



# U.S. WELFARE LAW VIOLATES HUMAN RIGHTS OF IMMIGRANTS

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From both a legal and societal perspective, the welfare law passed by Congress in August 1996 raises significant issues concerning the treatment of noncitizens lawfully present in the United States (Personal Responsibility, 1996). The 1996 welfare law distinguishes between citizens and noncitizens in determining eligibility for federal and state social welfare benefits. Noncitizens face significantly greater obstacles in qualifying for benefits than citizens. This policy of exclusion on the basis of national origin clashes with human rights principles and

should prompt lawyers, social workers and other groups to consider carefully their role in social welfare policy.

U.S. immigration law classifies every non-U.S. citizen as an "alien" (Immigration and Nationality Act, 1952). Within the broad category of alien exist two subsets: an "immigrant" and "nonimmigrant." An immigrant generally is classified as a "permanent resident" — an individual who has received the coveted "green card" and may legally stay in the United States for an indefinite period of time. A non-immigrant is classified under a wide variety of visa categories beginning with letters and ending in numbers, e.g., H-1. The nonimmigrant does not have the right to remain in the United States beyond the period specified by the visa.

Under legislation existing before the 1996 welfare law, immigrants (but not nonimmigrants) generally were entitled to the same social welfare benefits as U.S. citizens, without significant differences in determining eligibility. For instance, permanent resident immigrants and citizens had to meet similar eligibility requirements for food and family assistance programs (Aid to Families with Dependent Children, 1935) and disability and aged assistance (Assistance to Aged, Blind and Disabled, 1935). However, the 1996 law placed major restrictions on an immigrant's eligibility to receive further government assistance under those and other social welfare programs.

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## SPECIFIC PROVISIONS OF 1996 WELFARE LAW

The 1996 welfare law specifically targeted government assistance to immigrants as a means to save money. Almost one-half of the anticipated savings in budget outlays were to come from cuts in nonemergency benefits to immigrants (Seubert, 1996; Lee, 1996). Even with recent amendments to the 1996 law that dampen its negative impact on immigrants (Balanced Budget Act, 1997), generally the only noncitizens still eligible to participate in (nonemergency) federal programs or receive (nonemergency) federal assistance are:

- Refugees, asylees, and asylum seekers during an initial period in the United States;
- Individuals who are, or have served, in the U.S. military, including the spouses and children of those individuals;
- Permanent residents who have worked in the United States for 10 years as defined by the federal Social Security Act (P.L. 104-193 § 402(a)(2)).

States may establish more liberal eligibility requirements than those above for foreign individuals seeking general welfare and medical assistance (§ 402(b)(1),(3)). States can also determine eligibility of immigrants for state and local public benefits, including housing, retirement, health, post-secondary education, and unemployment assistance (§§ 411, 412). In no instance, though, may states exclude those individuals who meet the federal standards given above (§ 412(b)).

Another provision of the welfare law aimed at tightening eligibility of noncitizens for government assistance

is that of attributing income and resources of a person signing an affidavit of support for the foreign individual to that individual (§ 421). State agencies, as well as the federal government, may deem the sponsor's income and resources as belonging to the foreign individual (§ 422). Deeming a sponsor's income and resources to be that of the foreign individual would effectively disqualify the individual from most public benefits. The deeming requirement continues until the foreign individual becomes a U.S. citizen or has worked here for 10 years (§ 421(b)).

Since enactment of the 1996 law, Congress has restored some benefits to immigrants, including retention of disability benefits for immigrants residing in the United States at the time Congress enacted the 1996 law (Balanced Budget Act, 1997). However, Congress continues to deny food stamps to immigrants when citizens would qualify.

Clearly, despite subsequent tinkering by Congress, a key motif underlying the 1996 welfare law remains: *Immigrants, many of whom have been living and working in this country for years, should no longer receive essential social benefits that citizens receive.* Congress has never before drawn such a drastic distinction between immigrants and citizens regarding eligibility for social services.

