



Freedom Network USA

February 10, 2020

Samantha Deshombres
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Service
Department of Homeland Security
20 Massachusetts Ave., NW
Washington, DC 20529-2140

RE: DHS Docket No: USCIS-2019-0010 “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements”
RIN: 1615-AC18

Submitted via www.regulations.gov

Dear Ms. Deshombres:

On behalf of Freedom Network USA (FNUSA), I submit this comment in response to the proposed rule, entitled “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements” initially published in the Federal Register on November 14, 2019 (hereinafter “proposed rule”).¹

FNUSA, established in 2001, is a coalition of 68 non-governmental organizations and individuals that provide services to, and advocate for the rights of, trafficking survivors in the United States. As the largest network of providers working directly with trafficking survivors in the US, we are uniquely situated to evaluate the impact of US government efforts to address human trafficking, identify challenges, and propose solutions.

Trafficking survivors have, by definition, suffered a financial crime. Trafficking survivors have been robbed of their earned income by the traffickers who have exploited and abused them. Most foreign national trafficking survivors also have incurred debts in their home country while attempting to access a well-paid job in the US. Trafficking survivors have been exploited by recruiters, employers, and poorly regulated labor sectors that regularly leave them in debt and struggling to support their families while pursuing justice.

¹ U.S. Citizenship and Immigration Service. “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements” (hereinafter “proposed rule”) 84 FR 62280 (November 14, 2019), available at <https://www.regulations.gov/document?D=USCIS-2019-0010-0001>

In recognition of these challenges, Congress created the T and U Visas to ensure that survivors have access to immigration protections while they work with the justice system. We strongly oppose the fee increases in the proposed rule, especially for survivors of human trafficking. Instead, we call on USCIS to develop policies and procedures that ensure that immigrant survivors of human trafficking and other forms of violence and exploitation have equal access to critical, life-saving protections.

Given our mission and our work, we stridently oppose the proposed rule. As over 80 members of Congress have stated, the proposed rule would “inevitably price out hundreds of thousands, if not millions, of people from obtaining citizenship and other immigration benefits for which they qualify, based solely on their inability to afford these unreasonably high fees.”² These proposed revisions will also enormously burden organizations like our members, service providers that assist immigrants in navigating this complex system.

I. General Comments

FNUSA calls on USCIS to withdraw the proposed rule as it creates significant barriers for individuals, including survivors of human trafficking, to access immigration benefits. Further, the proposed rule undermines the congressional intent to make humanitarian relief accessible to victims. USCIS should instead focus its efforts on ensuring that low-income and other vulnerable immigrants have access to the immigration relief for which they are eligible.

It is important to note that human trafficking survivors rarely self-identify as such. Some will be recognized as trafficking survivors by a law enforcement agency, social service provider, or legal service provider. Of those, some will apply for a U or T Visa. Those who were trafficked by a family member may apply for a VAWA Self-Petition. Those who were trafficked outside of the US may apply for asylum. For trafficking survivors, access to immigration benefits is essential to escape abusive situations and gain self-sufficiency following victimization.

