER, FORM I-912, 15-16 (Expires 09/30/2024) <https://niwaplibrary.wcl.american.edu/pubs/i-912>.

requesting the fee waiver, and includes all the necessary supporting evidence.<sup>37</sup> However, fee waiver requests that substitute a letter for Form I-912 are not recommended because the requests can take longer to adjudicate and have a greater likelihood of being denied. When a survivor is in deportation or removal proceedings before an Immigration Judge they will file their fee waiver request with the Immigration Judge using the EOIR-42A fee waiver form.<sup>38</sup> In conclusion, USCIS requires Form I-912, whereas immigration courts require form EOIR-42A for waiving fees.

### A. Legislative Intent of VAWA's "Any Credible Evidence" Rules

The VAWA "any credible evidence" standard applies in the adjudication of the VAWA self-petitions, VAWA cancellation of removal, VAWA suspension of deportation, U visa, T visa, INA Section 106 Employment Authorization, and other VAWA related cases.<sup>39</sup> This "any credible evidence standard" applies to the submission of evidence and adjudication of all issues related to victim-based immigration cases including fee waivers.

Survivors need fee waivers to access the vital immigration protections that Congress created to protect them. Survivors may be fleeing abusive homes and workplaces and lack the resources to pay for fee-based ancillary forms, which are required for adjudication of their crime victim-based immigration application. Many battered immigrants, abused children, trafficking victims, and other crime victims may have difficulty safely accessing, or their perpetrator destroyed, the types of "primary documentation," such as pay stubs, taxes, and bank accounts typically used to demonstrate an economic need for fee waivers. Congress recognized the evidentiary barrier when it created the special "any credible evidence" standard for the VAWA self-petitioners, U visa applicants, and T visa applicants,<sup>40</sup> and it also recognized the financial barriers that many survivors face when it required DHS to allow applicants for forms of victim-based immigration relief to seek fee waivers even when other immigrants were not eligible.<sup>41</sup>

Congress made the VAWA "any credible evidence" standard applicable to survivors' immigration cases to bar DHS from requiring survivors to provide (and only) credit primary evidence.<sup>42</sup>

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<sup>37</sup> USCIS, *Additional Information on Filing a Fee Waiver: Requesting a Fee Waiver*, <https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver>.

<sup>38</sup> DEP'T OF JUSTICE, FEE WAIVER REQUEST, FORM EOIR-26A (Revised 08/01/2022) <https://niwaplibrary.wcl.american.edu/pubs/eoir-26a-fee-waiver>.

<sup>39</sup> Including VAWA cancellation of removal, VAWA suspension of deportation, battered spouse waiver cases, VAWA HRIFA, VAWA NACARA and VAWA Cuban Adjustment cases.

<sup>40</sup> See USCIS-PM-602-0004 *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2009: Changes to T and U Nonimmigrant Status and Adjustment of Status Provisions; Revisions to Adjudicators Field Manual (AFM) Chapters 23.5 and 39 (AFM Update AD10-38)* <https://niwaplibrary.wcl.american.edu/pubs/wilberforce-changes-to-status> (Congress intended trafficking victims to file for fee waivers. USCIS interpreted this authority broadly and may waive any fees associated with the filing of an application for relief under section 101(a)(15)(T) of the INA, including all fees arising through the final adjudication of the adjustment of status application filed by T visa applicants).

<sup>41</sup> *Violence Against Women Act of 1994*, Pub. L. No. 103-322, tit. IV, § 40701(a)(3), 40702(a) and 40703(b), 108 Stat. 1955; See H.R. REP. NO. 103-395, at 38 (1993); See generally, Leslye E. Orloff, Kathryn C. Isom, and Edmundo Saballos, *Mandatory U-visa Certification Unnecessarily Undermines the Purpose of the Violence Against Women Act's Immigration Protections and its "Any Credible Evidence" Rules – A Call for Consistency*, 625-30 (September 10, 2010) <https://niwaplibrary.wcl.american.edu/pubs/call-for-consistency-mandatory-undermines-vaawa>.

<sup>42</sup> *William Wilberforce Trafficking Victim's Protection Reauthorization Act of 2008*, Dec. 23, 2008, Pub. L. 110-457, 122 STAT. 5044, <https://niwaplibrary.wcl.american.edu/pubs/william-wilberforce-trafficking-victims-protection-reauthorization-act-2008>.

