May 19, 2021

Submitted via www.regulations.gov

Tracy L. Renaud
Senior Official Performing the Duties of the Director,
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Ave. NW
Washington, DC 20529

Re: Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services – Request for public input, DHS Docket No. USCIS-2021-0004; RIN 1615-ZB87

Dear Ms. Renaud,

On behalf of the Division of Immigrant and Refugee Services for Catholic Charities Community Services, Archdiocese of New York, we write this comment on USCIS' request for input on how it can reduce administrative and other barriers within its regulations and policies that impede access to USCIS immigration benefits and the fair, efficient adjudications of these benefits.

Since 1949, Catholic Charities Community Services (CCCS) has been the direct service provider of the Catholic Charities of the Archdiocese of New York, serving over 150,000 individuals annually. CCCS is committed to welcoming New York's immigrants—including families seeking to reunify, children, refugees, the undocumented, and workers. Our Division of Immigrant and Refugee Services reaches more than 75,000 individuals across New York each year, through work done in a number of legal, integration, informational, and resettlement initiatives.

Based on our decades of experience representing clients in front of USCIS, CCCS has highlighted below some of the inefficient policies and practices that are impeding access to USCIS immigration benefits and the fair, efficient adjudications of these benefits.

Eliminate case processing delays. At the top of the list of barriers impeding access to immigration benefits at USCIS are the crisis-level case processing delays and an ever-growing immigration backlog. In recent years, these challenges have been compounded by inefficient

policies and practices that needlessly delay adjudications and divert resources away from the agency's core function of service-oriented adjudications. Some examples are backlogs in humanitarian cases – especially, affirmative asylum cases/VAWA and VAWA Adjustment of status, excessive requests for evidence by USCIS including requesting evidence not required by regulations, preventing multiple applications to be submitted for an immigration benefit, forcing the expense and administrative burden of the 290B[1] , enhanced administrative burden and inconsistency in determining whether some should receive a benefit as an exercise of discretion and the increased burdens placed on asylum applicants seeking work authorization.

Eliminate excessively broad requests for documents relating to an applicant's arrest. USCIS has been including boilerplate language in Requests for Evidence relating to an applicant's prior arrest that request underlying documents from the criminal case such as arrest reports, plea agreements, and sentencing information that applicant is required to provide in response. Often this information is not readily available, especially if the arrest took place in a different jurisdiction or many years ago. This places an undue burden on an applicant to provide information that should not be deemed essential for the adjudication, especially in a situation where it does not impact eligibility and the arrest was for a relatively minor offense or involved charges that were dismissed. CCCS recommends that USCIS look towards the certificate of disposition for information about the outcome of an arrest, and minimize requests for additional underlying documents from the criminal case as they are often not relevant for purposes of eligibility or discretion.

Eliminate inconsistent adjudication with enhanced training and oversight of adjudicators. Inconsistent discretion in adjudication by USCIS officers is rampant and stakeholders have almost no recourse to address inconsistencies. CCCS recommends training of all USCIS officers including training on implicit bias, implementation of specialized adjudicators for vulnerable populations, and accountability measures relating to discretion.

Increase validity of Employment Authorization Document (EAD). Requiring renewal of EADs during the pendency of a relief application is cost prohibitive, creates a burden on nonprofits, creates inefficiencies in adjudication and negatively impacts administrative capacity of USCIS. CCCS recommends that EADs be issued for the duration of the benefit being sought or, if that is not administratively feasible, for a minimum of two years.

Improve stakeholder engagement with USCIS. While USCIS offers a suite of tools to supposedly make customer service more efficient and streamlined, the best option for updated case information would be ongoing and effective communication with the USCIS Contact Center. Unfortunately, the USCIS Contact Center is burdensome and often unhelpful. If there are delays or issues with a particular case, the Contact Center is ineffective in resolving such issues. The automated call system options are overly complicated and designed such that it is nearly impossible to get an actual representative on the line. The representatives are often not able to assist with case-specific or time-sensitive issues, other than providing general information (examples of such issues that have come up recently: if an applicant needs to reschedule an interview at the last minute due to an emergency, or if USCIS has made a clear error in denying a

[1] The N600 is one example

case and we are trying to request a Service Motion to Reopen rather than having the applicant pay for a Form I-290B when it was clearly a mistake).

