Backgrounder

May 2001

Center for Immigration Studies

Public Charge Doctrine

A Fundamental Principle of American Immigration Policy

By James R. Edwards, Jr.

The public charge doctrine is one of the oldest and most venerated components of American immigration policy. It continues to be debated by policymakers and reported in the news, for this provision is as timely and central today as it was in America's earliest days.

The landmark 1996 welfare reform attempted to address some of the problems caused by public charges. President Clinton pushed for undoing parts of the reform as one of his last-minute negotiating conditions to clear fiscal year 2001 appropriations legislation. Clinton tried to force the extension of health care and food stamp benefits for legal immigrants.[1]

The Clinton administration sought to make legal immigrants immediately eligible for nonemergency Medicaid benefits — they currently are banned for their first five years in America. Immigrants are supposed to rely on their financial sponsors for such assistance. In a statement issued shortly before Election Day, the president increased the pressure for the partial, incremental rebuilding of the welfare state:

> *. . . Upon signing the welfare reform law, I made a commitment to reverse unnecessary cuts in benefits to legal immigrants that had nothing to do with the law's goal of moving people from welfare to work.*
>
> *In 1997 and 1998, I joined Congress in taking steps to restore eligibility for many vulnerable immigrants. Now, it is time to restore benefits to other legal immigrants who are working hard and playing by the rules, but are in need of assistance. . . . Congress must also act now to restore state options to extend Medicaid and SCHIP [State Children's Health Insurance Program] coverage to vulnerable legal immigrant women and children.*[2]

A spokesman for the House Ways and Means Committee chairman responded: "Chairman [William] Archer believes these folks should be coming to America to live the American dream, to earn a paycheck, not a welfare check."[3]

Well-meaning but myopic health care practitioners and health policy analysts have sought to expand taxpayer-funded health assistance to cover new immigrants.[4] Uninformed about immigration policy, these people have been coopted by immigrants' rights activists to speak, apparently unknowingly, on behalf of individuals who should perhaps have been excluded as potential public charges.

In a letter to *The Wall Street Journal*, one such health policy activist wrote:

> *Having studied the problem of immigrant access to health care in New York City for the past two years, it is clear to me that the most fiscally responsible way to address the problems of the Emergency Medicaid system . . . is to restore full Medicaid coverage for those legal immigrants who are now denied it by the 1996 legislation.* Full coverage will allow the poorest recent immigrants access to a full range of services, *including primary care. This will, by itself, reduce the number of expensive hospitalizations for recent immigrants described in your article. [emphasis added]*[5]

James R. Edwards, Jr., Ph.D., is an adjunct fellow with the Hudson Institute and teaches government in the Claremont McKenna College Washington Semester Program. He co-authored The Congressional Politics of Immigration Reform *(Allyn & Bacon, 1999) with James G.Gimpel. In the 104th Congress, Dr. Edwards served as legislative director to a member of the U.S. House Immigration Subcommittee. This* Backgrounder *expands on his contribution to the forthcoming* The Encyclopedia of Contemporary American Immigration *(Greenwood Publishing).*

Public charges fall under the category of "undesirables." They put a drain on society, rather than contribute productively and positively to it.

As one may see, in an age when the welfare state has grown in the United States, many people have lost sight of the historical role of public charge doctrine. An overview of this long-standing principle of immigration policy is both timely and needed. Public charge doctrine was intended to preserve a flow of qualified, capable immigrants. It is a tool for keeping out or expelling unproductive immigrants who place a drain on society. It is similar to a qualifications or skills test that may be required of prospective immigrants.

This *Backgrounder* examines the principle of public charge doctrine. It sets out the principle's deep historical roots in American law, both at the state and federal level. It explains congressional attempts to restore and strengthen this part of the law through landmark immigration and welfare reform laws enacted in 1996. It finally discusses the application of public charge doctrine today, as well as the working definition of public charge.

What Is Public Charge Doctrine?

A "public charge" is someone who cannot provide for himself and thus relies on public assistance for a substantial part of his livelihood; it is someone who is a charge, or responsibility, of the public.[6] Individuals who are deemed as likely to become charges of the public are excluded from entering the United States. If an immigrant becomes a public charge, he may be deported. With the rise of the welfare state in the United States since the Progressive Era, public assistance has increasingly come through the civil government; however, public aid historically had a heavy private sector, voluntary, charitable aspect.