DHS policies implement VAWA’s “any credible evidence” statutes through broad waiver authority and flexibility with the evidence that may be presented by survivors applying for victim-based forms of humanitarian relief, including evidence supporting survivors’ fee waiver requests.

A victim-applicant should provide the best evidence they can safely access to demonstrate their inability to pay the filing fee. If the applicant cannot provide primary evidence of their financial resources, the victim’s affidavit should contain:

- An explanation of why the primary evidence is not available;
- Information about the best evidence they have available and could safely access to show financial hardship;
- Discuss to whom the survivor’s inability to pay and the crime victimization are linked; and
- Provide an explanation of how the evidence submitted demonstrates the victim applicant’s inability to pay.

## **B. Best Practices for Requesting a Fee Waiver**

For the I-912 Form, applicant survivors should verify that the form they are submitting is eligible for a fee waiver (see Section I of this document).<sup>43</sup> On the I-912 Form, the survivor can check more than one box in Part I, Basis for Your Request, but they must select at least one basis and provide supporting documentation for each basis selected in English.<sup>44</sup> A common justification for denying an applicant’s fee waiver is failing to submit evidence in another language without a certified translation in English.<sup>45</sup> The form must be signed by each person requesting the fee waiver, and the waiver should be sent with the petition or application for which the survivor is asking the fee to be waived.<sup>46</sup>

Best practices for requesting a fee waiver also include filing the following documents, if possible, with the required fee waiver form:

- A cover letter;
- Proof of living arrangements (e.g. living with relatives, evidence of dependents residing in the household, living in a shelter, having to continue moving to remain housed, etc.)
- Evidence of current employment (e.g. W-2 forms, statements from employers, tax returns);
- Any proof of essential expenditures (e.g. receipts of mortgage payments, rent, food, clothing, utility bills, child or elder care, tuition bills, transportation expenses, medical expenses);
- Proof of disability determined by an appropriate federal agency (e.g. determination by the Social Security Administration (SSA), Department of Health and Human Services (HHS), Department of Veteran Affairs (VA), Department of Defense (DOD), etc.)
- Proof of extraordinary expenditures (Include those that do not occur on a monthly basis but which are necessary for the well-being of the survivor and their dependents e.g. hospital,

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<sup>43</sup> USCIS, *Additional Information on Filing a Fee Waiver: Common Reasons Why We Deny Fee Waiver Requests*, <https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver>.

<sup>44</sup> USCIS, *Additional Information on Filing a Fee Waiver: Requesting a Fee Waiver*, <https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver>.

<sup>45</sup> USCIS, *Additional Information on Filing a Fee Waiver: Requesting a Fee Waiver*, <https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver>.

<sup>46</sup> USCIS, *Additional Information on Filing a Fee Waiver: Requesting a Fee Waiver*, <https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver>.

mental health, or health care, or home or car repair bills related to the abuse or crime victimization);

- Evidence of receiving public benefits (e.g. Medicaid, Food Stamps, Supplemental Security Income, Temporary Assistance of Needy Families, State Cash Assistance etc.);
- Documentation of assets
- Documentation of financial support or subsidies (e.g. parental support, alimony, child support, educational scholarships, pensions, Social Security, etc.)
- Documentation of debts and liabilities (e.g. outstanding loans, credit cards, insurance, medical/dental bills, etc.)

The cover letter is an opportunity to outline the contents of the fee waiver application, go into detail about the evidence enclosed in the application, and further explain the applicant survivor's financial need for the fee waiver. In the cover letter, it is useful to reference all of the evidence submitted, outline the history of the violence and/or abuse the survivor has suffered, and describe how this abuse history impacts the survivor's need for a fee waiver. The cover letter should also explain how the survivor's submitted evidence complies with VAWA's "any credible evidence" rules. The other listed recommended evidence is helpful and may be required to meet the fee waiver eligibility criteria.

### **III. The Fee Waiver Eligibility Criteria**

As long as a survivor is applying with one of the aforementioned forms that qualify for a fee waiver, an applicant may be eligible for the fee waiver if they meet one of the three requirements:<sup>47</sup>

- (1) There is a financial hardship due to factors such as costly medical expenses, unemployment, eviction, homelessness,<sup>48</sup> or emergencies; or
- (2) The household income is at or below 150% of the federal poverty guideline; or
- (3) The household receives a means-tested public benefit.

