

SYSTEMIC BARRIERS TO NATURALIZATION THAT CONGRESS CAN ADDRESS

Congress is largely responsible for many of the recurring problems in the naturalization process. It has offered no coherent legislative program in support of citizenship and has chronically underfunded the U.S. Citizenship and Immigration Services (USCIS). Congress has exacerbated USCIS's budgetary and other challenges by passing unfunded legislation and by requiring USCIS, unlike other public service agencies, to be largely self-supporting.

Fee Structure and Rates

Congress essentially requires USCIS to recover the full cost of application processing and services by collecting application fees. Congress also requires that USCIS perform an internal audit every two years to review processing costs and adjust the application fees accordingly. This system creates a number of problems for USCIS, which has experienced rising costs in recent years due to expensive new technologies and new processing requirements for quality control and national security. In addition, this system creates budget uncertainty because the funding stream is entirely dependent on the number of applications filed, which is difficult to predict. Perversely, if applications increase unexpectedly, the revenue from fees also increases, but USCIS cannot access fee revenue above its estimated budget without going through a lengthy process to obtain congressional permission. When Congress makes sporadic discretionary appropriations to USCIS, it usually restricts use of the funds to a particular problem area, such as backlog reduction. Moreover, Congress does not provide any regular, annual appropriation to support USCIS's operating costs. Ultimately, this system has led to a situation in which USCIS is entirely dependent upon application fees to support its operating costs and chronically underfunded in areas such as staffing, background checks, and new software and computer systems.

In the last few years, the fee for the naturalization application has increased rapidly, from \$95 in 1994, to \$225 in 1998, to \$260 in 2002, to \$320 in 2004, to the current fee of \$330 that took effect in 2005. In addition to the application fee, there is the fee for fingerprinting, now called "biometrics," which increased from \$25 in 1998, to \$50 in 2002, to the current cost of \$70 in 2004. USCIS has announced plans to increase fees substantially in fiscal year 2007.

The high application fee is a major barrier for low-income immigrants who desire citizenship. Although fee waivers are available for applicants who are unable to pay, they are by no means easy to obtain. The fee waiver application process is cumbersome and usually requires professional assistance to assemble all the required documentation of household income.

Moreover, the cost of fee waivers is borne by paying applicants, as USCIS estimates the number of fee waivers expected and figures this cost into the application fee. The current pattern of routine and significant fee increases creates a vicious cycle of higher fees leading to more applicants who need fee waivers, which increases the cost for paying applicants and leads to higher fees to cover the cost of more fee waivers.

Many immigrants are working poor whose income is not low enough to qualify for a fee waiver, yet too low to comfortably afford the fees. According to the Urban Institute, 41 percent, or 2.4 million, of the immigrants currently eligible to naturalize have incomes under 200 percent of the poverty level. Under the current fee structure a family will spend \$800 for the parents to apply for citizenship—more than one month's rent in many U.S. cities. Untenable fees create a permanent underclass of working poor who cannot afford to naturalize and cannot qualify for a fee waiver.

Demands by Congress and the administration that USCIS employ new technologies, quality assurance measures, and national security checks have added to its increasing operating costs. The agency estimates that current application fees include a \$5 surcharge to cover the cost of information technology and quality assurance measures. Additional security checks that were implemented after 9/11 for all applicants seeking immigration benefits require significant USCIS staff time, at an annual cost of about \$140 million and a per application surcharge of \$21.

Congress and the administration have also exacerbated USCIS's budget challenges by passing unfunded legislation. For example, in 2003 Congress passed a commendable law that waived the citizenship application fee for military personnel. However, Congress failed to fund this law, meaning family members of immigrant military personnel effectively pay for their loved ones' benefits from their own USCIS application fees. Further, under the Homeland Security Act of 2002, Congress created the Office of Citizenship (OoC) within USCIS. Although it tasked this new office with promoting citizenship, it did not provide any funds for the office's activities. The costs of both military citizenship applications and the OoC are included in the application fees as part of a \$7 per application surcharge.

Astonishingly, USCIS even charges applicants for the cost of litigation settlements, effectively forcing the same people who are harmed by USCIS's errors and mismanagement to pay for financial judgments against the agency. Litigation settlements are also included in the \$7 per application surcharge.

English Requirements and the Lack of Broader English Waivers

Congress requires that, by law, immigrants must demonstrate an ability to read, write, and speak basic English, and have a knowledge of U.S. history and civics. The English requirement poses the greatest barrier for citizenship applicants, particularly those who are elderly, disabled, low-income, and have low levels of education in their native country. Many try to obtain citizenship but fail the English test, while others are too intimidated by the test to even apply.

