

# PUBLIC CHARGE

Mary Clark  
HIAS Pennsylvania

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Maripat Pileggi  
Community Legal Services  
(215) 227-4738  
[mpileggi@clsphila.org](mailto:mpileggi@clsphila.org)

September 11, 2019

# What is public charge?

- Public charge has been a part of federal law since 1882.
- Public charge grounds of inadmissibility. Immigration officials can deny some immigrants a visa or a green card if the immigration official finds that the immigrant is a public charge.

# Public Charge Grounds of Inadmissibility Is Only a Factor in Green Card Application, Visa Application, and Visa Renewal Processes

## **Public Charge cannot be used to deny the following:**

- US Citizenship applications
- Green Card renewal applications
- Asylum applications
- DACA renewals
- TPS applications or renewals
- VAWA petitions
- U and T Visa applications
- SIJ applications
- And more

# And many people are exempt from public charge grounds of inadmissibility when applying for green cards

**The following people cannot be denied green cards on public charge grounds:**

- Refugees
- Asylees
- VAWA petitioners
- SIJ
- U-Visa holders
- T-Visa holders
- And more

# Who is at risk under the public charge grounds of inadmissibility?

- The main group of people who are at risk of the public charge grounds of inadmissibility are people who are applying for immigrant visas and green cards on family petitions.
- People with green cards who leave the U.S. for 180 days or more could also be at public charge risk when they seek to reenter the U.S. Green card holders traveling for less than 180 days are NOT at public charge risk when reentering.

# Who makes decisions about public charge inadmissibility?

- The Department of State makes public charge decisions for people applying for visas to enter the U.S. from overseas.
- The Department of Homeland Security, USCIS, makes public charge decisions for people applying for visa renewals and green cards in the U.S.

# Current USCIS Public Charge Policies

- Under current policy, a public charge is someone who depends almost exclusively on the government for financial support. An immigrant's current and past receipt of cash assistance (TANF, GA and SSI) or Long-Term Care Medical Assistance (for nursing home care, for example) can be considered when making public charge determinations in the U.S. No other benefits can be considered.

# What changes are being made?

- On August 14, 2019, USCIS published new rules redefining the term “public charge.” The Department of State has started to make similar changes to its public charge rules and has stated that it will fully changes its rules to match USCIS’s.
- USCIS’s new rules are scheduled to take effect on October 15, 2019. Several lawsuits have been filed challenging the new rules. These lawsuits may delay or cancel the rules. Stay tuned for updates on these lawsuits.

# What changes are being made?

- The new rules published on August 14, 2019 do NOT change and can NOT change the people who are subject to and exempt from the public charge grounds of inadmissibility.
- The public charge limitations and exemptions on slides 3 and 4 will remain in effect.

# What changes are being made?

- USCIS's new public charge rules will expand the definition of "public charge" to mean anyone who is more likely than not to use any of the following public benefits:
  - Cash Assistance (TANF, GA, SSI)
  - Federal Medical Assistance (except Emergency MA and MA for pregnant women and children)
    - Note that along with Emergency MA and MA for pregnant women and children, state-funded Medical Assistance is also NOT included. People who are eligible for any of these exempted MA programs can receive them without any public charge risk.
  - SNAP/Food Stamps,
  - Housing subsidies and public housing.

# Overview of public benefits programs implicated in USCIS's new public charge rule

- TANF and GA: cash assistance for people in very deep poverty (about 20% FPL).
- SSI: cash assistance for people with disabilities or over age 65 in poverty (about 75% FPL).
- Federal Medical Assistance: Income limit of 138% FPL for most, up to 250% FPL for some.
  - EXCLUSIONS:
    - MA for pregnant women (through 60 days post partum) and kids (under 21): Available to a broad range of "lawfully present" individuals with incomes between 138% and 220% FPL.
    - Emergency MA: for people whose immigration status makes them ineligible for "regular" federal MA and who have emergency medical conditions.
    - State-funded MA: available to a broad range of "lawfully present" individuals with very low income (20-45% FPL) and assets, and who meet categorical requirements (eg, disability, parent, age 59+).
- SNAP (Food Stamps): Income limit is 160% FPL for most, up to 200% FPL for some.
- Federal housing assistance-- section 8 and public housing: Income limits up to about 250% FPL (many programs in Philly have been closed for years).