Although the USCIS Policy Manual stipulates a multi-tiered structure of responding to requests to escalate cases Tier 1 staff members cannot answer,[2] there is no information about when to expect the Tier 2 officer to respond to the request. If the call is missed, there is no way to get back in line other than start over, leaving applicants and legal reps without a meaningful way to get information regarding a pending case.

With changes in policies regarding COVID-19, instructions have been inconsistent regarding rescheduling of appointments, in particular, oath ceremonies. Here are some recent issues Catholic Charities Community Services, Archdiocese of New York has seen:

- Notices for Oath Ceremonies state that is a client has been out of the country in the previous two weeks, they need to call the Contact Center to reschedule. However, operators at the Contact Center stated that they could not reschedule oath ceremonies over the phone, and a request had to be in writing. The local New York USCIS office does not accept documentation on site, and a subsequent mailing was not opened and processed in time, resulting in the client receive a notice of nonappearance.
- In current practice, as interviews are being scheduled a faster rate, the lag time between the interview schedule date and notification of said date is limited. A reschedule request takes 30 days to process and this date often comes after the original interview. For clients who do not have status, such as those with a pending Adjustment of Status, or pending Removal of Conditions on a Permanent Resident Card, "missing" their interview can be extremely detrimental because they may get referred to deportation proceedings and presented with a subsequent NTA, at the discretion of the officer. In one case, the applicant was unable to come back in time for the mandatory quarantine time frame before an interview. The applicant called the USCIS Contact Center several times to request a reschedule and did not receive a new date in time for the originally scheduled interview. Therefore, the case was denied, and the case was referred to EOIR. The applicant attempted to call the USCIS Contact Center, and they could not assist her as 30 days had not yet passed. The applicant attempted to work with a local liaison to USCIS to assist with information on the case, to no avail. The applicant is now pursuing the Ombudsman for assistance. What should have been a simple reschedule for a straightforward interview, is now a two-pronged advocacy effort, which requires actions by the Ombudsman and EOIR to close her case, which is neither administratively effective nor cost efficient for agencies involved.
- There is no recourse to follow up regarding requests to reopen administratively closed cases by USCIS. Contact Center operators cannot answer questions regarding these reopen requests, and the only contact information is a PO Box without any further contact information or a receipt notice showing proof a request to reopen was issued.

Lastly, there is inconsistent practice of not allowing legal representative with a G-28 on file to request information singularly without the client on the line, in direct conflict with the USCIS Policy Manual that states:

[2] USCIS Policy Manual Chapter 3, Part C.1 USCIS Contact Center https://www.uscis.gov/policy-manual/volume-1-part-a-chapter-3

> Case-specific information may be provided to the applicant and the *applicant's attorney or authorized representative (with a properly completed Notice of Entry Appearance as Attorney or Accredited Representative (Form G-28) on file) after the inquirer's identity has been verified* (emphasis added).[3]

CCCS recommends that USCIS provide a process through which counsel can communicate directly with the local field office or restore the ability to email field office directors about individual case issues. Also restore INFOPASS appointments.

Improve the process for reopening cases after administrative closure by USCIS. The current process for reopening is to send the reopening request to a mailing address without any other contact information. Upon submission, no receipt notice is issued. The result is that in order to assess reopening status, advocates are left only to send inquiry. These current practices cause adjudicatory inefficiencies and negatively impact vulnerable immigrants such as Special Immigrant Juveniles. CCCS recommends reviewing the process to include issuing a receipt notice and providing contact information for further case status inquiries.

Improve protocols for rescheduling requests. The processing times for an interview rescheduling request is 30 days, even if the 30 days is after the scheduled interview. These delays are causing cases to be denied and referred to EOIR while the reschedule request is still pending. CCCS recommends that USCIS create a process that would prevent a case from being denied and referred to EOIR when a rescheduling request is pending.

