

INTERIM MEMO FOR COMMENT

Posted: 11-22-2010
Comment Period Ends: 12-07-2010
This memo is in effect until further notice

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000



U.S. Citizenship
and Immigration
Services

November 18, 2010

PM-602-0011

Policy Memorandum

SUBJECT: Fee Waiver Guidelines as Established by the Final Rule of the USCIS Fee Schedule; Revisions to Adjudicator's Field Manual (AFM) Chapter 10.9 (AFM Update AD11-05)

Purpose

This Policy Memorandum (PM) provides guidance on processing fee waiver requests filed pursuant to 8 CFR 103.7(c) as amended by changes made in the final rule "U.S. Citizenship and Immigration Services Fee Schedule," published in the *Federal Register* (FR) on September 24, 2010. See 75 FR 58961.

Scope

Unless specifically exempted herein, this PM applies to and is binding on all USCIS employees. This PM supersedes and rescinds all preceding fee-waiver guidance, including the following memoranda:

- Michael A. Pearson memorandum, *Fee Waiver Relating to Employment Authorization for Victims of Trafficking*, dated May 25, 2001
- William R. Yates memorandum, *Adjustment of Fees of the Immigration Examinations Fee Account*, dated February 1, 2002
- Johnny N. Williams memorandum, *Fee Surcharges and Refund of Fee Surcharges*, dated January 23, 2003
- William R. Yates memorandum, *Correction regarding the fees for filing Form N-600, Application for Certificate of Citizenship, and Form N-600K, Application for Citizenship and Issuance of Certificate under Section 322*, dated July 23, 2003
- William R. Yates memorandum, *Field Guidance on Granting Fee Waivers Pursuant to 8 CFR 103.7(c)*, dated March 4, 2004
- William R. Yates memorandum, *Adjustment of the Immigration Benefit Application Fee Schedule*, dated April 15, 2004
- William R. Yates memorandum, *Fee Waivers for Hurricane Katrina Victims*, dated September 19, 2005
- Don Neufeld memorandum, *Adjustment of the Immigration Benefit Application Fee Schedule*, dated July 12, 2007

- Don Neufeld memorandum, *Fee Waiver Guidelines as Established by the Final Rule of the Immigration and Naturalization Benefit Application and Petition Fee Schedule, Revisions to Adjudicators' Field Manual (AFM) Chapters 10.9(a) (AFM Update AD07-19)*, dated July 20, 2007
- Michael L. Aytes and Rendell Jones memorandum, *Fee Waivers for Victims of Southern California Wildfires*, dated November 27, 2007

Authority

This PM is issued under the authority of Title 8 CFR 103.7(c) and INA section 286(m).

Background

The final rule “U.S. Citizenship and Immigration Services Fee Schedule,” effective November 23, 2010, establishes a new fee schedule for immigration-benefit requests. It also amends the regulations governing fee-waiver eligibility. USCIS has developed the new Form I-912, Request for Fee Waiver, in an effort to facilitate the fee-waiver request process. The form will become available for public use on November 23, 2010. As the use of a USCIS-published fee-waiver request form is not mandated by regulation, USCIS will continue to consider applicant-generated fee-waiver requests (i.e., those not submitted on Form I-912) that comply with 8 CFR 103.7(c).

Policy

It is USCIS policy that individuals may apply for and be granted a fee waiver for certain immigration benefits and services based on an inability to pay. Please consult the revisions to *AFM* Chapter 10.9 in this PM for the complete list of forms and services that are eligible for a fee waiver.

Implementation

USCIS released Form I-912 to provide a standard means for submitting fee-waiver requests. The form is intended to bring clarity and consistency to the fee-waiver process. The Form I-912 instructions provide applicants with guidance on properly completing Form I-912 and submitting supporting documentation. The Form I-912 instructions also give information on the methodology that USCIS uses to make a decision on a fee-waiver request. USCIS uses the same methodology whether the request is submitted on a Form I-912 or via an applicant-generated request. USCIS will continue to consider applicant-generated fee-waiver requests (i.e., those not submitted on Form I-912), but those requests must meet the criteria described in *AFM* Chapter 10.9 in order for the fee to be waived. All pending and newly submitted fee waiver requests will be reviewed under the guidelines in that chapter.