#### **A. Eligibility Criteria: Financial Hardship and Benefits of Showing Income Relative to the Federal Poverty Guidelines**

Financial hardship may be proven through submission of evidence documenting the income, assets, and expenses of the survivor and survivor's household. Documentation may include but is not limited to:

- Bank account statements;
- Documentation of assets owned;
- Receipts of rent or mortgages paid;
- Costs of food and groceries;
- Utilities costs;
- Medical expenses;

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<sup>47</sup> See USCIS Fee Waiver Policy PM-602-0011.1 (March 13, 2011) <https://niwaplibrary.wcl.american.edu/pubs/policy-fee-waiver-schedule-3-2011>; USCIS, *Additional Information on Filing a Fee Waiver: How to Show That Your Household Income is at or Below 150 Percent of the Federal Poverty Guidelines and Eligibility*, <https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver>.

<sup>48</sup> USCIS, *Additional Information on Filing a Fee Waiver: How to Show That Your Household Income is at or Below 150 Percent of the Federal Poverty Guidelines*, <https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver>.

- Childcare costs;
- Elder care costs;
- Tuition costs;
- Commuting costs; and
- Monthly payment of lawful debts.

Proof of abuse can be shown by providing a summary paragraph or information from the victims' VAWA, T visa, U visa, or other victim or abuse-based applications that attest to the detailed incidents of crime victimization or abuse. It can also be helpful to submit a copy of any protection order or other family or juvenile court order issued to the survivor documenting the abuse. This proof should include a description of the barriers that the victim faced or faces in leaving the abusive home or workplace or in overcoming the impact of the violence or abuse experienced on the survivor's life. For example, a victim of rape perpetrated by a neighbor in the victim's apartment building may have had to find and move to alternative and potentially more expensive housing.

The evidence submitted should demonstrate the survivor's experiences of fear, emotional distress, and trauma as well as discuss how these experiences impacted the survivor's life, earning ability, costs associated with healing following victimization, and the choices the victim had to make to promote they and their children's safety. If economic issues contributed to a survivor staying in an abusive home or continuing to work for an abusive employer, then the attempts, how long it took, and if the victim was able to leave should be documented and discussed.

As part of the financial hardship waiver request for victims applying for lawful permanent residency, the victim's application should highlight:

- The impact that the wait times in the application process before the victim attained legal work authorization, their ability to overcome the abuse, and their financial hardship of the wait;
- How, in U visa cases, the waitlist contributed to financial hardship;
- The survivor's history of "Good Moral Character;"
- History of being granted Form I-192 inadmissibility waivers;
- Problems U visa applicants may have encountered in obtaining U visa certifications, including any certifications that needed to be reissued because of the difficulties the victim had safely gathering evidence to present with their U visa application;
- In VAWA Self-Petition cases, the impact of delays in adjudication of VAWA self-petitions on a victim's access to work authorization and ongoing abuse the victim suffered while the victim awaited adjudication of the self-petition and the ability to apply for lawful permanent residency. This should include a discussion of the extent to which the wait times delayed the victim's ability to separate from their abuser;
- Evidence of Substantial Harm caused by the crime victimization or abuse, including letters from victim services and neighbors to show that the applicant's life was interrupted and severely burdened by the abuse and financial hardships that occurred as a result of the abuse and/or crime victimization.

It is also useful in financial hardship requests for fee waivers, where applicable, to demonstrate that a victim's household income is at or below 150% of the federal poverty guideline.



## **B. Eligibility Criteria: Household income is at or below 150% of the Federal Poverty Guidelines**

Under current law, an applicant for a fee waiver may prove eligibility by demonstrating that the applicant's household income is at or below 150% of the poverty guideline.<sup>49</sup> To determine when household income is at or below of the Federal Poverty Guideline:

- Go to the Department of Health and Human Services website to determine the current poverty guideline for the household size of the immigrant victim applicant,<sup>50</sup> and
- Multiply the poverty guideline for the household size by 150%.

