

March 31, 2022

Department of Homeland Security  
U.S. Citizenship and Immigration Services  
5900 Capital Gateway Drive  
Camp Springs, MD 20588-0009

**RE: RIN 1615-AC74; Public Comment on Proposed Rule for the Public Charge Ground of Inadmissibility**

VOR is a national non-profit organization established in 1983 to advocate for human rights and high-quality care for all individuals with intellectual and developmental disabilities (I/DD). We are grateful that the Department of Homeland Security (DHS) has provided the public an opportunity to comment on DHS Notice of Proposed Changes to the Public Charge Grounds of Inadmissibility, and that DHS has seen fit to nullify the Public Charge Rule of 2019 and re-establish the 1999 standards while in the process of formalizing the new policy.

Many individuals with I/DD contribute to the wealth and productivity of the country, and all help strengthen the fabric of our society. Given their value to our country, VOR believes all individuals with I/DD should be granted the same rights to immigrate to the United States as non-disabled individuals. We believe that being denied entry into the U.S. based on being a public charge violates their human rights, but we understand that the country and our immigration policies are not likely to accept this position. We would ask, however, that a person's need for institutional placement not be a fixed determinant in denying eligibility but be considered as one of several factors in a family's application to enter the United States. Instead of institutionalization being an absolute bar to entry, we believe the goals of immigration would be better served by applying the rules for admissibility for individuals with I/DD or their families on a case-by-case basis. VOR believes such an approach would benefit both applicants and the United States.

**Clarifying Language and Definitions in the Proposed Rule**

We agree with the proposal to exempt people who seek long-term care in Home and Community Based Service (HCBS) settings from being barred from entry on that basis. This form of long-term care does not require the taxpayer to provide room and board, only the cost of the health care services provided. While our organization would like to see a wider range of services offered, we view this as an improvement over the 1999 language, which had been open to greater interpretation of what might or might not constitute a public charge based on a need for long-term care. By allowing HCBS services, DHS is creating a clear path for immigrant families and encouraging them to apply for the services they need to best become part of the fabric of our society. The absence of such clearly defined guidelines in past policy may have resulted in families wishing to immigrate into the U.S. being reluctant to apply for services for which they had been eligible out of fear of being determined a public charge and refused entry.<sup>1</sup> As stated above, VOR encourages DHS also to adopt a policy that would look at the potential burden for people receiving long-term care services in other settings on a case-by-case basis.

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<sup>1</sup> Federal Register/Vol. 87, No. 37/Thursday, February 24, 2022/Proposed Rules p. 10588 (b. Discussion of Chilling Effects)

Another section that should be clarified appears on page 37 of the downloaded document,<sup>2</sup> under Part C. Definitions, wherein appears the language “Likely at Any Time To Become a Public Charge”. According to the Federal Register report, “Neither the 1999 Interim Field Guidance nor the 1999 NPRM defined ‘likely’ or ‘likely at any time to become a public charge’ for purposes of making public charge inadmissibility determinations.”<sup>3</sup> We believe that this language requires better definition. Just like non-disabled individuals, people with I/DD change with age, and for most their needs increase. Is an individual with higher needs to be considered more *likely to become a public charge at any time* as they age?

In evaluating these individuals and their application, it would be beneficial to all if the final rule included guidance directing the consideration of the role of that individual’s family would have in overseeing his/her care. Further, at times, should an individual with I/DD have one’s application denied, the impact this could have on that applicant’s broader family unit’s decision should be considered. An individual who may become a public charge may be a part of a family who has 2-4 individuals able and willing to fully contribute to our society and economy. If the applicant with I/DD is denied entry, and the applicant’s family chooses to remain with them, there are social and economic impacts that should be considered. VOR supports guidelines that allow staff to reasonably consider the broader context of an applicant with I/DD’s situation.

VOR recommends additional clarity for both the word “*likely*” and for the phrase “*at any time*”. While each case should be considered on its individual merits and adhere to federal guidance, the lack of specificity in this definition creates an opportunity for confusion or over-reach.

### **The Need for an Internal Board of Appeals**

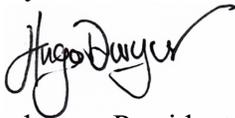
Currently, an individual or family wishing to appeal a denial of an application to immigrate to the US based on the Public Charge Rule must apply to a federal circuit court of appeals or the US Department of Justice Board of Immigration Appeals. We would propose an internal structure within the DHS itself in order to expedite appeals and allow families an easier way to clarify the status of their loved ones who require long-term services and supports within the definitions of the Public Charge Rule.

### **Conclusion**

Again, VOR appreciates the opportunity to provide input and feedback on the proposed rule. We are pleased that DHS is working to update the public charge guidance. As our nation and world evolve, it is incumbent upon us to best address dated policies with full transparency and input from all involved parties in order to ensure federal regulations reflect a balance of needs and goals.

Should you have any questions regarding these comments, please contact VOR’s Executive Director, Hugo Dwyer at: [hdwyer@vor.net](mailto:hdwyer@vor.net)

Hugo Dwyer - Executive Director, VOR - A Voice of Reason



Sam Friedman - President, VOR Board of Directors



<sup>2</sup> Federal Register/Vol. 87, No. 37/Thursday, February 24, 2022/Proposed Rules p. 10606

<sup>3</sup> 64 FR 28689 (May 26, 1999); 64 FR 28676 (May 26, 1999).