II. Fee Increases Significantly Burden Human Trafficking Survivors

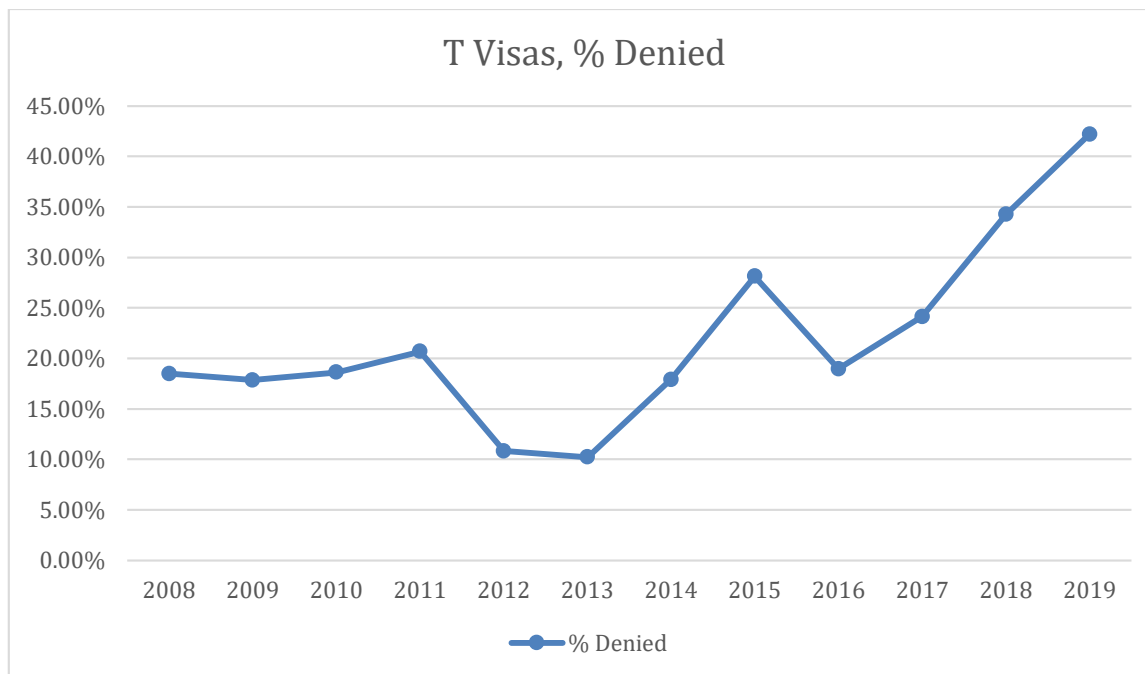
USCIS proposes raising the fees for some of the most commonly used immigration benefits while simultaneously gutting the use and criteria for fee waivers.³ The changes contained in the proposed rule would create a financial hardship for trafficking survivors, especially those with dependent family members, because financial abuse and loss of income is a key element to the abuse of human trafficking. These extreme fees can make the initial application (which almost always requires the concurrent filing of a I-192) an insurmountable barrier when coupled with the new fee waiver requirements. Trafficking victims, almost without exception, have no paystubs, tax returns, or other documentation of their income. The trafficking experience makes those things impossible, because traffickers generally do not use a payroll company or follow proper withholding requirements. Thus, trafficking survivors are unlikely

² Letter to Acting DHS Secretary Chad Wolf and Acting USCIS Director Ken Cuchinelli. “Re: U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request DHS Docket No: USCIS-2019-0010: RIN: 1615-AC18” (November 19, 2019). Available at: <https://meng.house.gov/sites/meng.house.gov/files/Letter.pdf>

³ See Table 19; Proposed Rule at 62326. See also Proposed Rule at 62298.

to either have the thousands of dollars needed to file the initial application, nor the documentation requested for a fee waiver. This leaves survivors in poverty and at high risk of continued exploitation and abuse.

Additionally, the most recent data released by USCIS shows a substantial increase in the denial rates for T Visas.⁴ The denial rate for T Visas, when taken as a percentage of total decisions made in each Fiscal Year, has skyrocketed to over 45%.



At the same time, this proposal would increase the cost of an appeal, while the changes to the Fee Waivers have made them inaccessible to trafficking survivors. Because of the time sensitive nature of appeals, once again survivors are in the impossible situation of choosing between their basic needs (like food, housing, and medicine) and pursuing their T Visa.

III. Eliminating Fee Waivers Will Harm Survivors Applying for Naturalization

The proposed rule maintains fee waivers for VAWA self-petitioners⁵ and U and T visa applicants for any forms filed in relation to their main benefit until they have adjusted status.⁶ However, the proposed rule generally eliminates fee waivers for all naturalization applications and many other forms in non-survivor based cases, like legal permanent

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https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I914t_visastatistics_fy2019_qtr4.pdf

⁵ As defined by INA 101(a)(51)

⁶ See Proposed Rule at 62296, and Table 7 at 62297 for full list of forms still eligible for fee waivers in survivor-based cases for VAWA self-petitioners, U and T visa applicants.

residence applications, work permit applications, and Form I-751, Petitions to Remove Conditions on Residence, among others.⁷

By doing so, the proposed rule ignores the fact that survivors of human trafficking may pursue other routes to secure immigration status which lack such explicit protections--for example, survivors may seek lawful permanent residence on a basis other than those specifically designed for crime survivors. In these instances, these survivors will no longer have access to fee waivers.

In addition, under the proposed rule, legal permanent residents applying for naturalization, including trafficking survivors, will not have access to fee waivers. Over the last several years, the high cost of naturalization has often been a barrier for individuals who are eligible to apply.⁸ Thus, raising the fees for naturalization by 83%, coupled with eliminating the availability of fee waivers, will put low-income legal permanent residents escaping violence in the unconscionable position of having to choose between expending resources to become a U.S. citizen or cover basic necessities for their families.

