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**Public Charge**

Dear Program Grantee/State Agency:

SUBJECT: Guidance on definition of "public charge" in  
immigration laws

The Department of Justice (DoJ) published in the Federal Register on May 26, 1999, a Notice of Proposed Rulemaking (NPRM) that establishes clear standards governing whether an alien is inadmissible to the United States, ineligible to adjust immigration status, or has become deportable on the grounds that he or she is likely to be or is a "public charge." The Immigration and Naturalization Service (INS) also published Field Guidance in the same Federal Register, and the Department of State (DoS) has issued a cable to all embassies implementing immediately the policy set forth in the NPRM.

There has been some confusion among immigrant families and service and benefit providers regarding how the receipt of different benefits and services by immigrants and their family members will be treated for public charge purposes. The NPRM, along with the INS and DoS guidance, clarifies the limited number of benefits that may be considered by immigration officials in making public charge determinations.

The DoJ proposes to define public charge to mean an alien who has become (for purposes of deportation) or is likely to become (for purposes of admissibility or adjustment) "primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense." Cash benefits for income maintenance include the following: (1) Supplemental Security Income (SSI); (2) Temporary Assistance for Needy Families (TANF), but not including supplemental cash benefits excluded from the term "assistance" under TANF program rules or any non-cash benefits and services provided by the TANF program; and (3) State and local cash benefit programs that are for the purpose of income maintenance (often called "General

## Public Charge

In an effort to protect the public health and help people become self-sufficient, the Clinton Administration is publishing a proposed rule in the *Federal Register* on May 26 that clarifies the circumstances under which a non-citizen can receive public benefits without becoming a "public charge" for purposes of admission into the United States, adjustment of status to legal permanent resident, and deportation.

The new regulations, for the first time, define "public charge" and state which benefits a non-citizen may receive without concern for negative immigration consequences. The regulation describes the various issues that must be considered in making a public charge determination. This information will help non-citizens and their families make informed choices about whether to apply for certain benefits. The regulation also enhances the administration of the nation's immigration laws by promoting fair and consistent decision-making.

### Background

"Public charge" has been part of U.S. immigration law for more than 100 years as a ground of inadmissibility and deportation. An alien who is likely at any time to become a public charge is inadmissible and ineligible to become a legal permanent resident of the United States. Also, an alien can be deported if he or she becomes a public charge within five years of entering the United States from causes that existed before entry. Instances of deportation on public charge grounds have been very rare.

Recent immigration and welfare reform laws have generated considerable public confusion and concern about whether a non-citizen who is eligible to receive certain Federal, State, or local public benefits may face adverse immigration consequences as a public charge for having received public benefits.

This concern has prompted some non-citizens and their families to deny themselves public benefits for which they are eligible -- including disaster relief, treatment of communicable diseases, immunizations, and children's nutrition and health care programs -- potentially causing considerable harm to themselves and the general public. This impact undermines the government's policies of increasing access to health insurance and health care and helping people to become self-sufficient by drawing temporarily on public support during a transition period.

### Definition of Public Charge

The proposed rule, which was drafted after an extensive interagency process with benefit-granting agencies, defines "public charge" to mean an alien who has become (for deportation purposes) or is likely to become (for admission or adjustment of status purposes) "primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance, or

Some of the above programs may provide cash benefits, such as energy assistance, transportation or child care benefits provided in cash under TANF or the Child Care Development Block Grant (CCDBG), and one-time emergency payments under TANF. Since the purpose of such benefits is not for income maintenance, but rather to avoid the need for on-going cash assistance for income maintenance, they are not subject to public charge consideration.

### **Criteria for Public Charge Determinations**

The proposed rule states that an alien's mere receipt of cash assistance for income maintenance, or being institutionalized for long-term care, does not automatically make him or her inadmissible, ineligible to adjust status to legal permanent resident, or deportable on public charge grounds. The law requires that INS and DOS officials consider several additional issues as well. Each determination is made on a case-by-case basis.

### **Admission and Adjustment of Status**

Before an alien can be denied admission to the United States or denied adjustment of status to legal permanent resident based on public charge grounds, a number of factors must be considered by INS and DOS, including: the alien's age, health, family status, assets, resources, financial status, education and skills. No single factor -- other than the lack of an Affidavit of Support, if required -- will determine whether an alien is a public charge, including past or current receipt of public cash benefits for income maintenance.

