



BOARD of DIRECTORS

Sara Gould
Chair

The Steinem Initiative,
Smith College

Hiroshi Motomura
Vice Chair
University of California,
Los Angeles School of Law

Inez Gonzalez
Treasurer
California State University,
Fullerton

Ghazal Tajmiri
Secretary
Blank Rome LLP

Julissa Arce
Ascend Educational Fund

J. Anthony Borrego
Spring Street Business Law, PC

Kevin M. Cathcart, Esq.

Muzaffar Chishti
Migration Policy Institute at New
York University School of Law

Robert J. Horsley
Fragomen, Del Rey,
Berssen, & Loewy, LLP

Cindy Mann
Manatt, Phelps & Phillips, LLP

Robert Pauw
Gibbs Houston Pauw

Bradley S. Phillips
Munger Tolles & Olson LLP

Alexandra Suh
Koreatown Immigrant
Workers Alliance

*Organizations listed for
identification purposes only*

EXECUTIVE DIRECTOR
Marielena Hincapié

May 30, 2017

U.S. Citizenship and Immigration Services,
Department of Homeland Security
Washington, D.C.

OMB Control Number 1615-0023

Re: Comments on U.S. Citizenship and Immigration Services, OMB
Control Number 1615-0023, Docket ID USCIS – 2009-0020, Agency
Information Collection Activities: Application To Register Permanent
Residence or Adjust Status, Adjustment of Status Under Section 245(i),
and Confirmation of Bona Fide Job Offer or Request for Job Portability
Under INA Section 204(j)

Dear Sir or Madam:

Thank you for the opportunity to comment on the federal notice
concerning an information collection request regarding the estimated
public burden of Form I-485, the Application to Register Permanent
Residence or Adjust Status. 82 Federal Register 16054 (March 31,
2017).

The National Immigration Law Center (NILC) is a nonpartisan national
legal advocacy organization that works to protect and promote the
rights of low-income immigrants and their family members. NILC
specializes in the intersection of public benefits and immigration laws
and policies, offering technical assistance, trainings, and publications to
government agencies and non-profit organizations.

With more than 30 years of experience, NILC understands the
challenges and barriers that immigrant families confront in their efforts
to participate fully in and contribute to our nation's communities.

We ask that you consider NILC's following comments:

Questions 61 and 62 of Part 8 of the I-485 Form

A person residing in the United States seeking to adjust to permanent
resident status or register for permanent residence must file Form I-
485 with the U.S. Citizenship and Immigration Services (USCIS). The
"proposed text" related to Public Charge rejects sensible improvements

LOS ANGELES (Headquarters)
3435 Wilshire Blvd., Suite 1600
Los Angeles, CA 90010
213 639-3900
213 639-3911 fax

WASHINGTON, DC
1121 14th Street, NW, Suite 200
Washington, DC 20005
202 216-0261
202 216-0266 fax

www.nilc.org

made to the form, referred to as “current text,” and is confusing and inconsistent with existing USCIS policy.

The “proposed text” for questions 61 and 62 are below:

61. Have you received public assistance in the United States from any source, including the U.S. Government or any state, county, city, or municipality (other than emergency medical treatment)?

62. Are you likely to receive public assistance in the future in the United States from any source, including the U.S. Government or any state, county, city, or municipality (other than emergency medical treatment)?

These questions are confusing to applicants, attorneys, advocates, and adjudication officials. There is no mention of these questions, much less direction on how to respond to them, in the Instructions for Form I-485. Although these two questions have been separated—they were previously a single question—they remain, as written, unclear, confusing, and at odds with the USCIS policy on public charge.

Most importantly, the questions, as written, perpetuate a longstanding misunderstanding and concern among immigrants that receiving public benefits will undermine their ability to adjust their status or will otherwise put them at risk, because they will be considered a “public charge.” This, in turn, has a chilling effect on immigrants’ willingness to apply for critical benefits for themselves or their children.

The proposed changes to the Public Charge questions on the I-485 Form, as they are currently written, are a step backward and will increase fear among immigrant families who will be less likely to apply for critical benefits for which they or their family members—including citizen children—might be eligible.

1999 INS Rule and Field Guidance on Public charge

In 1999, the former Immigration and Naturalization Service (INS, now USCIS) issued landmark field guidance defining the term “public charge,” establishing procedures to be used by INS officers when making public charge determinations, and clarifying the benefits that immigrants can receive without public charge consequences.¹

Simultaneously, the Department of Justice published a proposed rule addressing the same issues² and the Department of State issued a cable incorporating the definitions and rules contained in the guidance.³ The guidance took effect on May

¹ Field Guidance on Deportability and Inadmissibility on Public Charge Grounds [64 FR 28689] [FR 27-99] <http://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-54070/0-0-0-54088/0-0-0-55744.html> (last visited October 10, 2012).

² 64 Fed. Reg. 28676 (May 26, 1999), <http://www.gpo.gov/fdsys/pkg/FR-1999-05-26/html/99-13188.htm> (last visited Oct. 10, 2012).

