

Immigrant Crime Victims and Public Charge: Post-VAWA 2013

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Violence Against Women Act of 2013 Public Charge Amendments

Under U.S. immigration laws, one of the elements that an immigrant seeking lawful permanent residency must prove is that s/he is admissible to the United States. If an immigrant applying for lawful permanent residency is likely to become a public charge,¹ their application for lawful permanent residency will be denied because the immigrant is inadmissible for lawful permanent residency. However, the Violence Against Women Reauthorization Act of 2013 (VAWA 2013) amended immigration laws to exempt from the public charge bar those immigrants who have received certain types of humanitarian immigration relief, such as immigrant victims of crime.

Over the past two decades, Congress has created special immigration protections and access to public benefits for immigrant victims of domestic violence, sexual assault, human trafficking, stalking and other criminal activities. Immigrant victims of family violence, workplace sexual assault, human trafficking and other crime victims who have come forward to report crimes and offer help to law enforcement detecting, investigating and prosecuting crime perpetrators are vulnerable economically, have special needs for access to health care and services, and face safety risks. Congress, and many states, have recognized immigrant crime victims' urgent need for access to the public benefits safety net and created special access to federal and state funded public benefits for immigrant victims.

Despite the fact that immigrant crime victims and their children are legally eligible to receive public benefits, many are reluctant to access them because it is widely believed in immigrant communities that immigrants who receive public benefits are permanently barred from ever becoming lawful permanent residents on public charge grounds. To address this issue, Congress amended immigration laws through VAWA 2013 to exempt the following groups of immigrant crime victims from the public charge bar to admissibility and thus lawful permanent residency:²

- VAWA self-petitioners³ who are:
 - Self-petitioners as spouses, former spouses, children and step-children of U.S. citizens and lawful permanent residents;⁴
 - Self-petitioner parents of U.S. citizen over 21 year old sons or daughters;⁵
 - Battered spouse waiver recipients;⁶
 - VAWA's special Cuban Adjustment recipients;⁷
 - VAWA's special protections for Haitian entrant recipients;⁸

¹ INA § 212(a)(4); 8 U.S.C. 1182(a)(4). For purposes of determining inadmissibility, "public charge" means an individual who is likely to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense. USCIS, *Public Charge*, Q and A, Q:What is public charge and when does it apply? <http://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge> (last updated Sept. 3, 2009).

² Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54, section 804 (Mar. 7, 2013).

³ INA § 212(a)(4)(E)(i); 8 U.S.C. § 1182(a)(4)(E)(i).

⁴ INA § 101(a)(51)(A) and (B); 8 U.S.C. § 1101(a)(51)(A) and (B).

⁵ INA § 101(a)(51)(A); 8 U.S.C. § 1101(a)(A).

⁶ INA § 216(c)(4)(C); 8 U.S.C. § 1186a(c)(4)(C); INA § 101(a)(51)(C); 8 U.S.C. § 1101(a)(C).

⁷ INA § 101(a)(51)(D); 8 U.S.C. § 1101(a)(D).

⁸ INA § 101(a)(51)(E); 8 U.S.C. § 1101(a)(E).

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- VAWA's Special Nicaraguan and Central American Relief Act (NACARA) protections;⁹
- U visa recipients;¹⁰
- Other qualified immigrant crime victims including:¹¹
 - VAWA cancellation of removal applicants;¹²
 - VAWA suspension of deportation applicants;¹³
 - T visa applicants who receive prima facie determinations, bona fide determinations or T visa approvals;¹⁴ or
 - A spouse or child with a pending or approved family based visa petition when the applicant or their child has been battered or subjected to extreme cruelty by their U.S. citizen or lawful permanent resident spouse or parent or a member of the spouse or parent's family residing in the same household as the immigrant victim.¹⁵

Some immigrants who are victims of domestic violence, sexual assault, human trafficking, stalking, or dating violence may have other forms of immigration status that are not subject to the public charge bar to lawful permanent residency. These groups of immigrants are:¹⁶

- Refugees (both those entering the country and applying for permanent resident status);
- Asylum applicants and recipients;
- Certain immigrants who were subject to battery or extreme cruelty by a U.S. citizen spouse or parent;¹⁷
- Certain immigrants eligible for cancellation of removal who were subject to battery or extreme cruelty by a U.S. citizen or LPR spouse or parent;
- Amerasian immigrants (for their initial admission);
- Individuals granted relief under the Cuban Adjustment Act, the Nicaraguan and Central American Relief Act, and the Haitian Refugee Immigration Fairness Act;¹⁸ and
- Applicants for Temporary Protected Status.

Who is subject to the public charge bar to lawful permanent residency?

Advocates and attorneys may work with immigrant crime victims who may not be able to file for immigration relief designed for immigrant victims that include an exemption to the public charge bar. This may cover:

- Immigrant victims who may be eligible for U visas but cannot obtain U visa certifications and are pursuing other forms of immigration relief;
- Immigrant crime victims who have non-victimization related avenues to lawful permanent residency through family members or employment; or
- Immigrants who have student/work visas and gain opportunities to obtain lawful permanent

⁹ INA § 101(a)(51)(F) and(G); 8 U.S.C. § 1101(a)(F) and(G).

¹⁰ INA § 212(a)(4)(E)(ii); 8 U.S.C. § 1182(a)(4)(E)(ii).

¹¹ INA § 212(a)(4)(E)(iii); 8 U.S.C. § 1182(a)(4)(E)(iii).

