



Freedom Network USA

November 26, 2018

Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Service
Department of Homeland Security
20 Massachusetts Ave., NW
Washington, DC 20529-2140

VIA www.regulations.gov

RE: USCIS-2010-0008, OMB Control Number 1615-0116; Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions

Dear Ms. Deshommes:

On behalf of Freedom Network USA (FNUSA), I am submitting this response to “U.S. Citizenship and Immigration Service Agency Information Collection Activity; Revision of Currently Approved Collection: Requests for Fee Waivers; Exemptions” published in the Federal Register on September 28, 2018 (hereinafter “proposed revisions”).¹ These proposed revisions relate to Form I-912; Request for Fee Waiver and accompanying memoranda.²

FNUSA, established in 2001, is a coalition of 57 non-governmental organizations and individuals that provide services to, and advocate for the rights of, trafficking survivors in the United States. As the largest network of providers working directly with trafficking survivors in the US, we are uniquely situated to evaluate the impact of US government efforts to address human trafficking, identify challenges, and propose solutions.

Trafficking survivors have, by definition, suffered a financial crime. Trafficking survivors have been robbed of their earned income by the traffickers who have exploited and abused them. Most foreign national trafficking survivors also have incurred debts in their home country while attempting to access a well-paid job in the US. Trafficking survivors have been exploited by

¹ U.S. Citizenship and Immigration Service. “Agency Information Collection Activity; Revision of Currently Approved Collection: Requests for Fee Waivers; Exemptions,” (hereinafter “Proposed Revisions”) Federal Register, Vol 83, No.189, September 28, 2018, pg. 49120, available at <https://www.gpo.gov/fdsys/pkg/FR-2018-09-28/pdf/2018-21101.pdf>

² USCIS is proposing revisions to existing fee waiver memo located at PM-602-0011.1 “Fee Waiver Guidelines Established by the Final Rule of the USCIS Fee Schedule: Revisions to Adjudicator Field Manual (AFM) Chapter 10.9, AFM Update AD11-26.(March 13, 2011), available at: <http://bit.ly/2011USCISFeeWaiverGuidelines> (hereinafter “Fee Waiver Guidelines”). We also object to USCIS making such substantive policy changes via form revision.

recruiters, employers, and poorly regulated labor sectors that regularly leave them in debt and struggling to support their families while pursuing justice.

In recognition of these challenges, Congress created the T and U Visas to ensure that survivors have access to immigration protections while they work with the justice system. We strongly oppose the proposed changes to the I-912 fee waiver application and instructions, as well as changes to the USCIS Policy Memorandum PM-602-0011.1.³ Instead, we call on USCIS to develop policies and procedures that ensure that immigrant survivors of human trafficking and other forms of violence and exploitation have equal access to critical, life saving protections.

The proposed revisions directly conflict with the will of Congress to provide access to protection without fees for humanitarian visas, violates the evidentiary standard established for these visas, and will cause significant burdens on survivors attempting to access protection and support law enforcement.

1. USCIS' Proposed Revisions Violate the Spirit and Letter of the Violence Against Women Act (VAWA) and the Trafficking Victims Protection Act (TVPA)

In the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Congress specifically created a waiver of all fees related to humanitarian visas through adjustment of status.⁴ Human trafficking survivors, almost without exception, have been denied regular paychecks. Few survivors have any documentation of their labor, and the documentation that they have is often fraudulent. This fraud is, in fact, a key element of the trafficking crime. Therefore, trafficking survivors are unlikely to have accurate documentation of their recent income.

Additionally, the humanitarian visas are subject to the "any credible evidence" standard.⁵ Survivors of human trafficking and other forms of exploitation and abuse are unlikely to have consistent evidence and documentation. They have had limited contact with friends, family, and community members. The perpetrators have threatened and assaulted survivors. The perpetrators almost uniformly take all documentation, including identity documents and documentation of their employment. Trafficking survivors often have no financial resources, and are reliant on nonprofit organizations for their daily needs, including housing and food.

