



U.S. Citizenship  
and Immigration  
Services

HQ 70/5.5  
AFM Update AD07-19

## Interoffice Memorandum

TO: SERVICE CENTER DIRECTORS  
NATIONAL BENEFITS CENTER DIRECTOR  
DIRECTOR OF REFUGEE, ASYLUM AND INTERNATIONAL OPERATIONS  
REGIONAL DIRECTORS  
DISTRICT DIRECTORS  
FIELD OFFICE DIRECTORS

FROM: Donald Neufeld /s/  
Acting Associate Director  
Domestic Operations

DATE: July 20, 2007

RE: 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)

### **1. Purpose**

This memorandum provides field offices with guidance for consideration and approval of fee waiver requests conforming to the final fee rule, "Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule," published in the *Federal Register* (FR) on May 30, 2007. See 72 Fed. Reg. 29851 (May 30, 2007).

### **2. Background**

The final fee rule, effective on July 30, 2007, establishes a new fee schedule for immigration and naturalization benefit applications and petitions and regulations governing eligibility for a waiver of the required fees. Applicants and petitioners for immigration and naturalization benefits may request a waiver of the required filing fee when they show that they are "unable to pay." 8 C.F.R. §103.7(c)(1). In determining inability to pay, USCIS officers consider the totality of all factors, circumstances, and evidence the applicant supplies including age, disability, household income, and qualification within the past 180 days for a federal means tested benefit, as well as other factors associated with each specific case. 8 C.F.R. §103.7(c)(1)

### **3. Field Guidance**

The following forms and services are either fee exempt or may be eligible for a fee waiver under 8 C.F.R. §103.7(c)(1):

#### **A. Fee Exempt Forms and Exceptions**

- Form I-90, Application to Replace Permanent Resident Card, only if:
  - The applicant is filing because the card issued was incorrect due to a USCIS administrative error;
  - The applicant is filing because he or she never received his or her card in instances where USCIS sent the card to an address other than the address provided by the applicant or where USCIS sent the card to the address provided by the applicant and the card was returned undeliverable; or
  - The applicant is filing to register at age 14 years, and the existing card will not expire before the applicant's 16<sup>th</sup> birthday.
- Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant in cases involving:
  - Special Immigrant-Juveniles; or
  - Self petitioners under the Violence Against Women Act (VAWA).
- Form I-914, Application for T Nonimmigrant Status (victims of human trafficking).
- Form I-918<sup>1</sup>, Petition for U Nonimmigrant Status (victims of violent crime who assist in the prosecution).
- Form I-129F, Petition for Alien Fiance(é), when a petition for K-3 status based on an immigrant petition is filed by the same U.S. citizen husband or wife.
- Form I-589, Application for Asylum and Withholding of Removal, when it is a petition for asylum.

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<sup>1</sup> Form I-918 will not be in use until the interim final rule, New Classification for Victims of Criminal Activity, Eligibility for "U" Nonimmigrant Status, is published and effective.

- Form I-600, Petition to Classify Orphan as Immediate Relative, where filed to adopt a sibling of an adopted or prospective adoptee orphan based on an approved Form I-600A.
- Form I-730, Refugee/Asylee Relative Petition.
- Form N-400, Application for Naturalization, if through service in the U.S. Armed Forces.
- Form N-644, Application for Posthumous Citizenship.

B. Forms and Services Eligible for a Fee Waiver Based on an Inability to Pay.<sup>2</sup>

- Biometrics services fee. USCIS has the discretion to waive the biometric services fee based on an inability to pay.
- Form I-90, Application to Replace Permanent Resident Card.
- Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO), for appeals and motions filed with USCIS relating to the forms specified in 8 C.F.R. §103.7(c).
- Form I-485, Application To Register Permanent Residence or Adjust Status, in the following circumstances:
  - An alien in lawful nonimmigrant “T” status (victims of human trafficking), under section 101(a)(15)(T) of the Act;
  - “U” status (victims of violent crime who assist in the prosecution), under section 101(a)(15) (U) of the Act;
  - An asylee applying for adjustment of status under section 209(b) of the Act;
  - An approved self-petitioning battered or abused spouse or child of a United States citizen or lawful permanent resident under the Violence Against Women Act (VAWA); or
  - An alien to whom section 212(a)(4) of the Act, excludability due to likelihood of becoming a public charge, does not apply, including:
    - Applications for Special Immigrant-Juveniles; or

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<sup>2</sup> See section 212(a)(4) of the Act and Chapter 10.9(b)(1) of the *Adjudicator’s Field Manual* for a definition of and methods to determine an inability to pay.