Improve procedures for scheduling (or rescheduling) biometrics appointments. Currently, if an applicant misses a biometrics appointment the only way to reschedule is to do so in writing to a central ASC address in Alexandria, VA, but it can take months to get a new appointment and there is no meaningful way to follow up. CCCS has also had issues where biometrics appointments have not been scheduled by USCIS for defensive asylum applicants or derivatives after we have submitted a copy of the defensive I-589 to USCIS per the instructions. It is unclear how to follow up in that situation, and biometrics are needed in order to proceed with the asylum case in Immigration Court. USCIS previously and successfully had a contact at the District ASC level who could be contacted to reschedule appointments. CCCS recommends that this process be reinstated. If this is not feasible, CCCS recommends allowing the Contact Center to reschedule biometrics appointments over the phone and provide a way to follow up when a biometrics appointment has not been originally generated.

Improve interpretation services at USCIS interviews. Providing clear and consistent guidance on interpretation requirements and ensuring that USCIS provides interpretation at interviews, at a minimum for rare languages.

Reduce delays in issuing green cards following a grant in removal proceedings. Currently the process for getting a green card produced following a grant by an Immigration Judge often involves

[3] USCIS Policy Manual Chapter 7, Part H.2 USCIS Assistance https://www.uscis.gov/policy-manual/volume-1-part-a-chapter-7

delays and it is unclear who counsel should follow up with and how to do so when the green card is not produced in a timely manner following an InfoPass appointment. CCCS recommends that USCIS institute a clear process for the issuance of green cards following a grant in court and provide a way to follow up on delays.

Create a process for attorneys to submit a new G-28 for a pending case. Currently there is no process to submit a new G-28 when there is a change in counsel (even from the same agency/firm) which means that the Contact Center will not respond to new counsel's case inquiry. CCCS recommends that USCIS create a centralized process through which counsel can submit a new Form G-28 if necessary.

Reduce inconsistencies in adjudication and general suspicion/hostility toward N-648s. N-648s are not adjudicated consistently. This is apparent when an N-648 is rejected in a first interview with one officer, and a substantially similar N-648 is presented in the second re-interview with a new officer and is accepted without any issues. Officers often provide vague or confusing reasons either orally or in writing through a subsequent RFE as to why they are not accepting the N-648, even when the N-648 has been adequately completed by a qualifying medical professional with sufficient detail. There is no meaningful ability to appeal an officer's decision to deny an N-648 – when a supervisor is called during an interview, he/she uniformly confirms the offer's denial. Officers often treat our disabled clients who are applying with an N-648 with suspicion or even outright hostility as though they are trying to perpetrate fraud. CCCS recommends that USCIS provide better training to officers on adjudicating N-648s, such that they treat applicants professionally and do not second-guess the conclusions of qualified medical professionals or maintain an overly high standard when the form has been completed adequately and with sufficient detail.

Reduce wait time for scheduled interviews and misplaced files at interviews. Long Interview wait times continue to be an issue at 26 Federal Plaza, and applicants and counsel may wait more than an hour to be called for an interview, with no explanation for the delay or idea of when the case will be called. Missing files at the time of the interview also appears to be an issue impacting our clients. At CCCS we had an attorney appear for interviews at 26 Federal Plaza with her clients, waited in a crowded waiting room for over an hour, and then been called to the window to be told by an officer that USCIS cannot find the file and the interview will need to be rescheduled for another day. This has happened to this attorney twice recently, in different cases. CCCS' clients missed work, had to arrange for childcare, and in one case traveled two hours to attend, only to told they would need to do it all over again another day. CCCS recommends that USCIS should improve its file management system and proactively confirm ahead of a case's interview date that the file is accounted for and if it is not, contact the applicant in advance so he/she does not appear unnecessarily for an interview that cannot go forward.

Correct USCIS regulations and/or processes that disproportionately burden disadvantaged, vulnerable, or marginalized communities.

A. Naturalization:

- 8 CFR § 312.1 Literacy Requirements
- 8 CFR § 312.2. Knowledge of history and government of the United States

The regulations as written are inconsistent with the statute and such inconsistency impacts actual adjudication of applications for naturalization. Although the statute does mandate a basic literacy test, and a history and a government test, nowhere in the statute does it mandate that the history and government examination be conducted in English, as is set out in the regulation. The English examination, as conducted, also exceeds that very limited scope envisioned by the statute. This disparate application 1) disproportionately burdens communities who are low-income, who have historically lacked access to education, and/or who have undiagnosed disabilities due to historical lack of access to quality healthcare or cultural stigma; 2) is administratively burdensome and not cost effective for USCIS; and 3) places both USCIS employees and applicants at risk during the current COVID-19 pandemic due to required return interview appointments.