### **Deportation**

The INS can deport an alien on public charge grounds only if the alien has failed to meet the benefit-granting agency's demand for repayment of a cash benefit for income maintenance or for the costs of institutionalization for long-term care. INS may initiate removal proceedings only if the benefit-granting agency has the legal authority to demand repayment and has:

- chosen to seek repayment within five years of the alien's entry into the United States;
- obtained a final judgment;
- taken all steps to collect on that judgment; and
- been unsuccessful in those attempts.

Even if these conditions are met, the alien is not deportable on public charge grounds if the alien can show that he or she received public cash benefits for income maintenance or was institutionalized for long-term care for causes that arose after entry into the United States.

### **Other Public Charge Clarifications**

There is no public charge test for naturalization. Public charge is not a factor in whether a non-citizen can sponsor a relative to come to the United States. Benefits received by one member of a family are not attributed to other family members for public charge purposes, unless the cash benefits amount to the sole support of the family.

## **Public Charge**

### **GENERAL**

**Q1: Why are the Department of Justice (DOJ) and the Immigration and Naturalization Service (INS) issuing field guidance and a proposed regulation concerning public charge, and what is the effect of these documents?**

A1: DOJ and INS are issuing this guidance and proposed regulation to alleviate growing public confusion over the meaning of the currently undefined term "public charge" in immigration law and its relationship to the receipt of Federal, State, or local public benefits. By defining "public charge," DOJ seeks to reduce the negative public health consequences generated by the existing confusion and to provide aliens with better guidance as to the types of public benefits that will and will not be considered in public charge determinations. The guidance defines "public charge" and gives examples of benefits that will and will not be considered by INS officials for public charge purposes. It also summarizes the existing law regarding public charge and explains how the INS will administer these provisions.

**Q2: What does it mean to be a "public charge" under the immigration laws?**

A2: An alien who is likely at any time to become a "public charge" is ineligible for admission to the U.S. and is ineligible to adjust status to become a lawful permanent resident. An alien who has become a public charge can also be deported from the U.S., although this very rarely happens. These provisions have been part of U.S. immigration law for over 100 years, and the recent immigration reform and welfare reform laws did not substantively change them. Both INS (in the U.S.) and the Department of State (State) (overseas) make public charge determinations.

**Q3: How is "public charge" defined, and when will this definition be implemented?**

A3: The INS is issuing guidance and a proposed regulation that define "public charge" for the first time. "Public charge" means an alien who has become (for deportation purposes) or who is likely to become (for admission/adjustment purposes) primarily dependent on the government for subsistence. This definition is effective immediately. As discussed below, INS and State will consider the receipt of cash benefits for income maintenance purposes and institutionalization for long-term care at government expense in determining dependence on the government for subsistence.

## Public Charge: Questions and Answers

Page 3

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likely to become a public charge, INS and State will consider whether the alien is likely to become primarily dependent on the government for subsistence as  
(more)

demonstrated by either (1) the receipt of public cash assistance for income maintenance purposes, or (2) institutionalization for long-term care at government expense (other than imprisonment for conviction of a crime). Short-term institutionalization for rehabilitation is not taken into account for public charge purposes.

Public benefits considered to be public cash assistance for income maintenance include:

- (1) Supplemental Security Income (SSI);
- (2) Temporary Assistance for Needy Families (TANF), but not including supplementary cash benefits excluded from the term "assistance" under TANF program rules or any non-cash benefits and services provided by the TANF program;
- (3) State and local cash assistance programs for income maintenance (often called state "General Assistance," but which may exist under other names).

In addition, the costs for institutionalization for long-term care, which may be provided under Medicaid or other programs, may be considered in making public charge determinations.

While the receipt of these benefits may be considered by INS and State for public charge purposes, having received them does not automatically make someone a public charge. As explained above, the totality of circumstances test applies for admission and adjustment. For deportation, all of the procedural requirements, described above, apply.

