

May 30, 2017

Office of Policy and Strategy  
Chief, Regulatory Coordination Division  
U.S. Citizenship and Immigration Services  
Department of Homeland Security  
20 Massachusetts Avenue NW  
Washington, DC 20529-2140

**RE: Request for Comments: Agency Information Collection Activities  
DHS Docket No. USCIS-2009-0020**

To Whom It May Concern:

The New York Legal Assistance Group submits the following in response to the Department of Homeland Security's ("DHS") request for comment on the proposed revision of the Application to Register Permanent Residence or Adjust Status, Form I-485.

New York Legal Assistance Group (NYLAG) is a nonprofit law firm that provides free civil legal services each year to over 78,000 low-income New Yorkers who cannot afford attorneys. Many of our clients are noncitizens, as over 3 million residents of New York City are foreign-born.<sup>1</sup> We know firsthand how vital immigrants are to the fabric of New York City.

Therefore, NYLAG has a keen interest in ensuring that our immigrant clients are able to live safe and healthy lives, and, in pursuit of these ends, that they are able to access the services they need in order to flourish. In addition, recognizing that obtaining immigration status helps communities maintain economic stability, we also have a strong interest in supporting programs and policies that help noncitizen New Yorkers apply for immigration benefits for which they are eligible.

**We take this opportunity to offer our perspective on the "public charge" grounds of inadmissibility, as it relates to the proposed changes to Form I-485.** USCIS's rule provides that an individual is inadmissible on public charge grounds in two narrow instances: (1) when they have or are likely to receive cash assistance for income maintenance, or (2) when they have or are likely to be institutionalized for long-term care at government expense.<sup>2</sup> We support this narrow approach to evaluating public charge because it provides clarity and does not inhibit immigrants from accessing other crucially needed services and resources that promote the health

---

<sup>1</sup> NYC Population Facts, <https://www1.nyc.gov/site/planning/data-maps/nyc-population/population-facts.page>.

<sup>2</sup> Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28689, (Mar. 26, 1999) "Memorandum for All Regional Directors: Public Charge INA Sections 212(a)(4) and 237(a)(5)," from Michael A. Pearson, Executive Associate Commissioner, Officer of Field Operations, Immigration and Naturalization Service.

and safety of our communities, such as health services, domestic violence services, and emergency food and shelter.

This narrow approach also is faithful to the original intent of the public charge grounds, which still guides policy on this issue today: to discourage the immigration of those likely to be wholly dependent on government assistance or government-funded institutions for their daily subsistence. The public charge ground itself was added in 1882, at time when states and municipalities offered few public benefits other than government-funded institutions to house individuals lacking any familial support or any means of earning an income. Orphans, the elderly, the physically and mentally disabled were warehoused in poorhouses or asylums at government expense, often in appalling conditions.<sup>3</sup> The “ordinary meaning” of the public charge concept has always reflected this idea of completely “destitute” noncitizens lacking any familial or community support or any means of supporting themselves due to age, isolation, or disability. *See Matter of Harutunian*, 14 I&N Dec. 583, 586 (BIA 1974) (citations omitted). Today, the number of public benefits offered by federal and local government has increased substantially, and current programs vary greatly in terms of eligibility, the value of the benefits offered, and the length of time they can be received.

Expanding the public charge analysis to any noncitizen who receives any form of supplementary benefit, no matter how ancillary to their daily subsistence, would be inconsistent with this original intent of the grounds and its history, and it would contradict the long-standing, plain language understanding of “public charge.” Such an expansion in the analysis also fails to take into account the substantial differences in types of public benefits offered today, ranging from temporary emergency services which are available to immigrants, to long-term, non-emergency programs which are not. Failing to differentiate these kinds of benefits by expanding the grounds on Form I-485 may also create confusion for immigrants themselves, who may decide not to apply for *any* programs for which they are eligible.

**An overly broad inquiry into “public charge” may deter applicants or potential applicants from receiving crucial services needed to maintain healthy and safe communities.** It is widely believed that passage of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) in 1996 had a chilling effect on many noncitizens, discouraging many immigrants who remained lawfully eligible for many state or local benefits from applying for them out of fear or stigma.<sup>4</sup>

<sup>3</sup> Mara Youdelman, NAT’L HEALTH LAW PROGRAM, *What is a “Public Charge” and Does Receipt of Health Benefits Impact It?* (Feb. 14, 2017), available at <http://www.healthlaw.org/issues/medicaid/medicaid-expansion-toolbox/issues-a-advocacy/what-is-a-public-charge-and-does-receipt-of-health-benefits-impact-it#>, citing David Rothman, *THE DISCOVERY OF THE ASYLUM: SOCIAL ORDER AND DISORDER IN THE NEW REPUBLIC*, 198-200, 290-221 (1971).

