

DHS Docket No. USCIS-2010-0012
Comment Opposing Proposed Rule

The ACLU of Wisconsin Foundation by attorney R. Timothy Muth respectfully submits this comment opposing in its entirety the proposed rule regarding public charge grounds of inadmissibility, DHS Docket No. USCIS-2010-0012. This proposal wrongly establishes a wealth and income test for immigrants desiring to enter or remain in the US or to become US citizens. In so doing, the proposed rule creates serious negative impacts, splits up families, and complicates an already-burdened immigration system.

The ACLU of Wisconsin advocates for the protection of the civil rights and civil liberties of all persons. Our communities are strengthened by vibrant communities of immigrant and native-born persons, all enjoying the equal protections of a system of laws. ACLU-WI is particularly concerned by this proposed rule, which appears to be part of a pattern of recent executive branch actions designed to change long-standing policy and practice arbitrarily and in a manner which penalizes and discriminates against the immigrant community of limited economic means in favor of the wealthy and well-connected.

These significant changes are part of the alarming shift in our legal immigration system from a posture of welcome and support of families towards one of exclusion. Noncitizen spouses and parents, who may just be starting out on the path to economic security, would face potential separation from their loved ones, including U.S. citizen children. Vulnerable immigrant families would be deterred from obtaining basic, life-sustaining medical and nutritional assistance. Altogether, the wealth bar proposed by DHS threatens the very foundation of our immigration system--one that is based on preserving family unity; thriving with the energy and spirit of immigrants working to better their situations; and upholding our tradition as a nation of immigrants.

Through the rule, the Department of Homeland Security (DHS) seeks to radically heighten the standard for whether an applicant for admission to the United States or adjustment of status is "likely to become a public charge" and is thus inadmissible under INA § 212(a)(4). If implemented, DHS would subject affected applicants to an income test, penalize even the modest use of an array of public benefits, and exclude all too many from the United States under an expansive new public charge definition.

1. The exclusionary "wealth test" in the proposed rule violates fundamental principles under which the immigration system has functioned.

The US immigration system reflects a series of judgments and commitments by the elected representatives of the people and reflected in the Immigration and Naturalization Act and other laws. Those judgments and commitments include placing a significant value on family unity. Those judgments and commitments include admitting immigrants from a wide variety of backgrounds, skills, and countries.

This proposed rule, however, is inconsistent with that set of fundamental principles and commitments. This rule creates a hurdle, a wealth test, for the first time. Immigrants will be barred from entry, extension of stay, or adjustment of status if they do not meet income requirements or if they use one of a variety of anti-hunger and anti-poverty programs, including non-emergency Medicaid,

Supplemental Nutrition Assistance Program (SNAP), and public housing. By changing long held policy on the definition of “public charge” the rule places an arbitrary wealth test over policies such as family stability, reunification and unity.

Yet the proposed rule fails to identify a true problem or concern which the rule is intended to rectify. Yes, immigrants may use benefits such as Medicaid and food assistance, but those are benefits for which Congress allowed immigrants to be eligible. The rule thus appears to be motivated solely by anti-immigrant animus, with an intention to penalize their legal use of resources to which they would otherwise be entitled in the same manner as native-born US citizens.

2. The proposed rule will have negative impacts on immigrants lawfully in the country and their US citizen family members.

By telling immigrants that their ability to extend their stay or adjust their status will be negatively affected if they make use of public benefits, the proposed rule has readily foreseeable negative impacts. Indeed, it appears that some of these negative impacts are desired consequences of the rule.

The rule forces immigrants who are legally present within the United States to forego various public benefits if they plan in the future to seek to extend their stay or adjust their status and become US citizens. The foregone benefits are ones to which they might otherwise be entitled in situations of economic or health stress for their families.

There are readily foreseeable consequences of discouraging lawful immigrants from accessing public benefits to which they are entitled:

Immigrants who forego use of Medicaid because of this rule will be foreclosed from obtaining routine checkups and preventive health services by virtue of their cost. They will not access the health care system until conditions become grave, and health care systems will be required to treat them on an uncompensated basis, increasing the costs for all.

Immigrants who are unable to receive food assistance (SNAP) run the risk of malnutrition and disease. The lack of food security will make it less likely, not more likely, that immigrants will be able to achieve economic sufficiency and rise out of poverty.

Immigrants who are unable to receive housing assistance because of this rule, may find themselves and their families homeless.

Even though the use of benefits by US citizen dependents is not part of the calculation of public charge under the proposed rule, US citizen children will suffer. When noncitizen parents forego medical treatment or cannot access housing assistance, the entire household suffers regardless of immigration consequences. The impact will be increasing poverty for households which include both citizens and noncitizens as the safety net programs are withdrawn for those who would seek a future change in their status.

The consequences will be felt by the broader population as well. To the extent immigrants cannot afford preventive medical care and vaccinations without access to Medicaid, for example, a sicker community affects everyone within it, not just the immigrant.

Thus the proposed rule might generate short term cost savings as immigrants drop out of public safety net programs, but the longer term costs reflected in increased poverty and worsening health outcomes could be far worse.

3. The proposed rule includes an unworkable and arbitrary test which further complicates an already overburdened and delay saturated USCIS.

The proposed rule would also mandate a public charge determination process that is confusing at best. This process, bound to result in inconsistent decisions that will confound both adjudicators and the regulated public, would compel applicants to submit reams of paperwork that may be ignored or deemed unnecessary. The operational burden of administering that paperwork would fall on U.S. Citizenship and Immigration Services (USCIS) --an already overstretched agency--deepening nationwide case processing delays. In short, the proposed rule would foster inconsistency, uncertainty, and inefficiency throughout our legal immigration system--the opposite of what government regulations should achieve.

With the current delays in processing times at USCIS, this unworkable rule with its ambiguous test will certainly stretch out processing times even for those “following the rules” and “waiting in line.”

Conclusion

Contrary to the assertions underlying this proposed rule, immigrants enrich the United States, they do not weaken it. The proposed rule seeks to further close the door to US citizenship by barring persons who are just at the start of their pathway to full economic participation in the country and who may have encountered a chance monetary or health setback. Congress intended the safety net programs to be available for these immigrants. The proposed rule says, in effect, if you want to adjust your status and become a citizen you must live without any safety net, putting yourself and your family at risk. The proposed rule should be rejected.