



December 7, 2018

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

VIA [www.regulations.gov](http://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 the National Survivor Network (NSN), 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 clear opposition to the changes regarding "public charge." NSN has conscientious objections regarding the immense harm that the proposed rule would inflict. Immigrant survivors of human trafficking and other forms of exploitation and violence will be unduly burdened with this change, placing them in further harm.

NSN was established in 2011 representing over 280 survivors of human trafficking across the US in 38 states. Members of the NSN include survivors with various backgrounds and origins spanning 24 countries. With the myriad of experiences of survivors, we are the experts in the US, we are critically competent to evaluate the impact of US government policy on addressing human trafficking and proposing solutions to those potential harms.

**1. The services that Foreign Nationals need as victims of human trafficking are the same as any Domestic Victim.**

Trafficking survivors have suffered multiple crimes. We have been robbed of our earned income by our traffickers. Being recruited by false pretenses into what we believe to be higher paying jobs, access to education, and other services to maintain our lives, we are charged exorbitant fees while being trafficked; believing we have no way out without paying those debts—often under duress and threats of retaliation against our families. Rather than getting the job or education we were coming for, we were forced into heinous crimes and abuses against us and threatened with deportation if we spoke out against our trafficker and the crimes being perpetrated upon us.

Human Trafficking is a criminal law that many survivors don't fully understand. You cannot identify as a victim of crime when you don't even know that what is being done to you is a crime. We are threatened by our traffickers into compliance and told we are the criminals for being victims of a crime. They threaten us with immigration status while holding our identification and papers, they threaten our family if we do not pay off our debts while not paying us—perpetuating the cycles of debt and interest accumulated on

those debts. Therefore, 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 make victims of human trafficking more vulnerable by not allowing financial stability while they participate in the prosecution of criminal traffickers.**

While we are seeking specific forms of immigration status due to being victims of human trafficking, we hear that accepting services will deny our access to immigration, but many of us are unaware of the regulations and oversight surrounding that. Immigrant families are already withdrawing from assistance programs that support their basic needs due to fear. This proposed rule, if implemented, will impose significant hardships and costs to victims of human trafficking and their families. It will create long-term economic costs on our communities due to increased injury and health consequences of unmitigated trauma; while violating the very protections that the Trafficking Victims Protection Act provides.

The proposed public charge rule will continue our fear of accessing public benefits of which we are entitled, and upon which we 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.”<sup>1</sup>**

Access to services and support is critical both for our healing and to be able to fully assist law enforcement in the investigation and prosecution of our traffickers since trafficking survivors face overwhelming debt, untreated medical needs, trauma, and homelessness.

This proposed rule expands the public assistance programs that will now count against us in deciding whether we are to become a public charge, including crucial programs that we need to escape abuse and meet basic needs. Human trafficking is, by definition, a financial crime. We have been deprived of our income, tricked into acquiring debt, and may also have developed untreated medical needs due to the conditions of our trafficking situation.

- Access to housing assistance is essential, as we were forced to live in housing provided by our traffickers, and affordable housing is extremely limited in the US.
- Food assistance, including SNAP and WIC, are basic human needs in ensuring that we are able to feed ourselves and our families while we are without an income, working with law enforcement to prosecute our traffickers.
- We are often unable to access medical care during our trafficking situation, oftentimes poorly treated in the trafficking situation or not treated at all; making access through Medicaid or CHIP mandatory. Many of us have or develop long-term chronic conditions, suffer injuries at the hands of our trafficker, or develop sexually transmitted infections from sexual assault or forced commercial sex, and babies

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<sup>1</sup> Pub. Law 106-386 Sec. 107(b)(1)(A) and codified at 22 USC 7105(b)(1)(A).

made from those trafficking situations.

- Those of us with children may rely on cash assistance, such as TANF, in order to meet our basic needs while recovering from the crimes against us, accessing training, healing from the abuse and exploitation we have endured, and finding new employment.