<sup>4</sup> Neeraj Kaushal & Robert Kaestner, *Welfare Reform and Health Insurance of Immigrants* 40(3) Health Serv. Res. 697–722 (June 2005), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1361164/>.



In New York, many noncitizens are lawfully eligible for public benefits such as Medicaid, Safety Net Assistance, and other state-funded benefits. In the case of Medicaid, New York City has encouraged noncitizens to apply for state-funded Medicaid.<sup>5</sup> This is because individuals with Medicaid are more likely to have a regular doctor, to use medical services in general, to receive a check up or preventative visit, to receive care at a doctor's office versus a clinic, and are less likely to postpone or go without care due to cost.<sup>6</sup> Increasing Medicaid enrollment has been shown to increase "outpatient utilization, preventive care, and improved health care quality; reductions in emergency department use; and improved self-reported health,"<sup>7</sup> as well as "reduced stress and anxiety, and improved quality of life."<sup>8</sup> These improved outcomes benefit *all* New York City residents.

In our work, we frequently encounter noncitizens who refuse to apply for benefits for their U.S. citizen children, fearing that it might affect their immigration status or that they may even lose custody of their children. Our organization works hard to dispel these fears, to ensure that U.S. citizen children are receiving the medical assistance, supplemental food assistance, or disability benefits to which they are lawfully entitled.

As stated above, NYLAG maintains a strong interest in encouraging our clients to continue to avail themselves of public assistance and benefits. Programs and services like public education, public hospitals and vaccinations, domestic violence services, emergency food and shelter, Supplemental Nutritional Assistance Program (SNAP), and Medicaid play a crucial role in ensuring that individuals are able to live and thrive to the greatest possible extent and to ultimately feel like an integral part of our community. Broadly tying any utilization of these public services to the likelihood of successfully adjusting to lawful permanent resident status may create a chilling effect on immigrants' use of these programs, which could impact the health, safety, and well-being of all New Yorkers. These harms might also extend to many immigrants with legal status and U.S.-born citizens whose immigrant family members may become afraid to seek help for their basic needs. In short, a decline in the willingness and ability of foreign-born populations to access public services and resources, including various public

---

<sup>5</sup> See ACTIONNYC PROGRAM, <http://www1.nyc.gov/assets/immigrants/downloads/pdf/actionnyc-expansion-announcement.pdf>; NY HUMAN RES. ADMIN., *Guide to Health Insurance and Health Care Services for Immigrants in New York City*, available at <https://www1.nyc.gov/assets/ochia/downloads/pdf/guide-to-health-insurance-for-immigrants.pdf>.

<sup>6</sup> Artiga, Samantha et al, *Racial and Ethnic Disparities in Access to and Utilization of Care among Insured Adults*, KAISER FAMILY FOUNDATION (Aug. 2015), available at <http://kff.org/disparities-policy/issue-brief/racial-and-ethnic-disparities-in-access-to-and-utilization-of-care-among-insured-adults/>

<sup>7</sup> BD Sommers, et al. *Changes in Utilization and Health Among Low-Income Adults After Medicaid Expansion or Expanded Private Insurance*, 176(1) JAMA INTERN MED. 1501-1509 (2016), available at <http://jamanetwork.com/journals/jamainternalmedicine/article-abstract/2542420>.

<sup>8</sup> Julia Paradise, *Data Note: Three Findings about Access to Care and Health Outcomes in Medicaid*, KAISER FAMILY FOUNDATION (Mar. 23, 2017), available at <http://kff.org/medicaid/issue-brief/data-note-three-findings-about-access-to-care-and-health-outcomes-in-medicaid/>.

assistance programs, could have significantly negative impacts on the public health and overall economic security of our clients.

**In light of these interests, we express strong concern about a broad examination of “public charge” for adjustment applicants, and, by extension, DHS’s current proposed changes to questions 61 and 62 on Form I-485.** DHS proposes to ask applicants for adjustment of status to provide their entire history and likelihood of receiving public assistance from any source.<sup>9</sup> We urge DHS to revise questions 61 and 62 to use more specific language that reflects its definition of “public charge.” Questions 61 and 62 should only inquire about an individual’s history or likelihood to receive cash assistance or to be institutionalized for long-term care.

We appreciate the opportunity to comment on this highly important topic and we look forward to a continuing dialogue with DHS on these and many other issues.

Sincerely,



Randy Retkin  
New York Legal Assistance Group

---

<sup>9</sup> DHS’ currently proposed language on question 61 asks, “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)?”