In general, fee-waiver requests will be reviewed by considering, in a step-wise fashion, whether the applicant is receiving a means-tested benefit, whether the applicant’s household income level renders him or her unable to pay, or whether recent financial hardship otherwise renders him or her unable to pay. This PM also provides examples of required or acceptable supporting documentation.

Revisions to the *AFM*

1. Effective November 23, 2010, Chapter 10.9 of the *AFM* is revised to read:

10.9 Waiver of Fees.

(a) Submission of Request. A person requesting a waiver of fees for an application, petition, appeal, motion, service or other matter may submit either a **Form I-912, Request for Fee Waiver**, or a written request for permission to have their immigration benefit request processed without payment of the required fee as provided in **8 CFR 103.7(c)** and this chapter. There is no fee required for filing a fee-waiver request.

(1) Applicability. These guidelines apply to filing fees for those applications, petitions, motions, and requests contained in 8 CFR 103.7(b)(1)(i) and (c).

(2) General Fee Waivers. USCIS may waive fees for the following based on an inability to pay:

- Biometrics services fee;
- Form I-90, Application to Replace Permanent Resident Card;
- Form I-191, Application for Advance Permission to Return to Unrelinquished Domicile;
- Form I-751, Petition to Remove Conditions on Residence;
- Form I-765, Application for Employment Authorization;
- Form I-817, Application for Family Unity Benefits;
- Form I-821, Application for Temporary Protected Status;
- Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105-100 (NACARA));
- Form N-300, Application to File Declaration of Intention;
- Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA);
- Form N-400, Application for Naturalization;
- Form N-470, Application to Preserve Residence for Naturalization Purposes;
- Form N-565, Application for Replacement of Naturalization/Citizenship Document;
- Form N-600, Application for Certification of Citizenship; and
- Form N-600K, Application for Citizenship and Issuance of Certificate under Section 322.

(3) Conditional Fee Waivers. If the application or petition is not listed in paragraph (a)(2) of this chapter, USCIS may waive a fee based on an inability to pay and subject to the conditions specified:

- Form I-131, Application for Travel Document, only for those applying for humanitarian parole (i.e., only for persons that are applying for an Advance Parole Document under Application Type “e” or “f” in Part 2 of the Form I-131);
- Form I-192, Application for Advance Permission to Enter as Nonimmigrant for an applicant who is exempt from the public charge grounds of inadmissibility of section 212(a)(4) of the Immigration and Nationality Act (INA), either by statute or by policy;
- Form I-193, Application for Waiver for Passport and/or Visa for an applicant who is exempt from the public charge grounds of inadmissibility of section 212(a)(4) of the INA, either by statute or by policy;
- Form I-290B, Notice of Appeal or Motion, if the underlying application was fee exempt, the fee was waived, or it was eligible for a fee waiver;
- Form I-485, Application To Register Permanent Residence or Adjust Status, in the following circumstances:
 - A “Registry” applicant filing under section 249 of the INA who has maintained continuous residence in the United States since before January 1, 1972; or
 - The applicant is exempt from the public charge grounds of inadmissibility under section 212(a)(4) of the INA, including but not limited to the following benefits:
 - Asylees applying for adjustment of status under section 209(b) of the INA; or
 - Applications for Special Immigrant Juveniles; or
 - Applications under the Cuban Adjustment Act, the Haitian Refugee Immigration Fairness Act (HRIFA), and the Nicaraguan Adjustment and Central American Relief Act (NACARA), or similar provisions; or
 - Lautenberg Parolees;
- Form I-601, Application for Waiver of Grounds of Inadmissibility for an applicant who is exempt from the public charge grounds of inadmissibility of section 212(a)(4) of the INA.

