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Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
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Submitted via www.regulations.gov

RE: Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services; Request for Public Input (RIN 1615-ZB87, USCIS-2021-0004)

Dear Chief Deshommes:

Our organization, the Michigan Immigrant Rights Center (“MIRC”), submits this comment in response to the above-referenced request for public input to the Department of Homeland Security (“DHS”). On April 19th, 2021, U.S. Citizenship and Immigration Services (“USCIS”) published a notice in the Federal Register requesting 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. This request is in response to President Biden’s Executive Order 14012, “Restoring Faith in Our Legal Immigration System”. We appreciate the opportunity to provide feedback on an array of issues that, if addressed, will help restore faith in our immigration systems.

MIRC is a nonprofit legal services provider and resource center for Michigan’s immigrants and community advocates, with offices in Ypsilanti, Detroit, Grand Rapids, and Kalamazoo. MIRC receives grants to focus its direct representation services on vulnerable populations and seek immigration benefits on their behalf. These grants allow MIRC to serve survivors of sexual assault and domestic violence, unaccompanied children, and persons escaping persecution, among other populations. MIRC’s attorneys work daily with USCIS and its various offices, including the Detroit Field Office, the Chicago Asylum Office, the Service Centers, and the National Benefits Center. Additionally, MIRC maintains a free, confidential intake phone line that any Michigan resident can call to obtain, at minimum, brief advice regarding an immigration issue. Through our intake line, we often learn about the experiences of pro se individuals who are attempting to navigate the USCIS system without legal representation. As such, MIRC is uniquely positioned to identify barriers from the perspective of staff attorneys, community advocates, and the immigrant population itself seeking direct representation or legal advice in accessing benefits and services from USCIS.

These barriers include crisis-level case processing delays and an ever-growing backlog, compounded in recent years by inefficient policies and practices, and a noticeable shift away from the agency’s core function of service-oriented adjudications. Among the barriers that USCIS has imposed in recent years include eliminating the word “customer” from their mission statement, prohibiting walk-in appointments at local field offices, making it harder to access live assistance or schedule a local appointment through the USCIS Customer Service Center phone line and closing local and national email boxes for case inquiries. As a result, the agency has walled itself off from its customers, creating a barrier to both immigration benefits and efficient customer service.

The Request for Public Input seeks information on how USCIS can reduce administrative and other barriers and burdens within its regulations and policies, including those that inhibit non-US citizens from easily obtaining immigration services and benefits. We address specific questions raised in the Request for Public Input below.

(1) Are there any regulations; policies; precedents or adopted decisions; adjudicatory practices; forms, form instructions, or information collections; or other USCIS procedures or requirements that you consider to be unjustified or excessive barriers that impede easy access to legally authorized immigration benefits and fair, efficient adjudications of these benefits?

I. USCIS must improve its customer service processes by increasing accessibility and transparency

USCIS is no ordinary customer service agency. For many of its “customers”, USCIS is providing extraordinary or even life-saving benefits. Through its various offices, USCIS provides long-term protection to survivors of torture and persecution, to abused or abandoned children, and to family members of US citizens who face deportation. As such, USCIS must approach its customer service mandate with urgency. A failure in customer service should not be the deciding factor in whether an individual accesses life-changing benefits. We have seen repeatedly how overly-complicated USCIS processes diminish the ability of our clients to access benefits even with legal representation, and we have also seen USCIS processes discourage or completely inhibit pro-se applicants from successfully applying for benefits. Accordingly, we request USCIS take steps to improve its customer service process, including:

- Reducing the level of automation in the USCIS customer service telephone system

The USCIS customer service telephone system is constantly changing, and it is often impossible to reach a live agent because the automated system does not provide the opportunity to request one. MIRC’s attorneys have employed workarounds, such as asking the automated system for an Infopass appointment even if that was not the purpose of the call, as a way of connecting to a live agent. These workarounds were identified through the collective experiences of our staff of immigration attorneys. This means that the average unrepresented caller would have no means of accessing a live agent, since they are unlikely to be aware of these workarounds. It simply should not be this difficult to speak to a live agent, and USCIS should overhaul its telephonic customer service system immediately to provide the public with meaningful access to customer service agents.

