

May 29, 2007

Questions and Answers

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USCIS Sets Final Fee Schedule to Build an Immigration Service for the 21st Century

U.S. Citizenship and Immigration Services (USCIS) today announced a new fee schedule for immigration benefit applications and petitions. In consideration of public comments received, USCIS has made some substantive changes that will benefit some families with children applying for adjustment of status and prospective adoptive parents who experience delays in finalizing their adoptions. The new fee schedule rule also expands the availability of waivers and exemptions. The final schedule, effective on July 30, 2007, largely implements the fee structure described in the proposed rule published on Feb. 1, 2007.

Even with the changes, the new schedule will ensure that USCIS will have sufficient funding to fully recover its costs of doing business and also enable USCIS to meet national security and public safety concerns, prevent and detect fraud, and invest in comprehensive transformation efforts – all leading to a more efficient and effective immigration system.

BACKGROUND

USCIS last updated its fees on October 26, 2005, based solely on inflationary increases. Early in 2006, the agency completed its first comprehensive fee review in more than ten years and, as a result, found that current fee revenues were insufficient to recover full operating costs. Based on that review, USCIS published a proposed fee structure in the *Federal Register* on Feb. 1, 2007 seeking comments from the public.

In addition to publication of the proposed rule, during the 60-day public comment period, USCIS leadership reached out to the community to encourage the public to submit comments on the rule to make sure their views were known to USCIS. USCIS Director Emilio Gonzalez also testified on February 14th before a Congressional subcommittee to discuss the proposed fee structure.

USCIS received comments from more than 3,900 individuals and organizations – including refugee and immigrant service and advocacy organizations, public policy groups, state and local governmental entities, educational and other not-for-profit institutions, Members of Congress, corporations, and the general public.

QUESTIONS AND ANSWERS:

Q. Please explain the revisions to the final rule from that which was proposed in February.

A. The agency received more than 3,900 comments on the proposed fee schedule. The final rule includes some substantive changes from the February fee proposal, without sacrificing the funding necessary for USCIS to strengthen the security and integrity of the immigration system, improve customer service, and modernize business operations for the 21st century. A more thorough discussion of these changes are found in the final rule – however, below is a synopsis:

- Children who are filing a concurrent Form I-485 (Adjustment of Status to Permanent Residence) with their parents will see a 25 percent reduction from the proposed filing fee;
- Prospective Adoptive Parents may now receive one free extension of the approval of Form I-600A (Application for Advance Processing of Orphan Petition) if they have not submitted a Form I-600 (Petition to Classify Orphan as Immediate Relative) for an orphan;

- Fee waivers may be requested by Form I-485 filers if their eligibility stems from asylum status, victims of human trafficking, certain juvenile immigrants, or self-petitioners under the Violence Against Women Act;
- Fee waivers may be requested for Form I-485 filers if they apply under programs where, by law, they do not have to demonstrate that they will not be a public charge;
- Added “Special Immigrant-Juvenile” as a category of applicants exempt from the \$375 filing fee for Form I-360 (Petition for Amerasian, Widow(er), or Special Immigrant); and
- USCIS officials will now be able to waive the \$80 biometric fee for individuals who have been granted a fee waiver for their respective application/petition.

It is important to note that these changes, in particular the filing fee reduction for children filing with a concurrent Form I-485 with their parents, are in line with the Administration’s policy that each application fee should be set at the level to recover the costs of processing and adjudicating that application. In the case of I-485s for children filed with their parents, the costs of processing that application is less because the large majority of Form I-485s are filed by persons older than 14. Our analysis found a 35 percent difference in the average time it takes to process an I-485 by someone under fourteen years of age, as compared to the time it takes to process a case filed by someone older.

Q. When will the new fee schedule become effective?

A. The new fee schedule will be effective on July 30, 2007. Applications or petitions postmarked or filed on or after that date will require the new fees.

Q. If an applicant files a Form I-485 to adjust status before the rule is effective, will he/she have to pay for future interim benefits?

A. Yes. An applicant for adjustment of status who applies before the fee rule becomes effective will continue to have to file separate applications with fees for employment and travel authorization. Those who file an adjustment of status application (Form I-485) **after** the new fee schedule is effective will **not** have to pay the additional fees for employment and travel authorization as these costs have been included in the new adjustment of status application fee.