## RATIONALE FOR CUTS TO NONCITIZENS

To justify cutting benefits to noncitizens, especially those who have obtained immigrant status, Congress specifically explained national policy concerning welfare and immigration in the 1996 welfare law. "Self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes" (§ 400(1)). U.S. immigration policy continues to be that "aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the

resources of their families, their sponsors, and private organizations. . . ." (§ 400(2)(A)). However, despite "the principle of self-sufficiency, aliens have been applying for and receiving public benefits from Federal, State, and local governments at increasing rates" (§ 400(3)). Prior "eligibility rules for public assistance and unenforceable financial support agreements have proved wholly incapable of assuring that individual aliens not burden the public benefits system" (§ 400(4)). Therefore, a "compelling government interest exists to enact new rules . . . to assure that aliens be self-reliant in accordance with national immigration policy" (§ 400(5)). To cover all bases for cutting benefits to foreign individuals, Congress noted that it is a "compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits" (§ 400(6)).

As highlighted by Congress, the purpose of restricting benefits to immigrants rests upon the age-old principle of self-sufficiency; early immigrants to this country received no handouts, and contemporary migrants should fare no better. Yet, many of the government assistance programs now existing did not originate until the 1930s, with government health care coverage under Medicare and Medicaid originating in 1965. Social benefits now taken for granted simply did not exist for anybody, citizen or noncitizen, during periods of major immigration growth prior to the mid-twentieth century. To claim that today's immigrants should not be entitled to current social programs because of an anachronistic self-sufficiency principle fails to reflect generally accepted elements of today's welfare state.

Another questionable aspect of the rationale for cutting benefits to immigrants is the claim that immigrants have burdened the public welfare system. Economists have been debating for years whether immigration contributes to or burdens the overall economy. One observer of



immigration in the United States writes that "[e]conomic theory suggests that immigration is a bargain for any receiving society, because it augments the labor supply, one of the three principal factors of production (along with land and capital), essentially free of cost"; however, this theory is subject to "many qualifications" (Kennedy, 1996:66). Unskilled immigrant workers may increase gross economic output but, as "productivity has become more dependent on knowledge and skill, the net value of unskilled immigrant labor has decreased, a point that informs much of the current case for restricting immigration" (1996:66). The debate becomes even more complicated when comparing relative and absolute values of the unskilled immigrant (1996:66). Essentially, either side of the debate can present evidence to back its point of view.

Recent government policies have allowed more low-income immigrants into the United States (Bureau of the Census, 1996). However, these immigrants are less likely than before to receive social welfare services (Padilla, 1997). Nonetheless, immigrants have been using social welfare services to

the extent that, by cutting federal and state benefits to this group, government can substantially reduce its outlays. Because noncitizens have no right to vote and limited means of protest, restricting benefits to noncitizens becomes politically feasible. Congress would have to proceed more cautiously when dealing with the voting public, even those on the lower end of the economic scale.

### UNEQUAL TREATMENT OF NONCITIZENS

An inevitable outcome of the 1996 welfare law is that of promoting discrimination against individuals on the basis of their national origin. If an individual is not a U.S. citizen, the welfare law treats that individual differently than the citizen. Does government have the legal right to discriminate on the basis of national origin?

Based on prior decisions by the U.S. Supreme Court, the federal government has broad power to legislate over foreigners in the United States (*Chinese Exclusion Cases*, 1884, 1888, 1889, 1893). This power emanates as a

fundamental attribute of national sovereignty. The power to regulate naturalization of aliens also rests solely with the federal government (U.S. Constitution, Article 1 § 8). Therefore, challenges to the welfare law based on improper federal legislative action will probably be difficult to sustain.

While the federal government has substantial leeway to regulate affairs concerning noncitizens, states are subject to the doctrine of equal protection, which prohibits a state from depriving any "person within its jurisdiction the equal protection of the law" (U.S. Constitution, 14th Amendment § 1). Because the federal government enacted the welfare law and specifically authorized states to discriminate against immigrants, a legal challenge to state laws and policies under an equal protection theory may be difficult to raise. However, the federal government is subject to constitutional requirements and may not pass laws that violate the Constitution. Therefore, while the U.S. Supreme Court might accept disparate federal treatment of noncitizens based on the broad authority of the federal government to regulate noncitizens, the Court should closely examine state actions under equal protection guidelines.