# What changes are being made?

- An immigrant's past use of named public benefits for 12 months (in the aggregate) over any 36 month period after October 15, 2019 will be heavily and negatively weighed during a public charge determination.
- But, keep in mind, that there are very few people who are both eligible for the public benefits named in the public charge rule and who are actually subject to the public charge grounds of inadmissibility.

# Almost everyone who is eligible for public benefits in PA can get public benefits in PA without public charge risk.

	TANF eligible?	SSI eligible?	SNAP eligible?	MA eligible (not state MA, EMA, or kids or pregnant women)?	Subject to new public charge rule?
Refugee/asylee	Yes	Yes <sup>1</sup>	Yes	Yes	No
Cuban entrant	Yes	Yes	Yes	Yes	No
T-Visa holder	Yes	Yes <sup>1</sup>	Yes	Yes	No
VAWA petitioner	Yes	No <sup>5</sup>	Yes <sup>2</sup>	Yes <sup>2</sup>	No
Green card 5+ years	Yes	No <sup>3</sup>	Yes	Yes	No <sup>4</sup>
Green card less than 5 years	Yes	No <sup>5</sup>	No <sup>6</sup>	No <sup>7</sup>	No <sup>4</sup>
U-Visa	Yes	No	No	No	No
Applying for green card on family petition	Yes	No	No	No	Yes

1. For first seven years with this status.

2. Subject to 5 year bar. If in first five years, see n. 6 for SNAP and n. 7 for MA.

3. Some exceptions apply. For example, disabled people with either 40 quarters of work history or who have been lawfully residing since 8/22/96.

4. Green card holders who leave the U.S. for 180+ days may be subject to public charge when reentering.

5. Some exceptions apply. For example, disabled people lawfully residing since 8/22/96.

6. Some exceptions apply. For example, people receiving a benefit for a disability, like GA MA.

7. Some exceptions apply. For example, those continuously present since 8/22/96 and some veterans.

# What changes are being made?

- An immigrant's family member's receipt of benefits will not be considered. The only person whose public benefit receipt will count is the immigrant who is applying for a green card or a visa and who is subject to the public charge test.

**NO NEED FOR ANY FAMILY MEMBERS OF IMMIGRANTS  
SUBJECT TO FUTURE PUBLIC CHARGE TEST TO DROP  
BENEFITS AT ANY TIME!!!**

# What changes are being made?

- No benefits besides those explicitly listed will be considered. So, an immigrant's past receipt of WIC, EITC, UC, WC, school lunch, Marketplace subsidies, CHIP, state-funded Medical Assistance, EMA, MA for pregnant women and children and many others will NOT be considered in a public charge determination.

# What changes are being made?

- Totality of the circumstances is still the rule. Past public benefits receipt alone cannot automatically make someone a public charge.

# Totality of the Circumstances

1. Age
  2. Health
  3. Family Status/Household income
  4. Assets, Resources, Financial Status
  5. Education and Skills
- Affidavit of Support – minimal

# TOC Test

## 1. Age

- Applicants under 18 or over 61 = negative factor

## 2. Health

- Medical conditions that require extensive treatment and/or affect ability to work = negative factor
- USCIS will look at panel physician/civil surgeon report
- Applicants with medical conditions need to prove they can afford private health insurance

# TOC Test

## 3. Family Status/Household Size

- USCIS will ask: Does household size make applicant more likely to become a public charge?