³ U.S. Department of State Foreign Affairs Manual Volume 9, Fam 40.41 Public Charge,

21, 1999. The INS issued the guidance and proposed rule to alleviate “considerable public confusion about the relationship between the receipt of federal, state and local public benefits” and “public charge” determinations in immigration law.⁴

After extensive consultation with benefit-granting agencies including the Departments of Health and Human Services and Agriculture and the Social Security Administration, the INS noted that,

“This situation is becoming particularly acute with respect to the provision of emergency and other medical assistance, children’s immunizations, and basic nutrition programs, as well as the treatment of communicable diseases. Immigrants’ fears of obtaining these necessary medical and other benefits are not only causing them considerable harm, but are also jeopardizing the general public.”⁵

INS definition of public charge

The 1999 INS rule and guidance clarified that “public charge” refers to an individual who is likely to become “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.”⁶ The term describes persons who cannot support themselves and who depend on benefits that provide cash—specifically Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), or state and local cash assistance programs—for their income. In addition, public assistance, including Medicaid, that is used for long-term institutional care, such as in a nursing home or mental health institution, may be considered as a factor in establishing public charge.

The receipt of these benefits does not automatically make an individual inadmissible, ineligible to adjust to lawful permanent residence, or deportable on public charge grounds. Each determination is made on a case-by-case basis in the context of the totality of the circumstances. Other factors to be considered include an individual’s age, health, income, family size, education, and skills, as well as the affidavit of support. No single factor will determine whether an individual is a public charge. Although the government can look at whether the individual used cash welfare, it cannot make its decision based only on what happened in the past.

USCIS Policy is Clear: Noncash Benefits are Not Subject to Public Charge Consideration

INA 212(A)(4) <http://www.state.gov/documents/organization/86986.pdf> (last visited Oct. 10, 2012).

⁴ 64 Fed. Reg. 28689

⁵ 64 Fed. Reg. 28676

⁶ “Public Charge” (USCIS webpage), <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge> (last visited Oct. 11, 2012).

The guidance states that noncash benefits and special-purpose cash benefits that are not intended for income maintenance, but rather to promote other important societal interests, are not subject to public charge consideration.⁷ These programs include use of Medicaid, the Children’s Health Insurance Program (CHIP), or other health programs by the individual or a member of the family; or the Supplemental Nutritional Assistance Program (SNAP), WIC, public housing, or other noncash programs used by the individual or a family member. All other noncash programs, such as housing, school lunch, job training, child care, shelters, energy assistance, disaster relief, and health clinics, also are not relevant in the public charge determination.

The Need to Conform the I-485 Form to Existing USCIS Policy

Once again, USCIS must act to address “considerable public confusion about the relationship between the receipt of federal, state and local public benefits” and “public charge” determinations in immigration law.⁸ Questions 61 and 62 of Part 8 on Form I-485 fail to distinguish between cash and noncash benefits.

Recommendations:

If questions pertaining to the use of public benefits are deemed necessary, they must be rewritten to ask the questions that are relevant to the public charge determination:

- *Have you received Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), or cash from state and local income assistance programs?*
- *Have you received public assistance, including Medicaid, for long-term institutional care—such as in a nursing home or mental health institution?*

The Instructions for Form I-485 must include a section explaining these questions by:

- Specifying that noncash benefits such as SNAP, Medicaid, CHIP, WIC, housing benefits, child care services, energy assistance, emergency disaster relief, foster care and adoption assistance, education assistance, job training are not considered in the public charge determination.
- Specifying that receipt of monthly cash benefits for income maintenance purposes—SSI, TANF, cash from state and local income assistance programs and long-term institutional care—may be considered as a factor in the public charge determination, but does not automatically make an individual ineligible to adjust status to lawful permanent residence on public charge grounds.

⁷ Ibid. 5

⁸ Ibid. 4

- Provide a link and refer to existing USCIS guidance on public charge determinations, as currently appears in the “current text,” and below.

Before responding to Item Numbers 61. and 62., please see Item 8. in the “How To Fill Out Form I-485” section of the General Instructions section and Item 9. in the What Evidence Must You Submit with Form I-485 section of the Instructions. Please visit www.uscis.gov/green-card/green-cardprocesses-and-procedures/public-charge and www.uscis.gov/news/fact-sheets/public-chargefact-sheet.

In conclusion

Once again, USCIS must act to alleviate “considerable public confusion about the relationship between the receipt of federal, state and local public benefits” and “public charge” determinations in immigration law.⁹ Despite the issuance of the guidance, immigrants and their families continue to avoid seeking critical services for which they are eligible. Advocates, attorneys and social service workers report that otherwise eligible non-citizen households express reluctance to apply for nutrition assistance or SNAP based on a belief that receipt of these and other noncash benefits for themselves and/or US citizen household members will prevent them from becoming a lawful permanent resident.

This misunderstanding of USCIS policy will only be made worse if questions 61 and 62 of Part 8 of Form I-485 are not corrected. The questions promote confusion among immigration attorneys as well as USCIS officials. It is understandable why immigrants are wary of applying for noncash benefits.

Because these questions on the adjustment forms are overly broad, asking about the use of public benefits generally, including those that are not relevant to the public charge inquiry, the resulting responses and data collected must be considered flawed, unnecessary for the agency’s functioning, and lacking in practical utility.

We are grateful for your consideration of these comments. If you have any questions, please contact me at rejeske@nilc.org.

Respectfully,

/s/

Jenny Rejeske
Senior Health Policy Analyst

⁹ Ibid. 4