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STANDPOINT

Attorneys & advocates against domestic & sexual violence

Immigration Policy Affecting Survivors Who Are Immigrants

This newsletter will be covering some of the ways in which immigration policy has shifted in the past few months under the current administration and what advocates need to know to assist survivors who are immigrants in navigating the changing immigration landscape. Explore our website for more resources

and contact information so we may answer any questions you have regarding this newsletter.

This information is meant to provide domestic and sexual violence advocates with general information on Immigration Policy. It is recommended that anyone applying for an immigration benefit work with an experienced immigration attorney.

Visit our Website

Notice to Appear (NTA) Memorandum

United States Citizenship and Immigration Services (USCIS)[1] issued a memorandum last year that greatly expands the different circumstances in which they may issue a **Notice to Appear (NTA)**[2]. The memo greatly affects survivors who are immigrants in a variety of ways.

Under the new memo, if an applicant files an immigration application with USCIS, the application is ultimately denied, and the applicant is considered a "priority for removal," USCIS may issue an NTA and initiate **removal proceedings**[3] against that person.

Following one of President Trump's Executive Orders issued in early 2017, individuals in the following circumstances are now "priorities for removal":

- those who have been convicted of or charged with a criminal offense,
- those who have committed acts that constitute a chargeable criminal offense but have not necessarily been formally charged,
- those who have engaged in fraud or willful misrepresentation in connection with any official matter,
- those who have abused any program related to receipt of public benefits,
- those who are subject to a final order of removal but have not deported,
- those who pose a risk to public safety or national security, or
- those who are "unlawfully present."

This last category is basically a "catch-all" that many survivors who are immigrants will likely fall into. A person is considered to be "unlawfully present" if they entered the United States without being inspected at the border, if they overstayed their visa, or if they violated the terms of their visa.

Given the more expansive list of people who are now considered "priorities for removal," and the affect this could have on pending immigration applications or applications they are considering applying for, survivors are encouraged to

speak to an immigration attorney about possible criminal or immigration violations they may have committed, whether knowingly or unknowingly. Making the attorney aware of these possible violations will help them to accurately weigh the strength of the survivor's immigration case and determine whether to recommend filing an application, given the heightened risk.

After being made aware of this memo and its possible implications, individuals may be tempted to withdraw their immigration applications. However, these individuals should be aware that withdrawing an application does not protect them from possible removal and may prompt USCIS to issue an NTA against them anyway. If an immigrant survivor wants to withdraw their application, they should speak with an immigration attorney first.

Lastly, it's important to note that this NTA memo is a change in policy, not law. Policy changes are something that leadership can do without Congressional approval. Policy is also something that can change with a different administration or different leadership. Therefore, it is possible that this policy will change again in the future.

If an NTA is issued to a survivor, it is vital that they speak with an immigration attorney as soon as possible. It is also incredibly important that the individual not miss any scheduled hearings. If they fail to show up for a hearing they could be **ordered removed**[4] *in absentia,* which means they will have an outstanding removal order against them. Not appearing for court also means that the individual is not able to claim any defenses they may have against removal.

1. **USCIS** is in charge of approving or denying most immigration applications.
2. An **NTA** is a document that informs an individual that they have been placed in removal proceedings. An **NTA** also provides the reason why the government believes the individual is removable. The issuance of an **NTA** does not mean that the individual will absolutely be removed, as they may be eligible for relief from removal in immigration court.
3. **Removal proceedings** are proceedings in front of an immigration judge where they will determine if the person should be deported or not.
4. If someone has been **ordered removed**, it means they have been ordered to be deported by a judge in immigration court.

Fee Waiver Updates

A fee waiver is a request an applicant can make to waive a filing fee for certain immigration applications based on the applicant's inability to pay. Most immigration applications related to crime victims are free (such as U visas or VAWA self-petitions). However, if the immigrant needs to file additional

applications alongside their primary application, such as waivers of inadmissibility or work permit applications, they may be asked to pay a filing fee. An inadmissibility waiver, which is required in situations where the applicant has past or present criminal issues or violations of immigration law, costs $930. Inadmissibility waivers are extremely common and are frequently required in connection with crime victim immigration applications. Similarly, a standalone work permit application costs $495, a green card application costs over $1,000, and citizenship currently costs $725. For many survivors, this expense is insurmountable. Therefore, many survivors will need to file a fee waiver at some point, and advocates can play a crucial role in assisting with this process.