Once it is determined that the immigrant victim applicant's household income falls below 150% of the poverty guideline for the victim's household size, the next step is to document the applicant's income. Income can be proven by providing copies of tax returns filed using the victims' Individual Taxpayer Identification Number (ITIN).<sup>51</sup> If the applicant is currently working or has worked in jobs where taxes are not collected, their employer may have provided them with a Miscellaneous Income Form (I-1099), which they could file with their tax returns or file to document income earned (if the applicant is working as a contractor or in a housekeeping job).

Although tax documents are not required for a fee waiver application, it will be considered a sign of "Good Moral Character." Thus, advocates and attorneys should encourage immigrant survivors who are working to obtain an ITIN to file tax returns on income earned. If the victim has filed for an ITIN number and is awaiting receipt of the ITIN, the victim can provide a letter from the nonprofit organization or firm assisting them in filing the ITIN as evidence that they are seeking an ITIN to file tax returns on income earned.

A survivor applicant may also show proof of living below 150% of the Federal Poverty Guideline without a tax return. For immigrant survivors, the VAWA's "any credible evidence" laws apply to the types of evidence that survivor applicants can submit to prove that the household is living at or below 150% of the federal poverty guideline. If the applicant does not have a tax return, the following secondary forms of evidence may be submitted as proof that the applicant's household include is at or below 150% of the poverty guideline:

- Pay-check stubs
- Employment authorization documentation (EAD)
- Proof letter from employer

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<sup>49</sup> See DEP'T OF HOMELAND SECURITY, DHS MEMO ON FIELD GUIDANCE ON GRANTING FEE WAIVERS PURSUANT TO 8 CFR 103.7(c), (Mar. 4, 2004) <https://niwaplibrary.wcl.american.edu/pubs/dhs-memo-on-field-guidance-on-granting-fee-waivers-pursuant-to-8cfr-103-7c>; USCIS, *Additional Information on Filing a Fee Waiver: How to Show That Your Household Income is at or Below 150 Percent of the Federal Poverty Guidelines*, <https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver>.

<sup>50</sup> ASSISTANT SECRETARY FOR PLANNING AND EVALUATION, HHS POVERTY GUIDELINES 2023, <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>; DEP'T HOMELAND SECURITY, I-912 SUPPLEMENT, 2023 HHS POVERTY GUIDELINES FOR FEE WAIVER REQUEST (January 19, 2023) <https://www.uscis.gov/i-912p>.

<sup>51</sup> See Leslye E. Orloff, et. al., *Bench Card for State Court Judges on Common Issues that Arise From Parties' Immigration Status: Economic Remedies*, 8-9 (March 29, 2022) <https://niwaplibrary.wcl.american.edu/pubs/benchcard-economic-relief>; Rafaela Rodrigues and Leslye E. Orloff, *Public Benefits, Immigrants' Rights and COVID-19*, 2 (June 12, 2021) <https://niwaplibrary.wcl.american.edu/pubs/cares-act-unemployment-imm-victims>.

- Alimony obligations
- Child Support obligations
- Employers statements
- For SIJS: application may submit court order of foster care, court order dependency approval (I-360)

If the survivor applicant is homeless but receives services from a homeless shelter, the survivor should provide a currently dated letter from the shelter, including a statement indicating that the survivor receives services from the shelter and a signature by a shelter employee attesting to the survivor's situation.<sup>52</sup> If the survivor applicant is homeless but does not reside in a shelter, an affidavit from a member of good standing in your community who knows the survivor and can support the survivor's claim that they are homeless and unable to pay the fee(s) is acceptable.<sup>53</sup>

### **C. Eligibility Criteria: Using Public Benefits to Request Fee Waivers Meeting Means-Tested Benefits Criteria**

This section reflects current law in 2023, which states that when an immigrant applicant, their spouse, or a head of household living with the applicant are currently receiving a means-tested public benefit, the immigrant is eligible to request a fee waiver<sup>54</sup> using Form I-912.<sup>55</sup>

“A means-tested benefit is a public benefit where the agency granting the benefit considers your income and resources.” In general, if the applicant receives a benefit that was granted based on income, USCIS considers it a means-tested benefit.<sup>56</sup>

Examples of means-tested public benefits are:<sup>57</sup>

- Temporary Aide to Needy Families (TANF)
- Supplemental Nutrition Assistance Program (SNAP)
- Medicaid
- Supplemental Security Income (SSI)
- Child Health Insurance Program (CHIP)
- Supplemental Security Income

<sup>52</sup> USCIS, *Additional Information on Filing a Fee Waiver: How to Show That Your Household Income is at or Below 150 Percent of the Federal Poverty Guidelines*, <https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver>.

