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Congress of the United States
House of Representatives
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August 19, 2020

Kenneth T. Cuccinelli
Senior Official Performing Duties of the Director
U.S. Citizenship and Immigration Services
20 Massachusetts Ave, NW Washington, DC 20001

Dear Mr. Cuccinelli,

I write on behalf of immigrant constituents, particularly business owners and entrepreneurs, in Oregon's First Congressional District to urgently request that U.S. Citizenship and Immigration Services (USCIS) issue communications to help community members understand what specific programs or benefits can factor in a public charge determination.

In response to the COVID-19 pandemic, federal, state, and local programs have been created to support members of our community, including immigrants, who are struggling with the dire economic downturn and even greater long-term uncertainty. A number of these programs aim to provide support and relief to small business owners as they navigate the unprecedented hardship that the ongoing COVID-19 pandemic has inflicted on their businesses. Receiving disaster assistance is not typically a negative factor in a public charge assessment. However, in light of ongoing litigation and confusion over USCIS policies, community members who are immigrants are understandably confused and apprehensive. Similarly, under the final rule issued by the agency, only cash assistance programs for income maintenance are considered a negative factor, not for businesses, but the current environment is creating confusion that must be addressed. These eligible community members are forgoing community assistance that could help their businesses retain jobs and sustain local economies in fear of USCIS actions that could harm them or tear apart their families.

Many local programs that provide financial support to individuals, families, and businesses are backed fully or in part by federal funding streams, compounding the lack of clarity. For example, the City of Hillsboro will soon be awarding a third round of small business grants that draw on Washington County, Oregon's distribution of funds made available through the Coronavirus Aid, Relief, and Economic Security Act (CARES Act, P.L. 116-136).

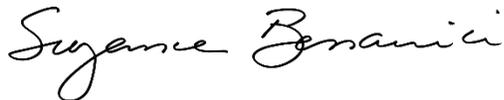
Yet USCIS has allowed a cloud of confusion to stop relief from reaching eligible business owners. There remains a need for explicit communication of exactly what public funding, if any, provided via the CARES Act and other relief efforts at the federal, state, or local level would be considered in a public charge determination. USCIS has announced that it will not consider any

testing or treatment for COVID-19 as part of the public charge inadmissibility determination, but no such information has been made for many other public services or assistance programs that pose a great benefit to the wider community.

At this moment, there are immigrant members of our community doing everything they can to provide for their families, keep them healthy and safe, and contribute to society by creating economic activity and opportunities for employment. Despite ongoing litigation that will likely take months to resolve, they **need clarity today** from USCIS so that they can access badly needed resources that they are eligible to receive without fear of inadvertently triggering immigration action that would harm them and their families. I respectfully request that USCIS immediately issue clear communication to assist those navigating the landscape of public services, supports, and benefits to clarify whether and how participating in these programs will or will not factor in a public charge determination.

Because this is an urgent issue that is affecting families and small businesses, please respond to this letter by publicly issuing updated communication as soon as possible and no later than August 28, 2020.

Sincerely,

A handwritten signature in cursive script that reads "Suzanne Bonamici".

Suzanne Bonamici
Member of Congress



U.S. Citizenship
and Immigration
Services

September 11, 2020

The Honorable Suzanne Bonamici
U.S. House of Representatives
Washington, DC 20515

Dear Representative Bonamici:

Thank you for your August 19, 2020 letter requesting clarification on the public charge rule during the coronavirus (COVID-19) pandemic. Mr. Cuccinelli asked that I respond on his behalf.

In your letter, you request U.S. Citizenship and Immigration Services (USCIS) issue communications to help the public understand which public benefit programs will be considered in a public charge inadmissibility determination, including whether USCIS will consider funding provided to businesses as part of the COVID-19 relief.