- Restoring the online Infopass system

The transition away from an online Infopass system to the current system has been nothing short of absurd. The current system requires an individual to call the USCIS customer service number, say the magic words “I need to make an Infopass appointment” (since navigating through the automated system will lead nowhere), speak to an agent, and wait days or weeks for a call back from USCIS to schedule the appointment. MIRC’s attorneys have received these calls on Saturdays and at 7 AM in the morning. We have also had situations where a callback never came, and we had to go through this long process again. This process appears to be a complete waste of time for all parties involved. While we do not oppose a screening process to ensure that Infopass appointments are reserved for individuals who have resolvable issues, it boggles the mind as to why the appointment could not simply be scheduled upon initial contact with a live agent. Additionally, for the screening process to work, customers must be able to reach a live agent in the first place, reinforcing why USCIS must reduce harmful levels of automation in its customer service system.

- Issuing receipt notices timely and sending electronic copies

As USCIS is already aware, there has been a pattern of unacceptable delays in receipt notice issuance for newly-filed petitions with USCIS. These delays can have serious impacts on our client's lives. As one example, for applicants who are eligible for automatic 180-day extensions of their Employment Authorization Documents, the delay in receiving their receipt notice can mean the inability to renew their driver's license. For our clients here in Michigan where we lack public transit, the inability to drive often means the inability to work. This can have devastating impacts on our clients and their families. As another example, we have clients who are Conditional Permanent Residents and have suffered abuse from their spouses. Waiting months for their I-751 receipts can mean the inability to work, drive or access public benefits for individuals who have recently escaped domestic violence situations and need these resources to rebuild their lives. As such, we urge USCIS to take immediate steps to remedy the current delays in receipt notice issuance, and additionally, to create a mechanism for electronic issuance of receipt notices.

- Restoring avenues of communication with the local Field Offices

USCIS must restore our ability to communicate with the local Field Offices, particularly for simple matters such as reschedule requests. We have experienced serious issues with Field Office interviews based on USCIS errors and US Postal Service delays. These issues are compounded by the fact that many of our clients are VAWA, U, T, or similarly protected applicants, which prevents us from resolving issues through the USCIS customer service center. For example, though our office timely filed a change of address with the Vermont Service Center, interview notices for a VAWA client were sent to our former office. Technically, our only option was to send a written inquiry to the Vermont Service Center, which most certainly would have led to our client missing her interview. While we were able to obtain the interview date by utilizing our professional networks, we would not have been able to do this using USCIS' established procedures. Additionally, the solution we used would not have been available to an unrepresented client. Accordingly, USCIS must restore the ability for its customers to communicate with the Field Office by reinstating inquiry-specific email accounts for each local office.

- Create a centralized electronic G-28 repository so that attorneys do not have to repeatedly send in G-28s

As historic delays in USCIS processing times remain an ever-present issue, it is to be expected that an applicant may experience a change in representation, or a change in their attorney's firm, address or contact information. USCIS currently does not have an established procedure to receive and acknowledge interfiled G-28s for cases initially filed pro se, to substitute representation for an applicant who is changing attorneys, or confirm receipt of an updated G-28 based on an attorney's change of law firm, address, or telephone number. This problem is particularly pronounced for cases that transfer from a Service Center to the National Benefits Center (NBC) to a Field Office, such as one-step adjustment of status applications. This makes it extremely difficult for attorneys to advocate for their clients, since they are not recognized as the attorney of record despite multiple attempts to file a G-28 by mail. In some cases, our attorneys will be recognized as the attorney of record by the Field Office but not the NBC, or vice versa. We recommend USCIS create a centralized electronic system that allows attorneys to directly upload G-28s into the USCIS system, and can be viewed by all USCIS offices involved in the adjudication of a particular case.