<sup>53</sup> USCIS, *Additional Information on Filing a Fee Waiver: How to Show That Your Household Income is at or Below 150 Percent of the Federal Poverty Guidelines*, <https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver>.

<sup>54</sup> See 1 USCIS-PM B.4; See also, *City of Seattle v. DHS*, No. 3:19-cv-07151-MMC (Dist. Ct. CA 2020) <https://www.govinfo.gov/content/pkg/FR-2020-08-03/pdf/2020-16389.pdf> (enjoining DHS from implementing or enforcing any part of the USCIS Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements Rule and allowing USCIS to continue to accept and grant fee waivers to applicants who are eligible based on receipt of means-tested public benefits).

<sup>55</sup> DEP'T OF HOMELAND SECURITY, REQUEST FOR FEE WAIVER, FORM I-912, (Expires 09/30/2024) <https://niwaplibrary.wcl.american.edu/pubs/i-912>.

<sup>56</sup> USCIS, *Additional Information on Filing a Fee Waiver: How to Show That You Receive a Means-Tested Benefit*, <https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver>.

<sup>57</sup> USCIS, *Additional Information on Filing a Fee Waiver: How to Show That You Receive a Means-Tested Benefit*, <https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver>.

NOT means-tested benefit programs are:<sup>58</sup>

- Medicare
- Unemployment
- Social Security
- Social Security Disability Insurance (SSDI)
- Retirement, Survivors and Disability Insurance (RSDI)
- Student financial aid/loans/grants

If the benefit is not well-known, the survivor should provide as much information as possible about the benefit, including a brochure, contact information, and/or website of the agency granting the benefits.<sup>59</sup>

To be eligible for a fee waiver based on receipt of means-tested public benefits, the victim will need to demonstrate that they, their spouse, or the head of household in which they reside, is currently receiving a means-tested public benefit.<sup>60</sup> The required information should be in the form of a letter, notice, or other official document (not the survivor's benefits card) and contain the following required information:

- The survivor's name;
- The name of the agency granting the public benefit;
- The type of benefit; and
- An indication that the survivor is currently receiving the benefit (date granted, expiration date, and/or date of renewal if available)<sup>61</sup>

For immigrant survivors of domestic violence or other crimes, obtaining proof of receipt of means-tested public benefits could involve obtaining evidence under the control of their abuser or the perpetrator of crimes committed against them. Also, if VAWA, T, U and SIJS eligible immigrant victims of crime or abuse are eligible for means-tested public benefits themselves, it is very limited because eligibility varies by immigration status, state, when the victim first entered the U.S., and the requirements of the specific benefits program.

#### **D. Best Practices**

Many immigrant survivors will be able to prove eligibility for a fee waiver based on financial hardship, which is often connected to the abuse or crime victimization. Some immigrant survivors may also be able to prove household incomes below 150% of poverty, particularly those who have recently separated from their abuser or left employment where abuse had been occurring. When victims can prove eligibility based on financial need and/or income at or below 150% of poverty, the victim can attain fee waivers without having to rely on the means-tested public benefits eligibility. Because the means-tested public benefits eligibility approach can be more difficult and sometimes dangerous for immigrant survivors to prove, obtaining fee waivers based on financial hardship is preferred.

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<sup>58</sup> USCIS, *Additional Information on Filing a Fee Waiver: How to Show That You Receive a Means-Tested Benefit*, <https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver>.

<sup>59</sup> USCIS, *Additional Information on Filing a Fee Waiver: How to Show That You Receive a Means-Tested Benefit*, <https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver>.

<sup>60</sup> See USCIS Fee Waiver Policy PM-602-0011.1, 5 (March 13, 2011) <https://niwaplibrary.wcl.american.edu/pubs/policy-fee-waiver-schedule-3-2011>.

<sup>61</sup> USCIS, *Additional Information on Filing a Fee Waiver: How to Show That You Receive a Means-Tested Benefit*, <https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver>.