## 4. Assets, Resources, Financial Status

- Household income > 125% FPL
- Assets such as accounts, real estate > 3 or 5 times the shortfall in household income
- Sufficient assets to cover medical costs
- Evidence: Credit history/score, tax transcripts

# TOC Test

## 5. Education and Skills

- Employment history
- High school diploma
- Occupational skills/certificates/licenses
- English proficiency
- Exemption: primary caregiver

# Heavily-weighted Factors

- Negative

- No job history or prospects
- Currently receiving “public benefits”
- Approved for public benefits for 12 mos within any 36-month period after October 15, 2019
- Serious medical condition + no insurance

- Positive

- Assets and support above 250% of FPL
- Work authorized and income above 250% of FPL
- Private health insurance

# Affidavit of Support

- No longer primary factor
- USCIS to look at likelihood of sponsor to support applicant:
  - Relationship of applicant and sponsor
  - Joint residence of applicant and sponsor
  - Whether sponsored other immigrants

# Public Charge Bonds Available

- For applicants found inadmissible based on public charge grounds
- Highly Discretionary
- Minimum \$8,100 bond
- Not available if heavily weighted negative factor exists

# Case example #1

Susanna has been living in the U.S. with Temporary Protected Status since 2010. In 2014, she met and married a U.S. citizen, with whom she has 2 U.S. citizen children. In 2015, her husband filed a petition and an affidavit of support for her immigrant visa and green card. She received her green card in 2016 and now wants to start the application process to become a U.S. citizen.

She and her husband work and earn about \$3000/mo, putting them at about 145% FPL. Her husband and children receive SNAP. Her children receive MA. She also receives WIC for herself and the two children and child care subsidies. She and her husband receive Marketplace subsidies. She he received TANF when she was pregnant with her first child.

# Case example #1

Is Susanna subject to a future public charge test?

- **NO!** There is no public charge test during US Citizenship application processes.

Might Susanna think that she and her family should stop using public benefits?

- **Yes!** Confusion and fear might lead her to believe that her family's use of benefits will cause her to be denied US Citizenship.

What should she do?

- Keep her and her family's benefits on! And get MA if she is pregnant.

## Case Example #2

Sandra has been living in the U.S. with Temporary Protected Status since 2010. In 2014, she met and married a U.S. citizen, with whom she has 2 U.S. citizen children. In August 2019, after hearing news that TPS for Sandra's country might be eliminated, she and her husband started looking into the process of filing a family petition and an affidavit of support for Sandra's immigrant visa and green card.

She and her husband work and earn about \$3000/mo, putting them at about 145% FPL. Her husband and children receive SNAP. Her children receive MA. She also receives WIC for herself and the two children and child care subsidies. She and her husband receive Marketplace subsidies. She received TANF when she was pregnant with her first child.

# Case Example #2

## Is Sandra subject to a future public charge test?

- Yes. She will be subject to a USCIS public charge test during her visa and LPR application processes.

## What should she do?

- Talk with an immigration attorney about filing the petition and AOS before Oct 15, 2019.
- If a petition and AOS is not filed by Oct 15:
  - Remember: new public charge rule does NOT consider family members' receipt of benefits. No reason for husband and kids not to get benefits.
  - Remember: new public charge rule does NOT consider receipt of Marketplace subsidies, WIC, or child care subsidies. No reason for anyone, including Sandra, to drop Marketplace subsidies, WIC or child care subsidies.
  - Remember: new public charge rule does NOT permit retroactive application. Her receipt of MA before October 15 will not be considered (it also would not be considered because it was MA for a pregnant woman).
  - Remember: totality of the circumstances is still the rule. Her past receipt of TANF does not automatically make her a public charge (and might have been more than 36 months ago, so might not count at all) and she has significant factors that will be weighed positively during the public charge test.

## Case example #3

Sarah came to the U.S. on a temporary visa in January 2014. She applied for asylum and after 4 long years, her asylum application was approved in 2018. Now she would like to apply for a green card. She has been receiving SSI, SNAP, and MA since June 2019.

# Case example #3

Is Sarah subject to a future public charge test?

- **NO!** Asylees are exempt from the public charge grounds of inadmissibility, so there will be no public charge test for Sarah when she applies for her green card. There is no public charge test for anyone who applies for US Citizenship, so Sarah will not be subject to a public charge test if she decides to become a US Citizen in the future.

