

THE TRUMP TEST: Who Does “Public Charge” Apply To? A Resource for Advocates & Service Providers

The Trump Administration has announced a proposed rule that would dramatically broaden the “public charge” test that has been a part of federal immigration law for over 100 years. The proposed rule puts the wealthy ahead of families who have waited years for their chance to be reunited or stay together. It could force immigrant families to choose between a permanent legal status or access to basic needs like healthy food, safe housing, and health care.

If the rule is finalized, immigration officials could consider a much wider range of government programs in the “public charge” determination. These programs include most Medicaid programs, housing assistance such as Section 8 housing vouchers, Project-based Section 8, or Public Housing, SNAP (Supplemental Nutrition Assistance Program) and even assistance for seniors who need help paying for prescription drugs. The rule also adds a radical new income test for the applicants where earning under 125% of the federal poverty level (\$31,375 for a family of four) would be weighed negatively. The proposed rule also details how being a child or a senior, having a number of children, not speaking English well, or having a medical condition could be held against immigrants seeking a permanent legal status.

How would immigrant families be harmed by the new regulation?

The proposed regulation would make—and has already made—immigrant families afraid to seek programs that support their basic needs. The proposal could prevent immigrants from using the programs their tax dollars help support, preventing access to healthy, nutritious food and secure housing. Since about one in four children have at least one immigrant parent, this issue touches millions and is critical for our nation’s future. The proposed rule also would make it much more difficult for low-income individuals to immigrate, reunite or remain with their families.

Here are some hypothetical scenarios where the public charge test may apply, if the proposed regulation change is published and finalized. In each case, a person faces a dilemma and may be forced to prove that their situation does not make them a public charge.

SCENARIO 1: CLARA



Clara came from Nicaragua to visit her cousins in the U.S. when she was 16. Soon after arriving, Hurricane Mitch ravaged her hometown and several family members were killed or displaced. She stayed in the U.S. because she had nowhere safe to return, and in 2001, she was granted Temporary Protected Status (TPS). Clara was not able to finish school and worked for many years as a hotel housekeeper. In November 2017, the government announced they would be ending TPS for Nicaraguans. Clara and her partner of many years decided to get married. Clara is pregnant and is enrolled in Medicaid because she lives in Ohio, a state that provides health coverage to lawfully residing pregnant women. Clara’s husband wants to sponsor Clara for a green card before her TPS expires in January 2019 but fears that using health coverage during her pregnancy will cause a problem.

Clara’s public charge test under the proposed rule: *Receiving Medicaid for 12 months or longer in the 3 years prior to her application for a green card would be a heavily weighed negative factor held against Clara under the public charge test. However, it would not count against her if she was only enrolled before the effective date of the final rule.*

SCENARIO 2: EDDIE



Eddie is a 26-year-old graduate student. He works as a student instructor and research assistant to pay for school, as he's not eligible for federal loans. Eddie has lived in the U.S. for as long as he can remember but was born in Mexico. He's had DACA since 2012. Eddie married a U.S. citizen (Irma) last year and has a 2-year old daughter. Irma works as a teaching assistant, earning 30,000 per year. Eddie's daughter receives Medicaid and his wife has ACA Marketplace Coverage. Eddie is not eligible for subsidized health insurance and relies on his school clinic to treat his severe asthma. Last year, Eddie incurred a large medical bill for an emergency room visit during an asthma attack. Eddie has had trouble making regular payments the bill and this caused his credit score to plummet. Eddie's wife petitioned for his green card 6 months ago.

Eddie's public charge test under the proposed rule: *The receipt of Medicaid by Eddie's daughter shouldn't be held against him in the public charge test. However, the family's low income and Eddie's health condition and low credit score could be negative factors in the public charge test.*

SCENARIO 3: SASHA



Sasha is a 35-year-old woman from Russia who recently escaped a physically and verbally abusive relationship with her husband, a green card holder. Sasha has filed a self-petition for a green card under the Violence Against Women Act (VAWA). She received a prima facie determination that her case will be approved but the process to obtain a green card through VAWA can take several years. Because Sasha does not speak English well and suffers severe emotional distress, she has not been able to find work since leaving her husband. She recently moved into a Section 8 housing unit, which will allow her to live safely with her children. Sasha's U.S. citizen brother petitioned for Sasha's green card in 2005. Sasha has been on the waiting list for 13 years and just learned she is eligible to adjust status through her brother's petition. Sasha is relieved that she has the option to become a green card holder sooner than she expected.