- Applications based on the Cuban Adjustment Act, Haitian Refugee Immigration Fairness Act (HRIFA), and the Nicaraguan Adjustment and Central American Relief Act (NACARA).
- Form I-751, Petition to Remove Conditions on Residence.
- Form I-765, Application for Employment Authorization to request an Employment Authorization Document (EAD).
- Form I-817, Application for Family Unity Benefits for Status under the Family Unity Program.
- Form N-300, Application to File Declaration of Intention, to apply for U.S. Citizenship.
- Form N-336, Request for Hearing on a Decision in Naturalization Procedures Under Section 336 of the Act, to request a hearing on an unfavorable decision related to a Naturalization application.
- 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 Certificate.
- Form N-600, Application for Certificate of Citizenship.
- Form N-600K, Application for Citizenship and Issuance of Certificate under Section 322 of the Act to recognize U.S. citizenship for an adopted child.

#### **4. Adjudicator's Field Manual (AFM) Update**

Chapter 10.9 of the *Adjudicator's Field Manual* (AFM) provides guidance regarding fee waivers. Effective July 30, 2007, chapter 10.9(a) is revised as follows:

##### **(a) Implementation [Revision effective July 30, 2007]**

(1) **Applicability**. All pending and newly submitted fee waiver requests should be reviewed under these guidelines. These guidelines apply to those applications, petitions, motions, and requests filing fees contained in **8 CFR 103.7(b)**. Pursuant to 8 CFR 103.7(c)(5), no fee relating to any application, petition, appeal, motion, or request

made to United States Citizenship and Immigration Services may be waived under 8 CFR 103.7(c)(1) except for the following:

- Biometrics;
- Form I-90;
- Form I-485 (only in the case of an alien in lawful nonimmigrant status under sections 101(a)(15)(T) or (U) of the Act; an applicant under section 209(b) of the Act; an approved self-petitioning battered or abused spouse, parent, or child of a United States citizen or lawful permanent resident; or an alien to whom section 212(a)(4) of the Act does not apply with respect to adjustment of status);
- Form I-751;
- Form I-765;
- Form I-817;
- Form N-300;
- Form N-336;
- Form N-400;
- Form N-470;
- Form N-565;
- Form N-600;
- Form N-600K; and
- Form I-290B and motions filed with United States Citizenship and Immigration Services relating to the specified forms in 8 CFR 103.7(c).

There are certain applications and petitions listed in 8 CFR 103.7(b), which are exempt from fee waivers or have specific fee exemptions and therefore would not fall under these fee waiver guidelines.

**Note:** See Appendix 10-10 for a detailed list of (1) fee exempt forms and exceptions; and (2) forms and services eligible for a fee waiver based on an inability pay.

(2) Documentation. Along with the affidavit or unsworn declaration pursuant to 28 U.S.C. §1746, as required by 8 C.F.R. 103.7(c), the applicant may submit additional documentation to provide proof of the "inability to pay." Fee waiver requests should be decided based upon the affidavit 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 affidavit or unsworn declaration is sufficiently detailed to substantiate his or her inability to pay the fee. If the CIS Officer determines that the individual did not substantiate his or her inability to pay, then the fee waiver request should be denied.

(3) 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.

Appendix 10-10 is added as follows:

**Appendix 10-10 Fee Waiver Guidelines**

<b>Fee Exempt Forms and Exceptions</b>	
<b>Form Number and Name</b>	<b>Applicability and Comments</b>
Form I-90, Application to Replace Permanent Resident Card	<p>There are three exceptions to having to pay the application filing fee:</p> <ul style="list-style-type: none"> <li>• If the applicant is filing only because the card issued was incorrect due to a USCIS administrative error. However, if the error was not caused by USCIS, both application and biometrics fees are required.</li> <li>• If the applicant is filing only because he or she never received his or her card. However, if the card was sent to the address provided and never returned to USCIS, the application will be rejected.</li> <li>• If the applicant is filing only to register at age 14 years, and the existing card will not expire before the applicant's 16<sup>th</sup> birthday.</li> </ul>