IV. Restricting Access to Fee Waivers Creates Barriers for Trafficking Survivors

USCIS has already taken dramatic measures to limit the use and criteria of fee waivers.⁹ Earlier this year, USCIS eliminated the means-tested benefit criteria for fee waivers which drastically and unjustifiably limited access to immigration benefits. For immigrant survivors of violence, presenting evidence of means-tested benefits was an unambiguous method to demonstrate financial hardship without relying on documentation that may be unsafe or burdensome to obtain. For over a year, advocates have voiced their strong opposition to the I-912 form changes as they have limited survivors' access to immigration relief. Current fee waiver adjudications are inconsistent, and often do not contain any details why a fee waiver request has been rejected.

FNUSA's May 2, 2019 Comments on OMB Control Number 1615-0116; USCIS Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver is attached and hereby incorporated into our objections to the current proposed rule.

⁷ See Proposed Rule at 62999. Fee waivers will be eliminated for naturalization, and the following forms in non-survivor based cases: 1) Form I-90, Application to Replace Permanent Resident Card; 2) Form I-765, Application for Employment Authorization; 3) CNMI related petitions and applications; 4) Form I-485, Application to Register Permanent Residence or Adjust Status; 5) Forms for applicants exempt from the public charge inadmissibility ground; Form I-751, Petition to Remove Conditions on Residence. Note that applicants seeking a domestic violence-based I-751 waivers are defined as "VAWA self-petitioners" under INA 101(a)(51)(C) and thus access to fee waivers are statutorily protected under the TVPRA of 2008 (8 U.S.C. § 1255(l)(7)).

⁸ See National Partnership for New Americans & the Center for the Studies of Immigrant Integration at the University of Southern California "Nurturing Naturalization: Can Lowering the Fee Help?" (February 2013), available at https://dornsife.usc.edu/assets/sites/731/docs/Nurturing_Naturalization_final_web.pdf; See also Chinelo Nkechi Ikem. "High Applications Fees Can Be a Significant Barrier to Naturalization. *Pacific Magazine* (February 22, 2018) <https://psmag.com/economics/application-fee-naturalization>

⁹See e.g. DHS. USCIS. "Agency Information Collection Activities; Form I-912; Request for an Individual Fee Waiver," USCIS-2010-0008 (September 28, 2018) available at: <https://www.regulations.gov/document?D=USCIS-2010-0008-0144>

The proposed rule sharply narrows the criteria for fee waivers; and eliminates the financial hardship criteria entirely. The proposed rule states that USCIS will only consider fee waiver requests from individuals who can demonstrate they have an annual household income at or below 125 percent of the federal poverty guidelines.¹⁰ It also indicates that USCIS Director can grant “discretionary fee waiver requests” in extremely limited circumstances.¹¹

The proposed (and current) I-912 instructions create additional burdens that are *ultra vires* to the statute permitting fee waivers for survivor-based cases, as it appears as if survivors need to demonstrate a nexus between their victimization and their lack of income or proof of income.¹² This non-statutory language is burdensome on survivors, as they may face obstacles obtaining income or providing proof of income for reasons that may or may not be related to their victimization. Further, this language runs counter to existing law, as Congress did not place any such limits on fee waivers when it codified their use for survivor-based relief.

Whether intentional or not, the proposed rule will act as a barrier to status for the human trafficking survivors we serve. The additional limits on fee waiver criteria, coupled with the stringent documentation requirements for fee waivers will prevent many survivors from qualifying for fee waivers. We fear that low-income eligible survivors will not apply for these critical benefits given the significant barriers to demonstrate their eligibility for fee waivers. In this way, the proposed rule undermines the bi-partisan Congressional intent in establishing VAWA-based relief.

