



Protecting Immigrant
Women and Girls
Fleeing Violence

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Submitted via www.regulations.gov

Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Service
Department of Homeland Security

Re: Comments in Response to 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

Dear Ms. Deshommes:

The Tahirih Justice Center (“Tahirih”) is pleased to submit the following comments in response to U.S. Citizenship & Immigration Services’ (“USCIS”) Proposed Rule entitled “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements” published in the Federal Register on November 14, 2019 (the “proposed rule”).

I. Introduction

Tahirih is a national, nonpartisan policy and direct services organization that has assisted over 25,000 immigrant survivors of gender-based violence (GBV) over the past twenty-two years. Our clients endure horrific abuses such as human trafficking, domestic violence, forced marriage, rape, and other crimes. We provide *pro bono* legal representation for clients by staff with expertise in immigration and family law, and through a network of outside attorneys that Tahirih trains and mentors. Tahirih also addresses clients’ needs holistically, through full-time social services staff. In addition to serving survivors directly in our various locations throughout the country, Tahirih engages in national advocacy to promote policies and practices that maximize their safety and protection.

Our client base is overwhelmingly comprised of indigent women of color, who must overcome tremendous obstacles to apply for relief to begin with. As a result, we do not charge a fee for our services. By imposing new or higher fees and prohibiting fee waivers for certain applications, USCIS’ proposed rule disproportionately and arbitrarily punishes them further. Contrary to the will of Congress, the proposed rule will largely render our clients unable to afford to pursue relief, prolonging their trauma and depriving communities of their valuable contributions. The proposed rule will also place an added burden on Tahirih and others who will be forced to divert critical resources toward raising funds for filing fees. **We are therefore strongly opposed to the proposed rule**, as explained in further detail below.

II. Imposing Fees for Asylum Applications and Initial Applications for Employment Authorization Documents (EADs) Will Cause Irreparable Harm to Survivors of GBV

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Women and girls fleeing GBV are among the most vulnerable asylum seekers in the US. GBV takes many forms, with government actors, families, and communities targeting women for forced marriage, Female Genital Mutilation/Cutting, honor crimes, rape, domestic violence, femicide, and other human rights abuses. Survivors suffer not only violent retaliation for trying to escape, but economic isolation and severe social ostracization as well. Those who overcome tremendous odds and do manage to escape face further peril as they search for safe haven. With little if any support system, the vast majority of survivors arrive in the US with nothing. According to a nationwide survey of advocates, immigrant women, and service providers Tahirih conducted in late 2017, safe and affordable housing and economic hardship ranked among the top three most urgent and prevalent systemic challenges, respectively, confronting immigrant women in the US.ⁱ Unable to afford basic necessities, survivors are once again highly vulnerable – this time, to exploitation by traffickers and other bad actors preying on their desperation to survive.

With the one-year asylum filing deadline looming, a fee to apply will effectively function as a bar to asylum for survivors. If an applicant cannot pay the fee within one year of arrival, she will lose the opportunity to apply entirely and forfeit her ability to ultimately protect her children in danger at home.ⁱⁱ In addition, the new fee for initial EADs may prove prohibitive for those who do manage to pay the asylum fee with both survivors and society bearing the cost. Policies that promote homelessness, poverty, hunger, unemployment, and exploitation are not only inhumane, but unnecessarily burden taxpayers in the process.ⁱⁱⁱ

Finally, women may also suffer disproportionately as a result of the proposed new fees if a family can only afford to have one member apply for relief. If the head of a household is deemed to be male, and thus the chosen applicant, unequal power dynamics within the family will be perpetuated to the detriment of its female members.