The statute separates the knowledge requirements of naturalization into two subsections and states that:

> (a) No person… shall be naturalized… who cannot demonstrate-
>
> 1) an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language: *Provided, that the requirements of this paragraph relating to ability to read and write shall be met if the applicant can read or write simple words and phrases* to the end that a reasonable test of his literacy shall be made and that no extraordinary or unreasonable condition shall be imposed upon the applicant **[**emphasis added]; and
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> 2) a knowledge and understanding of the fundamentals of the history, and the principles and form of government, of the United States.[4]

First, in instances where applicants do not meet language or disability exemptions, and otherwise qualify for naturalization, adjudicators currently test applicants on both language ability and civics and history in English per the regulation[5]. However, the statute only requires that applicants demonstrate knowledge and understanding of U.S. history and government and it does not explicitly require that such demonstration be in English. In fact, although applicants are already extensively tested on their English ability through review of the Form N-400, on which the language is quite complex, through general conversation during the interview, this in of itself goes beyond the requirements of the statute which only asks that an applicant be able to "read or write simple words and phrases…" In fact, the statute allows the applicant to demonstrate an understanding by being able to read OR write the words and phrases. Additionally, the regulation allows the officer conducting the examination to choose to complete the history and government questions with an interpreter in the applicant's native language if the officer "determines that an inaccurate or incomplete record of examination would result if the examination on technical or complex issues were conducted in English"[6] If the true test of knowledge enumerated in subsection (a)(2) of the statute is simply U.S. civics and history, there is no reason why the regulations should include an additional burden that requires applicants to demonstrate this knowledge in English, which would likely be the imposition of extraordinary or unreasonable conditions warned against in the English testing section of the statute. In fact, a more accurate demonstration of their knowledge of history and government would most certainly be in their native language.

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[4] 8 USC § 1423

[5] 8 CFR § 312.2

[6] 8 CFR § 312.2(c)(ii); This implicitly acknowledges that the history and government examination need not be conducted in English.

Considering the inconsistency between the statute and the regulation, the fact that applicants should be sufficiently tested on their English ability by the reading or writing of simple words and phrases, and the allowance within the regulation for officers to exercise authority in allowing applicants to complete the history and government portion with an interpreter, USCIS should modify the regulations to restrict the examination of English to the bounds set out by the statute and to regularly allow applicants to complete the history and government portion of the exam in the language most comfortable for them as a true test of their knowledge.
The fact that the regulations and current practice of USCIS are inconsistent with the clear mandates of the statute disproportionately burdens low-income communities and communities who historically lack access to education. In our experience, the individuals with whom Catholic Charities has worked with can communicate and understand English, to the degree required by the statute, and can meet the civics and history requirements, by studying the questions via recordings or with the help of their family members. However, when adjudicators force these applicants to perform the history and government exam in English, they go beyond the requirements of the statute for that examination and, additionally, are imposing the same extraordinary and unreasonable conditions, regarding the demonstration of English prohibited by the statute.

In these situations, legal service providers are forced to grapple with how to advise these applicants on their eligibility, while considering the historical context and present-day realities of inequitable access to education and day to day priorities of low-income clients. USCIS could suggest that legal service providers advise clients of nearby adult literacy education programs, citizenship classes, or English classes, in order to meet this burden. However, this assumes that such programs are accessible: (1) the program is free or low-cost, in other words, it is financially accessible, (2) in regards to scheduling for communities often working hourly jobs based on inflexible shift schedules, that the applicant could reasonably attend within the constraints of their other more pressing priorities, and (3) where programs are held virtually, considering whether or not the applicant has access to quality and consistent internet services, if at all.

For our low-income clients, accessing classes to increase their literacy level to a degree currently required USCIS, in contravention of statutory requirements, is simply not an option, leaving these particular community members out from accessing the benefit of naturalization. USCIS should modify the regulations to comport with the requirements of the statute in regard to literacy.

