HARVARD IMMIGRATION AND REFUGEE CLINICAL PROGRAM

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Submitted via www.regulations.gov

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

Re: OMB Control Number 1615-0116; United States Citizenship and Immigration Services, Docket ID USCIS-2010-0008

Dear Ms. Deshommes,

We are writing on behalf of the Harvard Immigration and Refugee Clinical Program (HIRC) and the Harvard Law School Immigration Project (HIP) in Cambridge, Massachusetts to express our strong opposition to the United States Citizenship and Immigration Services' ("USCIS") Proposed Change to Form I-912, *Request for Fee Waiver* (the "Proposed Change") related to removing receipt of a means-tested benefit as a category of eligibility for a fee waiver.

We, the signatories of this letter, are immigration lawyers and law students from HIRC and HIP. Founded in 1984, HIRC was one of the first immigration and refugee clinics in the United States. In partnership with Greater Boston Legal Services (GBLS), the largest legal services provider in New England, HIRC has represented thousands of individuals from around the world in their efforts to gain humanitarian protections, like asylum.

HIP is a student-practice organization under the supervision of HIRC, which provides law students with the opportunity to gain practical, hands-on legal experience. HIP represents clients seeking release from detention in Massachusetts, promotes policy reform, and provides representation to refugees and asylees who are seeking family reunification and legal residency.

HIRC and HIP represent individuals who have been granted asylum and depend on I-912 fee waivers to cover their costly I-485 *Applications to Adjust Status* so that they can become Legal Permanent Residents ("LPRs"). HIRC and HIP oppose the Proposed Change for two main reasons: (1) the Proposed Change will create duplicative work for USCIS and undermine USCIS's efficiency and exacerbate the backlog; and (2) the Proposed Change places an undue burden on asylees, a uniquely at-risk and vulnerable immigrant population.

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I. The Proposed Change will exacerbate the processing time backlog and undermine USCIS's performance and efficiency.

The current Form I-912 allows applicants to qualify for fee waivers by proving that they receive a means-tested benefit, such as Supplemental Nutrition Assistance Program ("SNAP", formerly the Food Stamps Program), Medicaid, Temporary Assistance for Needy Families ("TANF") etc. To qualify for these state and federal assistance programs, applicants must have already satisfied rigorous eligibility requirements, and provided significant evidence to prove their need and low-income status to the relevant state or government agency. In other words, *I-912 applicants who receive means-tested benefits have already proven that they are low-income or suffer from financial hardship when they apply for their fee waivers* because they have successfully completed the verification process for that means-tested benefit.

Although USCIS asserts that the revised Form I-912 "streamlines and expedites USCIS's review, approval, or denial of the fee waiver," it in fact does the opposite. Eliminating receipt of a means-tested benefit as a category of eligibility for I-912 fee waivers and requiring applicants to instead independently prove either low-income or financial hardship would in fact *slow* USCIS's review of fee waiver requests because it unnecessarily requires USCIS officers to redo time-consuming analyses that have already been thoroughly performed by other state and federal officers.

For example, in Massachusetts, to apply for SNAP benefits, an applicant *must* provide evidence to verify his or her income and expenses.[1] Required Massachusetts SNAP verifications include (1) pay stubs or a letter from an employer showing gross income and number of hours worked, and (2) award letters, checks, or other records of payment from any other form of income, including workers' compensation, veterans' benefits, pensions, child support, etc.[2] Additionally, the maximum gross monthly income standard for SNAP eligibility is 130% of the Federal Poverty Level.[3] Current USCIS poverty guidelines for I-912 eligibility are set at 150% of the Federal Poverty Level.[4] This means that by virtue of qualifying for SNAP in Massachusetts, a fee waiver applicant who receives that benefit has *necessarily demonstrated sufficiently low income to satisfy the standard that USCIS would require for granting an income-based fee waiver*.

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[1] MASSACHUSETTS DEPARTMENT OF TRANSITIONAL ASSISTANCE, *Apply for SNAP Benefits*, (2018), https://www.mass.gov/how-to/apply-for-snap-benefits-food-stamps.

