



Freedom Network USA

December 10, 2018

U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, D.C. 20529-2140

VIA www.regulations.gov

Re: DHS Docket No. USCIS-2010-0012 - Comments in Response to Proposed Rulemaking
Inadmissibility on Public Charge Grounds

Dear USCIS:

On behalf of Freedom Network USA (FNUSA), I am submitting these comments in response to the Department of Homeland Security's (DHS) Notice of Proposed Rulemaking Inadmissibility on Public Charge Grounds published in the Federal Register on October 10, 2018 to express our strong opposition to the changes regarding "public charge." FNUSA has grave concerns regarding the immense harm that the proposed rule will have on immigrant survivors of human trafficking, as well as other forms of exploitation and violence.

FNUSA, established in 2001, is a coalition of 57 non-governmental organizations and individuals that provide services to, and advocate for the rights of, trafficking survivors in the US. Cumulatively, our members serve over 2,000 survivors of human trafficking in the US each year.¹ As the largest network of providers working directly with trafficking survivors in the US, we are uniquely situated to evaluate the impact of US government efforts to address human trafficking, identify challenges, and propose solutions.

1. Foreign national survivors of human trafficking are in need of supportive services

Trafficking survivors have, by definition, suffered a financial crime. Trafficking survivors have been robbed of their earned income by the traffickers who have exploited and abused them. Most foreign national trafficking survivors also have incurred debts in their home country in the belief that they are gaining access a well-paid job in the US. Trafficking survivors have been exploited by recruiters, employers, and poorly regulated labor sectors that regularly leave them in debt and struggling to support their families while pursuing justice.

Human trafficking survivors generally do not self-identify as trafficking victims. Most are unfamiliar with the crime, many fear retaliation from the traffickers against themselves or their family members both in the US and abroad, and many believe that they will not be protected by government officials or law enforcement. Therefore, human trafficking

¹ Freedom Network USA 2018 Member Report, <https://freedomnetworkusa.org/app/uploads/2018/04/FRN-Member-Report-Digital-FINAL.pdf>, p. 3.

survivors generally do not report the crimes committed against them for many years, while they are also often victims of other forms of crimes, from domestic violence and sexual assault, to theft and extortion. Thus, foreign national survivors of human trafficking remain extremely vulnerable both during their trafficking experience and in the time after their escape.

2. The proposed public charge rule will discourage survivors from accessing critical safety net benefits.

While some human trafficking survivors seeking specific forms of immigration status, including the T and U Visas, are exempt from the public charge ground of inadmissibility, most survivors will be unaware or unconvinced of the exemption leaving them without the very services and protections that Congress has established. Immigrant families are already withdrawing from assistance programs that support their basic needs due to fear, even though the proposed rule has not taken effect. Not only will the proposed rule, if implemented, impose significant human suffering costs on victims of human trafficking and their families, but will also impose long-term economic costs on our communities due to increased injury and health consequences of unmitigated trauma.

The chilling effect we are witnessing is deeply concerning. FNUSA members across the country report that survivors are afraid of accessing the public benefits to which they are entitled, and upon which they rely to stay safe. Congress specifically established public benefits eligibility for human trafficking survivors in the original Trafficking Victims Protection Act in 2000, “a victim of a severe form of trafficking in persons shall be eligible for benefits and services under any Federal or State program or activity ... to the same extent as ... a refugee.”² Trafficking survivors face overwhelming debt, untreated medical needs, trauma, and homelessness. Access to services and support is critical both for the healing of the survivor and to enable the survivor to be able to meaningfully assist law enforcement in the investigation and prosecution of the traffickers.

The proposed rule greatly expands the range of public assistance programs that will now count against an individual in deciding whether someone is likely to become a public charge, including crucial programs that victims need to escape abuse and meet basic needs. Human trafficking is, by definition, a financial crime. Victims have been deprived of their income, tricked into acquiring debt, and may also have developed untreated medical needs due to the conditions of the trafficking situation.

- Access to housing assistance is critical, as human trafficking victims are often forced to live with the trafficker, and affordable housing is unavailable in the US.
- Food assistance, including SNAP and WIC, are critical in ensuring that trafficking survivors are able to feed themselves and their families while they are without an income.
- Trafficking survivors are often unable to access medical care during their trafficking situation, making access through Medicaid or CHIP critically important. They may have or develop long-term chronic conditions, suffer injuries at the hands of the trafficker, or develop sexually transmitted infections from sexual assault or forced

² Pub. Law 106-386 Sec. 107(b)(1)(A) and codified at 22 USC 7105(b)(1)(A).

commercial sex.

- Trafficking survivors with children may rely on cash assistance, such as TANF, in order to meet their basic needs while recovering from the trafficking, accessing training, healing from the abuse and exploitation they have endured, and finding new employment.

Access to basic needs play a critical role in accessing safety. Immigrants who are being exploited for their labor are trapped by their lack of other options, as well as the threats of the traffickers. When victims have options for safe and affordable housing, food, medical care, and services; they are able to leave the traffickers and cooperate with law enforcement in the investigation and prosecution of the traffickers. The proposed public charge rule, however, undermines federal and state policies to support victims by discouraging them from accessing critical services. Without sufficient resources, victims are either compelled back into exploitive employment, or face destitution and homelessness.