The Department of Homeland Security (“DHS”) regulations promulgated, through the Inadmissibility on Public Charge Grounds Final Rule (84 FR 41292, Aug. 14, 2019, final rule, as amended by 84 FR 52357, Oct. 2, 2019, final rule correction) (“Public Charge Final Rule”)¹, at 8 CFR 212.21(b) include a list of public benefits that U.S. Citizenship and Immigration Services (“USCIS”) will consider in making public charge inadmissibility determinations under that rule. Further, 8 CFR 212.21(e) defines “receipt of public benefits” as the provision of “a public benefit. . . . to an alien as a beneficiary, whether in the form of cash, voucher, services, or insurance coverage.” The definition further states that “applying for a public benefit does not constitute receipt of public benefits although it may suggest a likelihood of future receipt. Certification for future receipt of a public benefit does not constitute receipt of public benefits, although it may suggest a likelihood of future receipt. An alien’s receipt of, application for, or certification for public benefits solely on behalf of another individual does not constitute receipt of, application for, or certification for such alien.” USCIS would not consider public benefits received by a business entity rather than an individual to be relevant to a public charge inadmissibility determination regarding an officer or employee of the business entity who is an alien.

As you note in your letter, “public benefit” under the Public Charge Final Rule includes cash assistance for income maintenance. The USCIS Policy Manual Volume 8, Part G, Chapter

¹ For additional information, please see <https://www.govinfo.gov/content/pkg/FR-2019-08-14/pdf/2019-17142.pdf>.

10 explains that in order to be considered cash assistance for income maintenance, a public benefit would have the following characteristics: it would be provided in the form of cash or cash equivalent (such as a debit card or check), it would be for a non-specific purpose in which the cash or cash equivalent may be used for food and nutrition, housing, or healthcare, means-tested (requirement based on income threshold), and it would not be otherwise listed as excluded in DHS regulations or the USCIS Policy Manual. The Policy Manual includes some non-exclusive examples of state programs that would be considered cash assistance for income maintenance, as well as examples of benefits/programs that would not be considered public benefits. Among the examples of excluded benefits are any services provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), and short-term, non-cash, in-kind emergency disaster relief.

In addition to the DHS regulations, and the USCIS Policy Manual guidance, USCIS also has a dedicated webpage with information regarding the Public Charge Final Rule.² As you note in your letter, this page includes information about public benefit consideration with respect to public charge inadmissibility determinations made under the Public Charge Final Rule during the COVID-19 national emergency, and states that “USCIS will neither consider testing, treatment, nor preventative care (including vaccines, if a vaccine becomes available) related to COVID-19 as part of a public charge inadmissibility determination, nor as related to the public benefit condition applicable to certain nonimmigrants seeking an extension of stay or change of status, even if such treatment is provided or paid for by one or more public benefits, as defined in the rule (e.g. federally funded Medicaid).” In addition, “if an alien subject to the public charge ground of inadmissibility lives and works in a jurisdiction where disease prevention methods such as social distancing or quarantine are in place, or where the alien’s employer, school, or university voluntarily shuts down operations to prevent the spread of COVID-19, the alien may submit a statement with his or her application for adjustment of status to explain how such methods or policies have affected the alien as relevant to the factors USCIS must consider in a public charge inadmissibility determination. For example, if the alien is prevented from working or attending school, and must rely on public benefits for the duration of the COVID-19 outbreak and recovery phase, the alien can provide an explanation and relevant supporting documentation. To the extent relevant and credible, USCIS will take all such evidence into consideration in the totality of the alien’s circumstances.”³

As you may be aware, on July 29, 2020, the U.S. District Court for the Southern District of New York (SDNY) in *State of New York, et al. v. DHS, et al.* and *Make the Road NY et al. v. Cuccinelli, et al.* enjoined the DHS from enforcing, applying, implementing, or treating as effective Public Charge Final Rule.⁴ On August 12, 2020, the U.S. Court of Appeals for the Second Circuit granted a partial stay of the July 29th injunction, and limited its application to the Second Circuit, i.e., to New York, Connecticut, and Vermont. At this time, DHS has not announced when it will resume applying the Public Charge Final Rule outside of the Second Circuit. In the interim, USCIS is making public charge inadmissibility determinations under the

² For additional information, please see <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge>.

³ *Id.*

⁴ For additional information, please see <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge/injunction-of-the-inadmissibility-on-public-charge-grounds-final-rule>.

The Honorable Suzanne Bonamici
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1999 Interim Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 65 Fed. Reg. 28689 (May 26, 1999).⁵

Thank you again for your letter. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Sincerely,



Joseph Edlow
Deputy Director for Policy

⁵ For additional information, please see <https://www.federalregister.gov/documents/1999/05/26/99-13202/field-guidance-on-deportability-and-inadmissibility-on-public-charge-grounds>.