V. Opposition to Transfer of Funds to ICE

FNUSA also stridently opposes USCIS’ plan to transfer over \$110 million to Immigration and Customs Enforcement for enforcement purposes.¹³ It is reprehensible that the agency seeks to fund enforcement measures by raising fees (in some cases exorbitantly) on low-income immigrants seeking necessary immigration benefits. Furthermore, **Congress created USCIS**

¹⁰ [Emphasis added]. In addition to the 125% FPG criteria, fee waivers will only be available to those seeking an immigration benefit for which he or she is not required to submit an affidavit of support under INA section 213A, 8 U.S.C. 1183a or is not already a sponsored immigrant as defined in 8 CFR 213a.1; and who are seeking an immigration benefit for which they are not subject to the public charge inadmissibility ground under INA section 212(a)(4), 8 U.S.C. 1182(a)(4). See U.S. Citizenship and Immigration Service. “Regulatory Impact Analysis: U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements” CIS No. 2627-18; DHS Docket No.: USCIS-2019-0010; RIN: No: 1615-AC18 at 28 (October 30, 2019) available at <https://www.regulations.gov/document?D=USCIS-2019-0010-0559> (hereinafter “Regulatory Impact Analysis”)

¹¹ Proposed rule at 62301. The proposed rule would “limit a Director’s discretionary waiver to cases related to one of the following: (1) Asylees; (2) Refugees; (3) National security; (4) Emergencies or major disasters declared in accordance with 44 CFR part 206, subpart B; (5) An agreement between the U.S. government and another nation or nations; or (6) USCIS error.”

¹² The current I-912 instructions state, “If you already have or are applying for VAWA benefits or T or U nonimmigrant status, and due to your victimization, you do not have any income or cannot provide proof of income as required in the paragraph above, describe your situation in sufficient detail in Part 3., Item Number 12. to substantiate your inability to pay as well as your inability to obtain the required documentation.”

¹³ USCIS. “Proposed rule; Extension of comment period; Availability of supplemental information” (Published December 9, 2019), available at <https://www.federalregister.gov/documents/2019/12/09/2019-26521/us-citizenship-and-immigration-services-fee-schedule-and-changes-to-certain-other-immigration>

to be a benefit-granting agency. The express purpose of allowing USCIS to collect fees is directly related to the services being provided, and is a rare exception to the general practice of funding federal operations with tax dollars. The proposed rule represents yet another way in which USCIS is betraying Congressional intent and the mission of USCIS.

Conclusion

For the reasons provided here, Freedom Network USA urges USCIS to promptly withdraw the proposed fee rule, as creates needless barriers for low-income and vulnerable immigrants to access immigration benefits, and runs counter to USCIS' purpose as established by Congress.

I can be reached at jean@freedomnetworkusa.org if you have any questions or need any further information or explanation.

Sincerely,

A handwritten signature in black ink that reads "Jean Bruggeman". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Jean Bruggeman
Executive Director
Freedom Network USA



Freedom Network USA

May 6, 2019

USCIS Desk Officer
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

VIA dhsdeskofficer@omb.eop.gov

RE: OMB Control Number 1615-0116; USCIS Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver

Dear USCIS Desk Officer:

On behalf of Freedom Network USA (FNUSA), I am submitting this response to “U.S. Citizenship and Immigration Service Agency Information Collection Activity; Revision of Currently Approved Collection: Requests for Fee Waivers” published in the Federal Register on April 5, 2019 for an additional 30 day comment period (hereinafter “proposed revisions”).¹ These proposed revisions relate to Form I-912; Request for Fee Waiver and accompanying memoranda.²

FNUSA, established in 2001, is a coalition of 68 non-governmental organizations and individuals that provide services to, and advocate for the rights of, trafficking survivors in the United States. As the largest network of providers working directly with trafficking survivors in the US, we are uniquely situated to evaluate the impact of US government efforts to address human trafficking, identify challenges, and propose solutions.

Trafficking survivors have, by definition, suffered a financial crime. Trafficking survivors have been robbed of their earned income by the traffickers who have exploited and abused them. Most foreign national trafficking survivors also have incurred debts in their home country while attempting to access a well-paid job in the US. Trafficking survivors have been exploited by

¹ U.S. Citizenship and Immigration Service. “Agency Information Collection Activity; Revision of Currently Approved Collection: Requests for Fee Waivers; Exemptions,” (hereinafter “Proposed Revisions”) Federal Register, Vol 84, No.66, April 5, 2019, pg. 13687, available at <https://www.federalregister.gov/documents/2019/04/05/2019-06657/agency-information-collection-activities-revision-of-a-currently-approved-collection-request-for-fee>

² USCIS is proposing revisions to existing fee waiver memo located at PM-602-0011.1 “Fee Waiver Guidelines Established by the Final Rule of the USCIS Fee Schedule: Revisions to Adjudicator Field Manual (AFM) Chapter 10.9, AFM Update AD11-26.(March 13, 2011), available at: <http://bit.ly/2011USCISFeeWaiverGuidelines> (hereinafter “Fee Waiver Guidelines”). We also object to USCIS making such substantive policy changes via form revision.

recruiters, employers, and poorly regulated labor sectors that regularly leave them in debt and struggling to support their families while pursuing justice.

