Submitted Electronically

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Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
United States Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Ave. NW
Washington, D.C. 20529

RE: Notice of Proposed Rulemaking on "Public Charge Ground of Inadmissibility"

DHS Docket No. USCIS-2021-0013, RIN 1615-AC74

Dear Chief Deshommes:

Catholic Charities USA (CCUSA) and the United States Conference of Catholic Bishops (USCCB) respectfully submit this comment on the U.S. Citizenship and Immigration Services (USCIS) Notice of Proposed Rulemaking on "Public Charge Ground of Inadmissibility" ("Proposed Rule"), published on February 24, 2022. We are grateful for the opportunity to submit comments on the Proposed Rule and welcome the proposed provisions as they will alleviate public charge concerns for many families who are entitled to receive public benefits. In addition, the proposed changes will help lift significant barriers that have discouraged low-income families from seeking much-needed assistance through government-funded programs that are designed to prevent and eliminate poverty in the U.S. CCUSA and the USCCB previously submitted comments detailing our shared concerns with respect to the 2018 Notice of Proposed Rulemaking on public charge.[1]

[1] *See generally* Catholic Charities USA & U.S. Conference of Catholic Bishops, Comments on "Inadmissibility on Public Charge Grounds" Notice of Proposed Rulemaking, RIN 1615-AA22 (Dec. 3, 2018) https://bit.ly/38MpYEn; *see also* Inadmissibility on Public Charge Grounds, 83 FR 51,114 (Oct. 10, 2018).

CCUSA is a national membership organization representing more than 167 Catholic Charities member agencies, which operate more than 2,600 service locations across 50 states and the District of Columbia, providing an array of social and immigration legal services. In 2020, the Catholic Charities network provided services to almost 237,000 immigrants, refugees, and asylees, including legal and resettlement services as well as social services such as food and nutrition assistance, housing and mental health services.[2] Over the last year, Catholic Charities agencies have served more than 15 million people across the U.S. regardless of creed or immigration status.

The USCCB is a nonprofit corporation whose members are the active cardinals, archbishops, and bishops of the United States and the U.S. Virgin Islands. The USCCB's Committee on Domestic Justice and Human Development (USCCB/DJHD), staffed by the Office of Domestic Social Development (USCCB/DSD), assists the body of bishops with advancing the social mission of the Church, including its policy advocacy, education, and outreach in support of the Church's antipoverty efforts. For decades, the USCCB's Committee on Migration (USCCB/COM) has collaborated with the U.S. government to welcome and manage the provision of services to unaccompanied migrant children, U.S.- and foreign-born victims of human trafficking, and refugees. Under the direction of USCCB/COM, the USCCB's Department of Migration and Refugee Services (USCCB/MRS) serves and advocates on behalf of these and other populations.

The Catholic Church's work in assisting immigrants stems from the belief that every person is created in God's image and, therefore, has inherent dignity. Our organizations' collective commitment to serving the poor and vulnerable is guided by Scripture and Catholic Social Teaching. In the Gospel of Matthew, Christ calls us to bear witness to the poor with compassion and through acts of service. We are reminded by Christ's teachings that what we do for the least among us, we do for Christ.[3] As Catholics, our primary commitment to serving the poor and vulnerable members of society is to enable them to become active participants in the life of society.[4] We answer this call to serve our brothers and sisters in need through corporal acts of mercy and advocacy. Therefore, we welcome many of the provisions of the proposed public charge rule as they align more closely with our mission of promoting healthy communities and empowering low-income populations to achieve economic self-sufficiency and become contributing members to the growth and development of their communities.

In response to the Proposed Rule, we offer the following statements of support and recommendations:

1. **Defining *likely at any time to become a public charge* to mean that a person would need to be "*primarily* dependent on the government for subsistence as demonstrated by the receipt of cash assistance, or institutionalization for long-term care at government expense" reinstates USCIS' long-standing procedures in implementing the public**

[2] CCUSA Internal Survey (Apr. 2021).
[3] Matthew 25:34-40.
[4] U.S. Conference of Catholic Bishops, *Options for the Poor and Vulnerable*, https://bit.ly/3E7L1wB (last visited Apr. 12, 2022).

charge inadmissibility test. This definition would also advance the goal of government assistance programs in combatting poverty and protecting public health.

We welcome USCIS' decision to codify the definition of the phrase *likely at any time to become a public charge* based on long-standing procedures in the 1999 Interim Field Guidance. As USCIS discussed at length in the Proposed Rule, this definition recognizes that immigrants or U.S. citizens living in mixed immigration status households who qualify for certain public benefits may only need government assistance to supplement their income temporarily or to address a specific need. USCIS solicits feedback on the use of the term "primarily" in evaluating a person's dependency on the government for subsistence in the application of the public charge inadmissibility test. We support the use of the term "primarily" as it would distinguish between those who receive government assistance as a main source of income and subsistence and those who receive assistance temporarily to supplement their income or for special use. We agree with USCIS that temporary, non-cash assistance to briefly aid families in their time of financial hardship alone (especially during a pandemic) should not be grounds to deny Lawful Permanent Resident status (LPR status) to an applicant.