In prior decisions regarding a state's distinct treatment of immigrants and citizens concerning government benefits, the Court has viewed national origin as a suspect classification (*Graham v. Richardson*, 1971). To justify legislation treating immigrants differently from citizens, the state must demonstrate a compelling interest for the legislation. (In a case involving nonimmigrants, the Court allowed a lesser standard of examination in upholding the ineligibility of nonimmigrants for supplemental medical insurance under Medicare (*Mathews v. Diaz*, 1976)). The constitutional requirement to demonstrate a compelling interest is extremely difficult to satisfy. Using the economic rationale put forth by Congress, a state could

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fall short of providing a compelling interest necessary to uphold discriminatory treatment of immigrants. After all, immigrants do not use social benefits excessively compared to citizens. Studies can show that immigrants actually provide a net economic benefit to the overall economic product. Therefore, if a state could not provide a compelling reason to discriminate against immigrants in the receipt of welfare benefits, the Court might view this separate treatment as unconstitutional.

Existing legal precedent by the Court focuses on a case-by-case analysis of whether government can deny a particular benefit or right to a noncitizen, depending upon whether state or federal government has denied the benefit (*Foley v. Connelie*, 1978; *Ambach v. Norwick*, 1979). Under the U.S. Constitution, the federal government has more leeway to discriminate against immigrants than do states. Unfortunately, this legal precedent overlooks the broader, more crucial issue of whether, by discriminating against individuals on the basis of national origin, the welfare law violates human rights principles that should also form part of U.S. jurisprudence.

## HUMAN RIGHTS

Most nations, including the United States, have approved a 1948 United Nations statement on human rights, known as the Universal Declaration of Human Rights (1948). This document lists specific human rights and promotes the doctrine of inclusion. The basic concept is that every individual is entitled to certain protections, regardless of where he or she resides. The declaration is not legally binding on a particular country. Yet, at a minimum, approval of the declaration by a country indicates an intent to promote the specified rights.

The Universal Declaration of Human Rights contains three distinct sets of human rights. The first set lists political and individual freedoms that are similar to what Americans view as human rights. The right to a fair trial, freedom of speech and religion; freedom of movement and assembly; and guarantees against discrimination, slavery, and torture fall within political and civil human rights.

Beyond the initial set of human rights in the declaration is another group of human rights that embodies so-called positive rights. These rights attempt to ensure that every person obtains an adequate standard of living. Under this second set of human rights, everyone "has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care, and necessary social services" (Article 25, para. 1). In addition, "motherhood and childhood are entitled to special care and assistance" (para. 2), and everyone has the right to a free education at the elementary level (Article 26, para. 1).

A third and final set of human rights involves collective rights among nations. This set of rights is the least developed among the three types of human rights. Under the 1948 declaration, everyone "is entitled to a social and international order in which the rights and freedoms" listed in the declaration can be fully realized (Article 28).

Clearly, as defined by the Universal Declaration, human rights cover much more than political rights. Social welfare benefits are as important a human right as the right to free speech. The declaration also provides that "everyone" is entitled to all the rights and freedoms listed in the declaration without distinction of any kind, including that of national origin (Article 2). Everyone is "equal before the law" and is "entitled without any discrimination to equal protection of the law" (Article 7).

In viewing the Universal Declaration of Human Rights in its entirety, the following proposition appears valid: *Provided that an individual lawfully resides or is lawfully present within a particular jurisdiction, that individual is entitled to the same fundamental social welfare benefits as anyone else.* Governments must not distinguish between the human rights of citizens and those of noncitizens lawfully present within that jurisdiction. Consequently, with its intentional exclusion of noncitizens from social benefits that qualify as human rights, the 1996 welfare law conflicts with the declaration.

## CONCLUSION

The 1996 welfare law appears to seriously compromise human rights of noncitizens in the United States. While Congress can argue that noncitizens are costing the government too much money, this claim conflicts with many studies on the actual net economic benefit of immigrants to this country.

Perhaps, however, the greatest shortfall in the law is that of exclusion. One group of individuals – noncitizens – are not as worthy as another group – citizens – when fundamental social benefits are at issue, implementing exclusion. This legislative policy of exclusion is an anathema to any concept of universal human rights. ■

*Note:*  
References available upon request.