

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services

HQ70/5.5

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March 4, 2004

MEMORANDUM FOR: SERVICE CENTER DIRECTORS, CIS
REGIONAL DIRECTORS, CIS
DISTRICT DIRECTORS, CIS

FROM: William R. Yates
Associate Director of Operations
U.S. Citizenship and Immigration Services

SUBJECT: Field Guidance on Granting Fee Waivers Pursuant to 8 CFR 103.7(c)

PURPOSE:

This memorandum replaces the October 9, 1998 fee waiver guidance and provides instructions and processing guidance for adjudication of fee waiver requests filed pursuant to 8 CFR 103.7(c). This field guidance should be followed until a final rule amending 8 CFR 103.7(c) becomes effective.

DISCUSSION:

Citizenship and Immigration Services (CIS) Officers retain broad discretionary authority under 8 CFR 103.7(c) in adjudicating fee waiver requests. These guidelines delineate factors CIS Officers may consider in adjudicating waiver requests, many of which are already considered in current practice. The factors noted in this memorandum are not exhaustive and CIS Officers have authority to consider other evidence in determining whether a waiver request can be approved. Each case is unique and should be considered on its own merits. All circumstances and evidence provided by the individual in support of a fee waiver request should be evaluated. A fee waiver request may be granted when it has been established to the satisfaction of the CIS Officer with jurisdiction over the request, that the individual is unable to pay the fee.

IMPLEMENTATION:

A. Guideline Applicability

As of the date of this memo, all pending and newly submitted fee waiver requests should be reviewed under these guidelines. All CIS Officers are asked to facilitate the adjudication of the fee waiver requests and the implementation of these guidelines. These guidelines apply to those applications, petitions, motions, and requests filing fees contained in 8 CFR 103.7(b). There are certain applications and petitions listed in 103.7(b), which are exempt from fee waivers or have specific fee exemptions and therefore would not fall under these fee waiver guidelines.

B. Documentation

Along with the affidavit or unsworn declaration pursuant to 28 U.S.C. 1746, as required by 8 CFR 103.7(c), the applicant *may* submit additional documentation to provide proof of the "inability to pay." Fee waiver requests should be decided based upon the affidavit and any additional documentation submitted in support of the fee waiver request. A fee waiver request may be approved in the absence of such additional documentation *provided* that the applicant's affidavit or unsworn declaration is sufficiently detailed to substantiate his or her inability to pay the fee. If the CIS Officer determines that the individual did not substantiate his or her inability to pay, then the fee waiver request should be denied.

C. Submission of Both Fee and Fee Waiver Request

When a form is submitted with both the appropriate fee for the form and a fee waiver request, the form should be processed, if otherwise acceptable, as properly filed with fee. No subsequent consideration should be given to, nor action taken on the fee waiver request.

GUIDELINES:

A. "Inability to pay"

An individual does not automatically qualify for a fee waiver based on any one particular situation or if he or she meets just one or more of the criteria listed below (e.g. the individual is not automatically qualified for a fee waiver if they are over 65 or if they have qualified for or received a "federal means-tested public benefit"). Each case is unique and should be considered upon its own merits.

A fee waiver request may be granted when it has been established to the satisfaction of the CIS Officer with jurisdiction over the request that the individual is unable to pay the fee. The CIS Officer should look at the individual's overall financial picture and take note of any evidence or documentation regarding the individual's living arrangements in the United States; the individual's extraordinary expenditures or those of his dependents residing in the United States; monetary contributions for the payment of monthly expenses received from adult children, dependents, and other people who are living in the individual's household, etc.; and other expenses for which the individual is responsible.

In determining whether the individual should be granted a fee waiver, the CIS Officer may consider the following situations and criteria, *in addition to the individual's overall financial picture and household situation* when adjudicating the fee waiver request:

- Whether the individual has demonstrated that within the last 180 days, he or she qualified for or received a “federal means-tested public benefit”. A Federal “means-tested public benefits” is any public benefit funded in whole or in part by funds provided by the Federal Government that the Federal agency administering the Federal funds has determined to be a Federal “means-tested public benefit” under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193. This may include, but is not limited to, Food Stamps, Medicaid, Supplemental Security Income, and Temporary Assistance of Needy Families or other public benefit. Keep in mind that state and local public assistance may be based on an amount higher than the “Federal means-tested public benefits”, but both should be considered as income and treated equally.

NOTE: Each agency’s public benefits are determined based on a unique set of criteria. Therefore, even though an individual has qualified for another agency’s benefits, it should only be one of the factors in determining the CIS fee waiver request and should not be used as a definitive factor.

