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**Comments of Human Rights First
On the Department of Homeland Security's November 14, 2019 Proposed Rule on U.S.
Citizenship and Immigration Services Fee Schedule and Changes to Certain Other
Immigration Benefit Request Requirements**

DHS Docket No. USCIS–2019–0010

December 30, 2019

On November 14, 2019, the Department of Homeland Security's (DHS) United States Citizenship and Immigration Services (USCIS) issued a notice of proposed rulemaking (84 Fed. Reg. 62280-62371), modified on December 9, 2019 (84 Fed. Reg. 67243-67246), which proposes to impose, for the first time, a fee for affirmative asylum applications, raise the fees charged for other applications, and eliminate many fee waiver categories.

Human Rights First strongly opposes the adoption of the proposed modifications to the USCIS fee schedule. These changes would create significant barriers to seeking asylum, applying for and receiving lawful permanent residence, as well as obtaining and renewing authorization to work legally while these applications are being processed. The rule is likely to significantly harm asylum seekers, who often arrive in the United States traumatized from the persecution they are fleeing and with few resources. The inability to pay should not interfere with the ability of asylum seekers to request the humanitarian protections and other immigration status and benefits they are entitled to under U.S. law. We urge DHS to rescind the proposed rule.

Human Rights First and its Interest in this Issue

Human Rights First is a non-profit, nonpartisan international human rights organization that challenges the U.S. government to live up to its ideals and serve as a beacon on human rights. With offices in Houston, New York City, Los Angeles, and Washington D.C., we provide pro bono representation to refugees seeking asylum in the United States, working in partnership with volunteer lawyers from many of the nation's leading law firms. Our attorneys and partner pro bono firms currently represent more 1,350 clients. We assist our clients, indigent refugees who have fled persecution in their home countries, to file applications for asylum, employment authorization, and lawful permanent residence, among other forms of immigration status. Because we work exclusively with individuals who are unable to afford private legal representation, reasonable fees and fee waivers are crucial to ensure that our vulnerable asylum-seeker clients can access refugee protection in the United States and support themselves and their families while they wait for their applications to be adjudicated. Our experience in the provision of legal services to indigent persons informs the comments that follow below.

Comments on the Proposed Regulations

For many asylum seekers and asylees, the existing fees associated with renewing a work

authorization document or applying for permanent residence are already prohibitive. The new and increased fees proposed by DHS and the elimination of many fee waivers will create major additional barriers for refugees seeking asylum, requesting employment authorization, and applying for permanent residence in the United States.

Under the proposed fee schedule, refugees would be subject, for the first time in the United States, to a fee to apply for the humanitarian protection of asylum. For instance, a refugee family of four would be required to pay \$2,010 in non-waivable fees to file an affirmative asylum application with USCIS (\$50) and to request initial work authorization documents (\$490 per person) while the asylum application is pending. This is a substantial sum for asylum seekers – many of whom are indigent and unable to lawfully work until they receive an employment authorization document.

Indeed, at present, individuals seeking asylum may not receive authorization to work until their asylum applications have been pending for at least six months.¹ The inability to work during this period leaves many asylum seekers, who are often traumatized and vulnerable, in precarious situations.² Asylum seekers without means to survive must rely on friends, family, or local communities for support. But some refugees lack support networks and suffer abuse and exploitation as undocumented workers in the labor market while waiting for work authorization. Many become homeless, live in overcrowded or unsafe conditions, and lack basic needs like food and clothing.

Even after an asylum seeker receives work authorization or is granted asylum, barriers to employment (language skills, need for professional recertification, etc.) prevent some from working or finding a job in the formal employment sector. Refugees who have experienced persecution in their home countries may also suffer from physical and psychological conditions, including Post-Traumatic Stress Disorder and depression, that inhibit their ability to work. Because of the costs of housing and other necessities, many asylees remain dependent on assistance from friends, family and non-profit organizations to make ends meet.

Yet, the proposed fee changes would substantially increase the fees charged to apply for permanent residence and would eliminate fee waivers for applicants unable to afford these fees. For adult applicants for permanent residence, DHS proposes to increase the fee 79 percent from \$1,225 to \$2,195.³ Children under the age of 14 applying for permanent residence with their

¹ 8 U.S.C. § 1158; 8 C.F.R. § 208.7; *but see*, 84 Fed. Reg. 62374-62424 (2019) (proposing to extend the waiting period to apply for work authorization to 365 days after filing of an asylum application, eliminate eligibility for work authorization to individuals who apply for asylum after crossing a U.S. border between ports of entry, and remove the requirement that initial employment authorization requests for asylum seekers be processed within 30 days, among other proposals).

² *See* Human Rights First, “Callous and Calculated: Longer Work Authorization Bar Endangers Lives of Asylum Seekers and Their Families” (Apr. 29, 2019) available at <https://www.humanrightsfirst.org/resource/callous-and-calculated-longer-work-authorization-bar-endangers-lives-asylum-seekers-and>.

