

## Looming obstacle to naturalization fee waivers draws response from organization, firm

By: Kris Olson November 27, 2019

The work of a Boston-based nonprofit that has helped hundreds of low-income green card holders become U.S. citizens annually is being threatened by changes to the process for obtaining fee waivers, set to take effect on Dec. 2.

With help from its longtime pro bono partners at Ropes & Gray, Project Citizenship has filed suit in federal court seeking to block and invalidate the U.S. Citizenship and Immigration Services' new rule, arguing that its adoption violates the Administrative Procedures Act and the Paperwork Reduction Act.

Naturalization is the final step on a "long road" to citizenship for lawful permanent residents, the complaint explains. At a minimum, most applicants need to have held a green card for five years; must be able to read, write and speak basic English; must have a basic understanding of U.S. history and government; must possess good moral character; and must demonstrate an attachment to the principles and ideals of the U.S. Constitution.

However, applicants believe running the gauntlet is worth it, as it unlocks the benefits of full participation in American society, including the right to vote, serve in the military, and obtain certain government jobs.

Until now, low-income green card holders have had three ways to demonstrate they qualify for a waiver. But USCIS is poised to take away the "most utilized and straightforward method of demonstrating an inability to pay," according to Project Citizenship's complaint.

Under that method, applicants supply proof that they have qualified to receive state-administered means-tested benefits, such as food stamps or MassHealth.

About a year ago, USCIS decided that it was troubled by the fact that eligibility for those benefits varies from state to state, thereby opening the door to fee waivers for individuals who would not otherwise qualify under the other two avenues, the agency says.

Project Citizenship has built its service model around the means-tested-benefit method of qualifying for a fee waiver, and it has been highly effective, succeeding at a 95 percent rate. In 2018 alone, the organization's 1,000-plus volunteers conducted 72 workshops, assisting 1,575 citizenship applicants.

The process leaves little to chance: By the time a workshop is over, a naturalization candidate's application and all the necessary supporting documentation are ready to be shipped off to a USCIS lockbox facility.

Once the means-tested-benefit option for obtaining a fee waiver is eliminated, applicants will be left with either needing to establish that their income is at or below 150 percent of the federal poverty guidelines or demonstrate they are experiencing "financial hardship," which Project Citizenship Executive Director Veronica Serrato says few are able to accomplish.

One problem with having the federal poverty guidelines determine whether an applicant for citizenship deserves a fee waiver is that the guidelines do not account for differences in the cost of living across the country, notes Project Citizenship's attorney, Ropes & Gray litigation and enforcement partner Amy D. Roy of Boston.

Serrato suspects the timing and short notice before implementation of the new rule is not a coincidence, with the 2020 election less than a year away.



“For me, it’s all about voter suppression,” she says.

A spokesperson for USCIS declines an interview request, citing agency policy of not commenting on pending litigation.

As if the elimination of the most common route of seeking a fee waiver were not enough, USCIS is also making it much more difficult for applicants to prove their income is sufficiently low, according to Serrato and Roy.

As proof of income, USCIS will not accept tax returns but rather will require applicants to submit an official tax transcript obtained from the IRS. For green card holders with limited means and often little access to computers or the internet, that is more easily said than done, Serrato says.

Just for good measure, USCIS is also making the use of its new Form I-912 mandatory, where once a letter from an applicant for citizenship would have sufficed.

The more onerous that USCIS makes the naturalization process, the more people will self-select out of embarking on it, Serrato says.

According to the complaint, USCIS admits that it did not comply with the notice-and-comment rulemaking procedures of the APA. Instead, USCIS believed it could adopt the revised Form I-192 and instructions under the Paperwork Reduction Act, which “really strikes us as an end run” around the APA, Roy says.

The complaint asserts USCIS has this wrong because its new rule is not “interpretive” but rather “substantive,” meaning it “affects individual rights and obligations.”

USCIS did issue three separate information collection notices as the Paperwork Reduction Act requires but seemingly paid little heed to the hundreds of comments it received, the complaint alleges. Nor did USCIS perform the required analysis to demonstrate that the changes would reduce the paperwork burden on applicants, instead looking at the issue from the agency’s perspective.

“They’ve got it flipped around,” Roy says.

But even from the agency’s perspective, it unnecessarily is creating a lot of work for itself, Serrato says.

“Why reinvent the wheel if somebody’s already been adjudged low-income?” she asks.

Project Citizenship’s complaint notes that, in 2017, nearly 40 percent of all naturalization applications included a fee waiver, and a founding principle of the organization is that citizenship should not only be for the wealthy, Serrato says.

The lawsuit asks the court to declare the new rule unlawful, vacate it, and enjoin USCIS from enforcing or applying any aspect of it.

Ropes & Gray has been with Project Citizenship literally since the beginning, helping it incorporate in 2014.

Since then, 335 of the firm’s attorneys and staff have volunteered with the organization, with lawyers donating 976 pro bono hours to the organization in 2018 alone. The firm has hosted seven citizenship workshops, at which 439 clients were served, and sponsored 21 Citizenship Centers in Project Citizenship’s offices.

But now, if that partnership is to continue to thrive, they will have beat back a rule change they say poses an existential threat to Project Citizen’s work.

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