

April 13, 2022

Secretary Alejandro Mayorkas
Department of Homeland Security
U.S. Citizenship and Immigration Services
5900 Capital Gateway Drive
Camp Springs, MD 20746

Re: Docket ID USCIS 2021-0013, OMB Control Number 1615-0023, Public Charge Ground of Inadmissibility

Dear Secretary Mayorkas,

We appreciate the opportunity to submit this comment regarding the proposed public charge rule on behalf of The George Washington University Law School's Immigration Clinic. As a long-established community legal clinic, our student-attorneys have been assisting individuals in need with humanitarian immigration matters in the Washington D.C. area since 1979.

We are both student-attorneys in the Clinic with unique backgrounds that lead to our personal understandings of immigration issues, one of us being a child of immigrants, and the other a future immigrant. We both have an interest in public interest law, and plan to use the skills we gain in our clinical experience to begin our careers as empathetic, compassionate, and kind-hearted advocates in the near future.

As student-attorneys who have worked with individuals from marginalized communities, we understand the real-life impact of the public charge standard. Although we commend the Department of Homeland Security for making a positive change, this proposed modification is not enough to make a concrete difference for vulnerable groups who are directly affected by it. We believe that the only way to truly promote equity is to cease the use of the public charge standard altogether.

Evaluation of the proposed rule

The moment in which we recognize the value of individuals as who they inherently are rather than what they can contribute to our economy is the moment in which we as a nation start regaining our humanity. We believe this proposed rule is a step in the right direction, but yet, it still seeks to punish potential immigrants for the simple act of being born outside our borders. It will fail to calm worries about benefits affecting future applications as it intends, and still leaves the door open for discrimination while enforcing a wealth test that counteracts the reason for the founding of this nation and the legacy of the American Dream. We propose that this problem can only be

remedied by discontinuing the application of the public charge rule itself, or alternatively, cease its use altogether for individuals with disabilities.

Proponents of maintaining the status quo of the public charge rule may argue that it prevents individuals from taking advantage of the government's funds and becoming a burden on taxpayers' shoulders without contributing to society. However, the use of this rule allows for assumptions about various groups of people, including those with disabilities, and refuses to see the value of human beings past their potential to make economic contributions.

The proposed rule redefines the phrase of "likely at any time to become a public charge" as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term at government expense.¹ The rule also sets the standard of "primary" dependence evidenced by the mentioned criteria, while the previous rule could have rendered one inadmissible based on one's reliance on certain specified and non-cash needs such as food, housing and health care.² This rule distinguishes between cash and non-cash assistance for the purpose of determining the primary dependent. Such a policy would encourage applicants to have and maintain their main source of income and be assisted by non-cash benefits like Medicaid if they need, without being primarily dependent on the government.

One of our clients, E, was born in a foreign country and obtained his US citizenship through naturalization. In 2018, E married I, a non-US citizen, in the US and now she would like to adjust her status. In determining her admissibility based on public charge ground, the respective adjudicator will be assessing the likelihood of her primary dependent on government based on cash-based assistance or long-term care institutionalization at expense of government; so, she can still be a contributing member of society by having her own income even if her situation in the future necessitates the use of a non-cash assistance like Medicaid. E also does not currently have a permanent job due to the economic effects of the COVID-19 pandemic, which is a factor that may require him to provide a co-sponsor for his affidavit of support. The proposed rule encourages third parties to find a co-sponsor in such affidavits to decrease chances of applicants becoming public charge in the future, as there are less non-cash grounds for such determination.

Another chilling effect of the previous rule that the proposed rule is expected to improve is the confusion among applicants for adjustment of status who the public charge ground of inadmissibility does not apply to them. After the previous rule issued by DHS, confusion started among different groups of immigrants and whether this rule applies to them or not. Exercising the previous rule could have resulted in discouraging immigrants, that even the rule did not apply to them, from receiving non-cash benefits so such assistance cannot be held against them in immigration process. This chilling effect could have had irreparable harm in more vulnerable members of the immigrant community like children, people with disabilities, people with pre-existing conditions etc. and at the time of global pandemic like COVID-19 pandemic in which public health is the priority. By distinguishing cash-based benefits and non-cash benefits, the government intends to lessen public confusion while maintaining healthy communities.

