

January 2020 Pro Bono Network Webinar: Fee Waiver Strategies, plus Late-Breaking Updates



Libby Hasse

Tahirih Houston Immigration Staff Attorney

Richard Caldarone
Litigation Counsel

E

Kursten Phelps
Director of Legal & Social Services

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Today's Agenda

- Introductions
- Litigation and immigration legal policy and rule updates
- Strategies and practical tips for effective USCIS fee waiver requests

Pro Bono Network Webinar

Introductions

Richard Caldarone

Litigation Counsel

richardc@tahirih.org

Libby Hasse

Immigration Staff Attorney

libbyh@tahirih.org

Kursten Phelps

Director of Legal & Social Services

kurstenp@tahirih.org

Proposed Rule Expanding Asylum Bars

- On December 18, DHS issued a notice of proposed rulemaking that, if made final, would dramatically expand the criminal bars to asylum
 - Current law: ineligible for asylum if convicted of aggravated felony or other particularly serious crime
 - Proposal: ineligible if –
 - convicted of (i) any felony; (ii) smuggling/harboring offense; (iii) illegal reentry; (iv) gang crimes; (v) DV/child abuse; (vi) various DUI offenses; (vii) misdemeanors concerning false identification, drug possession, or unlawful receipt of public benefits
 - IJ/AO determines, even absent conviction, that engaged in domestic battery or extreme cruelty

Proposed Rule Expanding Asylum Bars

- DV crimes include exemption for those who are not primary aggressors, though that determination has to be made by the IJ/AO
- Proposed rule would allow even vacated/modified convictions and sentences to operate as bar if vacatur/modification for rehabilitative or immigration purposes, and includes presumes that vacatur/modification were for those purposes if change made after removal proceedings begin or more than 1 year after original conviction/sentence
- Proposed rule would rescind regulations requiring automatic reconsideration of asylum applications denied on discretionary grounds where the applicant receives withholding of removal

Asylum Ban and Border Updates

- No updates yet on MPP (“Remain in Mexico”) 9th Circuit challenge, still awaiting ruling
- Third-country transit ban – litigation remains pending
 - Emergency stay granted on 12/20/19 related to individuals subjected to metering, meaning right now, the third-country transit ban is applying even to those put on a metering list before 7/16/2019
- Proposed rule to expand criminal bars to asylum is still in the comment period.

Public Charge and Health Care Ban

- Both are still subject to nationwide injunctions, pending appeals
 - Government has asked Supreme Court to stay injunction against the DHS public charge rule

Late Breaking Updates

Matter of A-B-

- *Matter of A-B-* is now back before the Board of Immigration Appeals, following the remand issued in 2018.
- Cases challenging *Matter of A-B-* remain pending before several federal courts of appeal

Proposed AAO Appeals Form Changes

- Notice issued 12/20/19, comments due 2/4/2020, proposed changes to I-290B notice of AAO appeal include:
 - Require addressing all reasons for denial in the appeal.
 - Permit “waiving” field office/service center review prior to AAO treatment
 - Prohibit the submission of new evidence to the AAO if the applicant was previously on notice (thanks to a NOID or RFE or the language of governing statutes/regulations), and the evidence was reasonably available earlier
 - Change the standard of review from de novo to abuse of discretion for discretionary decisions

Alert regarding rejected forms

- I-589 forms filed with affirmative asylum office are being rejected as incomplete when any space is left blank, even if it's clearly not applicable.
- In recent weeks an “alert” on www.ucsis.gov link to Form I-918 and I-918A note that incomplete applications may be rejected.
- Strongly advise completing all fields, even if they very clearly do not apply.
- If you get a rejected filing, notify Tahirih mentor attorney immediately for strategy and for monitoring of the practice.

BIA Decision on Deficient NTAs

- *Matter of Rosales Vargas and Rosales Rosales*, 27 I&N Dec. 745 (BIA 2020).
 - A notice to appear that does not include the address of the Immigration Court where the Department of Homeland Security will file the charging document, see 8 C.F.R. § 1003.15(b)(6) (2019), or include a certificate of service indicating the Immigration Court in which the charging document is filed, see 8 C.F.R. § 1003.14(a) (2019), does not deprive the Immigration Court of subject matter jurisdiction.

Late Breaking Updates

Fees and Fee Waivers Updates

- Thousands of comments submitted regarding proposed rule to increase USCIS filing fees and restrict fee waivers.
- The old I-912 form and public means tested basis for fee waiver remains acceptable pending litigation.

Strategies for Successful Fee Waiver Requests



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Fee Waiver Strategies

Learning Objectives

- Understand the importance of a strong fee waiver application
- Learn how to portray your client's financial situation in a sympathetic light
- Gain tools to prove your client's income is below the required threshold

Why is the fee waiver so important?