³ The proposed fee schedule, although slightly reducing the price of the application for permanent residence (\$1,120), would require applicants to pay new, separate fees to apply for employment authorization (\$490) and

parents face an astounding nearly 300 percent increase from the \$750 USCIS currently charges to the same \$2,195 fee. An asylee family of four would be required to pay an astronomical \$8,780 to apply for permanent residence – an amount that is simply out of reach for most of the refugee families Human Rights First represents.

For asylum seekers and recent asylees who struggle to support themselves, the proposed changes to the USCIS fee schedule and the elimination of many fee waivers are likely to have devastating consequences. Asylum seekers in the most precarious financial situation who cannot afford the fee for asylum will be prevented from even filing an application for asylum. Many asylum seekers will be unable to afford to request employment authorization documents that would allow them to work and often provide the only valid form of government identification asylum seekers in the United States can obtain.

Charging fees for asylum applications and initial work authorization will prevent some refugees from seeking protection and render them even more vulnerable

The right to seek asylum in the United States should not be conditioned on the ability to pay to submit an asylum application. A central tenant of U.S. immigration and refugee law is that “[a]ny alien who is physically present in the United States or who arrives in the United States . . . irrespective of such alien’s status, may apply for asylum.”⁴ To abide by this guarantee, for decades the United States has made applications for asylum and initial work authorization documents free of charge to ensure that vulnerable and traumatized refugees are able to seek humanitarian protection in the United States and to support themselves while their applications for asylum remain pending. The proposed rule would upend this tradition of refugee protection⁵ and would impose an unprecedented fee for affirmative asylum applications, charge asylum seekers whose applications remain pending a fee for their initial work authorization, and would not offer any fee waivers.

Asylum seekers who are unable to pay the fee will be shut out of the refugee protection system. Indeed, the proposed rule acknowledges that asylum seekers who wish to file an asylum application with USCIS who “do not pay the proposed \$50 fee” will “have no means of applying for recognition as a person in need of refugee protection and its attendant benefits such as asylum or withholding-based employment authorization, travel documents, or documentation of

refugee travel documents (\$585). Many of Human Rights First’s refugee clients and asylees request these documents in order to work, hold valid government identification, and travel abroad while they wait for a decision on their permanent residence application.

⁴ 8 U.S.C. § 1158(a)(1).

⁵ Congress has encouraged USCIS to refrain from charging fees for humanitarian applications, including asylum. See HR 1158, Consolidated Appropriations Act 2020, Pub-L 116-93, (December 20, 2019), Conf. Report, Div. D, Department of Homeland Security Appropriations Act, p 28 (“Further, USCIS is encouraged to refrain from imposing fees on any individual filing a humanitarian petition, including, but not limited to, individuals requesting asylum; refugee admission; protection under the Violence Against Women Act; Special Immigrant Juvenile status; a T or U visa; or requests adjustment of status or petitions for another benefit after receiving humanitarian protection.”).

immigration status.”⁶

Only three countries that are parties to the 1951 Convention Relating to the Status of Refugees⁷ charge a fee for asylum applications. Under this fee schedule proposal, the United States would join Iran, Fiji, and Australia in charging refugees fees for asylum applications.⁸ However, even Iran and Fiji provide certain fee exemptions, and Australia charges roughly half the fee proposed by DHS.

In the experience of Human Rights First, charging a fee for asylum applications would impose a substantial burden on asylum seekers recently arrived to the United States who often find themselves living in desperate financial circumstances and who may be suffering from the physical and psychological impacts of the persecution that they have suffered. Asylum seekers are often forced to depend on friends, family, and community and faith-based organizations for everything from housing to food, medicine, and transportation. These vulnerable individuals cannot afford even a \$50 asylum fee. Such a fee would likely have posed an insurmountable barrier for many of Human Rights First’s clients, including:

Charles likely could not have paid even \$50 to submit an asylum application when he fled to the United States with little more than the clothes on his back after he was severely tortured in his home country. He was forced to sleep on public transportation and could not afford to eat every day. He survived on donations from local religious organizations and the kindness of strangers. Charles has since been recognized as a refugee by the asylum office.

Homeless and suffering physically and psychologically from the torture he endured in his home country, Mohamed⁹ likely would not have been able to apply for asylum had he been forced to pay a fee. Although he eventually found refuge in a homeless shelter, Mohamed often went without enough to eat. Underlying physical health issues were exacerbated by the trauma of the torture Mohamed suffered and concerns about his wife and children who he was forced to leave behind in dire circumstances – all of which contributed to frequent thoughts of suicide. After filing for asylum, Mohamed was able to receive employment authorization, find a job, access better medical care, and move into a rented room, as he awaits his asylum interview.