**Q7: Are there public benefits that aliens can legally receive without worrying that the INS and State will consider them a public charge?**

**A7:** Yes. Not all publicly funded benefits will be considered by the INS or the State Department in deciding whether someone is or is likely to become a public charge. The focus of public charge is on cash benefits for income maintenance and institutionalization for long-term care at government expense. Examples of benefits that will not be considered for public charge purposes include:

- Medicaid and other health insurance and health services (including public assistance for immunizations and for testing and treatment of symptoms of communicable diseases; use of health clinics, prenatal care, etc.) other than support for institutionalization for long-term care
- Children's Health Insurance Program (CHIP)
- Nutrition programs, including Food Stamps, the Special Supplemental

**Medicaid and CHIP considered for public charge purposes?**

A10: No, not unless an alien is primarily dependent on the government for subsistence as demonstrated by institutionalization for long-term care at government expense. In particular, INS and State will not consider participation in Medicaid or CHIP, or similar state-funded programs, for public charge purposes. This approach will help to safeguard public health, while still allowing INS and State to identify people who are primarily dependent on the government for subsistence by looking to the receipt of public cash assistance for income maintenance. In addition, short-term institutionalization for rehabilitation will not be considered for public charge purposes.

**Q11: Do the public charge field guidance and regulation change the policy issued by the Food and Nutrition Service for the WIC Program in WIC Policy Memorandum #98-7, dated March 19, 1998, "Impact of Participation in the WIC Program on Alien Status"?**

A11: No. The new field guidance and regulation on public charge are consistent with the WIC policy memorandum issued in 1998. The WIC policy memorandum was developed based on agreements reached with the INS and State. The new field guidance and regulation merely restate and reinforce the agreement previously reached on the impact of participation in the WIC Program and alien status. As noted above, INS and State will not take WIC participation into account for public charge purposes.

**AFFIDAVIT OF SUPPORT**

**Q12: What is an affidavit of support, and who is required to have one?**

A12: The Personal Responsibility and Work Opportunity Reconciliation Act and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Section 213A, created a new requirement for all family-sponsored immigrants and those employment-based immigrants who will work for a close relative or for a firm in which a U.S. citizen or lawful permanent resident relative holds a 5 percent or greater ownership interest. An alien who applies for an immigrant visa or adjustment of status in one of these categories on or after December 19, 1997, must have an affidavit of support (AOS), INS Form I-864, from a qualifying sponsor or he or she will be found inadmissible as a public charge. An AOS is a legally binding promise that the sponsor will provide support and assistance to the immigrant if necessary.

The AOS must be signed by a sponsor who meets certain statutory requirements. Sponsors must be able to demonstrate that they are able to maintain the sponsored alien(s) at an annual income of not less than 125 percent of the federal poverty level. (Currently, 125 percent of the poverty level

**A15:** The purpose of this question is to ensure that the INS or State official making the decision has access to all facts that may be relevant in determining whether the 125 percent test, described above, is met. Any cash benefits received by the sponsor, such as SSI or cash TANF, cannot be counted toward meeting the 125 percent income threshold, but they are not held against the sponsor if he or she can meet the 125 percent test through other resources. The receipt of other means-tested public benefits, such as Food Stamps, Medicaid, or CHIP, have no effect on sponsorship.

**Q16: What happens if a sponsor who has signed the new affidavit of support dies?**

**A16:** The obligation to support the alien terminates with the sponsor's death, but the sponsor's estate would still be obligated to repay any obligations accrued before the sponsor's death. If there is a joint sponsor and only one of the sponsors dies, the remaining sponsor would remain liable under the affidavit of support.

For deportation purposes, if a sponsor has died and there is no joint sponsor, there is no legal obligation under the affidavit of support to repay any means-tested benefits. This means that the first prong of the test for deportation would not be met and the sponsored alien would not become deportable based on the affidavit of support.

### **EXAMPLE SITUATIONS**

**Q17: Are there categories of aliens who are not subject to public charge determinations?**

**A17:** Yes. Refugees and asylees are not subject to public charge determinations for purposes of admission or adjustment of status. Amerasian immigrants are also exempt from the public charge ground of inadmissibility for their initial admission to the U.S. In addition, various statutes contain exceptions to the public charge ground of inadmissibility for aliens eligible for adjustment of status under their provisions, including the Cuban Adjustment Act, the Nicaraguan Adjustment and Central American Relief Act (NACARA) and the Haitian Refugee Immigration Fairness Act (HRIFA).