II. USCIS should expand its use of humanitarian parole-in-place to protect mixed-status families and increase public safety

USCIS should develop policies to grant humanitarian parole-in-place for individuals with US citizen family members who are otherwise eligible for adjustment of status to keep families together and as a public safety measure. The Executive Branch has historically used its parole power to grant humanitarian parole to relatively broad categories of immigrants, and already has a policy in place to grant parole-in-place to certain military family members. USCIS should expand its policy to include individuals who would be eligible for adjustment of status but for an entry without inspection or admission, and have US citizen family members.

An expanded parole-in-place policy would benefit both the mixed-status families of the parolees, and the communities where they live. Individuals who have a family sponsor and who have US citizen family members, particularly those without a criminal record or adverse immigration history, generally have been a low priority for removal across administrations. Since, as discussed above, our office maintains an intake line for anyone seeking immigration help, we regularly encounter scenarios where a caller's only barrier to adjustment of status would be their manner of entry, and they do not have a qualifying relative for an unlawful presence waiver. In these types of cases, the individual is at relatively low risk of removal, but is unable to obtain lawful status, and will remain an undocumented immigrant indefinitely. The fact that our system creates a permanently undocumented class undermines public safety. These individuals are prohibited from gaining a driver's license or working with authorization. This puts them and their children at constant risk - they do not have access to secure transportation, they may fall prey to unscrupulous employers as a result of their vulnerable status, and they may be afraid to access benefits and resources for their US citizen children. These circumstances detract from public safety and the security of our communities. Accordingly, USCIS should deploy the tools in its possession to provide parole-in-place to individuals who otherwise would be eligible to adjust status.

(2) Are there USCIS regulations or processes that disproportionately burden disadvantaged, vulnerable, or marginalized communities?

I. Fees and fee waiver restrictions create a cost-prohibitive structure that disproportionately impacts low-income communities

Current fees and restrictive practices in filing fee waiver requests has disproportionately affected MIRC's clients and low-income communities creating unnecessary barriers for those in most need of a fee waiver. MIRC staff attorneys have had instances of filing fees being improperly rejected or rejected due to lack of proper evidence when there is no tax return included.

In one instance, an attorney submitted an I-765, Application for Employment Authorization renewal for a refugee in category (a)(3) with the proper filing fee. The payment was returned by USCIS on the basis that there was no filing fee needed and the application was received. However, upon adjudication months later, the application was denied because of lack of proper filing fee.

Many attorneys report an increase in fee waiver requests being rejected for lack of proper evidence of being low-income. This poses real, substantial challenges in ever getting this request approved for our low-income (and self-represented) clients who may not have a Social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN) to prove income (or lack thereof) on a recently-filed tax return. On occasion, USCIS will accept these requests without a tax return, paystub, or W-2 should we submit a letter from a homeless or domestic violence shelter. But the probability of success with that request is about 50%.

Additionally, fee waiver rejections often do not list specific reasons for the denial, which is made all the more perplexing by the fact that these rejections often appear erroneous. For example, MIRC's attorneys have submitted identical fee waivers for members of the same household to have some accepted and others rejected. Other times, MIRC's attorneys have followed form instructions and submitted W-2s and paystubs

in lieu of a tax return where the client had too low of an income to require filing an annual tax return, only to have these fee waivers rejected without specific explanation. The hundreds of dollars it costs to file a USCIS application is a significant sum for a low-income household, and rejections can lead to significant delays in accessing life-changing immigration benefits. In light of this, USCIS must be held accountable for how it adjudicates fee waiver applications, and a basic step towards accountability is requiring a specific explanation as to why a rejected request was insufficient.

Finally, the cost of naturalization today is the highest in U.S. history and among the highest in the world. Fee increases are neither necessary nor helpful to decrease processing times and backlogs. Fee hikes lead to decreased applications, which in turn depresses revenue. Higher fees also affect who naturalizes and have a racially disparate impact. Along with restoring and expanding the accessibility of fee waivers and reduced or sliding scale options, the administration must work to reduce naturalization fees.