As a result of the inconsistencies between the regulations and the statute in the above-named instances, USCIS adjudicators have required applicants to reappear for second interviews or simply to complete the section of the interview that the adjudicator deemed was incomplete during the first appointment. Especially over the last year, during the COVID-19 pandemic, this has placed undue burden on low-income applicants who either lost their job and must now pay for additional transportation to the local field office, or who rely on their hourly employment and must request additional time off to placate the adjudicators need for additional proof of knowledge. It places undue burden on applicants with disabilities, many of whom are at higher risk of either contracting, or having serious complications from COVID-19, and who also must coordinate travel or caretaker assistance to the field office a second time. It also burdens fellow USCIS employees during a time when offices are attempting to manage the number of people in the space, by requiring the same person to appear multiple times. Requiring an applicant to return for a second

interview because of a decision made based on inaccurate regulation or the inconsistent application of the regulation means that that interview slot is now not available to another applicant. At a time when appointment availability is already limited by COVID-19 restrictions, USCIS would certainly be able to adjudicate and close more cases if the appointment times they did have were effectively utilized. Had the regulation reflected the requirements of the statute and have been properly and consistently applied in the first place, these repeat trips and burden to both the community and USCIS staff could be avoided.
CCCS recommends that the regulations be modified to meet statutory limits on testing for both the English and History and Government tests.

Additionally, the current civics exam disproportionately impacts vulnerable populations – requires literacy and some level of education access. CCCS recommends that the test be revised and that the revision process must be fully transparent with materials developed in conjunction with educators and field testing administered through educators and other stakeholders involved in civics education and naturalization support.

B. Family-Based Petition & Adjustment of Status

- 8 CFR § 106.2, Fees
- 8 CFR § 106.3, Fee Waivers and Exemptions

The above regulations together disproportionately affect low-income and Black, Indigenous, and People of Color (BIPOC) immigrant communities who have historically been prevented from accumulating generational wealth and who are still systematically prevented from accessing quality higher education, stable and salaried employment, investment opportunities and other avenues of upward mobility that would allow them meet the existing requirements of both the fees for concurrent family petitions and adjustment of status applications, and the affidavit of support requirements.

First, the fees for a concurrent I-130 Petition for Alien Relative and I-485 Application to Adjust Status packet are some of the highest listed on the USCIS fee schedule and continue to increase almost annually. Second, the regulations do not allow applicants who are subject to the affidavit of support to access a fee waiver for the adjustment, even in situations where the sponsor's income does not meet the guidelines and a joint sponsor is being included.[7]

Where an immediate family member is submitting an I-130 petition and the intending immigrant is submitting an application to adjust status concurrently, USCIS should consider allowing access to a full or partial fee waiver for either or both applications based on the sponsor's income or receipt of public benefits, rather than the beneficiary, where a joint sponsor is being used to satisfy income requirements on the affidavit of support because the principal sponsor cannot meet the income threshold alone. If the USCIS regulation allows one or multiple joint sponsors to overcome the affidavit of support income requirement, it should also allow an exception to the fee, or at least a partial fee reduction.

This lack of cultural awareness and inflexibility within the regulations, in addition to the high fees and lack of access to fee waivers, prejudices primarily BIPOC immigrants. Not only does it prevent

[7] 8 CFR § 106.3(b)(1)

access to the benefit of legal permanent residency, but it prioritizes family reunification for some families over others, none of which is currently in line with the Biden Administration's goal to reduce barriers to immigration benefits and to promote "integration, inclusion, and citizenship" in the regulations. Any financial loss that USCIS believes they may incur for allowing access to fee waivers or decreasing the fee for family-based petitions and adjustment of status applications will surely be recovered when more families have access to the benefit in the first place and can proceed with applying without risk.

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In closing, CCCS urges USCIS to improve its adjudicative processes and customer service by eliminating inefficient, inconsistent, and discriminatory protocols, policies and regulations and by improving its external communication and engagement with the public and relevant stakeholders so as to ensure that the agency remains true to its statutory mission as a service-oriented, fair, and efficient administrator of benefits and "welcome" to the newcomer – the very mission that Congress envisioned and the public deserves.

Thank you for the opportunity to submit feedback to USCIS. Please do not hesitate to contact C. Mario Russell, Esq., mario.russell@archny.org // 917-806-9134 to provide further information.

Division of Immigrant and Refugee Services
Catholic Charities Community Services, Archdiocese of New York