Nayib, a journalist, health advocate, and lawmaker in his home country, likely would not have been able to afford to pay to file an affirmative asylum application, as he found himself homeless and hungry when he fled to the United

⁶ 84 Fed. Reg. 62319.

⁷ As the United States is a party to the 1967 Protocol Relating to the Status of Refugees, it is obligated to abide by the provisions of the 1951 Convention Relating to the Status of Refugees.

⁸ See 84 Fed. Reg. 62319.

⁹ All client names have been replaced with pseudonyms to protect their privacy and safety.

States to seek asylum because of his opposition to his country's ruling government. In the United States, Nayib was forced to rely on acquaintances for a place to sleep at night, frequently went without enough to eat, and lacked warm winter clothing before he was able to apply for asylum and receive work authorization and find employment as a certified nursing assistant while waiting for his application to be decided.

In addition to the fee on asylum applications, DHS proposes to charge asylum seekers who have filed affirmative asylum applications with USCIS and those who have submitted asylum applications in immigration court for initial employment authorization applications (\$490) and would not provide fee exemptions. Employment authorization documents not only allow asylum seekers to work lawfully in the United States but also serve as official U.S. government-issued identification, which are frequently required to obtain state identification documents, to enroll asylum-seeking children in state health programs and educational services, as well as to open bank accounts and obtain other private services. Many asylum seekers do not have any other valid identity documents because they have been lost in flight or have expired since they fled their home countries.

These proposed changes to employment authorization are likely to prevent the most desperate asylum seekers, who are unable to afford the fees, from submitting applications and leave them even more vulnerable to exploitation and abuse. These barriers to employment run counter to the requirements under the Refugee Convention and its 1967 Protocol to make gainful employment accessible to those seeking asylum.¹⁰ Indeed, the current six-month waiting period to request work authorization already forces some asylum seekers into desperate and sometimes dangerous circumstances,¹¹ including clients of Human Rights First:

Before receiving work authorization Zenia and her child were forced to live with a man who physically assaulted and demanded sex from Zenia as payment for staying in his home. Zenia subsequently fled with her child to a homeless shelter and sought help from local churches and non-profit organizations to cover their basic needs. With assistance from a pro bono attorney, Zenia applied for a free initial employment authorization document and received fee waivers for subsequent renewals, allowing her to become certified as a home health attendant and move into her own apartment while she waits for her immigration court hearing.

Saira, a journalist who fled her home country due to political persecution, and her

¹⁰ See Art. 17, Convention Relating to the Status of Refugees (1951) available at <https://www.unhcr.org/en-us/3b66c2aa10>; see Yael Schacher, "Why Forbidding Asylum Seekers from Working Undermines the Right to Seek Asylum," *Washington Post* (Nov. 18, 2019), available at <https://www.washingtonpost.com/outlook/2019/11/18/why-forbidding-asylum-seekers-working-undermines-right-seek-asylum/>.

¹¹ See Human Rights First, "Callous and Calculated."

five children found themselves homeless and reliant on donations from local religious and non-profit organizations to cover their needs until Saira received a no-fee initial work permit and fee waivers to renew the employment authorization. Once she was able to work, Saira found a job and moved the family out the homeless shelter where they had been staying. She and her children were subsequently granted asylum by an immigration judge.

Limiting the forms of payment USCIS accepts would impose a substantial burden on asylum seekers

Human Rights First strongly urges DHS to reconsider its proposal to prohibit the payment of fees using cashier's checks and money orders, as this restriction would likely create a substantial barrier to payment of USCIS fees and submission of applications by asylum seekers and other undocumented immigrants. This proposal is particularly troubling with respect to the imposition of a fee on asylum applications and initial employment authorization applications, as asylum seekers without work permits often are not eligible to open bank accounts and cannot acquire the debit or credit cards that USCIS could now require to make fee payments. Indeed, the vast majority of the Human Rights First's clients, who are able to pay application fees (generally for the renewal of work permits or for permanent residence once they have found employment), do so using money orders, which are readily available at U.S. post offices, pharmacies, and currency exchange bureaus. Requiring asylum applicants to pay USCIS with a debit or credit card is likely to prevent many refugees from filing their applications for asylum protection.

Conclusion

DHS's proposal to institute new and increased fees and to eliminate many fee waivers is likely to create substantial barriers for asylum seekers like those Human Rights First represents to submit requests for refugee protection in the United States, seek permission to work, and ultimately to become permanent residents. The proposed rule fails to adequately acknowledge or account for these substantial negative impacts on asylum seekers who lack the means to pay the fees imposed by the proposed USCIS fee schedule.

Human Rights First urges DHS to rescind the proposed fee schedule and reconsider this unprecedented and dangerous effort that would block vulnerable refugees from asylum protections in the United States.