A. Fees for Initial EAD Applications Will Irreparably Harm Asylum Seekers Experiencing Domestic Violence in the U.S.

Financial independence is a lifeline for survivors of domestic violence. Close to 100% of survivors of Intimate Partner Violence (IPV) report suffering economic abuse,^{iv} and 75% of women report staying in abusive relationships due to economic barriers.^v The role of financial resources in promoting women's well-being and safety from violence, including prevention of future abuse, cannot be overstated.^{vi} Both Congress and USCIS itself have explicitly recognized this, as primary survivor-based immigration petitions have no accompanying fee, survivors can access certain public benefits without penalty, and fee waivers for ancillary survivor-related immigration benefits are mandated.^{vii}

It is therefore critical that initial work authorization be readily available to asylum-seeking survivors. Requiring a fee for an initial EAD puts indigent survivors in an untenable position, serving as a barrier to safety and independence for them, and another tool of manipulation and control for abusers. Survivors forced to forego the ability to earn an income remain at the mercy of abusers, with homelessness as their only alternative in many cases. Continuing to live in a chronically unsafe, threatening situation also exacerbates trauma, and often results in extreme social isolation. This in turn prolongs trauma-induced mental health conditions with taxpayers bearing the burden of both short and long-term treatment. Finally, indigent survivors who do flee their abusers but cannot work risk losing their children to the system if they are deemed unable to protect and provide for them.

Examples of Tahirih clients who would suffer irreparable harm under the proposed rule include:

- “L” from Honduras was assaulted in the US by her boyfriend. He was ultimately arrested and convicted after she called the police. This was the second time that L suffered domestic violence while waiting for her case to be heard. “L” was able to apply for asylum and secure permission to work so she can live independently.
- “N,” also from Honduras, was beaten and sexually assaulted by her boyfriend in the US. N’s boyfriend also sexually assaulted her minor daughter. “N” reported her boyfriend to the police and he was arrested and convicted. Applying for asylum and an EAD has made a tremendous difference for her. She is now financially stable and does not need to rely on another provider to support her and her two young daughters. “N” has not been re-victimized since receiving her EAD.
- “C” was abused by her husband, and she reported him to the police. He was arrested and convicted. This was the second time that “C” was assaulted while waiting for her asylum case to be heard. The first time, she was raped by a stranger who broke into her apartment. “C” applied for and received her EAD. Working has enabled her to support herself and her US citizen daughter without relying on her abusive husband and has been critical to her healing and safety.

III. Heightening the Standard for Fee Waiver Eligibility, along with Increasing Fees for Applications for Adjustment of Status, U visa Petitioners’ Family Members, and Naturalization will Cause Irreparable Harm to Survivors of GBV in the U.S. Contrary to the Will of Congress

As noted above, primary survivor-based petitions are exempt from fees entirely, and a bi-partisan Congress mandated the availability of fee waivers for ancillary survivor-associated immigration benefits. As a result, Violence Against Women Act (VAWA) self-petitioners, U and T visa petitioners, and applicants for VAWA cancellation of removal or suspension of deportation must all be permitted to request fee waivers for their applications to adjust status to permanent residence and for status on behalf of qualifying family members. The proposed rule, however, heightens the standard for obtaining fee waivers. To qualify, applicants would now have to show that they earn less than 125% of the federal poverty guidelines, instead of less than 150% as is now the case. The rule allows for granting fee waiver requests discretionarily, but only in limited circumstances. We are deeply concerned that favorable discretion will be exercised rarely if ever, as our clients’ well-documented, meritorious, and credible fee waiver requests are arbitrarily denied even under current, less stringent USCIS guidelines.

The proposed rule further punishes those whose fee waivers are denied by imposing fee increases for the benefits they are seeking. As explained above, primary survivor-based relief applications do not carry a fee, but ancillary relief applications do. The proposed rule significantly increases fees for such relief. The most extreme example is in the case of applications for family members of U visa holders – the proposed rule increases the fee a staggering 559%, from \$230 to \$1515.00.

Survivors of GBV applying for immigration relief through non-survivor-related applications will lose access to fee waivers entirely, in effect barring relief. Without lawful status, and particularly without work authorization, survivors remain vulnerable to abuse. Meaningful access to immigration relief is essential for survivors to be able to seek safety. Finally, naturalization is already prohibitively costly for many. Nonetheless, the proposed rule raises fees and eliminates the availability of fee waivers for naturalization. Regularization of immigration status reduces survivors’ vulnerability to future abuse and increases their opportunities for higher paying jobs. Indigent survivors struggle to cover basic expenses for themselves and their children, including mental and physical health care needed as a direct result of abuse. Survivors should not have to choose between U.S. citizenship or food and shelter for their families. Again, policies that

promote instability and indigence are ill-advised for society at large as well.^{viii}

