



ASIAN AMERICAN LAWYERS ASSOCIATION OF MASSACHUSETTS

December 10, 2018

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

Dear Ms. Deshommnes:

The Asian American Lawyers Association of Massachusetts (AALAM) strongly opposes the Department of Homeland Security (Department or DHS)'s proposed changes for "Inadmissibility on Public Charge Grounds," published October 10, 2018, because such changes would disproportionately and severely impact approximately 1.5 million of the most vulnerable, low-income Asian American and Pacific Islander (AAPI) immigrant households nationwide, including those that live within the Commonwealth of Massachusetts.

AALAM is a non-profit professional bar association comprised of over 300 lawyers, judges, professors and students, and is dedicated to serving the Asian American legal community and improving and facilitating the administration of law and justice.

AALAM opposes the proposed "public charge" rule changes because they will negatively affect the livelihoods, safety, health and security of Asian Pacific American and immigrant populations in a multitude of ways.

First, because immigrants applying for legal permanent resident (green card) status are evaluated on whether they are likely to become a "public charge", DHS's proposed expanded definition of "public charge" imposes unjustified and unnecessary barriers on a widened category of individuals and families who would be *likely at any time* in the future to receive one or more government benefits from an expanded list of programs, including critical healthcare, nutrition and housing assistance programs for children.

This is in stark contrast to the current rule, where someone would only be designated a "public charge" if determined "primarily dependent" on the government for cash assistance or long-term care. The proposed new rule would therefore make it easier to designate an applicant as a public charge and deny their admission to the United States or reject their permanent resident application. This disproportionately affects the over 22 million Asian and Pacific

Islanders living in the United States, nearly two-thirds of APA immigrants are foreign born, and many more Asian Pacific Americans with immigrant parents.¹

Second, the confusion and ambiguity about enforcement of the proposed rule changes has already had a detrimental “chilling effect” on AAPIs locally and nationally as it has caused legal immigrant families who would not have be impacted by the rule change, to disenroll from or forgo necessary public programs they are legally entitled to, in fear of jeopardizing their status. The Asian Outreach Unit of the legal aid organization Greater Boston Legal Services in Massachusetts, has firsthand dealt with clients experiencing fear and confusion about their ability to continue to receive public benefits and believing they need to disenroll from essential public benefit and government assistance programs if wishing to apply for a green card. This chilling effect is detrimental to the overall well-being of immigrants living in the United States. Decreased participation in Medicaid, public housing assistance, Emergency Assistance to Elderly, Disabled and Children, Food Stamps, Transitional Aid to Families with Dependent Children, and other government assistance programs will lead to uninsured, unstable immigrant families and will have a negative impact on their health and financial stability and the nation’s economy as a whole.² The proposed rule is physically harmful, as many immigrants will be forced to choose between life-saving government services or getting a green card.

Third, as a professional bar association of attorneys whose mission is to ensure the fair and equitable administration of law and justice and eliminating unfounded access barriers, AALAM is greatly concerned about the lack of clarity in how the proposed rules and stricter guidelines for assessing a “public charge” would be enforced. The highly subjective and discretionary nature of the proposed rule poses a great risk that the new “totality of the circumstances” test will likely be unequally and inconsistently applied. For example, DHS seeks to make determinations that are “predicated on an opinion as to the likelihood of future events,” and on the totality of the circumstances.³ In forming such “opinion”, the following factors will be weighed heavily and negatively: being younger than the age of 18, older than the age of 60, having a chronic or pre-existing condition, making 125% of the federal poverty line (FPL) or lower, lacking a high school/secondary school degree, and being limited English proficient, among other factors.

The proposed rule further gives broad discretion to authorities to deny an adjustment of status to individuals who make less than 250 percent of the federal poverty line (\$63,000 for a family of four), a standard double of the current income requirements.⁴ As the Asian and Pacific Islander immigrant community continues to grow, the proposed rules are expected to have a

¹ National Asian Pacific American Bar Association Language Access Report (2017), at pg. 4.

² *Proposed Changes to “Public Charge” Policies for Immigrants: Implications for Health Coverage*, Henry J Kaiser Family Foundation, published Sept. 24, 2018, https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage/#endnote_link_274689-3.

³ Notice of Proposed Rulemaking: Inadmissibility on Public Charge Grounds, Department of Homeland Security, October 10, 2018, <https://www.federalregister.gov/d/2018-21106/p-878>.

⁴ Bier, David, *New Rule to Deny Status of Immigrants Up to 95% Self-Sufficient*, (Washington DC: CATO Institute, Sept. 24, 2018), <https://www.cato.org/blog/new-rule-deny-status-immigrants-95-self-sufficient>.

more pronounced impact on Asian Pacific Islander communities. The Migration Policy Institute (MPI) predicts that “Asians would end up being the most disadvantaged group numerically under [the proposed rules], with more than 1 million recent legal noncitizens living in families with incomes under 250 percent of poverty.”⁵

Finally, AALAM is gravely concerned about the continued attacks on the immigrant population in the United States, and in particular, believes the proposed rule change perpetuates the longstanding history of discrimination against Asian American and Pacific Islander immigrant communities from the 19th century, beginning with the Chinese Exclusion Act of 1882 and the Immigration Act of 1882. The Chinese Exclusion Act of 1882 suspended immigration from China for ten years and declared that the Chinese population was ineligible for naturalization. The Immigration Act of 1882 excluded from admission “any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge.”⁶ AALAM is concerned that the proposed rule returns to this indisputably repressive era in United States history and implements a rule that disproportionately discriminates against Asian and Pacific Islander immigrants.

For the reasons discussed above, AALAM strongly opposes the proposed rules for determining an immigrant’s inadmissibility on public charge grounds and urges the Department of Homeland Security to withdraw all of the changes proposed in its notice of proposed rulemaking. AALAM thanks DHS for its careful consideration of its comments.

Sincerely,



Christina Chan
President of the Asian American Lawyers Association of Massachusetts

⁵ Jeanne Batalova, Michael Fix, and Mark Greenberg, *Through the Back Door: Remaking the Immigration System via the Expected “Public Charge” Rule* (Washington, DC: Migration Policy Institute, 2016), <https://www.migrationpolicy.org/news/through-back-door-remaking-immigration-system-expected-public-charge-rule>.

⁶ Immigration Act of 1882, pg. 1