2. **Reinstatement of the totality of the circumstances test aligns with congressional intent for public charge inadmissibility determination. In addition, requiring written decisions by USCIS adjudicators would promote transparency and consistency in the application of the Proposed Rule.**

We commend the rollback of the arbitrary and capricious factors and standards imposed by the previous administration for evaluating the likelihood of a person's dependency upon government assistance, which were based on flawed reasoning. As written, the public charge rule's indeterminant process and lack of clarity caused a chilling effect on potentially eligible applicants from even applying for benefits. Catholic Charities agencies worked diligently to explain the new regulation once it was introduced, but the uncertainty caused by the changes was palpable: the people our agencies served stayed away from assistance programs and their families ultimately suffered. We laud the reinstatement of the statutory factors set forth by Congress in Section 212(a)(4) of the Immigration and Nationality Act (INA) as part of the totality of the circumstances test to determine a person's eligibility for LPR status.[5] We agree with USCIS that no one factor should be determinative of a person's ineligibility for LPR status on public charge grounds and that immigrant relatives should not be penalized for another household relative's past, present, or future use of government assistance to which they are entitled. Furthermore, we are pleased that the Proposed Rule requires USCIS adjudicators to articulate in writing the reason(s) for a public charge ineligibility determination in each case. This would promote transparency and consistency

[5] 8 USC § 1182(a)(4).

in the application of the public charge inadmissibility test, and it would promote due process by eliminating unwarranted bias in the process.

3. We applaud USCIS' steps to address the chilling effects the 2019 Final Rule had on communities and encourage the agency to do more.

As USCIS discussed at length in the Proposed Rule, the 2019 Final Rule on "Inadmissibility on Public Charge Grounds" ("2019 Final Rule") included the consideration of cash and non-cash public benefit programs,[6] which had an immediate chilling effect on low-income communities. As noted, many individuals, who were otherwise eligible for assistance designed to respond to their needs, were discouraged from requesting public assistance for fear of the perceived immigration consequences. The agency's acknowledgment of this impact on the public and its decision to address it are commendable. We recommend that the agency take further steps to address the lingering effects of the 2019 Final Rule, such as misinformation about the public charge inadmissibility test. We urge USCIS to invest additional resources in public awareness campaigns in collaboration with nonprofit and community-based organizations, as well as state and local agencies, to clarify the new public charge inadmissibility determination factors and address misconceptions about the potential risk of immigration enforcement or the sharing of an individual's information with immigration enforcement authorities.

4. We propose that USCIS provide more weight to Affidavits of Support (I-864) in applications where Congress specifically designated the Affidavit of Support as a necessary filing in order to avoid a finding of public charge.

Congress created the Affidavit of Support process, which provides a clear standard for adjudication to avoid arbitrary and inconsistent adjudication.[7] The Proposed Rule itself acknowledges that "with very limited exceptions, most noncitizens seeking family-based immigrant visas and adjustment of status, and some noncitizens seeking employment-based immigrant visas or adjustment of status, must submit a sufficient Affidavit of Support under Section 213A of the INA in order to avoid being found inadmissible as likely at any time to become a public charge."[8] As the rule further acknowledges, "[t]his requirement applies even if the officer would ordinarily find, after reviewing the statutory minimum factors, that the intending immigrant is not likely at any time to become a public charge."[9] The Proposed Rule indicates that the Affidavit of Support will just be one of the factors to be considered and allows for the possibility that other factors would outweigh the contractual showing of sponsorship process outlined by Congress. Indeed, the Affidavit of Support by statutory definition requires the immigrant to demonstrate financial support to ensure that they are not a public charge. Without according this process appropriate weight, the rulemaking effectively eviscerates this process as outlined by Congress.

[6] *See generally* Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019).
[7] *See* 8 USC 1182(a)(4)(c)–(d).
[8] Public Charge Ground of Inadmissibility, 87 Fed. Reg. 10,570, 10,579 (Feb. 24, 2022).
[9] *Id.* at 10,618.

Furthermore, the Proposed Rule ignores past practice wherein an Affidavit of Support was generally sufficient to find that the intending immigrant was unlikely to become a public charge.[10] As such, we propose that USCIS should return to its previous adjudicatory practices and establish that a properly filed and sufficient Affidavit of Support alone is satisfactory for a finding against public charge inadmissibility in order to afford the congressionally created process weight.

5. We propose that "family status" be defined expansively as "family unit" with the end goal of keeping families together.

As part of this proposed rulemaking, USCIS has requested public comments on how each of the statutory factors should be considered. In the immigration context, when Congress creates ambiguous statutes without clearly defining them, the rule of lenity dictates that the statute should be read in the light most favorable to the noncitizen. We propose that the undefined "family status" should be used as a factor in favor of keeping together a "family unit." USCIS should interpret the term "family unit" to mean the noncitizen's close relatives that can care for the noncitizen such as spouses, parents, siblings, children, grandparents, aunts/uncles, and cousins.[11] This would be in keeping with the strong presumption to interpret immigration statutes in favor of keeping together a family unit.[12] Furthermore, this interpretation will be in keeping with how the term "public charge" has been interpreted by the various administrative agencies that have delved into this issue in the past.[13] Lastly, this proposed interpretation would also fulfill Congress' goal of keeping families together, including larger families.