IV. The Fee Increases Proposed by the Rule Violate the Fourteenth Amendment as they Disproportionately Harm Indigent Immigrants

The proposed rule raises serious equal protection concerns, as it disproportionately increases fees and eliminates fee waivers for the forms most commonly used by low-income immigrants such as our clients. It is therefore one in a series of regulatory changes that collectively operate to permit only wealthy immigrants to enter and remain in the U.S.^{ix} Given that immigrants are no more likely to access public benefits than people born in the United States,^x these policies are unlawful, unnecessary, and have no basis in fact.^{xi} The only rational explanation for the proposed rule and related policies is instead that they implement the animus high-ranking government officials have repeatedly expressed about keeping non-white immigrants from places as disparate as Central America, Haiti, Mexico, the Middle East, and Nigeria out of the country.^{xii} A policy implemented on that basis violates the Equal Protection Clause of the Fourteenth Amendment.

V. Eliminating Fee Waivers and Imposing New and Higher Fees for Immigration Relief Will Impede the Tahirih Justice Center's Ability to Effectively Serve Indigent Survivors of GBV

As explained above, the overwhelming majority of Tahirih's clients currently apply for fee waivers in order to be able to apply for relief. Under the proposed rule, many clients' fee waivers will be denied, and they won't be able to afford to file their applications. In order to continue providing services to our clients, Tahirih will now have to divert its own resources toward fundraising for application fees to submit on their behalf. We will be unable to serve the same volume of clients, and law firms might be dissuaded from taking on cases if they must also pay the increased fees.

VI. Diverting \$200 Million from USCIS to DHS' United States Immigration & Customs Enforcement (USICE) will Increase Backlogs and Irreparably and Avoidably Harm Survivors Applying for Benefits from USCIS

The rule's proposed transfer of funds from USCIS to USICE will disproportionately harm survivors of GBV. Congress has given USCIS sole responsibility for adjudicating most claims for relief made by survivors — most notably petitions for T and U visas, VAWA self-petitions, and affirmative asylum applications. Applicants for such relief already face massive delays and backlogs. U-visa petitioners, for example, face a delay of more than four and a half years simply to be placed on the waiting list for U nonimmigrant status.^{xiii} USCIS's regulatory and statutory duties require it to reduce these backlogs, but the proposed rule will delay adjudications even more by diverting fees the agency receives to USICE for enforcement operations. The proposed reallocation of funds is arbitrary and avoidable; a USICE appropriations request could be made in the alternative. The inevitable result of the reallocation, however, is that survivors will wait still longer for adjudications of their status—and the accompanying opportunity for independence from abusers.

Lengthy USCIS processing delays reward abusers in various ways. For example, an abuser can easily manipulate the child custody process in his favor while a child's mother waits years to secure lawful status. Tahirih client "T" filed a battered spouse self-petition and has been awaiting adjudication for over a year. In the meantime, she cannot see her son or pursue custody because her abuser has threatened violence and deportation if she does. Another client, "R," has been waiting for adjudication of her U visa petition for over 4 years. During this time, while her divorce was pending, "R"'s abuser gained lawful permanent residence. He reopened child custody proceedings and won custody back from "R" precisely because she lacks immigration status.

In addition, due to recent changes in USICE policy, survivors are now highly vulnerable to deportation while they await adjudication of their petitions. As a survivor of human trafficking and rape, Tahirih client “A” became pregnant and gave birth to her child in the U.S. She petitioned USCIS for a T visa over a year ago, after seeking help from the police and testifying against her trafficker in court. The longer “A” waits in limbo for her T visa, the greater the danger of deportation she faces to the country where her trafficker now resides. She is terrified that he will retaliate against her if she is forced to return. Furthermore, if a survivor is deported while waiting for her U or T visa, she is no longer readily available to assist police.

Finally, even relatively short adjudication delays can have tragic consequences for asylum seekers. Children are highly vulnerable to retaliation from persecutors and can easily be used as bargaining chips by abusers and traffickers. “F” from Nigeria fled severe domestic violence and applied for asylum in the U.S. Her application has been stalled for several years. In the meantime, her 14-year-old daughter was brutally attacked on her way home from school and died the next day of her injuries. “F”’s son went into hiding, because her husband had been threatening her children for months and she strongly suspects he was involved.

