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Mark Phillips

Residence and Naturalization Chief

Office of Policy and Strategy

United States Citizenship and Immigration Services

U. S. Department of Homeland Security

20 Massachusetts Avenue N.W.

Washington, DC 20529-2140

Subject: Docket Number USCIS-2010-0012

Dear Sirs:

Gary S. Becker, Chief Economist for Catalyst Partners, LLC is pleased to provide the following comments in response to the U. S. Citizenship and Immigration Services, Department of Homeland Security (DHS) request for comments on the Notice of proposed Rulemaking entitled: "Inadmissibility on Public Charge Grounds." These written comments reflect some of my concerns as a regulatory economist.

Since 1977, I have written literally hundreds of economic analyses for the U. S. Environmental Protection Agency, the Occupational Safety and Health Administration, the Mine Safety and Health Administration, the Federal Aviation Administration, the Office of Management and Budget, the Food Safety and Inspection Service, and the U.S. Department of Homeland Security. In my last position, I was the Chief Economist for the DHS Private Sector Office, Office of Policy. At DHS, I was responsible for informing the Secretary of the impact of regulations, processes, and actions on the private sector.

I have reviewed the sections on Executive Order 12866, Executive Order 13771, Regulatory Flexibility Act, Initial Regulatory Flexibility Analysis and Paperwork Reduction Act. I find it very important to understand these and other sections in combination with each other because information created and used in one section is also found and used in another section. Some of my comments follow.

1. **Cost estimates and ranges are too specific and too broad.** -- DHS states that the quantified new direct costs of the proposed rule would range from about \$453,134,220 to

\$1,295,968,450 (undiscounted). The discounted cost would be about \$386,532,679 to \$1,105,487,375 at 3 percent and \$318,262,513 to \$910,234,008 at 7 percent. I perceive, based on the exactness of these estimates that there is little room for error in terms of calculations. Second, but more important is the fact that the low end of the range is approximately one-third of the high end, which suggests that DHS is unsure of the costs. Maybe a more enhanced analysis as to a better selection of possible outcomes would help to narrow the range.

- 2. No Electronic Filing Most Likely Raises the Costs and Slows Down the Application Process** -- OMB requires The Paperwork Reduction Act (Form 83-I) form to be submitted to the Office of Information and Regulatory Affairs. The Agency (see question number 13 in Form 83-I) is asked to report to OMB the annual reporting and recordkeeping hour burden. Question 13b requires the agency to provide the total annual responses and question 13(b)(1) is on the percentage of these responses collected electronically.

I have asked USCIS directly and through a Freedom of Information Act request for any Form 83-I's related to this rulemaking to see what percentage of these responses would be collected electronically. As of today, they have not responded. But according to the economic analysis, a provision for electronic filing of paperwork has not been considered which would most likely reduce the costs of this rulemaking. This assertion is at least partially substantiated by a 2017 submission to OMB (referenced in https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201706-1615-001).

USCIS says: "The use of the Form I-485, Form I-485 Supplement A, and the Instruction for Filing Form I-485 and Supplement A provide the most efficient means of collecting and processing the information needed to determine eligibility for individuals to acquire permanent residence status through adjustment of status. The forms can be completed electronically but currently cannot be filed electronically. They also state that: "USCIS is in the process of investigating the requirements for electronic submission of Forms I-485 and I-485A. Currently, respondents can access and complete the forms online but they must submit the completed application by mail."

The inability to accept the vast number of electronic submissions versus hand-processed mail submissions helps explain why the costs are high. Moreover, mail submissions slow down the application process. USCIS has known about the need to gravitate toward electronic submissions for decades because the last two iterations of Form 83-I (dated 10/95 and 2/4) ask agencies to identify the percentage of the paperwork applications to be collected electronically. Moreover, ever since I worked at OMB in 1999, agencies were encouraged to migrate towards using electronic submissions wherever possible. So more than 20 years have passed and electronic submissions are still not available to USCIS applicants and they were not considered as an alternative in the economic analysis.

In summation, the electronic collection of this information could expedite the approval process, promote data sharing among agencies, and limit the need for duplicative information collection. If electronic responses were allowed then the cost of this rulemaking to the general public would most likely be lower and the wait time to complete the review of these applications would undoubtedly be less.

- 3. Currently Long Processing Times, Maybe Even Longer Processing Times (As A Result of This Rulemaking), and the Variances Associated With Existing Processing Times Have Not Been Included and So the Cost of This Rulemaking**

May be Low. --The economic analysis cites a number of existing and/or new forms that may have to be filled out. Forms that were discussed include I-129, I-129CW, I-356, I-485, I-539, I-693, I-864, I-912, I-944, and I-945. The following table, using data from the USCIS website shows the current processing times by USCIS Service Center for a number of these forms.