Recommendations:

- Expand the ability to e-file an accompanying Form I-912 Request for Fee Waiver for an online form submission.
- Improve training for USCIS adjudicators regarding fee waivers and assessing fees to avoid improper rejections.
- Reduce cost prohibitive naturalization fees.

II. USCIS' current approach to N-648s adjudications curtails access to naturalization for the most vulnerable applicants

USCIS' current standards and procedures for N-648 adjudications, which include arbitrarily heightened and inconsistently applied legal standards, limit access to naturalization for the most vulnerable applicants. N-648 applicants, by definition, are experiencing some kind of medical disability, which should in itself prompt USCIS to create inclusive and accessible policies with respect to N-648 adjudications. In addition to coping with a medical disability, N-648 applicants may be low income, may not have familial support, may have limited English proficiency, and may not have established relationships with medical providers as a result of these barriers. USCIS must recognize that the most vulnerable N-648 applicants, who may not have the income, mobility, or social support to easily attend doctor's appointments, will also struggle to convince a doctor to take (uncompensated) time to fill out an N-648. In light of this reality, USCIS' approach to N-648 adjudications, such as denying cases because the N-648 does not sufficiently adhere to hypertechnical regulatory language, has a disproportionate impact on the most vulnerable applicants.

At MIRC, we have heard from low-income clients who filed for naturalization on their own, not knowing they were eligible for a fee waiver. These clients may have been unaware the N-648 was required to be submitted with the initial application, or they may not have realized the exacting standard USCIS imposes on these requests. As a result, these clients have to attend their interviews, often at great effort and expense, only to be denied and required to re-file. Filing for naturalization is an extremely burdensome process for the low income and the disabled. Naturalization interviews in the state of Michigan are conducted at the Detroit Field Office, even though applicants may reside over nine hours away. As such, USCIS must revise their N-648 adjudication policies and procedures in recognition of the vulnerabilities of N-648 clients, and to increase efficiency by injecting more predictability in the process.

Recommendations:

- Rescind Policy Alert (PA-2018-12), which became effective on February 12, 2019, altogether.
- Bifurcate the adjudication process for N-648s submitted with the initial N-400 application so that N-648 decisions are made prior to interview scheduling, eliminating unnecessary trips to the Field Office by disabled applicants.

- Require Requests for Evidence to state specific deficiencies in the N-648 that would allow the clinician to efficiently address areas of concern, instead of generalized statements that the N-648 is insufficient.
- Permit the N-648 to be submitted at the interview.
- Permitting any qualified medical professional, not necessarily the treating clinician, to complete the N-648.
- Create more reasonable adjudicative policies and providing better training so that:
 - N-648s are not approached with a presumption of fraud;
 - ISOs are not substituting their own judgment for that of a medical professionals;
 - ISOs interpret N-648s in a light favorable to the applicant and make reasonable attempts to extrapolate information from the N-648s to meet the relevant legal standards in recognition of the fact that clinicians are not lawyers, should not be required to explain their medical judgment using technical legal terminology, and in signing the N-648 are *per se* taking the position that their patient is clinically unable to learn English.
 - Include oath waiver language in the N-648 so that it can serve that purpose as well

III. USCIS must revise its public-facing materials to be accessible to the community it serves

USCIS must make an effort to provide its services in a way that is responsive to the needs of its customer demographic. Most USCIS customers are not United States citizens, and may not speak English. Those who do speak English may not be native English speakers. USCIS must overhaul its customer service protocols in recognition of the needs of its customer base. Currently, all forms on USCIS' website are offered only in English. While the informational content on the USCIS website is available in Spanish as well, even the English versions of the website content is often written in complex legalese. USCIS should evaluate and revamp its public-facing materials and customer service processes to be comprehensible to a non-attorney, and expand the languages it provides its materials in.