Q. How did USCIS engage with the public on the proposed fee schedule?

A. The comment period included not only an opportunity for the public to respond in writing, but also allowed USCIS leadership to meet with stakeholders throughout the country. USCIS officials conducted “question and answer” sessions in Washington, D.C., Los Angeles, New York, Chicago, Detroit, Boston, San Francisco, San Jose, Calif., Dallas, Phoenix and Denver. USCIS also discussed the issue through media interviews and with community-based organizations. Throughout this effort, it has been USCIS’ intent to inform the public about this rule and encourage them to submit comments. We believe we were successful given not only the volume of comments received, but also the value and usefulness of those comments.

Q. Are the public comments still available for public viewing?

A. Yes. The public comments are available on www.regulations.gov under docket #USCIS-2006-0044. A synopsis of those comments is also available in the fee rule itself, available for viewing at www.uscis.gov.

Q. Why is USCIS allowing fee waivers for certain classes of applicants filing for adjustment of status? Isn’t a need-based fee waiver inconsistent with the status or benefit being sought?

A. After considering the humanitarian purposes of certain statutes and reviewing the potential numbers of such applicants, USCIS decided to provide that a Form I-485 may be subject to a fee waiver when the

person's eligibility for adjustment of status stems from asylum status, 'T' status (victims of human trafficking) and self petitioners under the Violence Against Women Act (VAWA), or where by law the person otherwise is not required to demonstrate that he or she will not become a public charge, including but not limited to, Adjustment of Status Applications for Special Immigrant – Juveniles, or based on the Cuban Adjustment Act, Haitian Refugee Immigration Fairness Act, and the Nicaraguan Adjustment and Central American Relief Act. Because an Adjustment of Status Application cannot be filed until some time after an alien has been granted 'T' or VAWA status, the final rule does not provide any blanket exemptions from the fee for filing Form I-485 since that time in the United States may have provided the alien some financial capabilities. Also, because additional fee waivers would have been inconsistent with the financial capability requirements for adjustment of status, the final rule does not expand fee waiver eligibility in such cases any further. The changes made to the fee waiver and exemption eligibility criteria did increase fee waiver and exemption costs, but this increased cost did not cause an overall increase in fees because of the small number of affected applications and petitions.

Q. Many comments recommended alternative funding sources such as appropriated funds. Why didn't you consider this?

A. Law and policy have long supported the proposition that those applying for immigration benefits should bear the costs of their processing. Thus, in this final rule, USCIS continues to adopt a fee schedule to recover its costs through user fees. While it is true that Congress has, in the past, enacted intermittent appropriations to subsidize the operations of USCIS, the President's budget for FY 2008 does not request an appropriated subsidy, except for specific funds for the expansion of the Employment Eligibility Verification program. Even if an appropriation were requested, USCIS doubts that it would receive all of the necessary funding required to meet its mission responsibilities. Continuing to recover full costs at this time is necessary so as not to delay service delivery to applicants and petitioners.

Further, using appropriated funds to support USCIS is risky because the demand for immigration benefits may change rapidly with little notice. For example, appropriated funds provided for naturalization benefits could likely be insufficient if there was an increase in the number of naturalization application benefits submitted. In this instance, USCIS would have to cut back on services (which would increase processing times) to cover the costs of processing the additional applications. Reliance on appropriations in the past has contributed to the funding problems USCIS has faced recently. USCIS' new fee rule eliminates this problem because the fees are based on a robust model that incorporates all costs relating to services thereby providing a more stable source of funding.

Q. How long before applicants and petitioners begin seeing improvements in USCIS service as a result of this new fee schedule?

A. USCIS is focused on continuous improvement. For example, we are committed to substantial reductions in processing times by the end of FY 2008 for four key applications: (1) Form I-90, Application to Renew or Replace a Permanent Resident Card; (2) Form I-485, Application to Register Permanent Residence or Adjust Status; (3) Form I-140, Immigrant Petition for Alien Worker; and (4) Form N-400, Application for Naturalization. These four products represent almost one-third of USCIS' total workload. By the end of FY 2008 (Sept. 30, 2008), USCIS plans to reduce processing times for each of these from six months to four months. Applications for naturalization are projected to be reduced from seven months to five (when the ceremony at which a person takes the *Oath of Allegiance* is included as part of the process). Thus, our customers will see a significant improvement in the first full fiscal year following the fee adjustments. Also, by the end of FY 2009, we intend to reduce by 20 percent the average case processing times across the spectrum of applications and petitions.