Therefore, survivors must be allowed to provide whatever documentation they can. USCIS must not impose a higher evidentiary burden for the fee waiver than applies to the underlying application. USCIS, instead, proposes that applicants should be required to provide standard documentation such as tax transcripts to demonstrate their financial need. Human trafficking survivors are unlikely to have tax transcripts, to have filed tax returns, or to even understand what USCIS is requesting them to provide. Currently, trafficking survivors often rely on

³ Proposed Revisions at 49121.

⁴ Pub. L. 110-457, section 201(d)(7).

⁵ See, for example, INA 204(a)(1)(J), INA 214(p)(4)8, and CFR §214.11(d)(2)(ii).

statements from nonprofits, or documentation of public benefits that are being provided from state or local programs. These sources are able to interview survivors, review any documentation that they have, and make an assessment of the survivor's credibility. These alternatives are more realistically available to trafficking survivors than a tax transcript.

2. The Proposed Revisions will Impose Additional Barriers on Trafficking Survivors

Foreign national survivors of human trafficking and other forms of exploitation and abuse face tremendous barriers to accessing services and support. Many survivors have developed reasonable fears of law enforcement and government agencies due to their experiences with abusive governments in their home countries. Abusers and traffickers rely on and exploit these fears, telling their victims that the US government will not protect them and that they will face even worse abuse in their home country. Additionally, few foreign nationals understand the US legal and social services system and know that protections and services exist and how to access them. Recently, trafficking survivors are expressing increased fear of the US justice system, and are even less likely to come forward for services and protection.⁶

For these and other reasons, USCIS has never come close to approving the statutory maximum of 5,000 T Visas in a fiscal year. The highest number approved was under 900, in 2013, and has been dropping ever since.⁷ Therefore, it is especially concerning that USCIS would be increasing the barriers to fee waivers for ancillary-forms like work permits and admissibility waivers for trafficking survivors. As discussed above, few survivors of human trafficking have been paid a fair wage, have evidence of their wages, or have filed tax returns. For these reasons, flexible fee waiver guidance and practice have been and are absolutely essential for immigrant survivors to access critical protections created by VAWA and the TVPA.

3. The Proposed Revisions will Impose Additional Barriers on Providers Representing Trafficking Survivors

The 'any credible evidence' standard has allowed USCIS to review and approve fee waivers for over 20 years, based on the individual circumstances of crime victim survivors and their dependents. Survivors may have some documentary evidence of their trafficking, but may have no evidence of their economic status. Additionally, they may be filing for multiple family members, and gathering documentation from family members who are not in the US is very difficult.

The T Visa, for example, allows for certain trafficking victims to file applications for their parents, spouse, children, siblings as dependent T Visas. Adding additional filing requirements for each family member, as proposed in the revisions, will cause additional delays and burdens

⁶ See, for example, CAST, FNUSA, and Polaris' report 2017 Social Service, Advocate and Legal Service Survey Regarding Immigrant Survivors of Human Trafficking

<https://freedomnetworkusa.org/app/uploads/2018/01/ImmigrationSurveyReportFinal.pdf>

⁷ USCIS data on T Visa approvals accessed at <https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-914-application-t-nonimmigrant-status>

on providers and survivors, leading to longer delays in filing for immigration relief. These delays have real consequences on survivors and their families. Congress has recognized that family members often face threats of serious harm in their home countries.⁸ Adding additional filing requirements in situations that are so dangerous, when the requested documentation is so unlikely to be available, is both counter to Congressional intent and dangerous to public safety.

Conclusion

Ensuring equal access to the protections Congress created is crucial, especially for domestic and sexual violence survivors who may have few financial resources of their own. USCIS should not bypass Congressional intent and undermine these laws through fee waiver policy changes. Fee waivers provide an essential pathway for survivors to seek justice and safety.

FNUSA urges USCIS to withdraw the proposed revisions and to, instead, expand the types of documentary evidence accepted for establishing eligibility for a fee waiver so that survivors of domestic violence, sexual assault and human trafficking may equally access these protections. Strong, safe families lead to stronger, safer communities. Further restricting access to these protections puts both at risk.

I can be reached at jean@freedomnetworkusa.org if you have any questions or need any further information or explanation.

Sincerely,



Jean Bruggeman
Executive Director
Freedom Network USA

⁸ See 22 USC 7105(c)(3)(B).