

ALLIANCE FOR IMMIGRANT SURVIVORS

January 18, 2022

Submitted via www.regulations.gov

Andrea B. Lage
Acting Regulatory Coordinator, Visa Services
Bureau of Consular Affairs
Department of State
600 19th St, NW
Washington, DC 20006

Re: Comment on Interim Final Rule-Visas: Ineligibility Based on Public Charge Grounds; Docket DOS-2021-0034 and RIN 1400-AE87

On behalf of the following 72 national, statewide, and local organizations that serve survivors of domestic violence, sexual assault, and human trafficking, we are submitting comments in response to the Department of State's ("DOS") Notice of Reopening of public comment period on the Interim Final Rule concerning Visas: Ineligibility Based on Public Charge Grounds published at 86 Fed. Reg 64070, on November 17, 2021. The following comments intend to address the impact that DOS' October 11, 2019 Interim Final Rule¹ ("DOS rule") rule has on survivors of domestic violence and sexual assault: both survivors seeking admission as well as sponsoring family members or other household members. Our organizations urge DOS to **publish a final public charge rule that addresses the needs of victims of domestic violence and sexual assault and supports their ability to obtain and maintain safety and well-being.**

While many survivors seeking certain survivor-specific forms of immigration status are exempt from the public charge ground of inadmissibility, such as those who are seeking protections under the Violence Against Women Act, T visas and U visas,² the final DOS public charge rule should recognize that large numbers of survivors who do not seek, or who are ineligible for survivor-specific forms of status, and thus will be impacted by the rule. Even in instances where survivors already have been admitted and the DOS rule would not directly apply to them, their family members who may be seeking a visa, such as those sponsored by survivors, or those living in their households (including US

¹ Visas: Ineligibility Based on Public Charge Grounds, Interim final rule, request for public comment, 84 Fed Reg. 54996 (October 11, 2019), available at: <https://www.govinfo.gov/content/pkg/FR-2019-10-11/pdf/2019-22399.pdf>.

² 8 USC §1182(a)(4)(E)

Citizens), are being impacted.³ The DOS rule affects both potential applicants for immigrant visas living abroad and people currently living in the U.S. either as sponsors of future immigrants abroad, or intending immigrants themselves who must leave the U.S. and undergo consular processing. Often, survivors (including U.S. citizens or those already admitted) who are in the U.S. fear that if a family member in the U.S. uses a benefit, it will affect their ability to sponsor family members living abroad for visas. In addition, non-citizen survivors who are currently in the US but must go abroad for consular processing are forgoing benefits and services while still in the U.S. because doing so might affect a future public charge determination upon admission. Given the complexity of public charge policy and the significant number of families and households in which members have different immigration statuses, there is widespread confusion about who is subject to the rule.⁴

While DOS has revised the Foreign Affairs Manual (FAM)⁵ to align with the Immigration and Naturalization Service's (INS's) 1999 Field Guidance ("1999 Field Guidance"),⁶ and DHS operating policy, having a policy in the regulations that differs from the 2021 FAM guidelines and the 1999 Field Guidance adds to the confusion for immigrants and their families, as well as for immigration attorneys and accredited representatives, benefits granting agencies, and others who work with immigrant communities.

Over the last several years, immigrant survivors and their families have been declining, or withdrawing from, assistance programs that support their basic needs due to fear.⁷ Unfortunately, the promulgation of the enjoined public charge regulation in 2019 had a severe chilling impact on survivors accessing benefits, including those not subject to the rule, and for benefits that would not be considered in a public charge assessment. For example, survivor advocates reported examples of survivors declining housing for victims, including housing specifically provided for victims, resulting in survivors

³ E.g., Barofsky, J., Vargas, A., Rodriguez, D., Matos, E., & Barrows, A. (2021). Putting out the 'unwelcome mat:' The Announced Public Charge Rule reduced safety net enrollment among exempt noncitizens. *Journal of Behavioral Public Administration*, 4(2), available at: <https://doi.org/10.30636/jbpa.42.200>.

⁴ Center for American Progress, Keeping Families Together, March 16, 2017, available at: <https://www.americanprogress.org/article/keeping-families-together/>.

⁵ U.S. Department of State, 9 FAM 302.8, (U) Public Charge - INA 212(A)(4), CT: VISA-1258, 3-25-2021), available at <https://fam.state.gov/fam/09fam/09fam030208.html>.

⁶ Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed Reg., March 26, 1999, available at: <https://www.govinfo.gov/content/pkg/FR-1999-05-26/pdf/99-13202.pdf>.

⁷ E.g., H. Bernstein, D. Gonzalez, M. Karpman, & S. Zuckerman (2019). "One in Seven Adults in Immigrant Families Avoided Public Benefit Programs in 2018.: DC: Urban Institute, Retrieved from: <https://www.urban.org/research/publication/one-seven-adults-immigrant-families-reported-avoiding-public-benefit-programs-2018>; Protecting Immigrant Families, Research Documents Harm of Public Charge Policy During the COVID-19 Pandemic, August 2021, available at: <https://protectingimmigrantfamilies.org/wp-content/uploads/2021/08/Research-Documents-Harm-of-Public-Charge-Policy-During-the-COVID-19-Pandemic-2.pdf>.

becoming homeless and their children returning to live with abusers. Another advocate reported a survivor of rape declining a Sexual Assault Nurse Examiner (“SANE”) forensic exam and accompanying emergency medical treatment,⁸ a service not considered in a public charge assessment. Results from a national poll conducted in September 2021, showed that nearly half of families with immigrants who needed assistance during the COVID-19 pandemic responded that they abstained from applying due to concerns about their immigration status.⁹ The result has been significant human suffering and economic costs to immigrant survivors, their families, and our communities at large. To alleviate the widespread confusion and the chilling effect, we urge DOS to **remove the text of the 2019 DOS rule from the C.F.R. as soon as possible because the chilling effect of the public charge policy continues and the current DOS policy landscape confuses immigrant families, as well as discourages immigrant survivors from seeking critical services.**

Prior to the 2018 public charge related changes to the FAM, DOS’ public charge policy and practice was clear-cut and reasonably predictable. If an adequate affidavit of support had been submitted, the consular officer would determine if an individual was admissible based on the submitted affidavit, or request additional evidence or an additional affidavit of support from a joint sponsor. The pre-2018 FAM also considered the five statutory factors set out in INA § 212(a)(4)(B) and placed significant weight on the affidavit of support. The regulatory language prior to the 2019 DOS rule was consistent with the consular practice. The regulatory language prior to the 2019 DOS rule stated that individuals can be denied an immigrant visa if they failed to fulfill the affidavit of support requirement, failed to provide an additional affidavit of support by a joint sponsor when needed, or could provide confirmation of written employment or post a bond to remove a public charge concern.¹⁰

The policy was clear and consistent, making it easier for advocates to explain to immigrant families. When DOS underwent the 2019 rulemaking, the agency failed to cite any evidence of harm caused by the prior policy. We urge **DOS to issue a rule restoring the longstanding regulatory text that appeared prior to the 2019 DOS**

⁸ Brief of Amici Curiae Nonprofit Anti-Domestic Violence and Sexual Assault Organizations in Support of Plaintiff’s Motion for Preliminary Injunction. “State of Washington et al v. DHS et al. (Sept. 19, 2019), Retrieved from <http://bit.ly/2mfArzU>

⁹ 1,000 Americans nationwide in mixed-status families were surveyed September 1- 30, 2021. BSP Research and The Protecting Immigrant Families coalition, Immigrant Mixed Status Families Toplines Survey, December 8, 2021, available at: <https://protectingimmigrantfamilies.org/wp-content/uploads/2021/12/PIF-Poll-Toplines-Memo-FINAL-1.pdf>.

¹⁰ *Id.*

rule,¹¹ strengthened with language that promotes policies that support survivors in overcoming and escaping abuse.

Domestic and sexual violence are widespread in our communities – with one in three women and one in six men in the United States experiencing some form of sexual violence in a lifetime,¹² and more than 12 million men and women experiencing rape, physical violence, or stalking by an intimate partner each year in the United States.¹³ These figures are consistent with worldwide estimates, i.e., 1 in 3 women, or approximately 736 million women worldwide have been subjected to domestic or sexual violence.¹⁴ Over the course of the COVID-19 pandemic, domestic violence has increased in frequency and severity.¹⁵ Due to the prevalence of domestic and sexual violence, Congress has provided for many important protections and programs to support victims to escape and overcome abuse through various laws, including the Violence Against Women Act (VAWA),¹⁶ the Victims of Trafficking and Violence Protection Act,¹⁷ and the Victims of a Crime Act (“VOCA”),¹⁸ among other enactments.

Congress has also recognized the role of access to economic supports for survivors in escaping and overcoming abuse when it enacted the federal Temporary Assistance to Needy Families program,¹⁹ and included the Family Violence Option (“FVO”)²⁰ to prevent welfare program rules from unfairly penalizing or putting family violence victims at further risk. Domestic and sexual abuse can result in survivors falling into poverty: either

¹¹ 22 C.F.R. § 40.41 (2018), available at: <https://www.govinfo.gov/content/pkg/CFR-2018-title22-vol1/pdf/CFR-2018-title22-vol1-chap1-subchapE.pdf>.

¹² Centers for Disease Control and Prevention. (2017). The National Intimate Partner and Sexual Violence Survey (NISVS): 2010-2012 State Report. Retrieved from: <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>

¹³ Centers for Disease Control and Prevention. (2011). Sexual Violence, Stalking, and Intimate Partner Violence Widespread in the US. Retrieved from: https://www.cdc.gov/media/releases/2011/p1214_sexual_violence.html

¹⁴ World Health Organization & the United Nations Inter-Agency Working Group on Violence Against Women Estimation and Data. (2021). Violence Against Women Prevalence Estimates, 2018. Retrieved from <https://who.canto.global/b/QR99R>

¹⁵ D.J. Parrott, M.B. Halmos, C.A. Stappenbeck, & K. Moino, (2021). Intimate Partner Aggression During the COVID-19 Pandemic: Associations with Stress and Heavy Drinking. *Psychology of Violence*. retrieved from: <https://psycnet.apa.org/record/2021-70494-001> ; S. Al-Arshani, (Aug. 2020), COVID-19 lockdowns generated a crisis within a crisis for the victims of domestic violence, new study finds. *Insider*. Retrieved from <https://www.insider.com/covid-19-lockdowns-amplified-the-severity-of-domestic-abuse-cases-2020-8>

¹⁶ The Violence Against Women Act of 1994, Pub. L. No. 103-222, Title IV, 108 Stat. 1902-55 (codified in scattered sections of 8 U.S.C. and 42 U.S.C.) and subsequent reauthorizations; Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, (2000); Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, ((2006), and the Violence Against Women Reauthorization Act of 2013, P.L.,113-4,127 Stat. 54 (2013)

¹⁷ The Victims of Trafficking Protection Act of 2000, Pub. L. No. 106-386 (2000)

¹⁸ Victims of Crime Act of 1984, Pub. L. No. 98-473, 98 Stat. 2171 (codified in 42 USC 10601 et seq.)

¹⁹ See, Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub.L. 104-193 (1996)

²⁰ 42 U.S.C. § 602 (a)(7).

because the domestic violence itself included financial abuse or because the consequences of abuse or assault have undermined the victim's ability to work, maintain their housing, or otherwise access financial security. The FVO serves to address the experience of financial coercion and abuse that the overwhelming majority (approximately 94%) of survivors of domestic violence have experienced.²¹ Many abusive partners and employers, and other harm-doers try to prevent or sabotage survivors from attaining economic independence or stability by limiting their access to financial resources, interfering with employment, harming credit, and more.²² Survivors of domestic violence and sexual assault may also lose their jobs due to intense trauma, reduced productivity, harassment at work by perpetrators, and other reasons stemming from the violence.²³

In addition, survivors of domestic and sexual violence may have injuries due to the harm they have experienced, or lack having health insurance for having escaped an abusive relationship. Many survivors suffer health issues as a result of abuse, including acute injuries, chronic pain, and traumatic brain injuries, and are at an increased risk for suicide, depression, anxiety, posttraumatic stress disorder, and substance abuse.²⁴

Without sufficient economic and health resources, survivors are either compelled back into abusive or exploitative relationships, continue to experience the impacts of trauma and injury, or face destitution and homelessness.²⁵ Access to core financial, health, nutrition, and housing assistance programs are critical for survivors in their journeys to overcome the trauma they've experienced and should be disconnected altogether from the exclusionary "public charge" provision in DOS' rule. Being able to access benefits without fear contributes to the goals of aforementioned federal, as well as state and local policies that support survivor safety and autonomy, recovery from trauma, healthy families, and violence prevention.²⁶ DOS' public charge rule should support survivors in seeking or utilizing safety net benefits that are crucial to survivors' ability to escape or recover from abuse and trauma and work to reduce survivors' isolation from their

²¹ Postmus, J. L., Plummer, S. B., McMahon, S., Murshid, N. S., & Mi Sung Kim, M. S. (2012). Understanding economic abuse in the lives of survivors. *Journal of Interpersonal Violence*, 27(3), 411–430.

²² Adams, A., Sullivan, C., Bybee, D., & Greeson, M. (2008). Development of the scale of economic abuse. *Violence Against Women*, 13, 563-588.

²³ See, e.g., Rothman, E.F., Hathaway, J., de Vries, H.F., Stidsen, A. (2007). How Employment Helps Female Victims of Intimate Partner Violence: A Qualitative Study. *Journal of Occupational Health Psychology*, 12, 136-143. DOI: 10.1037/1076-8998.12.2.136;

²⁴ See M.J. Breiding et. al., Chronic Disease and Health Risk Behaviors Associated with Intimate Partner Violence-18 U.S. States/Territories, 18 Ann. Epidemiol., 538-44 (2005).

²⁵ *Id.*

²⁶ The Centers for Disease Control has concluded that improving financial security for individuals and families can help reduce and prevent intimate partner violence. Centers for Disease Control (2017). Preventing Intimate Partner Violence Across the Lifespan: A Technical Package of Programs, Policies, and Practices. Retrieved from <https://www.cdc.gov/violenceprevention/pdf/ipv-technicalpackages.pdf>

families, which are often essential sources of support when escaping and recovering from abuse.

The DOS public charge rule must promote family reunification

Family members serve as one of the main sources of support for survivors, and the presence of a strong support system can be vital to a survivor's ability to disclose, escape, and heal from the trauma of domestic violence, sexual assault, and other gender-based abuses. Survivors stress that having family in their lives is essential to their recovery, providing survivors with the affirmation, encouragement, stability, and resources they need to grow and move forward.²⁷ DOS' public charge rule should not work to isolate victims from their families and support system for having accessed critical economic, health, housing, and other programs to escape or heal from violence.

Conclusion

We urge DOS to move as expeditiously as possible to issue rulemaking on public charge. The constantly changing public charge policies have led to confusion among immigrants and their families, deterring immigrant survivors from accessing critical resources available to them to overcome and escape from abuse. Restoring and strengthening the public charge regulations that were in place before the 2019 rule is a critical step in **addressing the ability of survivors in immigrant families to obtain and maintain safety and well-being.**

Please feel free to contact Grace Huang at gchuang@api-gbv.org, or Richard Calderone at richardc@tahirih.org with any questions or concerns. Thank you for the opportunity to submit comments on the Interim Final Rule on Visas: Ineligibility on Public Charge Grounds.

Sincerely,

Alliance for Immigrant Survivors Co-Chairs

Asian Pacific Institute on Gender-Based Violence

ASISTA

Esperanza United (Formerly Casa de Esperanza National Latin@ Network)
Tahirih Justice Center

²⁷ Anderson, K.M., Renner, L.M., Danis, F.S. (2012). Recovery: Resilience and Growth in the Aftermath of Domestic Violence. *Violence Against Women*, 18(11), 1279-1299. DOI: 10.1177/1077801212470543.

National Organizations

Al Otro Lado
Alianza Nacional de Campesinas, Inc.
BWJP
Center for Gender & Refugee Studies
Children's Defense Fund
Disciples Immigration Legal Counsel
Freedom Network USA
Futures Without Violence
GBV Consulting
Immigration Center for Women and Children
Jewish Women International
Legal Momentum, the Women's Legal Defense and Education Fund
Lovelace Consulting Services, Inc.
National Alliance to End Sexual Violence
National Asians & Pacific Islanders Ending Sexual Violence
National Center on Domestic Violence, Trauma and Mental Health
National Coalition Against Domestic Violence
National Council of Jewish Women
National Immigrant Justice Center
National Immigrant Women's Advocacy Project (NIWAP) Inc.
National Network to End Domestic Violence
National Organization for Women
The National Domestic Violence Hotline
Ujima, Inc: The National Center on Violence Against Women in the Black Community

Statewide Organizations

Advocating Opportunity
Arizona Coalition to End Sexual and Domestic Violence
Asian Task Force Against Domestic Violence
Asian/Pacific Islander Domestic Violence Resource Project
California Partnership to End Domestic Violence
Colorado Coalition Against Sexual Assault
End Domestic Abuse Wisconsin
Florida Council Against Sexual Violence
Illinois Coalition Against Domestic Violence
Iowa Coalition Against Domestic Violence
Jane Doe Inc.
Kansas Coalition Against Sexual and Domestic Violence
Kentucky Coalition Against Domestic Violence
Maine Coalition Against Sexual Assault
Massachusetts Law Reform Institute (MLRI)
Monsoon Asians & Pacific Islanders in Solidarity
Montana Coalition Against Domestic and Sexual Violence

NC Coalition Against Sexual Assault
Nebraska Coalition to End Sexual and Domestic Violence
New York State Coalition Against Domestic Violence
New York State Coalition Against Sexual Assault
Northwest Immigrant Rights Project
Ohio Alliance to End Sexual Violence (OAESV)
Ohio Domestic Violence Network
Progreso Latino
Sexual Violence Law Center
TAASA
Texas Council on Family Violence
Vermont Network Against Domestic and Sexual Violence
Violence Free Colorado
Washington Coalition of Sexual Assault Programs
Wisconsin Coalition Against Sexual Assault

Local Organizations

New Mexico Asian Family Center
The Network: Advocating Against Domestic Violence
7000 Miles to Freedom
Apna Ghar, Inc.
Crime Victim Services
Her Justice, Inc.
Human Rights Initiative of North Texas
LA Center for Law and Justice
Shelter House, Inc.
South Asian Network, Inc
The Legal Project
YWCA Utah