| Processing Times for Select Forms By USCIS Service Center, October 3, 2018 | | | | |
|--|---|------------------|----------------|------------------|
| Form Type | California | Nebraska | Vermont | |
| I-129 | Blanket L | 4.5 Mo to 6.5 Mo | NA | 5 Wk to 4 Mo |
| | E - Treaty traders and investors | 3 Wk to 4 Mo | NA | 3 Mo to 5 Mo |
| | H-1B - Specialty occupation - Visa to be issued abroad | 6.5 Mo to 8.5 Mo | NA | 4 Mo to 6 Mo |
| | H-1B - Specialty occupation - Change of status in the U.S. | 6.5 Mo to 8.5 Mo | NA | 4 Mo to 6 Mo |
| | H-1B - Specialty occupation - Extension of stay in the U.S. | 6.5 Mo to 8.5 Mo | 2 Mo to 4 Mo | 3.5 Mo to 5.5 Mo |
| | H-2A - Temporary workers | 1 Wk to 3 Mo | NA | NA |
| | H-2B - Other temporary workers | 1 Wk to 3 Mo | NA | 1 Wk to 3 Mo |
| | H-3 - Temporary trainees | 3 Wk to 4 Mo | NA | 2.5 Mo to 4.5 Mo |
| | L - Intracompany transfers | 4.5 Mo to 6.5 Mo | NA | 5 Wk to 3 Mo |
| | O - Extraordinary ability | 1 Wk to 2.5 Mo | NA | 5 Wk to 3 Mo |
| | P - Athletes, artists, and entertainers | 1 Wk to 2.5 Mo | NA | 5 Wk to 3 Mo |
| | Q - Cultural exchange visitors and exchange visitors participating in the Irish Peace process | 3 Wk to 4 Mo | NA | 1 Wk to 4 Mo |
| | R - Religious occupation | 4 Mo to 7 Mo | NA | 1 Wk to 7 Mo |
| | TN - North American Free Trade Agreement (NAFTA) professional | NA | NA | 2.5 Mo to 4.5 Mo |
| I-129CW | CW-1 - CNMI-Only Nonimmigrant Transitional Worker | 3 Mo to 5 Mo | NA | NA |
| I-485 | Application to Register Permanent Residence or Adjust Status | 6 Mo to 42.5 Mo | 7 to 12 Mo | 11 Mo to 19.5 Mo |
| I-539 | Change status to the F or M academic or vocational student categories | 2 Mo to 4.5 Mo | NA | 12 Mo to 15.5 Mo |
| | Change of status to H or L dependents | 2 Mo to 4.5 Mo | 2 Mo to 4.5 Mo | 12 Mo to 15.5 Mo |
| | Change Status to the J exchange visitor category | 2 Mo to 4.5 Mo | NA | 12 Mo to 15.5 Mo |
| | All other change-of-status applications | 2 Mo to 4.5 Mo | NA | 12 Mo to 15.5 Mo |
| | Extension of stay for F or M academic or vocational students | 2 Mo to 4.5 Mo | NA | 12 Mo to 15.5 Mo |
| | Extension of stay for H and L dependents | 2 Mo to 4.5 Mo | 2 Mo to 4.5 Mo | 12 Mo to 15.5 Mo |
| | Extension of stay for J exchange visitors | 2 Mo to 4.5 Mo | NA | 12 Mo to 15.5 Mo |
| | Extension of stay as T nonimmigrant | NA | NA | 9 Mo to 11.5 Mo |
| | Extension of stay as U nonimmigrant | NA | NA | 9.5 Mo to 12 Mo |
| | All other extension applications | 2 Mo to 4.5 Mo | NA | NA |
| I-693 | NA | NA | NA | NA |
| I-864 | NA | NA | NA | NA |
| I-912 | NA | NA | NA | NA |
| I-944 | NA | NA | NA | NA |

NA- Not Applicable or Not Available.

The variance in the ranges of these estimates for the same forms is high. For example, it takes between 6 to 42.5 months to process Form I-485 at the California

Service Center and between 11 to 19.5 months to do the same at the Vermont Service Center (See above table).

Second, the average processing time by Service Center varies by weeks and by months. At the California Service Center, it will take an average of 24.25 months and at the Vermont Service center it will take an average of 15.25 months to process Form I-485. All of this affects the individual's decision-making process because applicants cannot predict with certainty the exact processing time required and what they must do in the intermittent time period. Processing time reliability results in large changes in personal income, and processing time costs. As a consequence, when making an application, individuals must allow for extra time, or a safety margin, in order to avoid longer than expected processing times. Owing to processing time pressure and the high personal penalty associated with lower or no income than otherwise, allowing an adequate safety margin is particularly important to these applicants.

This issue is of special importance because DHS has identified no added compliance costs associated with processing time delays. The implication is that regardless of the applicant and the processing time delay, they will all incur the same high cost of application, which is not reasonable to assume. This significant omission calls in question the accuracy of the estimates.

In summation I request that DHS remedy these deficiencies in the economic analysis and correct 1) What are the costs, 2) Who incurs the costs, and 3) When are the costs incurred? Similarly, I request that DHS better identify 1) What are the benefits, 2) Who incurs the costs, and 3) When do they occur?

Thank you very much for your consideration of these comments.

Regards,

Gary S. Becker
Chief Economist, Catalyst Partners,
202-467-8202 (Office) 301-356-3014 (Cell)
GBecker@catalystdc.com

<http://catalystdc.com/about-us/our-team/gary-becker-chief-economist/>

1250 Connecticut Avenue NW,
Suite 825, Washington, DC 20036
Desk (202) 467-8202
Email: info@catalystdc.com