

HQ 70/5.5

October 9, 1998

MEMORANDUM FOR REGIONAL DIRECTORS
SERVICE CENTER DIRECTORS

FROM: Michael A. Pearson
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Interim Field Guidance on granting fee waivers pursuant to 8 CFR 103.7(c)

PURPOSE: This memorandum provides instructions and processing guidance for adjudication of fee waiver requests filed pursuant to 8 CFR 103.7(c). This interim field guidance should be followed until a final rule amending 8 CFR 103.7(c) becomes effective.

DISCUSSION:

Why issue guidelines?

Generally, the Service has discretion to waive any of the fees prescribed in 8 CFR 103.7(b), relating to applications or petitions pursuant to 8 CFR 103.7(c), if the applicant establishes that he or she is unable to pay the prescribed fee. These guidelines clarify what constitutes an “inability to pay” and provide circumstances and forms that Service officers may consider in determining an applicant or petitioner’s “inability to pay.”

The Service, in support of the fee schedule adjustment regulation [63 FR 43604], pledged to clarify its existing fee waiver policy to ensure that it is equitable to applicants and petitioners as well as financially feasible in light of the reimbursements the Service needs to fund benefit programs. The Service is also issuing this guidance to overcome the perception that fee waivers are adjudicated inconsistently nationwide.

Service officers retain broad discretionary authority under 8 CFR 103.7(c) in adjudicating fee waiver requests. These guidelines delineate factors Service 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 Service officers have authority to consider other evidence in determining whether a waiver request can be approved.

ALL circumstances and evidence provided by an applicant or petitioner in support of a waiver request should be evaluated (i.e., financial data showing that he or she does not have access to the filing fee amount in his or her monthly budget or the applicant or petitioner is supporting other family members, as documented by reliable evidence). Suggested documentary evidence to support a fee waiver request is contained in the “Documentation” section. This guidance does not apply to the \$25 fee for fingerprinting associated with many applications and petitions. However, this waiver guidance does not alter the existing discretion of Service officers to waive the fingerprinting fee in exceptionally compelling situations financial hardship.

What is the implementation plan for the new fee waiver policy?

INS is distributing this field guidance to coincide with the October 13th implementation of the first fee increase contained in the fee increase regulation, [63 FR 43604]. After distribution of this guidance, and before issuing a rule amending 8 CFR 103.7(c), the Service will perform a field assessment to collect essential data on current fee waiver applicants. This financial study is being performed in order to develop a regulation on fee waivers that is equitable to applicants and petitioners, and financially feasible for the Service. The Service will publish a final rule after appropriate public notice and comment. This interim field guidance should be followed until a regulation amending 8 CFR 103.7(c) becomes effective. Additional instructions on the field’s responsibilities in collection of data for the financial assessment will be distributed shortly.

GUIDELINES:

To ensure that the Service’s fee waiver guidance is implemented consistently, is equitable to the applicant or petitioner, and financially feasible to support the program, special considerations should be given to those who demonstrate “inability to pay” as required under 8 CFR 103.7(c).

A. “Inability to pay”

In determining an applicant’s or petitioner’s “inability to pay”, a Service officer may consider the following situations and criteria in adjudicating the fee waiver request:

- Whether an applicant or petitioner has demonstrated that within the last 180 days, he or she qualified for or received a “federal means-tested public benefit”. “Federal means-tested public benefits” include, but are not limited to Food Stamps, Medicaid, Supplemental Security Income, and Temporary Assistance of Needy Families.
- Whether an applicant or petitioner 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).
- Whether an applicant or petitioner is elderly (age 65 and over, at the time the fee request is submitted).

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- Whether an applicant or petitioner 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.
- The age and number of dependents in an applicant's or petitioner's family household who are seeking derivative status or benefits concurrently with the principal applicant or beneficiary.
- 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 hardship; or an applicant on fixed income and confined to a nursing home.
- Any other evidence or factors that the Service officer believes establishes an applicant or petitioner's inability to pay the required filing fees.

B. Issues to be Considered

Under current regulations, any application or petition may be considered for a fee waiver. However, in considering fee waiver requests, Service officers should take into consideration the following issues:

- 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, Service officers should refer to the detailed information on the treatment of this category contained in field guidance memoranda on VAWA dated 4/16/96 and 5/6/97.
- 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)). Examples of this type of application would be an application to extend or change nonimmigrant status (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. Those petitioners must prove that they have an income level of 125% of the most current published poverty guidelines. 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. 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 distance, length, and source of income for the travel requested or proposed.

C. 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 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, Service officers should refer to the detailed information on the treatment of this category contained in field guidance memoranda on VAWA dated 4/16/96 and 5/6/97.

IMPLEMENTATION:

A. Processing fee waiver requests

As of October 13, 1998, all pending and newly submitted fee waiver requests should be reviewed under these guidelines. All Service officers are asked to facilitate the adjudication of the fee waiver requests and the implementation of these guidelines. These guidelines only apply to application and petition filing fees contained in 8 CFR 103.7(b).

B. Documentation

Fee waiver requests should generally be decided based upon the initial evidence submitted in support of the fee waiver request, unless the Service officer determines that a request for additional evidence would be appropriate. 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." All documents submitted by the applicant in support of a fee waiver request are subject to verification by the Service.

Suggested examples of documentation are:

- Evidence that an applicant has, within the last 180 days, qualified for or received a "federal means tested public benefit";
- Evidence which verifies an applicant's disability. 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;
- Employment records, pay stubs, W-2 forms, letter(s) from employer(s), and income tax returns (proof of filing of a tax return). The same documents may also be submitted for the dependents in the United States;
- Rent receipts, utility bills (such as gas, electricity, telephone, water), food, medical expense, child care receipts and receipts for other essential expenditures;
- Documentation to show all assets owned, possessed, or controlled by the applicant or petitioner, or by his or her dependents;
- Evidence of the applicant's living arrangements in the United States (living with relative, living in his or her own house, apartment, etc.), and evidence of whether his or her spouse, children, or other dependents are residing in his or her household in the United States;
- Evidence of the applicant's essential extraordinary expenditures or those of his or her dependents residing in the United States.

C. Public Information

The Office of Public Affairs is preparing a fact sheet to respond to media inquiries about the fee waiver guidance. Regional Offices please distribute to local offices with instructions to distribute to all local Congressional Offices in their jurisdiction.

D. Information to CBO/NGO Groups

All Service Offices must proactively communicate the fee waiver guidance and the suggested documentation that should support the fee waiver requests, to all community groups and local Congressional Offices in your area. All CBO/NGO groups should be notified that to facilitate the processing of fee waiver requests, 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.

E. Point of Contact

If you have questions regarding these guidelines, their implementation, or the financial assessment, please contact Irene Hoffman in HQADN at (202) 514-4754.