Access to our basic human needs is a critical role in our safety. Immigrants who are being trafficked are trapped in the lack of other options, as well as the threats of our traffickers. When we have access to safe and affordable housing, food, medical care, and services, we are capable of leaving our traffickers and are more able to cooperate with law enforcement in the investigation and prosecution of our traffickers. The proposed public charge rule is a detriment to federal and state policies to support us by discouraging us from accessing critical services; without adequate resources, we are either compelled back into exploitive employment, or face destitution and homelessness.

### **3. The proposed public charge rule explicitly punishes survivors of heinous crimes.**

We are left with criminal records and ruined credit from crimes that our traffickers forced us to commit. We suffer from interrupted education, injuries from abuse inflicted by our trafficker or others, untreated medical conditions, and significant debt caused by exploitation from our recruiters and traffickers. Human trafficking causes a range of injuries, including physical, psychological, and financial harms. These factors leave us almost in need of safety net services for at least a short time to support our recovery from our trafficking experience; and yet, many survivors are unaware of special immigration remedies for crime victims and will apply for other forms of immigration relief. These cumbersome negative factors described in the proposed rule will disproportionately harm survivors of human trafficking when we 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. This is an impossible burden for someone who was hidden from the world while being actively trafficked.

We were forced to provide labor or services, or to engage in commercial sex, for the benefit of our trafficker, without authorization or with fraudulent documentation. We are unable to produce documentation of our ‘employment’ with our trafficker, we have limited or interrupted education, may have been trafficked in a school setting, and have limited access to future employment.

- The application for admission receiving public benefits currently indicates “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.

We are sometimes eligible for state-funded public benefits through a process that is not as restrictive as the process for federally-funded public benefits. We may also have been approved for public benefits based on other criteria or have children that were born in the US by our trafficking situation that qualify. We often seek an immigration status that is not related to their victimization—because we may not know about those T-Visa and U-Visa statuses but may be dependent on public benefits due to our 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.

Our traffickers deny access to medical care and were exploiting and abusing us, resulting in untreated medical conditions that may require extensive and long-term treatment. We aren't being paid while being trafficked, so it is unlikely we have private health insurance or the ability to pay for medical care, due to the financial abuse perpetrated by our traffickers. Moreover, medical care is a basic human right and not a privilege for those financially able to obtain it.

We recommend that the proposed rule include, in considering the entirety of the situations, 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 us access employment and increase our ability to escape the violence or overcome the trauma we'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 erroneously 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.<sup>2</sup> 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.<sup>3</sup>

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<sup>2</sup> Pub. Law 106-386 Sec. 107(e)(3).

<sup>3</sup> Pub. Law 106-386 Sec. 107(f).

However, Congress has continued to expand protections and services for trafficking survivors. In the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Congress added trafficking survivors to the list of “qualified aliens” eligible for federal, state and local public benefits.<sup>4</sup> 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.<sup>5</sup> To be quite clear, this amendment made certain that both individuals applying for *and* persons already granted T Visas are exempt from the public charge ground of inadmissibility. The ground should not be used against individuals who have been granted T Visas seeking adjustment of status to lawful permanent residency.

### **Conclusion:**

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

**We beseech you to continue the current guidance around public charge as Congress created the intent.** 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, furthermore only when it represents the majority of a person’s support. This proposed rule would fundamentally destroy the test dramatically, abandoning the Congressional 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 a plethora of evidence that there is no issue with the current guidance and no persuasive argument for change, and we therefore urge DHS to maintain the existing guidance.

**NSN 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 [REDACTED] if you have any questions or need any further information or explanation.

Sincerely,



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<sup>4</sup> Pub. Law 110-457 Sec. 211 and codified at 8 § U.S.C. 1641(c).

<sup>5</sup> Pub. Law 113-4 Sec. 804 and codified at 8 § U.S.C. 1641(c).