Might Sarah think that she should stop receiving benefits?

- **Yes!** Confusion and fear might lead her to believe that her use of benefits will cause her to be denied a green card and US Citizenship.

What should she do?

- Keep her benefits on!

## Case Example #4

Sylvia came to the U.S. on a tourist visa years ago with her husband, Samuel. Their visas expired in 2014. They now have 2 U.S. citizen children and the family lives and works in the U.S. Their children receive SNAP, MA, and child care subsidy.

# Case Example #4

## Are Sylvia and Samuel subject to a future public charge test?

- There are no clear paths for either Sylvia or Samuel to get a visa or a green card in the U.S. If they will not be applying for a visa or a green card in the future, there is no public charge test in their future. Under current rules, many undocumented people do not have a public charge test in their future.

## What should they do?

- Keep benefits on. Even if they become eligible for a visa or green card in the future and will be subject to a public charge test as part of that visa/green card application, there are no benefits they or their children can get that will increase their public charge risks.
  - Remember: new public charge rule does NOT consider family members' receipt of benefits. No reason for kids not to get benefits.
  - Remember: proposed rule does NOT consider any benefits that are available to people without status. For example, the new rule does not consider Emergency MA, WIC, charity care, or services like medical care at a FQHC or food at pantries/cupboards. There's no reason for Sylvia or Samuel not to receive benefits or services available to undocumented people if they become eligible for them.

# Current Public Charge Deportation Policy

- The policy for public charge deportation is more restrictive than the policy for public charge grounds of inadmissibility.
  - Received cash assistance or long-term care institutional care for reasons that existed before entering the U.S., and
  - Received cash assistance or long-term care less than 5 years after entering the U.S., and
  - Have a legal debt to the government agency that provided the cash or long-term care and received a demand for repayment within 5 years of entering the U.S., and
  - Refused to repay the benefit, and
  - The government filed a lawsuit to compel repayment and won in court.

# Current Public Charge Deportation Policy

- Why is public charge deportation so extremely rare?
  - The reason for the person becoming a public charge had to exist before the person got to the U.S. If an injury, pregnancy, or hardship that happens in the U.S. creates the need for cash assistance or long-term care, the person cannot be deported on public charge grounds.
  - Government agencies in PA aren't seeking repayment, let alone suing people to compel repayment, of cash assistance or long-term care.

# Talking with immigrants– some key points

- If applying for family-based immigration, do so before October 15th!
- Almost everyone who is eligible to receive public benefits can receive those benefits without risk. Talk with an expert before forgoing benefits.
- If you are at public charge risk, there is no reason for anyone in your family, including your children, to forgo public benefits.

# Talking with immigrants– some key points

- Low-income LPRs – don't travel for 6 months+ outside the US
- No changes have been proposed to public charge deportation rules, and the rules that are currently in place are extremely restrictive and apply to almost no one.
- If you are applying for a visa from overseas, or you are helping a family member immigrate from overseas, talk with an immigration attorney. The Department of State public charge rules and processes are different than USCIS's.
- Advocates are fighting hard to prevent any changes to public charge rules. Stay tuned for updates on litigation.

# Advocacy

- Community outreach and education on new public charge rule.
- Story collection. Use [form on PICC website](#).
- Request meetings with Office of Management and Budget on DOJ public charge rule.

# Tools and Resources

- PICC Public Charge page: <https://paimmigrant.org/toolbox/public-charge-toolkit/>
- Join NILC's and CLASP's "Protecting Immigrant Families" Campaign: [bit.ly/PIFCampaign](http://bit.ly/PIFCampaign)
- NILC info on changes to public charge policies during overseas consular processing: <https://www.nilc.org/issues/economic-support/public-charge-changes-to-fam/>
- Public charge advocacy and outreach materials: [bit.ly/PIFresources](http://bit.ly/PIFresources)

# QUESTIONS?

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