(4) Humanitarian Fee Waivers. Based on an inability to pay, USCIS may waive any fees associated with the filing of any benefit request by a VAWA self-petitioner or under sections 101(a)(15)(T) (T visas), 101(a)(15)(U) (U visas), 106 (battered spouses of A, G, E-3, or H nonimmigrants), 240A(b)(2) (battered spouse or child of a lawful permanent resident or U.S. citizen), and 244(a)(3) (Temporary Protected Status), of the Act (as in effect on March 31, 1997). This would include filings not otherwise eligible for a fee waiver or eligible only for conditional fee waivers such as Forms I-212, I-485, I-539, and I-601.

(5) Documentation. Whether the request is submitted on **Form I-912** or in the form of a written statement, the applicant may submit additional documentation to provide proof of his or her inability to pay. Fee-waiver requests should be decided based upon the request for a fee waiver and any additional documentation submitted in support of the fee waiver request. A fee-waiver request may be approved in the

absence of such additional documentation provided that the applicant's request is sufficiently detailed to substantiate his or her inability to pay the fee. If USCIS determines that the individual did not substantiate his or her inability to pay, then the fee waiver request should be denied.

(6) Submission of Both Fee and Fee Waiver Request. When a form is submitted with both the appropriate fee for the form and a fee-waiver request, the form should be processed, if otherwise acceptable, as properly filed with fee. No subsequent consideration should be given to, nor action taken on the fee-waiver request.

(b) Review of Request.

(1) Inability to Pay. Each fee-waiver request is unique and should be considered on its own merits. A fee-waiver request may be granted when USCIS has determined that the individual is unable to pay the fee. Inability to pay the fee is based on the individual's overall financial picture and household situation, as may be established according to the steps and criteria described below.

(2) Determining Inability to Pay and Adjudicating the Fee-Waiver Request. In determining whether the individual is unable to pay the fee and should be granted a fee waiver, the USCIS employee must proceed according to the following steps and criteria:

- Step 1. Is the individual receiving a means-tested benefit?
 - The individual may demonstrate that he or she is receiving a "means-tested benefit." A means-tested benefit is a benefit where a person's eligibility for the benefit, or the amount of the benefit, or both, are determined on the basis of the person's income and resources, including those that may lawfully be deemed available to the person by the benefit-granting agency. Examples of means-tested benefit programs are Supplemental Nutrition Assistance Program, Medicaid, Supplemental Security Income, and Temporary Assistance of Needy Families.
 - To demonstrate that the individual (or the individual's spouse or the head of the household in which the individual resides) is receiving a means-tested benefit, the applicant should provide proof in the form of a letter, notice, or other official document(s) containing the name of the agency granting the benefit. The document(s) submitted must show the name of the recipient of the means-tested benefit and the name of the benefit received.
 - If the individual provides sufficient proof of the means-tested benefit, the fee waiver will normally be approved, and no further information will be required.

- Step 2. Is the individual's household income at or below 150 percent of the Federal Poverty Guidelines at the time of filing?
 - The individual may demonstrate that his or her household income, on which taxes were paid for the most recent tax year, is at or below 150 percent of the Federal Poverty Level as established in the most recent poverty guidelines. Those guidelines are revised annually by the Secretary of Health and Human Services and are available at <http://aspe.hhs.gov/poverty>. For fee-waiver review purposes, a household may include an applicant, spouse, parent(s) living with the applicant, and any of the following family members:
 - An unmarried child or legal ward under 21 years of age living with the applicant;
 - An unmarried child or legal ward over 21 years of age but under 24 years of age who is a full-time student and living with the applicant when not at school; or
 - An unmarried child or legal ward for whom the applicant is the legal guardian because the individual is physically or mentally disabled to the extent that he or she cannot adequately care for him or herself and cannot establish, maintain, or re-establish his or her own household.
 - The applicant may submit documentation as follows to demonstrate that his or her household income is at or below 150 percent of the Federal Poverty Guidelines at the time of filing:
 - Evidence of current employment or self-employment such as recent pay statements, W-2 forms, statement(s) from the individual's employer(s) on business stationery showing salary or wages paid, or income tax returns (proof of filing of a tax return).
 - Documentation establishing other financial support or subsidies – such as parental support, alimony, child support, educational scholarships and fellowships, pensions, Social Security, veteran's benefits, etc. Financial support or subsidy may include monetary contributions for the payment of monthly expenses received from adult children, dependents, and other people who are living in the individual's household, etc.
 - If available, the individual's Federal tax return(s), listing the members of the household.
 - If the applicant is filing on behalf of, or as a Special Immigrant Juvenile (SIJ), the fee waiver request should be supported by one of the following forms of evidence:
 - A recent state or juvenile court order establishing dependency or custodial assignment of the SIJ; or
 - A letter from a foster care home or similar agency overseeing the SIJ's custodial placement that describes the SIJ's inability to pay; or