In order to prove the need for a fee waiver, the individual must show that they qualify under one of these three criteria:

1. that they (or their spouse) are receiving a means-tested benefit (such as food stamps, social security, Medicaid, etc.);
2. their household income is at or below 150% of the Federal Poverty Guidelines; or
3. that they are currently experiencing financial hardship that prevents them from filing the fee, such as unexpected medical bills or financial emergencies.

Previously the USCIS guidance on fee waivers stated that applicants *may* submit additional documents to prove their inability to pay. In situations where the applicant could provide a sufficiently-detailed explanation about their inability to pay, their request may have been approvable without providing such documentation. This flexibility has been extremely helpful to survivors of violence, who often do not have access to financial documentation and who may have experienced economic abuse.

Since July 2018, however, fee waivers are being denied at much higher rates, typically due to a lack of evidence of their inability to pay. Where there was flexibility regarding the requirement to provide documentation, there is now much less flexibility. This makes providing documentary evidence more necessary. Advocates can be extremely helpful to survivors in gathering evidence to prove inability to pay.

One way advocates can help is by encouraging survivors who are immigrants to keep current on all documentation of paystubs, bank statements, receipts of benefits, etc. Notably, statements and support letters from advocates and shelter staff about a survivor's financial situation are being widely accepted as proof of inability to pay and have helped in getting many fee waivers approved.

In the past, certain domestic and sexual violence agencies have been hesitant to provide supportive letters for survivors based out of concerns for their confidentiality. Given the recent changes in immigration policy, it has become more important than ever to provide these supportive letters. We encourage

agencies to implement a policy that includes writing these letters for survivors who are immigrants, with the proper consent from the survivor.

Depending on the survivor's situation, it may be helpful to provide a certain level of detail in these supportive letters, beyond what advocacy would normally incorporate. We recommend advocates work in collaboration with the survivor's immigration attorney to determine the level of detail to include in their supportive letter. Standpoint is also happy to provide guidance on the drafting of supportive letters.

Public Charge Memo

In October 2018, the Department of Homeland Security released a proposed memo which expanded the situations whereby someone can be considered a "**public charge**[1]." Currently "public charge" means that an individual is primarily dependent on the receipt of cash benefits as a living wage (such as SSI or General Assistance) or is in long-term care at the government's expense (such as those in nursing homes or mental health institutions). The government wants to expand "public charge" to include those receiving non-cash benefits, such as housing benefits or food stamps.

It is important to note that the "public charge" consideration applies *only* to visa and green card applications. Also, the "public charge" consideration is forward-looking, meaning the question is whether a person is likely to rely on public benefits in the future, not whether they have received public benefits in the past. Lastly, **"public charge"** *does not* apply in the following situations:

- those who are applying for green card;
- those who are applying for citizenship;
- refugees;
- asylees;
- special immigrant juveniles;
- survivors of human trafficking (T Visa Applicants);
- survivors of certain other serious crimes (U Visa Applicants);
- "qualified" abused spouses or children who file VAWA self-petitions;

Note: This does not apply to green card/ lawful permanent resident applications that come from one of these categories. For example, if a U visa holder later applies for a green card, the "public charge" issue will not apply to them.

It is particularly important for advocates to convey that the above categories will not be affected by the recent proposed "public charge" changes. Misconceptions about this proposed change may cause survivors to withdraw from receipt of public benefits, or to not apply for public benefits for which they are eligible. Receipt of public benefits may be very beneficial in helping survivors stabilize after leaving an abusive relationship. Advocates should encourage survivors to

apply for benefits that they are eligible for. Likewise, it is important for individuals to know that if their children are receiving benefits, this will not affect their own "public charge" status.

1. **"Public charge"** is a test for immigrants applying to come into the U.S. and for those who are applying for a green card (also called lawful permanent residency). The test determines if the applicant is likely to need public benefits in the future. If they are determined to be a "public charge," their visa or green card application may be denied.

If you have any questions about this newsletter or would like to discuss in more detail any of the topics discussed, please do not hesitate to contact Standpoint. We are happy to have a conversation about ways in which advocates can assist immigrants in this evolving immigration climate. You can contact Rachel Kohler, Standpoint's immigration attorney, at 612-767-8926 or at rachel@standpointmn.org.