- Whether the individual has demonstrated that his or her household income, on which taxes were paid for the most recent tax year, is at or below the poverty level contained in the most recent poverty guidelines revised annually by the Secretary of Health and Human Services’ “Poverty Guidelines”. (See attached). A household as defined by the Census Bureau, for statistical purposes, consists of all the persons who occupy a housing unit (house or apartment), whether they are related to each other or not.
- Whether the individual is elderly (age 65 and over, at the time the fee request is submitted).
- Whether the individual is disabled. The disability should have been previously determined by the Social Security Administration (SSA), Health and Human Services (HHS), Veteran’s Administration (VA), Department of Defense (DOD) or other appropriate federal agency. An applicant or petitioner may provide verification of his or her disability by submitting documentation showing that the disability has been previously determined by the SSA, HHS, VA, DOD, or other appropriate federal agency.

NOTE: Each agency’s public benefits are determined based on a unique set of criteria. Therefore, even though an individual has qualified for another agency’s benefits, it should only be one of the factors in determining the CIS fee waiver request and should not be used as a definitive factor.

- The age and number of dependents in the individual’s family household who are seeking derivative status or benefits concurrently with the principal applicant or beneficiary.

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- Humanitarian or compassionate reasons, either temporary or permanent, which justify a granting of a fee waiver request. For example: the applicant is temporarily destitute; the applicant does not own, possess, or control assets sufficient to pay the fee without causing substantial financial hardship; or an applicant is on a fixed income and confined to a nursing home.
- Any other evidence or factors that the CIS Officer believes establishes an applicant or petitioner's inability to pay the required filing fees.

B. Delegation of Fee Waiver Authority

The authority to grant fee waivers should not be delegated below CIS Supervisory level (i.e. SDAO, SCAO). Initial review may be performed at the Adjudication Officer level with recommendations, however the final decision must be made at the Supervisory level.

C. Documentation

The following is a descriptive list of financial information that, if submitted, should be reviewed in order to obtain a picture of the individual's overall financial situation:

- Proof of living arrangements (i.e. living with relatives, living in the individual's own house, apartment, etc.), and evidence of whether the individual's dependents are residing in his or her household.
- Evidence of current employment or self-employment such as recent pay statements, W-2 forms, statement(s) from the individual's employer(s) on business stationary showing salary or wages paid, income tax returns (proof of filing of a tax return).
- Mortgage payment receipts, rent receipts, food and clothing receipts, utility bills (such as gas, electricity, telephone, water), child or elder care receipts, tuition bills, transportation expense receipts, medical expense receipts, and proof of other essential expenditures.
- Any other proof of essential expenditures.
- Proof that verifies the individual's disability. The individual may provide proof of his or her disability by submitting documentation showing that the disability has been previously determined by the Social Security Administration (SSA), the Department of Health and Human Services (HHS), the Department of Veterans Affairs (VA), the Department of Defense (DOD), or other appropriate federal agency.
- Proof of the individual's extraordinary expenditures or his or her dependents residing in the United States. Essential extraordinary expenses are those which do not occur on a monthly basis but which are necessary for the well being of the individual or his or her dependents.

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- Proof that the individual has, within the last 6 months, qualified for and/or received a Federal “means-tested public benefit”.
- Documentation to show all assets owned, possessed, or controlled by the individual or by his or her dependents.
- Documentation establishing other financial support or subsidies--such as parental support, alimony, child support, educational scholarships, and fellowships, pensions, Social Security or Veterans Benefits, etc. This includes monetary contributions for the payment of monthly expenses received from adult children, dependents, and other people who are living in the individual’s household, etc.
- Documentation of debts and liabilities--what is owed on any outstanding loans, credit cards, etc. by the individual and his or her dependents, and any other expenses the individual is responsible for (i.e. insurance, medical/dental bills, etc.).

D. Issues to be Considered

In considering fee waiver requests, CIS Officers should take into consideration the following issues:

- Incarcerated Individuals Requesting a Fee Waiver – In the case of an incarcerated individual who is requesting a fee waiver, the individual will not automatically qualify for the fee waiver based solely upon his/her incarceration. CIS Officers should consider the overall financial picture of the requestor, including any outside income or assets possessed by the individual and which the individual may have access to by way of spouse or outside family member. A fee waiver request submitted by an incarcerated individual should contain a description of any and all outside income or assets possessed and include any available supporting documentation as is expected of a nonincarcerated person.
- Extraordinary Expenses – The individual requesting the fee waiver has experienced unusual or extraordinary expenses to the degree that his or her financial situation has been significantly impacted and payment of the filing fee would subject the requestor to undue hardship. Examples include: unexpected and uninsured or underinsured medical bills or situations which could not normally be expected in the regular course of life events; a medical emergency or catastrophic illness affecting the individual or the individual’s dependents.
- Frequent or Prolonged Travel Expenses - If the fee waiver request states that the individual is unable to pay the filing fee because of travel expenses and the individual PROVIDES a reasonable explanation and/or supporting documentation regarding the purpose of the travel, the CIS Officer should not refer back to the associated application or petition to substantiate this statement. However, if the fee waiver request states that the individual is unable to pay the filing fee because of travel expenses and DOES NOT PROVIDE any explanation and/or supporting evidence, the associated application or

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petition may be examined to determine the manner, amount and reason for the travel. For example: If John Smith is requesting a fee waiver because he used all his funds to travel to Australia several times for pleasure, this situation does not merit a fee waiver unless additional supporting evidence is provided to convince the CIS Officer to the contrary. However, if John states that he traveled to Australia several times in order to care for a dying relative, then travel would not be an appropriate reason to deny the fee waiver request.