Sasha's public charge test under the proposed rule: *Although VAWA petitioners are exempt from the public charge determination, if Sasha adjusts her status through a family-based petition, she will be subject to the public charge test. The fact that she does not speak English well, is not employed and has received Section 8 housing can be held against her when she applies to adjust status. However, it would not count against her if she was only enrolled in Section 8 before the effective date of the final rule.*

SCENARIO 4: KAREENA



Kareena is from India. Kareena's son petitioned for her and she has been living in the United States for the past 12 years as a green card holder. She is 72 years old and recently retired from her job as a cashier. Kareena receives Medicare and extra help through the Low-Income Subsidy (LIS) Program for prescription drugs under Medicare part D. Kareena's sister recently became ill and she wants to travel back to India to support her family for a few months. Kareena is worried that if she leaves, she won't be able to come back to the United States to be with her son and grandchildren.

Kareena's public charge test under the proposed rule: *If Kareena is outside of the U.S. for more than 180 days (6 months), she may be subject to a public charge test when she seeks to reenter the United States. The fact that Kareena is unemployed and has used the Medicare LIS program would be heavily weighed negative factors against her. Her age could also be weighed against her. However, the use of Medicare LIS would not count against her if she was only enrolled before the effective date of the final rule.*

SCENARIO 5: ROBERTO



Roberto is a 68-year-old man from El Salvador with Temporary Protected Status (TPS). He has been living in the United States for more than 30 years, working in a chicken-processing factory. Roberto has several chronic medical conditions including sleep apnea, COPD, diabetes, high blood pressure and lower back pain. Roberto had to reduce his work hours to manage his pain and now earns \$14,000 per year, which is barely enough to pay his rent and utilities.

Due to his immigration status, Roberto is not eligible for Medicaid or SNAP benefits and relies on assistance from his church and local food pantry to get by. Roberto's daughter recently became a U.S. Citizen and would like to petition for her father's green card.

Roberto's public charge test under the proposed rule: *Even though he has never used public benefits, Roberto's low income (below 125% FPL), advanced age, and medical conditions could be held against him under the public charge test.*

SCENARIO 6: MAE



Mae is a 46-year-old single mother with two children. She and her family came to the U.S. from Thailand as part of the Hmong diaspora after the Vietnam war in 1974 when she was 2 years old. Her sister later became a U.S. citizen through marriage and petitioned for Mae's green card in 2005. Because of limits to family-based immigration, Mae has been on the waiting list for 13 years and she is finally getting close to having the last step of her application processed. Mae is finishing her nursing degree and works part-time so she can pick up her children from school. She and her children are enrolled in SNAP, as members of the Hmong community that helped the U.S. during the Vietnam war. Mae heard that if she continues to receive nutrition assistance, she may not be able to get her green card; without SNAP, her children would have no nutritional support.

Mae's public charge test under the proposed rule: *The use of SNAP by Mae (but not her children) would be a heavily weighed negative factor in the public charge test. Her low income could also be counted against her, especially if Mae's income is below 125% of the poverty line for her household of 3 people (\$25,975 per year). However, Mae's employment history and nursing degree would also be considered and would weigh in her favor.*

When we have each other's backs – by ensuring that those of us who have fallen on hard times can get through to better days – we make things better for all of us. But, by forcing families to choose between reuniting with their loved ones and weathering tough times, it would make the U.S. a sicker, hungrier, poorer nation. **Groups all over the country are monitoring and planning to fight the public charge rule change. For more information, go to www.protectingimmigrantfamilies.org.**

If these situations sound familiar, speak to an immigration lawyer or BIA-accredited representative to fully assess your situation. For free or low-cost options near you, visit the National Immigration Legal Services Directory at www.immigrationadvocates.org/nonprofit/legaldirectory/.

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