

USCIS Sued Over New Limits On Immigration Fee Waivers

By **Dorothy Atkins**

Law360 (October 31, 2019, 4:51 PM EDT) -- Immigration organizations hit the U.S. Citizenship and Immigration Services with lawsuits in California and D.C. federal court this week, challenging its decision to no longer waive application fees for immigrants who receive public benefits and narrowing who qualifies for the fee waivers.

In a lawsuit filed in D.C. federal court Wednesday, the Northwest Immigrants Rights Project, which provides legal assistance to thousands of low-income immigrants every year, argued that the government's recent policy change is "arbitrary" and "capricious" and will make it more difficult for low-income applicants to show that they cannot afford expensive fees, which can be over a thousand dollars.

"USCIS failed to make clear its rationale for the changes, offered shifting and illogical justifications, and relied on assertions that lack supporting data, contradict each other, or contradict the data before the agency," the suit says.

NWIRP counsel Rebecca Smullin of Public Citizen said Wednesday making fee waivers inaccessible will hurt individuals who are trying to legally work in the U.S. or become citizens in order to escape domestic abuse and human trafficking.

The city of Seattle and five other immigration organizations filed a similar lawsuit against the agency and its officials in California federal court Tuesday, arguing that the "sudden and unlawful" policy change "severely limits" the ability of low-income lawful permanent residents to become American citizens.

"This change effectively creates a wealth test for citizenship and will block large numbers of low-income [applicants] from becoming citizens, despite the fact that they are already part of the fabric of — and make enormous contributions to — our country," the complaint says.

Both lawsuits argue that the USCIS violated the Administrative Procedure Act by making the changes without undertaking a public notice-and-comment period. The NWIRP's suit also alleges the government failed to comply with the Paperwork Reduction Act.

The suits come days after the USCIS announced on Oct. 25 that it will no longer consider receipt of federal and state public benefits, like Medicaid and food stamps, as a factor when weighing if an immigrant qualifies for a fee waiver for certain immigration applications.

Under the new process, which is set to take effect on Dec. 2, low-income immigrants who want to apply for fee waivers will need to show they are eligible under one of the remaining two factors: that their income is at or below 150% of the federal poverty guidelines or that paying the fee would cause "financial hardship."

The California lawsuit notes that the fee waiver program has allowed hundreds of thousands of immigrants to begin the naturalization process despite limited financial resources, and in 2017, nearly 40% of all naturalization applications had their fees waived.

The lawsuit also took issue with one of the policy changes that requires applicants to submit a tax transcript from the Internal Revenue Service to prove they're below the poverty line, rather than submitting copies of tax returns. The suit says the change puts an additional burden on low-income applicants and that those tax transcripts may not be accurate, because even President Donald Trump has said publicly that tax transcripts "are notoriously inaccurate."

Jessica Marsden of Protect Democracy, who represents the plaintiffs in the California case, said legal residents who live and work in the U.S. and pay taxes should have the opportunity to become citizens and participate in democracy.

"The new rules essentially set up a wealth test for citizenship: If you're too poor to afford to apply, you're out of luck," she said. "We filed suit to prevent this administration from making it harder for those legal immigrants to become citizens."

A representative for the USCIS declined to comment Thursday.

The city of Seattle and the immigration organizations are represented by Lee H. Rubin, Matthew D. Ingber, Lauren R. Goldman, Niketa K. Patel, Nicolas E. Rodriguez and Luc W.M. Mitchell of Mayer Brown LLP, Jessica Marsden and Jamila Benkato of Protect Democracy Project, Niyati Shah and Marita Etcubanez of Asian Americans Advancing Justice and Seattle City Attorney Peter S. Holmes and Assistant City Attorney Erica R. Franklin.

The Northwest Immigrants Rights Project is represented by Rebecca Smullin and Michael T. Kirkpatrick of the Public Citizen Litigation Group.

Counsel information for the government wasn't immediately available Thursday.

The cases are City of Seattle et al. v. Department of Homeland Security et al., case number 3:19-cv-07151, in the U.S. District Court for the Northern District of California, and Northwest Immigrants Rights Project v. the U.S. Citizenship and Immigration Services, case number 1:19-cv-03283, in the U.S. District Court for the District of Columbia.

--Additional reporting by Suzanne Monyak. Editing by Bruce Goldman.

Update: This story has been updated to include comment from the plaintiffs' counsel.