- An approval notice on a Form I-797, Notice of Action, for a Form I-360, filed for the SIJ.
- If the individual provides sufficient proof that his or her household income is at or below 150 percent of the Federal Poverty Guidelines at the time of filing, the fee waiver will normally be approved, and no further information will be required.
- Step 3. Is the individual under financial hardship, due to extraordinary expenses or other circumstances, that renders the individual unable to pay the fee?
 - The individual may demonstrate that he or she is under financial hardship due to extraordinary expenses or other circumstances affecting his or her financial situation to the degree that he or she is unable to pay the fee. Examples include unexpected and uninsured (or underinsured) medical bills, situations that could not normally be expected in the regular course of life events, or a medical emergency or catastrophic illness affecting the individual or the individual's dependents. If the individual is under financial hardship, the individual should demonstrate that he or she has suffered a sufficiently negative financial impact as a result of this hardship in a reasonably recent period preceding the filing of the fee-waiver request so as to render the applicant's income during that period insufficient to pay the fee.
 - The applicant may submit documentation as follows to demonstrate that he or she is under financial hardship that renders him or her unable to pay the fee:
 - Documentation of all assets owned, possessed, or controlled by the individual and by his or her dependents. Assets include real estate, property, cash, checking and savings accounts, stocks, bonds, and annuities (except for pension plans and Individual Retirement Accounts (IRAs)).
 - Documentation concerning liabilities and expenses owed by the individual and his or her dependents, and any other expenses for which the individual is responsible. Liabilities and expenses include the cost of rent, mortgages, lease, the average monthly cost of food, utilities, child care and elder care, medical expenses, any tuition costs, commuting costs, and monthly payments of any lawful debts.
 - If the applicant cannot provide evidence of income, he or she should provide a description of the financial hardship and why he or she cannot provide any evidence of income. Affidavits from churches and other community-based organizations indicating that the applicant is currently receiving some benefit from that entity may be used as evidence of income.

- Any other documentation or evidence that demonstrates the individual's inability to pay the fee based on his or her overall financial picture and household situation.
- In reviewing all documentation and information submitted, consider whether cash or assets exist aside from income which could be liquidated without the applicant incurring a hardship. For example, the applicant may own stocks or other assets that could be easily liquidated.

(c) Processing Fee Waiver Requests.

(1) Effective Date. As of November 23, 2010, all pending and newly submitted fee waiver requests must be reviewed under these guidelines. These guidelines apply only to application and petition filing fees contained in **8 CFR 103.7(b)**.

(2) Notation on Form. After careful review of the fee-waiver request and supporting documentation, the fee-waiver approval or denial should be recorded in the receipt block of the underlying form for which the applicant is requesting a fee waiver. The fee-waiver decision should also be noted on the **Form I-912, Request for Fee Waiver**, if that is how the applicant submitted the request. In addition, the signature of the approving officer and any relevant comments should be written on the Form I-912. If the fee-waiver request is denied, send the applicant Form G-1054, Request for Fee Waiver Denial Letter. If reviewing an electronic version of the fee-waiver request, record the fee-waiver approval or denial in an electronic system and note the name of the USCIS employee making the fee-waiver decision.

2. The *AFM* **Transmittal Memoranda** button is revised by adding, in numerical order, the following entry:

AD 11-05 11-18- 2010	Chapter 10.9	Provides guidance on considering and approving requests for fee waivers.
----------------------------	---------------------	--

Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable by law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to Headquarters Management Directorate, Office of Intake and Document Production.