VII. Conclusion

For the reasons described above, USCIS’ proposed rule will needlessly prevent vulnerable survivors of trauma from accessing humanitarian relief contrary to the will of Congress. Tahirih urges USCIS to promptly abandon the proposed rule and retain the current fee structure instead, to maximize survivors’ access to the critical safeguards that Congress intended for them. We appreciate the opportunity to provide this feedback and we look forward to your detailed response. Please contact me at irenas@tahirih.org or 571-282-6180 for additional information.

Respectfully,



Irena Sullivan

Senior Immigration Policy Counsel

ⁱ <http://www.tahirih.org/wp-content/uploads/2018/01/Tahirih-Justice-Center-Survey-Report-1.31.18-1.pdf>

ⁱⁱ See the proposed rule at 62320: DHS does not intend for the inability to pay the asylum application fee to be an “extraordinary circumstance” sufficient to except an applicant from the one-year filing deadline.

ⁱⁱⁱ Homelessness overburdens crisis response and public safety systems, leading to many more incidences of debilitating medical conditions and emergency room visits.

^{iv} See, e.g., Postmus, J. L., Plummer, S. B., McMahon, S., Murshid, N. S., & and Mi Sung Kim, M. S. (2012). Understanding economic abuse in the lives of survivors. *Journal of Interpersonal Violence*, 27(3),411–430, Adams, A, Sullivan, C, Bybee, D, & Greeson, M. (2008), Development of the scale of economic abuse. *Violence Against Women*, 13, 563-588.

^v The Mary Kay Foundation. (2012). 2012 Mary Kay Truth About Abuse Survey Report available at: <http://content2.marykayintouch.com/Public/MKACF/Documents/2012survey.pdf>

^{vi} See <https://www.cdc.gov/violenceprevention/pdf/fpv-technicalpackages.pdf>; Eleanor Lyon, *Poverty, Welfare and Battered Women: What Does the Research Tell Us?* National Electronic Network on Violence Against Women 1 (Dec. 1997).

^{vii} See the Violence Against Women Act (VAWA) and Trafficking Victims Protection Act (TVPA).

^{viii} See FN iii.

^{ix}See DHS, Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019); U.S. Dep’t of State, Visas: Ineligibility Based on Public Charge Grounds, 84 Fed. Reg. 54,996 (Oct. 11, 2019); Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System (Oct. 4, 2019).

^x See, e.g., Alex Nowrasteh & Robert Orr, *Immigration and the Welfare State: Immigrant and Native Use Rates and Benefit Levels for Means-Tested Welfare and Entitlement Programs*, <https://www.cato.org/publications/immigration-research-policy-brief/immigration-welfare-state-immigrant-native-use-rates> (May 10, 2018).

^{xi} See, e.g., <https://www.tahirih.org/wp-content/uploads/2019/01/Tahirih-public-charge-comments-Dec-10-2018-1.pdf>.

^{xii} See, e.g., Michael D. Shear & Julie Hirschfeld Davis, *Stoking Fears, Trump Defied Bureaucracy to Advance Immigration Agenda*, N.Y. Times (Dec. 23, 2017), <https://perma.cc/F7LT-A8MC>; President Donald Trump, Remarks on the Illegal Immigration Crisis and Border Security (Nov. 1, 2018), <https://perma.cc/F4DX-RZ84>; Jeff Sessions, U.S. Att’y Gen., Remarks on Immigration Enforcement, Las Cruces, NM (Apr. 11, 2018), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-immigration-enforcement> (Last accessed Dec. 12, 2019), <https://perma.cc/DT3U-X4UG>; Rebekah Entralgo, *Conservatives want a man who compared immigrants to rats to lead DHS* (Apr. 11, 2019), <https://thinkprogress.org/conservatives-cuccinelli-dhs-immigrants-trump-7233d8f6f1ce/>.

^{xiii} See USCIS, *Processing Times*, <https://egov.uscis.gov/processing-times>.