3. The proposed public charge rule specifically punishes survivors of abuse and exploitation

Human trafficking causes a range of injuries to victims, including physical, psychological, and financial harms. Survivors are left with criminal records and ruined credit from crimes that the traffickers forced them to commit, interrupted education, injuries from abuse inflicted by the trafficker or others, untreated medical conditions, and significant debt caused by exploitation by recruiters and traffickers. These factors leave trafficking survivors almost uniformly in need of safety net services for at least a short time to support the survivor in recovering from the trafficking experience. And yet, many trafficking survivors are unaware of special immigration remedies for crime victims and will apply for other forms of immigration relief.

The heavily-weighted negative factors described in the proposed rule will disproportionately harm survivors of human trafficking when they apply for immigration remedies that are not exempt from public charge. The proposed rules identify specific circumstances that would weigh “heavily” in a public charge determination.

For example, these following heavily weighted negative factors would potentially harm victims in these ways:

- The applicant for admission is not a full-time student and is authorized to work, but is unable to demonstrate current employment, and has no employment history or no reasonable prospect of future employment.

Human trafficking survivors have been forced to provide labor or services, or to engage in commercial sex, for the benefit of the trafficker, generally without authorization or with fraudulent documentation. Trafficking survivors are unable to produce documentation of their ‘employment’ with the trafficker, generally have limited or interrupted education and employment history, and may (for those reasons along with trauma and medical needs) have no prospect of future employment.

- The applicant for admission is receiving public benefits, is currently “certified or approved” to receive public benefits, or has received one or more public benefits within the 36 months immediately preceding applying for a visa, admission, or adjustment of status.

Human trafficking victims are often eligible for state-funded public benefits through a process that is not as restrictive as the process for federally-funded public benefits. They may also have been approved for public benefits based on other criteria. Again, trafficking survivors often seek an immigration status that is not related to their victimization, but may be dependent on public benefits due to the trafficking experience.

- The applicant for admission has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with his or her ability to provide for him- or herself, attend school, or work; and does not have, or is unlikely to have private health insurance, or the ability to pay for reasonably foreseeable medical costs.

Again, as noted above, traffickers routinely deny access to medical care to the victims that they are exploiting and abusing, resulting in untreated medical conditions that may require extensive and long-term treatment. And, of course, trafficking victims are unlikely to have private health insurance or the ability to pay for medical care, due to the financial abuse perpetrated by the traffickers.

None of these factors, by itself, is to be dispositive. We therefore highly recommend that the proposed rule include, in considering the totality of the circumstances, the purpose and guidance of the important protections in federal laws like the Violence Against Women Act, the Trafficking Victims Protection Act, the Victims of Crime Act, and other important laws protecting victims from being subjected to the public charge test. Given that admission to the United States or adjustment of status can help victims access employment and increase their ability to escape the violence or overcome the trauma they’ve suffered, in applying the public charge rule, DHS should consider the supportive and protective effects of stable immigration status to survivors.

4. The proposed rule inaccurately states the law, which already provides for a public charge exemption for trafficking victims when applying for a T Visa or T Visa-based Adjustment of Status

The Trafficking Victims Protection Act of 2000 (TVPA) explicitly created a waiver of the public charge ground for T Visa applicants.³ The TVPA likewise allowed the Attorney General to waive the public charge inadmissibility ground for any T Visa holder seeking to adjust status to that of a permanent resident.⁴

³ Pub. Law 106-386 Sec. 107(e)(3).

⁴ Pub. Law 106-386 Sec. 107(f).

However, Congress has continued to expand and clarify the protections and services for trafficking survivors. In the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Congress specifically added trafficking survivors to the list of “qualified aliens” eligible for federal, state and local public benefits.⁵ And, in the subsequent 2013 reauthorization, Congress amended the public charge provision by adding qualified aliens to the list of individuals **completely exempt** from the public charge ground.⁶ In other words, this amendment made even clearer that both **individuals applying for and persons already granted T Visas are exempt from the public charge ground** of inadmissibility.

Conclusion

Ensuring equal access to the protections Congress created is crucial, especially for survivors of abuse and exploitation including human trafficking survivors, who may have few financial resources of their own. USCIS should not bypass Congressional intent and undermine these laws through public charge policy changes.

We instead urge that the current guidance around public charge remain in effect. Under current policy, only cash “welfare” assistance for income maintenance and government funded long-term care received or relied upon by an applicant can be taken into consideration in the “public charge” test – and only when it represents the majority of a person’s support. The proposed rule would alter the test dramatically, abandoning the enduring meaning of a public charge as a person who depends on the government for subsistence, changing it to anyone, including a survivor, who simply receives assistance with support for health, nutrition, or housing to meet their basic needs. There is ample evidence that there is no issue with the current guidance and no persuasive rationale for change, and we therefore urge that DHS maintain reasonable existing guidance.

FNUSA urges USCIS to withdraw the proposed revisions. Strong, safe families lead to stronger, safer communities. Further restricting access to these protections puts both at risk. I can be reached at jean@freedomnetworkusa.org if you have any questions or need any further information or explanation.

Sincerely,



Jean Bruggeman
Executive Director
Freedom Network USA

⁵ Pub. Law 110-457 Sec. 211 and codified at 8 § U.S.C. 1641(c).

⁶ Pub. Law 113-4 Sec. 804 and codified at 8 § U.S.C. 1641(c) and INA 212(a)(4)(E)(iii).