Premium processing fees will be used to transform USCIS from a paper-based process to an electronic environment, making it possible to incorporate more effective processing of low risk applicants and better identification of higher risk individuals. The new operational concept will be based on the types of online

customer accounts used in the private sector in order to facilitate transactions, track activities, and reduce identity fraud. The solution will also help to meet customer expectations for on-demand information and immediate real-time electronic service over the Internet.

Q. You've raised fees before with the promise of improving service. What's the difference between now and then?

A. The clear distinction between this new fee schedule and prior fee schedules is that the new fee schedule does not simply reflect costs and performance retrospectively, locking USCIS into a revenue stream that at best allows it to maintain the status quo. Instead the new fee schedule is designed to provide for an adequate and sustainable level of investment in staff, infrastructure, and processes to improve USCIS' administration of the nation's immigration laws.

USCIS plans to review fees every two years to ensure that it is recovering the full cost of processing immigration benefit petitions/applications. USCIS is committed to update its fees through a similar analysis at least once every two years. In comparison to fee reviews over the last decade, which essentially made retrospective adjustments on a narrowly calculated fee review, future fee reviews will combine assumptions from recent experiences and incorporate productivity gains resulting from the modernization of operations (which may allow for cost reductions) and from prospective activity changes (such as those that may arise from additional security measures or performance changes).

USCIS continues to seek ways to improve productivity while decreasing costs. USCIS is firmly committed to seeking new ways of doing business and reengineering processes in order to contain costs and pass on the savings to all of its customers. Large portions of this fee restructuring are designed to invest revenue in improvements to improve efficiency and effectiveness that will help reduce agency costs. Additionally, for the first time, USCIS has incorporated a productivity measure into the fee model to ensure that productivity gains resulting from automated business processes and better technology will be factored into future fee reviews.

Q. Will the changes in the final rule affect USCIS' ability to recover the full costs of operations and achieve promised service improvements?

A. No. The overall amount of the fee increase is the same as what was proposed even with its changes. The changes made to the Form I-485 fee, for example, merely redistribute the same costs as proposed within the population of applicants for this benefit in order to reduce the fees for families filing for adjustment of status. The other changes made had no impact on the fee schedule given the fairly small volume numbers associated with the affected applications and petitions. For example, USCIS did not reduce the naturalization fee, as doing so would increase the fees for other immigration benefit applications and petitions. In sum, the new fee schedule will not sacrifice the funding necessary for USCIS to strengthen the security and integrity of the immigration system, improve customer service, and modernize business operations for the 21st century.

Q. How can I obtain detailed information about the comments you received and how you responded?

A. Discussion of the public comments is featured in the final fee rule, available for review on USCIS' Web site at www.uscis.gov. While the number of comments received was relatively large, many were similar in content and issue. Accordingly, we were able to group the comments into the following categories: (a) Relative Amount of Fees (including recovery of additional costs and enhancements, improvement in service and reduction in inefficiencies, level of fees, multiple biometric data requests, premium processing, etc.); (b) Alternative Sources of Funding (includes appropriated funds); (c) Specific Benefit Application and Petition Fees (e.g., naturalization application, application to adjust status, employment authorization for students, etc.); (d) Fee Waivers and Exemptions (including victims and asylee adjustments, special immigrant – juvenile, and biometric fees); (e) Authority to Set and Collect Fees (includes discussion on the agency's general authority for charging fees); and (f) Methods Used to Determine Fee Amounts (e.g., methodology, alternative budget

modeling, calculating specific processing requirements, etc.).

Q. Where can I obtain more information on fee waivers?

A. Fee waiver information is available on USCIS' Web site at www.uscis.gov (click on "Immigration Forms" in the banner, then "Fee Waiver Guidance" under *Related Links*).

Q. Where can I obtain more information about the new fee schedule?

A. The final rule is available on USCIS' Web site at www.uscis.gov, in addition to a detailed chart that identifies the new fees for immigration benefit applications and petitions.