**Q18: If an alien has received cash public benefits in the past, but has stopped, will INS or State find that he or she is likely to become a public charge?**

**A18:** Past receipt of cash public benefits does not automatically make an alien inadmissible as likely to become a public charge. It is one factor that will be considered under the totality of the circumstances test to decide whether the alien is likely to become a public charge in the future. For example, if an alien

## Public Charge: Questions and Answers

Page 9

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this cash is the sole support for the family. However, if there are other sources of support or a parent is working, then the cash assistance would not represent the family's sole source of support.

**Q22: If an alien receives public benefits, will it hurt his or her chances to become a U.S. citizen?**

A22: No. There is no public charge test for naturalization purposes, so the receipt of benefits is not relevant, as long as they were legally received. Nor is there a requirement to repay benefits received in the past in order to qualify for citizenship.

**Q23: Can a naturalized citizen lose his or her citizenship because of receiving public benefits?**

A23: No. Nobody can lose his or her citizenship because of receiving public benefits. Once an immigrant becomes a citizen, he or she can receive benefits on the same basis as all other citizens. Citizens cannot be deported or barred from reentering the U.S. after an international trip based on the receipt of public benefits.

**Q24: Does an alien have to stop participating in some benefit programs in order to adjust status and become a lawful permanent resident?**

A24: No, but someone who is receiving a cash benefit for income maintenance at the same time that he or she applies to become a lawful permanent resident may be considered ineligible for adjustment as a public charge. An alien who has received a cash benefit in the past could reapply to the INS after he or she stops receiving the benefit, and might or might not be considered a public charge.

Someone who is receiving a non-cash benefit, for example, WIC, Food Stamps, Medicaid, or CHIP, would not have to stop participating in the program in order to be eligible to adjust to lawful permanent resident status.

As explained earlier, in all of these situations, the usual "totality of the circumstances" test would apply.

**Q25: If a lawful permanent resident has received public benefits and leaves the country, will INS stop him or her from returning on public charge grounds?**

A25: In general, a lawful permanent resident who has been outside the U.S. for 6 months or less is not screened for public charge purposes when he or she returns. This is because lawful permanent residents who leave for 6 months or less at a time are not considered applicants for admission when they return, and none of the grounds of inadmissibility, including public charge, apply to them.



## Public Charge: Questions and Answers

Page 11

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future, then they can refuse to grant a visa or approve adjustment of status, even if he is not currently receiving public cash assistance.

**Q30: What if a person is not receiving cash assistance but is very sick and needs an extended period of care in a nursing home or other long-term care institution? Will she have trouble getting her Permanent Resident Card ("green card")?**

A30: Yes. If someone is living in a nursing home or has a serious long-term illness that requires institutionalization, she will probably have trouble getting a green card unless she can show that she can get the care she needs without using Medicaid or other government-funded health programs (e.g., county aid). However, a short-term stay in a nursing facility, for example, to physically rehabilitate after surgery, will not be used to deny a green card. The alien is not deportable on public charge grounds if the alien can show that she received benefits for causes that arose after entry into the U.S.

**Q31: An alien who is primarily dependent on the government for subsistence as demonstrated by the institutionalization for long-term care at government expense can be found deportable as a public charge. Does this mean that INS will be conducting raids in nursing homes or other long-term care institutions?**

A31: No. INS will not send investigators into nursing homes or other long-term care facilities to look for aliens who might be deportable as public charges. INS may use information concerning institutionalization if it comes to INS attention through other avenues, but the only way an alien could be found deportable is if all the procedural requirements described above were met.

**Q32: If I'm eligible to self-petition for adjustment of status under the Violence Against Women Act (VAWA), do I have to show that I'm not likely to become a public charge?**

A32: The Administration is still considering the extent to which self-petitioners under VAWA are subject to the public charge requirements, and will address this in future guidance. The law does make clear that self-petitioners under VAWA do not need to submit an affidavit of support with their application, unlike other family-based immigrants.

**Q33: Cuban/Haitian entrants are eligible to receive certain public benefits under welfare reform. If they receive such benefits, will they be barred from adjusting status because they will be considered public charges?**

A33: The answer depends on how they become eligible to adjust status. There are statutory exceptions to the public charge ground of inadmissibility for those

immigration consequences based on that reliance.

-- INS --