[2] MASSACHUSETTS DEPARTMENT OF TRANSITIONAL ASSISTANCE, *SNAP Verifications: what information you need to provide*, (2018), https://www.mass.gov/service-details/snap-verifications-what-information-you-need-to-provide.

[3] MASSACHUSETTS DEPARTMENT OF TRANSITIONAL ASSISTANCE, *Maximum Gross Monthly Income Standards as referenced at 106 CMR 364.950*, (Effective 10/1/2017), https://www.mass.gov/files/documents/2017/10/20/c-snap-364-950.pdf.

[4] UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, *Form I-912P Supplement, 2018 HHS Poverty Guidelines for Fee Waiver Request*, (Jan. 13, 2018), https://www.uscis.gov/i-912p.

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USCIS asserts 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." However, that is not the case for SNAP where the gross monthly income limits are calculated at 130% of the Federal Poverty Guidelines *across states*.[5] Thus, eliminating receipt of a means-tested benefit, like SNAP, as a category of eligibility for an I-912 fee waiver not only places an undue burden on the applicant, but also requires USCIS officers to waste time and resources redoing work that has already been done.

The stated goal of USCIS is to "[a]dminister the nation's lawful immigration system, safeguarding its integrity and promise *by efficiently and fairly* adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values" (emphasis added). The Proposed Change does not forward these goals. In fact, it severely and unnecessarily *inhibits* USCIS's ability to "efficiently and fairly adjudicate" I-912 requests by drowning its officers in extensive document review that has already been completed by another competent state or federal officer.

II. The Proposed Change places an undue burden on asylees, a uniquely at-risk and vulnerable immigrant population.

The majority of HIRC's clients are individuals who have come to the United States seeking asylum. By definition, an asylum seeker has fled his or her home country because of persecution or a well-founded fear of persecution on account of his or her race, religion, nationality, membership in a particular social group, or political opinion.[6] Many asylum seekers suffer permanent physical or emotional disabilities as a result of their persecution, making them uniquely vulnerable. An asylum applicant who perseveres through the time-consuming, emotionally draining, and rigorous process of winning asylum eventually has the opportunity to adjust to LPR status.

In order to adjust, however, asylees must submit the I-485 *Application to Adjust Status*, and either pay the costly fees associated with it, or apply for an I-912 fee waiver. Many of HIRC and HIP asylee clients are single mothers with one or more children who typically make minimum wage. The total fees, which include the I-485 application fee, plus an additional biometrics fee, add up to $1,975 for a family consisting of a mother and a child who is under the age of 14. Thus, both HIRC and HIP represent asylees who depend on the I-912 fee waivers to cover the cost of their I-485 application fees.

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[5] *See* THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOOD AND NUTRITION SERVICE, *The Supplemental Nutrition Assistance Program (SNAP): What are SNAP income limits?* (Oct. 1, 2018), https://www.fns.usda.gov/snap/eligibility; *see also* THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOOD AND NUTRITION SERVICE, *Supplemental Nutrition Assistance Program (SNAP) Fiscal Year (FY) 2019 Income Eligibility Standards* (Oct. 1, 2018), https://fns-prod.azureedge.net/sites/default/files/snap/FY19-Income-Eligibility-Standards.pdf.

[6] *See* U.S.C. § 1101(a) (42).

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Eliminating receipt of a means-tested benefit as a category of eligibility for I-912 fee waivers and requiring all applicants to independently prove either low-income or financial hardship places an undue burden on asylees who already qualify for means-tested benefits. In our experience the income-based fee waiver greatly increases the processing time of the application, forcing asylees to needlessly wait longer for their green cards. Many asylees have already waited years for their asylum applications to be adjudicated. Thus, the Proposed Change places an undue burden on asylees, who are both exceptionally vulnerable and deserving of fair and efficient adjudication of their applications.

III. Conclusion

For the reasons detailed above, USCIS should immediately withdraw their current Proposed Change, and dedicate their efforts to advancing policies that advance their stated goal of administering "the nation's lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits."

Thank you for the opportunity to submit comments. Please do not hesitate to contact HIRC or HIP for further information.

Sincerely,

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