



Freedom Network USA

May 6, 2019

USCIS Desk Officer
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

VIA dhsdeskofficer@omb.eop.gov

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

Dear USCIS Desk Officer:

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” published in the Federal Register on April 5, 2019 for an additional 30 day comment period (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 68 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 84, No.66, April 5, 2019, pg. 13687, available at <https://www.federalregister.gov/documents/2019/04/05/2019-06657/agency-information-collection-activities-revision-of-a-currently-approved-collection-request-for-fee>

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. In fact, the OMB must reject these proposals as they will create significant, unnecessary burdens in contravention of OMB regulations,³ especially for survivors of human trafficking. 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 Create Barriers to Protection in Contradiction 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. For those reasons, they are also unlikely to have filed taxes. Therefore, trafficking survivors are unlikely to have "primary documentation," such as pay stubs or tax transcripts.

For over 20 years, USCIS has followed Congress' mandate, using a flexible standard for fee waivers submitted by survivors, ensuring they did not deter or deny eligible survivor applications. While the USCIS Response to Public Comments acknowledges the importance of this flexible response,⁵ it does not go far enough. For instance, USCIS' proposed fee waiver instructions would exempt VAWA self-petitioners, U and T Visa applicants from providing

³ 5 CFR 1350.5(d)(1)(i) (indicating to obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that the proposed collection of information is the least burdensome necessary for the proper performance of the agency's functions to comply with legal requirements and achieve program objectives)

⁴ Pub. L. 110-457, section 201(d)(7).

⁵ "USCIS Responses to Public Comments on I-912 Revision 60-day Federal Register Notice" (April 5, 2019), available at <https://www.regulations.gov/document?D=USCIS-2010-0008-1243> (hereinafter "USCIS Response") Response to comment 19 indicates, "USCIS understands that the VAWA, T and U population may have difficulty in obtaining the required documentation due to their alleged victimization and that those filers may need to apply a flexible standard in the types of documentation they may submit with their fee waiver request, "

documentation of their spouse's income in their fee waiver application.⁶ However, the revised form does not include this exemption clearly stated in the form. Applicants for humanitarian based applications should simply be directed to skip all questions related to income derived from family members. Additionally, while the comments and revised form instructions note that alternative forms of proof will be accepted for applications related to VAWA, T and U Visa applications, the comments state that "Adjudicators of these benefits and their fee waivers may consider whatever evidence is provided."⁷ It should be clear that adjudicators **will** consider all evidence provided for these applications.

It must also be noted that survivors of human trafficking also file other applications, such as the I-90, I-131, I-290B, and others. They may or may not have filed a VAWA, T or U Visa application, because they may have been trafficked while in TPS, DACA, or LPR status. Immigrants are also often victims of wage theft, labor exploitation, and other labor violations that do not rise to the level of labor trafficking, and thus may pursue other immigration remedies, but will still be unable to produce pay stubs or tax transcripts to document their eligibility for a fee waiver. These survivors should also be explicitly allowed to provide alternative evidence of their eligibility and USCIS should be explicitly **required** to consider all evidence provided for these applications.

2. USCIS Should Allow a Single I-912 for Concurrently Filed Petitions from Family Members

The requirement that each family member must supply his or her own I-912 fee waiver is needlessly duplicative and burdensome. Trafficking survivors are permitted to protect their family members via T derivative visas. These visas are available to spouses, children, siblings, and parents of certain T Visa recipients. These families may be concurrently filing I-192s or other forms for multiple family members. While USCIS may need copies of the household I-912 for each application, it is unnecessary for each family member to complete the form differently, as the key information (household income) will be the same. Therefore, USCIS should accept copies of the primary I-912 for each concurrently filed application.

3. Evidence of Receipt of Means-Tested Benefits Should be Accepted Evidence of Fee Waiver Eligibility

Means-tested benefits are often essential for supporting survivors' basic economic security,⁸ and human trafficking survivors have been explicitly provided access to a wide range of benefits to ensure their access to vital services in the aftermath of the trafficking crime. Contrary to

⁶ See Instructions to Request Fee Waiver 3.25.2019, available at <https://www.regulations.gov/document?D=USCIS-2010-0008-1246>

⁷ USCIS Response at p 7.

⁸ See Shaina Goodman. NCRDV "The Difference between Surviving and Not Surviving: Public Benefits Programs and Domestic and Sexual Violence Victims' Economic Security" (January 2018), available at https://vawnet.org/sites/default/files/assets/files/2018-10/NRCDDV-TheDifferenceBetweenSurvivingandNotSurviving-UpdatedOct2018_0.pdf

USCIS' assertions,⁹ receipt of these benefits are a simple, clear form of proof to document financial hardship and lack of available income to pay immigration fees. Eliminating this straightforward proof of financial hardship lacks practical utility,¹⁰ as receipt of a means-tested benefit is an accurate, valid and reliable method to demonstrate financial hardship.

USCIS indicates that “applicant who receives a means-tested benefit must generally provide evidence of income to the relevant agency. Therefore, applicants who receive a means tested benefit should have income documentation readily available to provide to USCIS.”¹¹ However, as noted above, trafficking survivors generally have no such proof. Instead, trafficking survivors are generally interviewed by attorneys or law enforcement agents who are anti-trafficking experts to determine if they are trafficking survivors. Their eligibility for services and benefits is often based solely on these confidential interviews.

USCIS states that applicants filing forms related to VAWA, T and U Visas must “describe your situation in sufficient detail ... to substantiate your inability to pay as well as your inability to obtain the required documentation. Additionally, provide any available documentation of your income such as pay stubs or affidavits ...”¹² However, this request is so vague as to be problematic. First, it seems to suggest that trafficking survivors must describe their trafficking situation in sufficient detail to justify their lack of documentation. In most cases, that explanation will be included in the underlying T Visa application and restating that information in the I-912 is duplicative and burdensome on the trafficking survivor, any agency or attorney representing the survivor, and on USCIS adjudicators. Additionally, this creates additional likelihood of inconsistent USCIS adjudications. There should be no need for an USCIS adjudicator to consider the applicant’s (or their family members, in the case of a derivative) trafficking experience in the course of adjudicating a fee waiver. This step would be duplicative and a waste of USCIS resources. Instead, proof of receipt of services or means-tested benefits based on the primary applicant’s status as a trafficking survivor should be sufficient and allow USCIS resources to focus on the adjudication of the underlying applications.

Conclusion

Ensuring equal access to the protections Congress created is crucial, especially for human trafficking survivors who may have few financial resources. USCIS should not bypass

⁹ USCIS justifies the elimination of the means-tested benefit criteria because it “has found that the various income levels used in states to grant a means tested benefit result in inconsistent income levels being used to determine eligibility for a fee waiver.” Proposed Revisions at 49121. See also USCIS Response, Response to Comment 2.

¹⁰ See note 7 *supra*. 5 CFR 1320.3 (defining “practical utility” as means the actual, not merely the theoretical or potential, usefulness of information to or for an agency, taking into account its accuracy, validity, adequacy, and reliability, and the agency's ability to process the information it collects (or a person's ability to receive and process that which is disclosed, in the case of a third-party or public disclosure) in a useful and timely fashion.) See also 5 CFR 1350.5(d)(1)(iii)

¹¹ USCIS Response, Response to Comment 7.

¹² See Instructions to Request Fee Waiver 3.25.2019, available at <https://www.regulations.gov/document?D=USCIS-2010-0008-1246>

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 human trafficking may 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,

A handwritten signature in black ink that reads "Jean Bruggeman". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Jean Bruggeman
Executive Director
Freedom Network USA