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Re: **AILA Comments on Agency Information Collection:
Form I-912, Request for Fee Waiver
OMB Control No. 1615–New**

The American Immigration Lawyers Association (AILA) submits the following comments on the Agency Information Collection: Form I-912, Request for Fee Waiver (OMB Control No. 1615–New).

AILA is a voluntary bar association of more than 11,000 attorneys and law professors practicing, researching and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on this information collection and believe that our members' collective expertise provides experience that makes us qualified to offer views that will benefit the public and the government.

Introduction

We would like to thank USCIS for its efforts in formalizing what was previously a vague and confusing process. The new Form I-912, Request for Fee Waiver provides USCIS customers with clear guidelines and evidentiary standards that are very helpful in preparing a fee waiver request. We also appreciate USCIS transparency and receptiveness to feedback and comments in the creation of this form. We believe that many, if not most, fee waiver applications are filed by applicants without the assistance of an attorney. Therefore, having a

straightforward form and instructions that include a simple “Q&A” format is extremely helpful. Currently, a pro se applicant must locate and read the policy memorandum to obtain guidance on the fee waiver process.¹ We appreciate the time and effort it took to make this significant improvement.

General Suggestions

Fee Waiver Denials—A primary concern is what happens procedurally when a fee waiver request is denied. Consider the situation involving a pro se applicant who files a timely application or petition with a Form I-912 fee waiver request. If the fee waiver is denied and the entire application is rejected, it would not be uncommon for the filing deadline to have passed before the applicant can reapply with the appropriate fee. If the entire package including the principal application is rejected upon the denial of a fee waiver, applicants may be deterred from seeking a waiver in the first place. This is particularly true if the principal application is time-sensitive, such as an I-290B, Notice of Appeal or Motion and the applicant would be prejudiced if the package is rejected.

To alleviate the problems that would ensue in such a situation, we suggest that when a fee waiver is denied, a denial notice be issued, but the principal application or petition remain on file with USCIS for a specified period of time during which the applicant may submit the required fee. In addition, we strongly suggest that the form instructions include a clear statement at the top about what happens if the fee waiver is denied.

Attorney Representation—Form I-912 should allow for attorney representation and include a signature line for the preparer of the form. A fee waiver request may often involve the preparation of extensive supporting documentation. Requests may also require the consideration of sophisticated legal and strategy issues, particularly if filing the I-912 would raise issues about the applicant’s eligibility for the principal benefit.

Translators—Form I-912 should also include a line for a translator’s signature. Many fee waiver applicants are not fluent in English, and because there could be serious consequences to filing the form (including findings of inadmissibility, deportability, law suits, etc.) it is very important that the applicant understand the nature and requirements of the form.

This section should include an “Applicant’s Statement” with language similar to that on page 6 of Form I-485, Application to Register Permanent Residence or Adjust Status. The applicant would check off a box either stating that he or she can read and understand English, or that each and every question has been read in his or her native language by an interpreter. The interpreter would then sign an “Interpreter’s Statement and Signature” certifying that he or she is fluent in English and the applicant’s native language.

¹ See Memo, Neufeld, Acting Assoc. Director, Domestic Operations, USCIS, HQ 70/5.5 (July 20, 2007).

Additionally, some applicants may wish to submit foreign language documents in support of the fee waiver request. We suggest adding a line asking applicants to submit translations of foreign language documents. For example:

Any document containing a foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Overseas Applicants—We request clarification as to whether a fee can be waived when an applicant for a benefit is applying abroad, as is often the case for Form I-601, Application for Waiver of Ground of Inadmissibility.

Information on Free/Low Cost Legal Services—We suggest that the form provide a link to free or low cost legal services.²

Overall Layout of Form I-912 Instructions

Introduction

In the Introduction, the directions to the www.uscis.gov link for Fee Waiver Guidance should read “Fees” instead of “Forms Information.” An alternate direct path to that guidance is www.uscis.gov/feewaiver.

Which applications and petitions will USCIS consider for an individual fee waiver?

We understand and agree with the reasoning behind allowing fee waivers for only certain applications. In particular, applications that require an affidavit of support are inherently incompatible with a fee waiver. However, because the final rule on the new USCIS fee schedule permits fee waivers for three forms not mentioned in the instructions, we ask that these be added to the list:

- Form I-191, Application for Advance Permission to Return to Unrelinquished Domicile.³
- Form I-193, Application for Waiver for Passport and/or Visa. *The fee for Form I-193 can only be waived for an alien who is not subject to a determination of his*

² <http://www.justice.gov/eoir/probono/states.htm>.

³ See 75 Fed. Reg. 58961, 58989; 8 CFR §103.7(c)(3)(v).

*or her likelihood of becoming a public charge under section 212(a)(4) of the INA.*⁴

- Form I-881, Application of Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to section 203 of Public Law 105-110, NACARA).⁵

We also suggest adding the following language to two additional listed forms:

- Form I-751, Petition to Remove Conditions on Residence. *I-751 applicants are generally subject to a determination of their likelihood of becoming a public charge under section §212(a)(4) of the INA upon adjudication of the I-485, application for adjustment of status. As such, an I-751 applicant who is also filing an I-912 fee waiver request may have to show extraordinary or changed financial circumstances pertaining to him- or herself, the petitioner, or any co-signer on a previous I-864, affidavit of support.*
- Form I-765, Application for Employment Authorization. *The fee for Form I-765 will not normally be waived for an alien who is subject to a determination of his or her likelihood of becoming a public charge under section 212(a)(4) of the INA.*

We suggest deleting the language “Some applications and petitions do not require a fee at all and do not require you to submit a Form I-912,” as unnecessary. Applicants will likely already know what application or petition they are filing and whether a fee is required.