The law allows some exemptions to the English requirement for those meeting both age and long-term residency stipulations. The English requirement is waived for applicants who, on the date of filing the naturalization application, are either: (1) age 50 or older and a lawful permanent resident for 20 years or more; or (2) age 55 or older and a lawful permanent resident for 15 years or more. Despite the availability of this waiver, many elderly applicants are left out because they cannot meet the long residency requirement. For example, a 90-year-old applicant who has been a Lawful Permanent Resident for ten years cannot qualify for an English waiver, yet it seems unlikely that someone of such advanced age would be able to learn a foreign language. For elderly people who are illiterate in their native language or have low levels of education, particularly women in many cultures, the ability to meet the English requirement is virtually impossible. These

applicants are, however, capable of learning and demonstrating knowledge of U.S. history and civics in their native language.

Other persons who have a severe physical, mental, or developmental disability that renders them unable to learn new information may be exempt from both the English and civics requirements. Although many elderly citizenship applicants have multiple health problems, these often do not rise to the level of severity required to qualify for a disability waiver. Often, elderly applicants do not understand the eligibility requirements for a disability waiver, and believe that any kind of disability qualifies. Because they find it too challenging to learn English, many try to obtain a disability waiver and are denied.

Outside the United States, other countries with similar citizenship requirements have recognized the challenges faced by the elderly in learning English, and provide broader English waivers for citizenship. For example, Canada does not require applicants age 55 or older to pass its citizenship test, while Australia provides a waiver of the English requirement for all applicants age 50 or older.

Criminal Convictions Leading to Deportation

There are some immigrants who wish to apply for citizenship but fear doing so or are ineligible due to past criminal arrests and convictions. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), which Congress passed in 1996, makes immigrants with certain kinds of criminal convictions permanently ineligible for citizenship and subject to removal. Immigrants with such convictions who apply for citizenship can be arrested at the citizenship interview and placed in removal proceedings. These dire consequences make it extremely important for applicants with any criminal arrest history to be carefully evaluated by an experienced immigration attorney or Board of Immigration Appeals accredited representative before applying for citizenship. Some criminal problems do not make applicants ineligible for citizenship and can be overcome, but the fear of deportation keeps some eligible immigrants from applying for citizenship.

Through IIRAIRA, Congress greatly expanded the types of crimes for which immigrants can be removed, and reclassified many crimes as aggravated felonies under immigration law that were previously not considered aggravated felonies. There are now 20 categories of aggravated felonies with multiple offenses listed in each category. Some of these offenses, such as murder, rape, and kidnapping, are heinous, but others are normally classified as misdemeanors. For example, if an immigrant is convicted of petit larceny for which the sentence of imprisonment is one year, the offense is treated as a misdemeanor under

state criminal law, but immigration law treats it as an aggravated felony. For several of the listed crimes, if a sentence of imprisonment for one year is ordered, the person is considered an aggravated felon even if the sentence was suspended and the person never served time in prison. Further, the definition of aggravated felony applies to convictions entered “before, on, or after” September 30, 1996, the date IIRAIRA was enacted, thus making the 1996 law retroactive. In passing IIRAIRA, Congress also eliminated much of the discretion immigration judges had to grant relief from removal. Thus, immigrants can be removed for crimes committed many years ago, even when they are fully rehabilitated and demonstrate good moral character.

In the years following Congress’s passage of IIRAIRA, a number of removal cases have illustrated the law’s harshness and inflexibility. For example, a Cambodian man who had grown up in the United States was deported after being convicted of indecent exposure for urinating in public. In another case, a Dominican man was placed in removal proceedings for conviction of a misdemeanor offense that had occurred some 20 years earlier, when he had consensual sex with his teenage girlfriend. In the decades following his conviction, he had no further criminal record, had married a U.S. citizen, and had three children who were U.S. citizens.

RECOMMENDATIONS:

- 1** Congress must appropriate operating funds to USCIS on an annual basis rather than requiring USCIS to fund itself solely on processing fees. It must end piecemeal, discretionary appropriations in order to ensure a predictable funding stream and break the cycle of regular, significant fee increases. While Congress fully funds other immigration functions, such as enforcement, detention, and border patrol, it fails to support services. This has led to unpredictable and erratic services from USCIS, whose budget depends upon the number of applications received.
- 2** Congress must stop passing unfunded mandates that impact USCIS. It must appropriate realistic funds for new activities and initiatives that will increase USCIS’s workload and costs. Congress should appropriate funds to cover the cost of litigation.
- 3** Congress should pass a law broadening and extending the English waiver for elderly citizenship applicants, allowing them to take the U.S. history and civics test in their native language. The law should allow an English waiver for applicants who are age 60 or older.
- 4** Congress should amend the Immigration and Nationality Act so that removal is not mandatory in cases involving relatively minor crimes that occurred many years earlier and where the person can demonstrate rehabilitation. Congress should restore the ability of USCIS adjudicators to use their discretion in these cases to grant naturalization. Specifically, Congress should narrow the list of crimes considered aggravated felonies to include only serious crimes. In addition, the law should not be applied retroactively.