- Applications have fees ranging from \$410 for a work permit application, \$930 for an application for a waiver of inadmissibility, to \$1225 for an application for permanent residency.
- If USCIS denies your fee waiver, they will reject the relevant application. This process takes about a month but can take more.
- If you are unable to re-file in time to meet a deadline, there is no exception that allows you to re-file late.
- If USCIS issues new versions of forms while your fee waiver application is pending adjudication, you could have to re-do the forms once they are rejected.
- USCIS has published a proposed rule to increase fees by 21%.

How do I prepare a fee waiver request?

- Form I-912
- Read the instructions before filling out the form
- Three bases (for now): income is under the threshold, financial hardship, means-tested benefit
- Supporting documents
- Client and all derivatives must sign
- Interpreter must also sign if clients are not fluent in English

Fee Waiver Strategies

Income Under 150% of the FPG

- Household members: do not include roommates
- How to calculate annual income?
- Income of family members: if someone else is contributing to the household income, you will need to prove up that person's income too.
- Additional financial support (i.e. child support, food stamps): you will need to prove it up

Income Under 150% of the FPG

- Part 5 Question 9 (old form) or Part 3 Question 12 (new form): Has anything changed since you filed your tax returns? **You may also use this space to provide any additional information about your circumstances that you would like USCIS to consider.**
 - Use this box to give the adjudicator some information about your client's case and her financial situation. Remember that they haven't looked at any other parts of the application yet. Reference the type of application (U/T/VAWA) and the type of abuse. Explain her financial situation. Should she be receiving child support from her abuser, but he doesn't pay? Does she work three jobs to be able to support her kids? Make it sympathetic.
 - Reference the attached proof of income, so the adjudicator can't miss it.

How do I gather proof of income?

- Tax return or W-2
- Tax transcript*
- Pay stubs from a minimum of the past month
- Letter from employer on letterhead
- Client statement explaining what she does for work, or who supports her if she doesn't work, and why she doesn't have any of the above
- Proof that household members are receiving a means-tested benefit (i.e. Medicaid or SNAP/food stamps) based on their household income
- Letter from Tahirih or other service providers stating that the client is receiving free services

What about means-tested benefits?

- Currently, due to litigation, you can still file under the old rules allowing proof of a means tested benefit
- Submit both proof of income AND proof of benefits because the rules could change again very quickly
- Provide proof that your client is receiving the benefit AND proof that the benefit is only available to those whose income is under 150% of the FPG
- Get an approval letter not just an ID card. Make sure it shows the date the benefit was granted and the date the benefit expires.
- Documentation must be less than a year old. It is more persuasive when the benefit was granted more recently.

When can I use the hardship option?

- If your client's income is OVER 150% of the FPG, you can use this option to show why your client cannot afford the fee
- Prove up the extra costs your client has which make it difficult for her i.e. medical expenses, unpaid medical bills, or other debt
- The form instructions also list unemployment, eviction, and homelessness but for those situations it seems likely the client's income is also under 150% of the FPG so it is better to fill out that section and explain the situation there

Fee Waiver Strategies

What do I do if my client's request is denied?

- Assess whether you can gather any additional proof. Has she started a new job? Recently filed a tax return? Applied for benefits?
- If not, you can try re-submitting with the same proof, with a cover letter requesting Supervisory Review, but be aware of deadlines.
- Ask if your client is able to save up to pay the fee herself.
- Ask if your firm is willing to pay the fee. This will save you and your client time and stress.

Fee Waiver Strategies

Tips and Tricks

- Don't wait until the last minute to prepare the fee waiver request. From the first meeting, you should be assessing what type of proof your client can provide.
- Make sure to let your client know all relevant deadlines, and how a fee waiver denial could affect them.
- Check if your firm is willing to pay the fee if the fee waiver is denied, and if not, let your client know she should start saving in case she has to pay it herself.
- Remember that not all forms are required to be filed together. A U visa applicant can file an I-765 now, but it isn't required. An I-192 waiver of inadmissibility is required for most U and T visa applicants, though, and if rejected, should be refiled ASAP.

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Questions?

Richard Caldarone

Litigation Counsel

richardc@tahirih.org

Libby Hasse

Immigration Staff Attorney

libbyh@tahirih.org

Kursten Phelps

Director of Legal & Social Services

kurstenp@tahirih.org

A recording of this briefing will be posted on Tahirih's Pro Bono E-Library at www.tahirih.org

Save the Date for February's webinar

- **Topic:** Late-breaking updates, plus practice pointers and strategies for consular processing of derivative T and U visa applicants.
- **Date:** February 19, 2020
- **Time:** 1:30 p.m. Eastern, 9:30 a.m. Pacific
- Registration invitation by e-mail forthcoming.

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<https://www.tahirih.org/get-involved/our-pro-bono-network/join-our-network/>