To the extent that “Other USCIS applications and petitions have fee exemption requirements for certain types of applicants and petitioners,” we ask USCIS to be more specific as to what it is referencing to better apprise applicants as to whether they should follow the link.

Fee Waiver Request Review Process

STEP 1

- The language of Step 1, Part 2, “**What is a means-tested benefit and what effect does it have on my eligibility for a fee waiver?**” is confusing in places, especially for an applicant with limited education and command of the English language. We suggest the following amended text:

A. A means-tested benefit is a public benefit where a person's eligibility for the benefit, or the amount of such benefits, or both, are determined on

⁴ See 75 Fed. Reg. at 58990; 8 CFR §103.7(c)(4)(ii).

⁵ See 75 Fed. Reg. at 58989; 8 CFR §103.7(c)(3)(xi).

*the basis of the person's "means," which includes both income **and** resources. Means-tested benefits may be federally or state funded. For purposes of this waiver application only, USCIS will consider federal or state public benefits that you are receiving based on your means. State agencies may assist in the local administration of federal means-tested public benefits.*

B. Examples of means-tested public benefit programs are Medicaid, Food Stamps (now a part of the "Supplemental Nutrition Program" or "SNAP" benefits), Temporary Assistance to Needy Families (TANF), and Supplemental Security Income (SSI), among others. These benefits have been specifically designated as "federal means-tested public benefits" for purposes of the Personal Responsibility and Work Opportunity Act (PRWORA) of 1996, P.L. 104-193. However, for purposes of this waiver, applicants may demonstrate their receipt of ANY federal or state benefit that determines eligibility based on the person's "means" whether or not they have been designated under PRWORA. Please consult with your benefit-granting agency or your legal advisor to determine whether any benefit that you are receiving qualifies as a benefit for which your eligibility is determined based on your "means."

- We suggest that USCIS include the above language and eliminate Part C as unnecessary.
- We suggest in Part D (which would become Part C with the above changes) that USCIS add the word "normally" before "consider" so that it reads, "*If you are receiving a means-tested benefit when you file Form I-912, we will normally consider you eligible for a fee waiver.*" This addition will make the language consistent with the language under "**1. How will USCIS determine if you qualify for a fee waiver?**"
- We suggest that for Part E (which would become Part D with the above changes), that the last sentence be amended to read:

The document(s) submitted must show the name of the recipient of the means-tested benefit, the name of the awarding agency, the date the benefit was awarded, and whether you are currently receiving this benefit.

- For Step 1, Part 3, the heading would be clearer, written as follows:

3. If the name of a family member is not listed in a means-tested benefit document, can that family member use the means-tested benefit as support for a fee waiver?

- Finally, we suggest that Section 3.E be removed from this part as it is not relevant to the heading.

STEP 2

- For Part 4.B, we suggest a comma instead of a semi-colon in the first sentence. We also suggest changing “an” to “a” toward the end of the fourth line.
- For Part 9.A, we suggest changing “The student should provide a copy of their parents’ income tax statement” to “Students should provide copies of their parents’ income tax statements.”

STEP 3

- Under Step 3, we suggest that USCIS add that financial obligations to immediate family members in the applicant’s home country is an example of a financial hardship factor.
- Part B should be changed to Part A.3. Alternatively, the opening sentence under A could start under 13 without a letter, followed by A, B and C.

General

We suggest moving the “General” section so that it is either immediately after the **Introduction** or after the section titled “**Which applications and petitions will USCIS consider for an individual fee waiver?**” This section includes important information in an easy-to-read Q&A format. Applicants for fee waivers may struggle with the lengthy instructions and would benefit from having this important information on Page 1 or 2.

We also suggest the following changes to the “General” section, starting on page 4:

- **6.A.** Add the following: *If you think your financial situation may affect your eligibility for immigration benefits, we suggest that you discuss these issues more fully with a qualified immigration attorney or legal advisor.*
- **6.B.** For clarity, add the following: *Your financial situation may make you ineligible for the benefit you are now seeking or may call into question a benefit you have received in the past. The fee waiver determination is made separately from the adjudication of the benefit or status you are seeking.*
- **6.C.** There is an extra space before the period at the end of the paragraph.

Who Must Sign Form I-912?

We suggest adding Part D to indicate which parties must sign Form I-912 when the underlying petition is a jointly filed Form I-751, Petition to Remove the Conditions of Residence.

General Instructions for Completing Form I-912

- For Line 11, we suggest changing the language to read: *Enter your average monthly income from wages for all members of your household, including yourself.*
- After Line 12 there should be a new “Line 13” with instructions that read:

Line 13. USCIS will compare the total amount in Line 13 to the Federal Poverty Guidelines.

This would change the numbering for the rest of the form. Otherwise, it appears that the number from Line 12 (money that is not included in Line 16) will be the only income compared to the Federal Poverty Guidelines.

Conclusion

AILA appreciates the opportunity to comment on this information collection and we look forward to a continued dialogue with USCIS on issues concerning this important matter.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION