

A RESOLUTION

23-350

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 3, 2020

To declare the sense of the Council opposing implementation of the Department of Homeland Security’s public charge rule because of the negative effect the proposed rule will have on our immigrant communities’ access to vital services and cost-saving initiatives that keep families healthy and on a path toward economic success.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Sense of the Council Opposing Implementation of Public Charge Rule Resolution of 2020”.

Sec. 2. The Council finds that:

(1) On January 27, 2020, by a 5-to-4 vote, the Supreme Court of the United States granted an order to stay previous preliminary injunctions issued by lower federal courts, thereby allowing the Trump Administration to begin implementation of the public charge rule on February 24, 2020.

(2) Since the 1800s, federal immigration laws have indicated that if an individual is a “public charge,” he or she may be prohibited from entering or staying in the United States. Since 1999, “public charge” has been interpreted to mean that United States Citizenship and Immigration Services (“USCIS”) officers would consider whether a foreign national was likely to become primarily dependent on government services, and “primarily dependent” has been interpreted to mean that a person receives at least half of their support in the form of cash assistance from the government.

(3) On October 10, 2018 the U.S. Department of Homeland Security (“DHS”) issued a proposed regulation that would drastically alter this long-standing practice, allowing USCIS immigration officers to refuse entry to those lawfully seeking to enter, or deny immigrants lawfully in United States the ability to remain permanently (i.e. those seeking to obtain a green card), when the immigration officer believes that the foreign national would be likely to receive *any* benefits, in *any* amount and at *any* point in the future. Instead of individuals having to be *primarily* dependent, the new regulation allows an immigration officer to examine 15 “negative factors,” such as whether an individual is older than 61, speaks English, or has “inadequate” education or skills to hold a job. Based on these subjective or speculative criteria,

and other criteria, an immigration officer will determine if an individual may become a public charge, and thereby deny an individual's entry or right to stay in the United States.

(4) On August 14, 2019, DHS published a final version of the regulation, and thus the new regulation promulgated by DHS makes it much easier for immigration officials and the Trump Administration to deny entry or legal status to people deemed likely to require government assistance in any amount or at any point in their lives.

(5) Several lawsuits were brought against the United States government in response to the final regulations and several United States District Courts throughout the country enjoined the federal government from enforcing the new regulations. Two United States Courts of Appeals decided to stay their lower courts' enjoinder decisions, but the United States Court of Appeals for the Second Circuit ("2nd Circuit") agreed with a United States District Court in New York enjoining the implementation of the regulations.

(6) Given this enjoinder, the United States appealed the 2nd Circuit's decision to the Supreme Court. The Supreme Court voted 5-4 to grant the United States' request to stay the 2nd Circuit's decision while the Supreme Court decides whether to grant a writ of certiorari to hear the case on its merits and to provide an opinion on the matter.

(7) Once the Supreme Court stayed the 2nd Circuit's decision to enjoin the federal government from implementing its new interpretation of the public charge rule, DHS announced that it would begin implementation of the rule on February 24, 2020.

(8) Implementation of the new interpretation of the public charge rule creates a "wealth test" that also would disproportionately bar non-white immigrants. Implementation also will likely deter individuals who rightfully qualify for public benefits – including important safety net benefits like SNAP, Section 8 housing, and Medicaid – from seeking them for themselves or their family due to fear that the utilization of benefits would negatively impact their immigration status (or a family member's), even if that fear is not based in fact. Organizations that serve immigrant populations are particularly concerned about the chilling effect this regulation will have on immigrants' healthcare as families may forego preventative and emergency medical care, as well as vaccinations and treatments for contagious diseases, which would have a negative impact on public health as a whole.

(9) The Migration Policy Institute estimates that the new standards for determining when an immigrant is likely to become a public charge could cause a significant share of the nation's nearly 23 million noncitizens and U.S. citizens in immigrant families using public benefits to disenroll. Even if the number affected is fewer, the impact of the new rule will be substantial.

Sec. 3. It is the sense of the Council that:

(1) The District of Columbia strongly opposes the implementation of the Department of Homeland Security's public charge rule and reaffirms its commitment to defend and protect the rights and safety of the immigrant and refugee community of the District of Columbia.

(2) The District of Columbia believes that all individuals, regardless of their income, ethnicity, or national origin, should be treated fairly, equally, and respectfully, and it does not support policies that evoke fear or discourage individuals from seeking rights and benefits to which they are entitled.

(3) The District of Columbia embraces a diverse citizenry, welcoming individuals from different racial, ethnic, religious, and national backgrounds, as such is vital to weaving together a strong and vibrant city.

(4) The United States Congress should promptly enact legislation accomplishing comprehensive immigration reform that treats all immigrants justly and reflects the basic principles of human dignity and human rights.

Sec. 4. The Council shall transmit a copy of this resolution and its legislative report to the President of the United States, the Leaders of both the Democratic and Republican party of the United States House of Representatives and of the United States Senate, the Attorney General of the United States, the Acting Secretary of the Department of Homeland Security, and the Mayor.

Sec. 5. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.