IV. The affirmative asylum backlog is a barrier to obtaining asylum, reuniting families and accessing much needed benefits for asylees

Thousands of asylum seekers face years-long delays in a backlog - the largest among the applications USCIS adjudicates - of 394,101 applications yet to be processed as of the 1st quarter of FY2021. In January 2018, the agency began implementation of the last-in, first-out (LIFO) policy to adjudicate affirmative asylum applications. Asylum seekers who had already been waiting for years now must wait even longer to have an opportunity to present their case. Some cases have been pending since 2015. These delays have substantially increased the time asylum seekers remain separated from their families, as they cannot petition for them until they obtain asylum. This causes considerable stress that can lead to re-traumatization and hinder the healing of asylum seekers who have survived traumatic experiences.

As an example, one of MIRC's clients filed for asylum in 2017 and is part of the asylum backlog. He identifies as LGBTQ, his mother is dead, and his father was his persecutor. Our client is now the sole lifeline for his minor brother who is living in a third country to escape their father. While USCIS granted an expedite request for this case in 2019, he still inexplicably has not been scheduled for an interview. Our client has now been employed at the same organization for years and built a life in Michigan, but feels like he is constantly treading water because he is unsure of his immigration status. He also is limited in his ability to secure safety for his brother or travel to see him until he has a permanent status in the United States.

Recommendations:

- Fund and train additional Asylum Officers,

- Modernize asylum office processes with electronic filings and a transparent interview scheduling system, and
- Promote transparency by providing regular, public updates on Asylum Officer interview schedules.
- Create a two-track system that allocates priority and resources to two categories of new and pending cases:
 - Track 1: Backlogged cases, with priority to longest;
 - Track 2: Unaccompanied children as required under the Trafficking Victims Protection Reauthorization Act (TVPRA); and

(3) Are there instances where current regulations may have added unintended or unanticipated costs, or imposed unintended or unanticipated administrative barriers, and in which those costs and barriers may not have been adequately considered in previous assessments of the regulation's direct costs?

I. Excessive and inconsistent use of form rejections impose unnecessary costs and burdens on applicants and USCIS

USCIS' excessive use of form rejections creates unnecessary barriers to applicants and wastes government resources. While we saw this practice culminate into an absurd extreme with the now-defunct blank-space policy, USCIS routinely engages in form rejections in scenarios where a Request for Evidence (RFE) would be sufficient, and utilizes rejections inconsistently. For example, USCIS will reject submissions where passport photos are missing, the wrong edition date is used, or a single signature is missing, while other times utilizing an RFE for similar deficiencies. Overzealous use of rejections can have outsized impacts on our clients' lives. For example, in filing a VAWA one-step for a client that required the submission of over a half-dozen forms, the entire filing was rejected because one form was outdated. Because of this, our client's receipt dates upon re-filing were too late to qualify him for an automatic 180-day EAD extension, which, as discussed above, leads to a whole host of ripple effects. In another case, a form rejection led to a client missing the one-year deadline, which added another hurdle to her asylum claim, but also significantly delayed her EAD eligibility. As such, we recommend USCIS review its rejection policies and identify areas where rejection can be avoided, such as where an application is failing to meet a completely technical, non-substantive requirement, or where a Request for Evidence could be utilized instead. Additionally or alternatively, USCIS should streamline its rejection process so that it does not take months to return a rejected application. These reforms would prevent unnecessary impacts on the client, such as falling out of status for missed deadlines, and would also save government resources in mailing back large packages and then duplicatively processing re-filed applications.

II. Certain Policies, Regulations, and practices in obtaining Employment Authorization Documents (EAD) set barriers to immigrants seeking a driver's license, obtaining lawful employment, and accessing social benefits.