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<b>Fee Exempt Forms and Exceptions</b>	
<b>Form Number and Name</b>	<b>Applicability and Comments</b>
I-360, Petition for Amerasian, Widow(er), or Special Immigrant	Applies when petition is for: <ul style="list-style-type: none"> <li>• Special Immigrant-Juveniles; or</li> <li>• Self petitioners under the Violence Against Women Act (VAWA)</li> </ul>
I-914, Application for T Nonimmigrant Status (victims of human trafficking)	
I-918, Petition for U Nonimmigrant Status (victims of violent crime who assist in the prosecution)	Form I-918 will not be in use until the interim final rule, New Classification for Victims of Criminal Activity, Eligibility for “U” Nonimmigrant Status, is published and effective.
I-129F, Petition for Alien Fiance(é)	Applies when a petition for K-3 status based on an immigrant petition is filed by the same U.S. citizen husband or wife.
I-589, Application for Asylum and Withholding of Removal	Applies when it is a petition for asylum.
I-600, Petition to Classify Orphan as Immediate Relative	Applies where a petition to classify an orphan as an immediate relative or to adopt a sibling of an adopted or prospective adoptee orphan is based on an approved Form I-600A.
I-730, Refugee/Asylee Relative Petition	
N-400, Application for Naturalization	Applies if through service in the U.S. Armed Forces.
N-644, Application for Posthumous Citizenship	

<b>Forms and Services Eligible for a Fee Waiver Based on an Inability to Pay*</b>	
<b>Service and/or Form Number and Name</b>	<b>Applicability and Comments</b>
Biometrics services fee	USCIS has the discretion to waive the biometric fee based on an inability to pay.
I-90, Application to Replace Permanent Resident Card	
I-290B, Notice of Appeal to the Administrative Appeals Office (AAO)	For appeals and motions filed with USCIS relating to the forms specified in 8 CFR 103.7(c).
I-485, Application To Register Permanent Residence or Adjust Status	<p>Applies in the following cases:</p> <ul style="list-style-type: none"> <li>• An alien in lawful nonimmigrant “T” status (victims of human trafficking), under section 101(a)(15)(T) of the Act;</li> <li>• “U” status (victims of violent crime who assist in the prosecution), under section 101(a)(15)(U) of the Act;</li> <li>• An asylee applying for adjustment of status under section 209(b) of the Act;</li> <li>• An approved self-petitioning battered or abused spouse or child of a United States citizen or lawful permanent resident under the Violence Against Women Act (VAWA); or</li> <li>• An alien to whom section 212(a)(4) of the Act, excludability due likelihood of becoming a public charge, does not apply, including: <ul style="list-style-type: none"> <li>○ Applications for Special Immigrant-Juveniles; or</li> <li>○ Applications based on the Cuban Adjustment Act, Haitian Refugee Immigration Fairness Act (HRIFA), and the Nicaraguan Adjustment and Central American Relief Act (NACARA).</li> </ul> </li> </ul>
I-751, Petition to Remove Conditions on Residence	



<b>Forms and Services Eligible for a Fee Waiver Based on an Inability to Pay*</b>	
<b>Service and/or Form Number and Name</b>	<b>Applicability and Comments</b>
I-765, Application for Employment Authorization	To request an Employment Authorization Document (EAD)
I-817, Application for Family Unity Benefits for Status under the Family Unity Program	
N-300, Application to File Declaration of Intention	To apply for a Declaration of Intention to become a U.S. citizen.
N-336, Request for a Hearing on a Decision in Naturalization Proceedings Under Section 336 of the Act	To request a hearing on an unfavorable decision related to a Naturalization application.
N-400, Application for Naturalization	
N-470, Application to Preserve Residence for Naturalization Purposes	
N-565, Application for Replacement of Naturalization/Citizenship Certificate	
N-600, Application for Certificate of Citizenship	
N-600K, Application for Citizenship and Issuance of Certificate under Section 322 of the Act	To recognize U.S. citizenship for an adopted child.

\* See section 212(a)(4) of the Act and Chapter 10.9(b)(1) of the *Adjudicator's Field Manual* for a definition of and methods to determine an inability to pay.

The AFM Transmittal Memoranda button is revised by adding new entries, in numerical order, to read:

AD07-19 [update effective 07-30-2007]	<b>Chapters:</b> <ul style="list-style-type: none"><li>• 10.9(a)</li><li>• Appendix 10-10</li></ul>	This memorandum revises <i>Adjudicator's Field Manual (AFM) Chapters 10.9(a)</i> and adds <b>Appendix 10-10</b> to reflect modifications to the availability of fee waivers by the final rule "Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule." 72 FR 29851 (May 30, 2007). This rule is effective on July 30, 2007.
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## **5. Contact Information**

USCIS personnel with questions regarding this memorandum should raise them through appropriate channels to Claudia Young, Domestic Operations Directorate.