- Self-Petitioning Abused/Battered Spouses and Children of Citizens or Lawful Permanent Residents applicants and adjustment of status and employment authorization applicants, under the provisions of the Violence Against Women Act (VAWA). (I-360, I-485, and I-765). Due to the sensitive nature of applications and petitions associated with this category, CIS Officers should refer to the detailed information on the treatment of this category contained in field guidance memoranda on VAWA dated 4/16/96, 5/6/97 and 5/25/01.
- Nonimmigrant Applications. Generally, nonimmigrants are required to demonstrate sufficient financial support for the duration of their stay in the United States (i.e., sufficient to overcome the public charge grounds of inadmissibility under section 212(a)(4) of the Immigration and Nationality Act (INA)). An example of a type of application for which a demonstration of financial support is required would be an application to extend or change nonimmigrant status (Form I-539). Fee waiver requests should be adjudicated in light of the level of income and support required for approval of these types of applications.
- Family-based visa petitions and applications and petitions related to classifying an orphan as an immediate relative. Petitioners for family-based visas must file an enforceable affidavit of support under section 213A of the INA, on behalf of the beneficiaries at the time the beneficiaries are applying for adjustment of status. Fee waiver requests should be adjudicated in light of the level of income and support required for approval of these types of applications or petitions. Keep in mind that multiple affidavits of support may be submitted to meet the requirement and may be from persons other than the petitioner or other relatives. In addition, the nature of applications and petitions associated with classifying an orphan as an immediate relative and applying for certificate of citizenship for adopted child (Form N-643) has the same considerations as the family-based petitions. Adoptive parents must demonstrate sufficient financial means to support the child in order to meet home study requirements. They must also file an affidavit of support on behalf of the adopted child. These applications and petitions should be treated the same as family-based visa petitions.
- Employment-based visa petitions and Employment Authorization. Generally, beneficiaries and applicants are entering the United States specifically for employment, with sponsorship from their employer, or are obtaining employment after entering. Fee waiver requests should be adjudicated in light of the level of income and support required for approval of these types of applications or petitions.

- Travel Documents and Advance Parole. A fee waiver request made in connection with this type of application should be adjudicated in light of the applicant or petitioner's representations as to the nature and purpose of travel as well as the individual's source of income for the travel requested or proposed.
- Special situations concerning Adjustment of Status Applications (I-485)

Public Charge Concerns. The granting of a fee waiver does not necessarily subject the applicant or petitioner to public charge liability under other provisions of the INA, such as deportability under section 237(a)(5) or inadmissibility under section 212(a)(4).

Exceptions to Public Charge Requirements. Refugees, Asylees, NACARA, HRIFA, Indochinese Parole Adjustment Act, Syrian Asylee Adjustment Act, Special Immigrant Juveniles and Registry applicants are exempt from the Form I-485 requirements to show evidence that they are not likely to become a public charge. Therefore, these categories may be given wider latitude in required income levels when determining fee waivers.

Self Petitioning Abused/Battered Spouses and Children of Citizens or Lawful Permanent Residents applicants and Adjustment of Status applicants under the provisions of the Violence Against Women Act (VAWA). This category should be given special consideration when determining whether they should be granted a fee waiver. Due to the sensitive nature of applications and petitions associated with this category, CIS Officers should refer to the detailed information on the treatment of this category contained in field guidance memoranda on VAWA dated 4/16/96, 5/6/97 and 5/25/01.

PUBLIC INFORMATION:

The Office of Program and Regulations Development (OPRD) and Public Affairs have prepared an updated fact sheet which will be posted on the CIS webpage. All CBO/NGO and community groups and local Congressional Offices in your area should be re-notified about the fee waiver guidance contained in the Public Affairs Fact Sheet and the suggested documentation that should support the fee waiver requests as well as the method for facilitating the processing of fee waiver requests. The applicants and petitioners should put a large notation "*fee waiver request enclosed*" on the outside of the mailing envelope containing their application or petition and fee waiver request. In addition, a similar notation should be placed on top of the affidavit and supporting information submitted in support of their request.

POINT OF CONTACT:

If you have questions regarding these guidelines or their implementation, please contact Irene Hoffman in OPRD or Paul Pierre in SCOPS through appropriate channels.

Enclosure: Poverty Guidelines