¹² 8 U.S.C. § 1641(c)(1)(B)(v).

¹³ 8 U.S.C. § 1641(c)(1)(B)(iv).

¹⁴ 8 U.S.C. § 1641(c)(4).

¹⁵ 8 U.S.C. § 1641(c)(1)(B)(iv) and (2)(A).

¹⁶ See "Field Guidance on Deportability and Inadmissibility on Public Charge Grounds," 64 Fed. Reg. 28689, 28691 (March 26, 1999); see also USCIS, *Public Charge*, Q and A, Q. Does public charge apply to me? <http://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge> (updated Sept. 3, 2009).

¹⁷ See 8 U.S.C. § 1182(a)(4); INA § 212(a)(4) for specific language regarding the circumstances in which immigrants subject to battery or extreme cruelty are exempt from this bar.

¹⁸ See *Matter of Mesa*, 12 I. & N. Dec. (Dep. Assoc. Comm. 1967) (public charge exception under the CAA); NACARA, Pub. L. 105-100, section 202(a); HRIFA, Pub. L. 105-277, Title IX, section 902.

residency through employer sponsorship.

For advocates and attorneys working with victims pursuing avenues to lawful permanent residency that are not exempt from public charge, it is important to understand how public charge has been defined under U.S. immigration laws. Advocates and attorneys need to be aware of what public benefits use will make an immigrant a public charge and what forms of benefits immigrants can receive without any public charge consequences.

What is the public charge ground of inadmissibility?

The public charge bar to lawful permanent residency applies to immigrants who are “likely at any time to become a public charge.”¹⁹ The Department of Homeland Security (DHS) defines public charge as an immigrant who is “likely to become... ‘primarily dependent on the Government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at Government expense.’”²⁰

Determination of whether an immigrant is a public charge is made as part of the immigrant’s lawful permanent residency application, and is assessed by looking at the “totality of the circumstances,” including the immigrant’s age, health, family status, assets, resources, financial status, education, skills, and whether an affidavit of support exists, among other factors.²¹ One factor alone should not be determinative of whether or not an individual is subject to the public charge bar.²²

Moreover, there are many federal and state public benefits that an immigrant can receive that cannot be considered as part of the public charge determination. Immigrants can access the following public benefits without having to be concerned about the public charge bar:²³

- Medicaid and other health insurance and health services (including public assistance for immunizations and for testing and treatment of symptoms of communicable diseases, use of health clinics, short-term rehabilitation services, prenatal care and emergency medical services) other than support for long-term institutional care;
- Children’s Health Insurance Program (CHIP);
- Nutrition programs, including the Supplemental Nutrition Assistance Program (SNAP) – commonly referred to as Food Stamps – the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the National School Lunch and School Breakfast Program, and other supplementary and emergency food assistance programs;
- Housing benefits;
- Child care services;
- Energy assistance, such as the Low Income Home Energy Assistance Program (LIHEAP);
- Emergency disaster relief;
- Foster care and adoption assistance;
- Educational assistance (such as attending public school), including benefits under the Head Start Act and aid for elementary, secondary or higher education);
- Job training programs;
- In-kind, community-based programs, services or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter);

¹⁹ INA § 212(a)(4); 8 U.S.C. § 1182(a)(4).

²⁰ See “Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,” 64 Fed. Reg. 28689 (March 26, 1999).

²¹ “Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,” 64 Fed. Reg. 28689, 28690. The “totality-of-the-circumstances” factors are codified at 8 U.S.C. § 1182(a)(4)(B).

²² *Id.*

²³ USCIS, *Public Charge Fact Sheet*, (Apr. 29, 2011), available at: <http://www.uscis.gov/news/fact-sheets/public-charge-fact-sheet>.

- Non-cash benefits under TANF such as subsidized child care or transit subsidies;
- Cash payments that have been earned, such as Title II Social Security benefits government pensions, and veterans' benefits, and other forms of earned benefits;
- Unemployment compensation; and
- Short-term institutionalization for rehabilitation purposes.

While not independently determinative in deciding whether an individual is a public charge, the following public benefit programs that can be considered as part of the public charge assessment and could potentially trigger the public charge bar:²⁴

- Supplemental Security Income (SSI);
- Cash assistance from the Temporary Assistance for Needy Families (TANF) program and state or local cash assistance programs for income maintenance, often called “general assistance” programs; and
- Public assistance, including Medicaid, that is used to support an individual who resides in an institution for long-term care- such as a nursing home or mental health institution.

On August 14, 2019, DHS published its final rule on Inadmissibility on Public Charge Grounds in which it reiterated that inadmissibility based public charge does not apply to certain immigrant crime victims.²⁵ The rule offers definitions of what it means to be a “public charge” thus rendering an immigrant as inadmissible.²⁶ Additionally, the rule explains DHS revised several regulatory provisions to reflect the changes codified by VAWA 2013 that T and U Nonimmigrants, and VAWA self-petitioners are exempt from inadmissibility for public charge purposes. As such, this rule on inadmissibility on public charge grounds does not apply to the aforementioned immigrant crime victims.

²⁴ *Id.*

²⁵ Inadmissibility on Public Charge Grounds, 157 Fed. Reg. 41,292 (Aug. 14, 2019) (to be codified at 8 C.F.R. Parts 103, 212, 213, 245, and 248).

²⁶ *Id.*, at 41,298.