In recognition of these challenges, Congress created the T and U Visas to ensure that survivors have access to immigration protections while they work with the justice system. We strongly oppose the proposed changes to the I-912 fee waiver application and instructions, as well as changes to the USCIS Policy Memorandum PM-602-0011.1. In fact, the OMB must reject these proposals as they will create significant, unnecessary burdens in contravention of OMB regulations,³ especially for survivors of human trafficking. Instead, we call on USCIS to develop policies and procedures that ensure that immigrant survivors of human trafficking and other forms of violence and exploitation have equal access to critical, life saving protections.

The proposed revisions directly conflict with the will of Congress to provide access to protection without fees for humanitarian visas, violates the evidentiary standard established for these visas, and will cause significant burdens on survivors attempting to access protection and support law enforcement.

1. USCIS' Proposed Revisions Create Barriers to Protection in Contradiction of the Violence Against Women Act (VAWA) and the Trafficking Victims Protection Act (TVPA)

In the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Congress specifically created a waiver of all fees related to humanitarian visas through adjustment of status.⁴ Human trafficking survivors, almost without exception, have been denied regular paychecks. Few survivors have any documentation of their labor, and the documentation that they have is often fraudulent. This fraud is, in fact, a key element of the trafficking crime. For those reasons, they are also unlikely to have filed taxes. Therefore, trafficking survivors are unlikely to have "primary documentation," such as pay stubs or tax transcripts.

For over 20 years, USCIS has followed Congress' mandate, using a flexible standard for fee waivers submitted by survivors, ensuring they did not deter or deny eligible survivor applications. While the USCIS Response to Public Comments acknowledges the importance of this flexible response,⁵ it does not go far enough. For instance, USCIS' proposed fee waiver instructions would exempt VAWA self-petitioners, U and T Visa applicants from providing

³ 5 CFR 1350.5(d)(1)(i) (indicating to obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that the proposed collection of information is the least burdensome necessary for the proper performance of the agency's functions to comply with legal requirements and achieve program objectives)

⁴ Pub. L. 110-457, section 201(d)(7).

⁵ "USCIS Responses to Public Comments on I-912 Revision 60-day Federal Register Notice" (April 5, 2019), available at <https://www.regulations.gov/document?D=USCIS-2010-0008-1243> (hereinafter "USCIS Response") Response to comment 19 indicates, "USCIS understands that the VAWA, T and U population may have difficulty in obtaining the required documentation due to their alleged victimization and that those filers may need to apply a flexible standard in the types of documentation they may submit with their fee waiver request, "

documentation of their spouse's income in their fee waiver application.⁶ However, the revised form does not include this exemption clearly stated in the form. Applicants for humanitarian based applications should simply be directed to skip all questions related to income derived from family members. Additionally, while the comments and revised form instructions note that alternative forms of proof will be accepted for applications related to VAWA, T and U Visa applications, the comments state that "Adjudicators of these benefits and their fee waivers may consider whatever evidence is provided."⁷ It should be clear that adjudicators **will** consider all evidence provided for these applications.

It must also be noted that survivors of human trafficking also file other applications, such as the I-90, I-131, I-290B, and others. They may or may not have filed a VAWA, T or U Visa application, because they may have been trafficked while in TPS, DACA, or LPR status. Immigrants are also often victims of wage theft, labor exploitation, and other labor violations that do not rise to the level of labor trafficking, and thus may pursue other immigration remedies, but will still be unable to produce pay stubs or tax transcripts to document their eligibility for a fee waiver. These survivors should also be explicitly allowed to provide alternative evidence of their eligibility and USCIS should be explicitly **required** to consider all evidence provided for these applications.

2. USCIS Should Allow a Single I-912 for Concurrently Filed Petitions from Family Members

The requirement that each family member must supply his or her own I-912 fee waiver is needlessly duplicative and burdensome. Trafficking survivors are permitted to protect their family members via T derivative visas. These visas are available to spouses, children, siblings, and parents of certain T Visa recipients. These families may be concurrently filing I-192s or other forms for multiple family members. While USCIS may need copies of the household I-912 for each application, it is unnecessary for each family member to complete the form differently, as the key information (household income) will be the same. Therefore, USCIS should accept copies of the primary I-912 for each concurrently filed application.