¹ USCIS 2021-0013, Public Charge Ground of Inadmissibility. 10606

² *Id* 10606

However, we believe that the chilling effect caused by the 2019 rule is likely to continue even if applicants are aware of the new rule, because rules can easily change as elections come and go. Given that we live in politically contentious times, it is not implausible that a version of the 2019 rule may be reinstated based on the outcomes of the next presidential election. Therefore, individuals may still be unwilling to apply for much-needed benefits in order to avoid impairing their future immigration applications. For this, we cannot fault them; only a substantial alteration would have the capability to soothe the public's uncertainty regarding this rule.

We would also like to emphasize the issue of considering past and current receipt of public “cash assistance” as a negative factor in the totality of circumstances standard for determining the likelihood of becoming public charge. The proposed rule, by modifying the past and current “benefits” to “cash assistance,” is going down the same path mentioned earlier. Many applicants might have had their independent source of income the whole time while they had to be dependent on some other non-cash benefits in time of emergency, such as a global pandemic. Counting such benefits as a negative factor in assessing their likelihood to become public charge would be unfair and in violation with the purpose of the public charge rule. By mitigating the impact of an applicant's use of benefits, the proposed rule proves to be as positive a modification as can be made to the public charge standard.

Although disability alone has never been a factor to determine whether an applicant is likely at any time to become a public charge, the proposed rule clarifies that disability could not be the only determinative factor for the purpose of this rule. The discretionary power provided by this proposed rule, though not as broad as that of the previous rule, still potentially allows for discrimination. Although disability alone cannot make someone a public charge, having a disability, whether physical, intellectual, psychiatric, or otherwise, can affect every single aspect of a person's life.³

This may include their ability to work and support themselves. Without proper knowledge of the intersectionality of disability issues, officers may make unfair decisions on applications based on factors that, unknown to them, result from an individual's disability. Accordingly, individuals with disabilities should not be considered a public charge under any circumstances to avoid this manner of subconscious discrimination, or alternatively, the public charge standard should not be consideration of inadmissibility.

Moreover, the proposed rule continues to enforce what is effectively a “wealth test” for prospective immigrants by rendering those who qualify for cash-based benefits as inadmissible.

The greatness of America lies in second chances; it is a place where immigrants have chosen to build and rebuild their legacies, going as far back as history can remember. This country exists for all who need it, not only those who can afford it. Applicants who would still be considered public charges under this proposed interpretation deserve a second chance to follow their American Dreams, even if they do not have the means to advance our economy.

³ Disability Inclusion, Center for Disease Control, (last visited April 11, 2022), <https://www.cdc.gov/ncbddd/disabilityandhealth/disability-inclusion.html#ref>

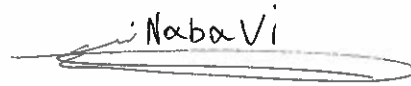
This proposed rule interprets the public charge standard of inadmissibility to be as fair as it possibly could be, considering the constraints of the standard itself. However, this is an opportunity to make a tangible difference, which is why we propose that the rule no longer be used. It is dehumanizing to force individuals to prove their use to our economy before permitting them to stay in the country; it implies that those who are not American by blood or birth are inherently worth less than those who are. The proposed rule is undoubtedly a step forward, but it is not nearly enough. It refuses to consider the complexities that make humans what they are, and in doing so, falls short of its potential.

In our role as student-attorneys, we work with individuals who cannot afford legal services. This proposed modification attempts to provide a pathway for those who are similarly situated but does not fully anticipate the human aspects of immigration. We hope that the Department of Homeland Security will further contemplate the active use of the public charge rule as a standard of inadmissibility in order to combat the unspoken inequities that it creates for those who aspire to become American.

Sincerely,



Trisha Kondabala
J.D. Candidate, May 2023
Student-Attorney, Immigration Clinic
The George Washington University Law
School



Mir Sadra Nabavi
LL.M. Candidate, May 2022
Student-Attorney, Immigration Clinic
The George Washington University Law
School