The prior administration issued two rules through the notice and comment process that substantially altered employment authorization eligibility and I-765 application processing for asylum seekers. These rules repealed the 30-day timeline for USCIS to process initial (c)(8) EAD applications by asylum seekers; more than doubled the wait period to apply for (c)(8) EADs from at least 150 to at least 365 days after filing an asylum application; erected new bars prohibiting various classes of asylum seekers from receiving (c)(8) EADs altogether; created new automatic termination provisions for (c)(8) EADs; made (c)(8) EAD applications more expensive; barred most asylum seekers on parole from receiving (c)(11) EADs; and made other harmful changes to asylum case processing. These changes have proven disastrous for asylum seekers, who are vulnerable by definition after experiencing persecution and fleeing their countries of origin, and who are ineligible for federal financial assistance. By delaying, denying, or complicating asylum seekers'

ability to work, the rules have negatively impacted asylum applicants' livelihood. As previously mentioned, an EAD or EAD receipt notice is necessary in order for asylum applicants to obtain a driver's license. With such barriers to asylum applicants, this has affected their ability to travel, work, and live independently. In addition, the rules have made it more difficult for asylum applicants to find and hire counsel (or even simply survive in the United States) so they can pursue their immigration cases. Beyond asylum seekers themselves, the rules have also harmed their families and communities, including legal service organizations and community support providers whose resources have been stretched thin.

Recommendations:

- USCIS should rescind or otherwise revoke these rules in their entirety, either through a new notice and comment process, or through some other mechanism prior to initiating new rulemaking.
- Reduce the waiting period for receiving employment authorization to 180 days, the minimum amount provided by statute.
- Accept applications any time after Form I-589 is filed (or an equivalent "triggering" action is completed, as described below). This would give USCIS more time to process those applications before reaching the 180-day statutory limit of when they can be approved.
- Consider a calendar-day system without the former EAD clock system or the current "applicant-caused delays" system. Switching to a straightforward calendar day calculation would eliminate the inefficiencies mentioned above and promote administrative economy.
- If USCIS maintains the EAD clock system, it should eliminate the "applicant-caused delays" provision of the August 25, 2020 rule, which duplicatively renders asylum applicants ineligible for work authorization if there are any unresolved applicant-caused delays listed in 8 C.F.R. § 208.7(a)(1)(iv).
- Develop an alternative means to meet the "filing of the application for asylum" requirement more quickly. For example, USCIS (in collaboration with EOIR) might consider these or other events to both meet the "filing" requirement and satisfy the one-year filing deadline:

For asylum seekers who wish to renew a (c)(8) EAD, there is no processing deadline. Those renewals typically take several months. Sometimes, they are delayed more than the six months of automatic extension afforded the prior EAD, causing asylum seekers to lose employment. Moreover, employers often do not understand or accept the automatic extension; the same is true for state agencies, e.g., those that issue drivers' licenses.

Recommendations

- Maintain a 30-day processing standard as a matter of agency policy, regardless of the outcome of pending litigation.
- Make it agency policy to issue an EAD within 30 days, rather than just committing to adjudicate the application within that time.
- For applicants eligible for automatic extensions, USCIS should make each extension last until the renewal application is adjudicated, rather than expiring after 180 days.
- Expand the categories eligible for automatic extensions.
- For purposes of qualifying for automatic extension of employment authorization, an EAD renewal application received up to 90 days after expiration of a prior EAD should be deemed as timely filed. This is particularly necessary given ongoing issues with improper "received dates," as discussed below.
- For eligible EAD renewal applicants, in the same envelope with a receipt notice, USCIS should provide a separate "notice of automatic extension of employment authorization" that the applicant can present to employers and state agencies. This notice should clearly state, in accessible language and an easily readable font, that it—or the accompanying receipt—serves to extend the validity of the applicant's current EAD. This should be implemented for EAD holders in all the relevant categories, not just category (c)(8).

Conclusion

In closing, MIRC urges USCIS to improve its efficiency in adjudications by eliminating inefficient processes and policies and to improve its customer service to ensure that USCIS remains true to its statutory mission for a service-oriented, fair, and efficient USCIS - one that Congress envisioned and the public deserves. We are hopeful that the barriers we have identified and mentioned above as well as the recommendations are considered in order to carry out the Executive Order of “Restoring Faith in Our Legal Immigration System”.

Respectfully submitted,


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Managing Attorney