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IMMIGRATION
LAWYERS
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December 28, 2019

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

Submitted via www.regulations.gov
DHS Docket No. USCIS-2019-0010

Re: DHS Notice and Request for Comments: U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements

Dear Ms. Deshombres:

The American Immigration Lawyers Association (AILA) submits the following additional comment to supplement its previous comment submitted on December 23, 2019.¹ This additional comment offers feedback to USCIS on the Form I-193, Application for Waiver of Passport and/or Visa and refundable fee aspects of the proposed regulation that were not previously addressed in AILA's prior comment.

I. AILA Opposes the Proposed Fee Increase for Form I-193, Application for Waiver of Passport and/or Visa

DHS proposes increasing the fee for the Form I-193, Application for Waiver of Passport and/or Visa from \$585 to \$2,790, a 377 percent increase.² This is an outrageous fee considering the time and effort required to both fill out and adjudicate a form with just one-page of content and one page of instructions. The form itself is comprised of ten questions, most of which request basic information from the applicant.³ The proposed rule does not indicate that any change to the form has been made, nor does it document that the adjudication procedures required to complete the process justify such a dramatic increase. As such, it is perplexing why USCIS feels that such an exorbitant fee is required.

In addition, while the proposed rule does not provide historical data for use of the Form I-193, it does project that in 2019/2020 an average of 7,672 individuals will utilize this form in the

¹ See AILA and the Council Submit Comment Opposing Revisions to the USCIS Fee Schedule, available here: <https://www.aila.org/infonet/aila-council-comment-opposing-uscis-fee-schedule>

² 84 Fed. Reg. 62280

³ See I-193, Application for Waiver of Passport and/or Visa, available at: <https://www.uscis.gov/i-193>

upcoming year.⁴ This low number is largely due to the fact that many travelers are unaware that this waiver exists, until it is determined during an inspection that they do not have sufficient documentation. The form is offered in the discretion of the district director or an inspecting officer and commonly used in extenuating circumstances beyond the control of the applicant, such as having their documents stolen, lost or destroyed while traveling.

Given the low number of travelers able to utilize this service, and the exceptional circumstances that normally justify its use, it is highly unlikely that there would be a high incidence of fraud or abuse to justify such a high fee as a deterrent. Furthermore, completion of this application is not time intensive and is often done during the inspection process, meaning that these applications are not pending for extensive periods such as other forms.

Finally, given the fact that applicants are expected to pay this fee on the spot, based on protocols designated by respective filing locations, a \$2,790 fee is an unreasonable expectation levied against individuals seeking a remedy to complex and unforeseen issues. Considering the various payment instructions applicants may face various consequences, be it carrying \$2,790 in cash or limits on daily spending or international transactions placed on cards or accounts. On top of the dramatic increase in fees, this is an added stress on an applicant where none is required.

For all of these reasons, we urge USCIS to reconsider this drastic fee increase for this form, which is utilized in large part by those who are vulnerable or who have extenuating circumstances beyond their control, and which is completed relatively quickly by the agency in its discretion during inspection.

II. Proposal Concerning Non-Refundable Filing Fees

DHS is proposing to modify 8 CFR section 103.2(a)(1) to clarify that filing fees are generally non-refundable regardless of the result of the immigration benefit request or how much time the request requires to be adjudicated.⁵ AILA recommends that in the process of modifying 8 CFR section 103.2(a)(1) that DHS also clarify how USCIS will handle the refund of filing fees in situations of clear USCIS error. Specifically, AILA recommends that USCIS refund filing fees in situations where USCIS denies an application or petition for an immigration benefit based on clear USCIS error, and the agency's clearly erroneous denial is overturned by the applicant, beneficiary, or petitioner through the filing of a Form I-290B.

In the past, stakeholders could, in some cases, have a clearly erroneous denial addressed and overturned by sending an email directly to the applicable Service Center email box or the USCIS Service Center Operations Directorate (SCOPS), by contacting the USCIS Customer Service Center, or through liaison channels. Now, however, many of these avenues for stakeholders to address clear USCIS error have been foreclosed. In most cases, stakeholders are now limited to preparing and filing Form I-290B in order to address the agency's clearly erroneous denial, at a cost of \$675 dollars for the filing fee.

⁴ 84 Fed. Reg. 62280

⁵ 84 Fed. Reg. 62296

AILA recommends that USCIS fully refund the I-290B filing fee if the agency determines, after adjudicating the I-290B, that the underlying petition denial was the result of clear USCIS error. Such a refund policy would help mitigate the substantial burden in terms of time and cost that petitioners, applicants, and beneficiaries experience when USCIS denies an application or petition based on clear error. Such a measure will also help to hold the agency more accountable to its stakeholders and the public, ensure that the agency's decisions are clearly grounded in fact and law, and hopefully help to reduce the overall number of erroneous denials issued by USCIS.