



Jewish culture for a just world

Ending the Racist Wealth Test: Eliminate the Public Charge Provision

The Workers Circle applauds the Biden Administration's action on September 8, 2022, issuing a new regulation ending the inhumane Trump-era public charge rule which had a dangerous chilling effect that kept millions of immigrant families from accessing health care and critical safety net programs. The new regulation makes welcome and important improvements to the public charge provision. We urge the Biden Administration and Congress to go further and eliminate the public charge provision in US immigration law altogether so that it may never again be used to discriminate against any group of immigrants seeking to come to or stay in the US. In addition, we urge Congress to end barriers to immigrant access to health care, nutrition, and housing programs.

What is Public Charge? A History of Discrimination

Since the 1880s, US law has contained a provision for inadmissibility on the grounds of public charge. It applies to those seeking to enter the US or, once here, obtain permanent status, but it doesn't specifically define public charge. The application of the public charge provision was discriminatory from its inception, aimed at excluding "any convict, lunatic, idiot or any person unable to take care of himself or herself without becoming a public charge."

In more recent history, according to the National Immigration Law Center, a person was considered a public charge for immigration purposes if they were primarily dependent on the federal government for subsistence. Since 1999, "primarily dependent" has been defined as someone who "received federal, state, or local cash assistance for income maintenance or were institutionalized for long-term care at government expense."

The Trump Administration: Instituting a Racist Wealth Test

In October, 2019, the Trump Administration rule expanding the public charge provision of US immigration law went into effect. His new rule changed "primarily dependent" on federal government benefits to "likely to use" as the criteria for classifying someone as a public charge—drastically broadening the definition to include use of benefits such as SNAP, low-income housing assistance, Medicaid (under most instances), Supplemental Security Income, and other public benefits. Benefits used before October 15, 2019 would not be considered and, for people waiting to enter the US, there were new instructions that allow for consideration of use of public benefits by applicants, their families, or sponsors. The rule was blocked by several federal courts but, on February 24, 2020, the Trump Administration rule went into effect. The US Supreme Court stepped in and, in a 5-4 decision, allowed the Department of Homeland Security's rule to go into effect.

The State Department has also instituted a similar rule for visa applicants, denying visas to people considered "likely to use" public benefits. The plan was to use factors such as age, education, language proficiency, and health. Visa applicants could buy an "exception" for a fee that low-income applicants, many of whom were people of color,

wouldn't be able to pay, reinforcing the contention that this amounted to a racially motivated wealth test.

A Troubling Impact on US Immigrant Families Heightened Under COVID

The Trump-era rule had a documented, chilling effect on immigrants in the US. Some immigrant families, confused and fearful about the implications of the rule on their status, were refraining from accessing much-needed benefits. Many left government programs that helped keep food on their family's table and a roof over their heads. Given that one in four children in the US have at least one foreign-born parent, the impact was widespread. During the COVID-19 pandemic this situation has had dangerous ramifications for immigrant families as well as their communities. Health care providers and social service agencies report that even immigrants who do not come under the public charge rule have been staying away from clinics, testing centers, food programs, and other essential services, exacerbating an already dire situation.

#WeWerePublicCharges: Why the Workers Circle Cares

We have our own public charge story. In 1900, the Workers Circle was founded by Yiddish-speaking Eastern European immigrants who came to the US with little or nothing in their pockets. They certainly wouldn't have been able to get to America if Trump's public charge rule were in effect. In fact, even then, many Jews were denied admission once they got to Ellis Island if they didn't have \$25 and a ticket to their final destination.

In the 1930s tens of thousands of Jews seeking to flee the rising danger in Germany and barred by the Nazis from taking assets out of the country were denied US visas because of the Hoover Administration's broad interpretation of the public charge provision in the immigration code. Even after President Roosevelt took office in 1933, opposition from the public and some State Department officials motivated in part by anti-Semitism prompted the Administration to maintain the harsh public charge exclusion.

The Workers Circle opposed the Trump Administration public charge rule and became an active member of the Protecting Immigrant Families (PIF) coalition. We are pleased that the Biden Administration has issued a regulation that largely repeals the Trump rule and makes some important improvements going further. Predictably, as in the past, there will be partisan attempts to attack this regulation in court, but there are solid grounds for the regulation to be upheld.

The Workers Circle believes that, as long as there is public charge language in the US Immigration and Nationality Act, administrations may use it, as the Trump Administration did, as a justification for applying a racist wealth test or other draconian hurdles for immigrants seeking visas or permanent status in the United States. The public charge language should be removed completely from immigration law.

As an organization that champions the rights and well-being of immigrants and fights for economic justice, we agree with Judge George B. Daniels of the New York Federal District Court. In his October 2019 ruling blocking the implementation of the Trump public charge rule, he called it, "...repugnant to the American Dream of the opportunity for prosperity and success through hard work and upward mobility." We know that a threat to some of us is a threat to all of us.

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