6. We propose that the receipt of state and local cash assistance should be excluded altogether from the public charge inadmissibility analysis. State and local governments should be allowed to apportion their resources in the way they believe would effectively address the needs of their communities.

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[10] Immigrant Legal Resource Center, Introductory Guide to the Affidavit of Support (Apr. 2018) https://bit.ly/3xifB5n.

[11] *Matter of Harutunian*, 14 I. & N. Dec. 583, 586 (BIA 1974) ("[The term Public Charge has] been on the statute books for over 80 years in essentially the same form. . . .The alien had not yet become a public charge, even though he personally was destitute and his care and support were being paid for by public funds, if there existed close relatives, ready, willing and able to pay the bill, but the appropriate government agency had failed to submit any bill. The alien had not become a public charge where the alien's mother had offered to make reimbursement, but under state law payment could not be accepted for maintenance and treatment of the institutionalized alien. The alien had not become a public charge where the circumstances were like those described [previously], except that no one had offered reimbursement.").

[12] *Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9th Cir. 2005) ("Public policy supports recognition and maintenance of a family unit. The Immigration and Nationality Act ('INA') was intended to keep families together. It should be construed in favor of family units and the acceptance of responsibility by family members."). *See also Nation v. Esperdy*, 239 F.Supp. 531 (S.D.N.Y. 1965); *Andrade v. Esperdy*, 270 F.Supp. 516 (S.D.N.Y. 1967).

[13] *See Matter of Harutunian, supra* at n.11. *See also Matter of B-*, 3 I. & N. Dec. 323, 325 (BIA 1948) ("Congress never intended that an unfortunate alien defective child or insane wife, committed to a State institution for curative treatment, having, respectively, parents or husband financially able to pay all proper charges, should thereby become pauperized, 'a public charge.' and on that ground deported.").

We commend the exclusion of cash benefit programs that provide "special purpose" benefits not intended for income maintenance, such as pandemic-related cash assistance or energy assistance. At the same time, we recognize that immigration is a federal issue, and federal regulation is warranted. Therefore, we believe that receipt of state and local public cash assistance should not be considered at all in public charge inadmissibility determinations.

Within Catholic social teaching, it is acknowledged that "a community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help to coordinate its activity with the activities of the rest of society, always with a view to the common good."[14] This means that the political and social structures closest to the problem should be empowered to provide the necessary resources needed to address the unique challenges that confront their communities. State and local governments are closest to the problems faced by their communities and should be allowed to determine how their state resources ought to be allocated to address those needs without consideration of federal immigration consequences for beneficiaries. Grant of immigration benefit is entirely within the federal government's purview. Therefore, only federal public benefit programs (not states') should be included in public charge inadmissibility analysis. This would allow states and local non-governmental partners to develop and implement programs tailored to the needs of their residents.

Furthermore, we believe that the consideration of the receipt of state and local cash assistance would sustain burdens on nonprofits serving low-income families. As USCIS notes in the Proposed Rule, specific threshold and eligibility for benefit receipt vary by state. Catholic Charities staff, who provide wraparound services to low-income families, are all too familiar with state and local public assistance programs and how often they change to respond to the evolving needs of the community. The cost of constantly training staff and community partners on the potential immigration consequences of the receipt of new state and local public benefits would be burdensome on nonprofits financially and logistically. For example, a Catholic Charities agency reported that when the 2019 Final Rule was published, there was considerable confusion within local communities and the service provider ecosystem. Immigration and social services organizations had to engage in wide-scale education campaigns to address the thousands of calls they received from community members regarding significant adjustments that were needed to state infrastructure and operations of benefit programs. Mass trainings for government workers, schools, parishes, and community centers were necessary, resulting in cost to the agency in the tens of thousands of dollars in staff time and resources. In addition, disruption to social services to the public was immeasurable and families and children ultimately suffered as a result. To avoid such devastating impact on communities, state agencies, and nonprofits, public charge inadmissibility considerations should be limited to federal public benefits.

[14] Pope Francis: Subsidiarity means everyone has a role in healing society, Catholic News Agency (Sept. 23, 2020), https://bit.ly/3E8PZsR.

Conclusion

We commend USCIS for deciding to codify the standards for public charge inadmissibility determinations set forth in the 1999 Interim Field Guidance, which has been the long-standing process by the agency. We continue to stand in solidarity with our brothers and sisters in need, and we are strengthened in our resolve to continue serving them. The Catholic Church teaches that solidarity is a moral virtue that is demonstrated through a firm resolve to commit oneself to the common good. Therefore, we stand ready to serve and support our brothers and sisters in navigating the complexities of this Proposed Rule upon implementation, and we look forward to our continued partnership with government and non-governmental entities to ensure the fair and efficient implementation of the rule.

Respectfully,

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