3. Evidence of Receipt of Means-Tested Benefits Should be Accepted Evidence of Fee Waiver Eligibility

Means-tested benefits are often essential for supporting survivors' basic economic security,⁸ and human trafficking survivors have been explicitly provided access to a wide range of benefits to ensure their access to vital services in the aftermath of the trafficking crime. Contrary to

⁶ See Instructions to Request Fee Waiver 3.25.2019, available at <https://www.regulations.gov/document?D=USCIS-2010-0008-1246>

⁷ USCIS Response at p 7.

⁸ See Shaina Goodman. NCRDV "The Difference between Surviving and Not Surviving: Public Benefits Programs and Domestic and Sexual Violence Victims' Economic Security" (January 2018), available at https://vawnet.org/sites/default/files/assets/files/2018-10/NRCDDV-TheDifferenceBetweenSurvivingandNotSurviving-UpdatedOct2018_0.pdf

USCIS' assertions,⁹ receipt of these benefits are a simple, clear form of proof to document financial hardship and lack of available income to pay immigration fees. Eliminating this straightforward proof of financial hardship lacks practical utility,¹⁰ as receipt of a means-tested benefit is an accurate, valid and reliable method to demonstrate financial hardship.

USCIS indicates that “applicant who receives a means-tested benefit must generally provide evidence of income to the relevant agency. Therefore, applicants who receive a means tested benefit should have income documentation readily available to provide to USCIS.”¹¹ However, as noted above, trafficking survivors generally have no such proof. Instead, trafficking survivors are generally interviewed by attorneys or law enforcement agents who are anti-trafficking experts to determine if they are trafficking survivors. Their eligibility for services and benefits is often based solely on these confidential interviews.

USCIS states that applicants filing forms related to VAWA, T and U Visas must “describe your situation in sufficient detail ... to substantiate your inability to pay as well as your inability to obtain the required documentation. Additionally, provide any available documentation of your income such as pay stubs or affidavits ...”¹² However, this request is so vague as to be problematic. First, it seems to suggest that trafficking survivors must describe their trafficking situation in sufficient detail to justify their lack of documentation. In most cases, that explanation will be included in the underlying T Visa application and restating that information in the I-912 is duplicative and burdensome on the trafficking survivor, any agency or attorney representing the survivor, and on USCIS adjudicators. Additionally, this creates additional likelihood of inconsistent USCIS adjudications. There should be no need for an USCIS adjudicator to consider the applicant’s (or their family members, in the case of a derivative) trafficking experience in the course of adjudicating a fee waiver. This step would be duplicative and a waste of USCIS resources. Instead, proof of receipt of services or means-tested benefits based on the primary applicant’s status as a trafficking survivor should be sufficient and allow USCIS resources to focus on the adjudication of the underlying applications.

Conclusion

Ensuring equal access to the protections Congress created is crucial, especially for human trafficking survivors who may have few financial resources. USCIS should not bypass

⁹ USCIS justifies the elimination of the means-tested benefit criteria because it “has found that the various income levels used in states to grant a means tested benefit result in inconsistent income levels being used to determine eligibility for a fee waiver.” Proposed Revisions at 49121. See also USCIS Response, Response to Comment 2.

¹⁰ See note 7 *supra*. 5 CFR 1320.3 (defining “practical utility” as means the actual, not merely the theoretical or potential, usefulness of information to or for an agency, taking into account its accuracy, validity, adequacy, and reliability, and the agency's ability to process the information it collects (or a person's ability to receive and process that which is disclosed, in the case of a third-party or public disclosure) in a useful and timely fashion.) See also 5 CFR 1350.5(d)(1)(iii)

¹¹ USCIS Response, Response to Comment 7.

¹² See Instructions to Request Fee Waiver 3.25.2019, available at <https://www.regulations.gov/document?D=USCIS-2010-0008-1246>

Congressional intent and undermine these laws through fee waiver policy changes. Fee waivers provide an essential pathway for survivors to seek justice and safety.

FNUSA urges USCIS to withdraw the proposed revisions and to, instead, expand the types of documentary evidence accepted for establishing eligibility for a fee waiver so that survivors of human trafficking may access these protections. Strong, safe families lead to stronger, safer communities. Further restricting access to these protections puts both at risk.

I can be reached at jean@freedomnetworkusa.org if you have any questions or need any further information or explanation.

Sincerely,

A handwritten signature in black ink that reads "Jean Bruggeman". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Jean Bruggeman
Executive Director
Freedom Network USA