The policy of excluding potential public charges seeks to ensure that individuals unable or unwilling to sustain themselves not burden society. It embodies the idea that an immigrant should be self-sufficient and contribute to the society granting him the privilege of becoming a new member. It is one of the conditions of the social contract. Immigration policy relates to the choosing among foreigners those whom a country will accept. Designating public charges as excludable rests within the rights of a sovereign nation to decide on those to whom to grant admission or the right to remain.

The chief goal of American immigration policy has always been to admit productive, self-reliant individuals who positively contribute to society. For instance, early goals of this country included settling frontiers and building commercial enterprises. Policymakers employed immigration to help reach these goals, largely limiting admission to able-bodied, responsible individuals. "Desirable" immigrants have been expected to pay taxes, exhibit republican virtues, and possess good moral character. Public charges fall under the category of "undesirables." They put a drain on society, rather than contribute productively and positively to it.

The Roots of Public Charge Policy

Public charge doctrine has been part of American immigration law since colonial days. A key "long-standing concern from the time of provincial and state regulation of immigration was with the coming of persons who might become a burden to the community; . . . both colonies and states sought to protect themselves by exclusion of potential public charges . . . ."[7]

The English colony of Massachusetts enacted the earliest American public charge laws in 1645.[8] The arrival in the colonies of undesirables spurred other colonies to enact similar laws. "By the end of the seventeenth century American colonists were especially reluctant to extend a welcome to impoverished foreigners and the 'Rogues and vagabonds' that England had so graciously decided she could spare."[9] Many colonies protected themselves against public charges through such measures as mandatory reporting of ship passengers, immigrant screening and exclusion upon arrival of designated "undesirables," and requiring bonds for potential public charges.[10]

For example, a law enacted in colonial Massachusetts in 1700 kept out the infirm who had no security against becoming public charges.[11] The law required ship captains to post bonds for "lame, impotent, or infirm" passengers who were "incapable of maintaining themselves." The bond requirement sought to prevent the new arrival from becoming reliant on public relief. Without a bond from the captain, the vessel had to return the person to his home country.[12]

New York adopted a law in 1691 that required an immigrant to have "a visible Estate" or "a manual occupation" or "give sufficient surety, that he shall not be a burden or charge to the respective places, he shall come to Inhabit."[13] Delaware in 1740 sought to exclude potential public charges, including "any such infant, lunatick [sic], aged, maimed, impotent or vagrant

person;" the colony thus enacted a law whose title was to "Prevent Poor and Impotent Persons [from] being Imported."[14] Following American independence, states either automatically continued to enforce colonial-era public charge laws or reaffirmed those laws.[15]

With ratification of the U.S. Constitution, the federal government gained a role in immigration policy. Article I, Section 9, Clause 1 states that the federal government would take control over immigration beginning in 1808. States continued to strengthen their own public charge laws after that time. This state role apparently was understood to be in accord with the Constitution. States retained jurisdiction over the allocation of their own public resources and control over their own populations. For example, in 1827, New York passed a law that imposed a fine on anyone who brought into the state a "poor or indigent person, not having legal settlement therein."[16]

A federal-state confrontation regarding immigration policy, and public charge doctrine in particular, occurred over a "head tax" levied on immigrants. In 1849, the U.S. Supreme Court overturned New York and Massachusetts head taxes as unconstitutional. These states had charged able-bodied immigrant arrivals the head taxes, which were to meet the public relief costs imposed by immigrant paupers.[17] Nevertheless, Congress and the states concurrently acted within their respective jurisdictions, each legislating to control immigration throughout much of the 19th century. But in 1883, the Supreme Court struck down New York's final attempt to craft a law that complied with the earlier decision. That ruling prohibited states from raising funds for public assistance from an immigrant tax and left the regulation of immigration to Congress.

Congress enacted broad federal immigration legislation, the Immigration Act of 1882, which included the first federal public charge provision. The 1882 Act excluded any immigrant "'unable to take care of himself or herself without becoming a public charge'" from entering the United States.[18] This measure essentially adopted at the federal level the same exclusion policy that had operated in the states. Excluded foreigners were returned to their home country at the ship owner's expense. The 1882 Act also imposed, much as states had done, a head tax. This tax would "meet the expenses of regulating immigration and caring for needy immigrants on arrival."[19]

In addition to federal policy excluding public charges, Congress made deportation of public charges part of federal law. The Immigration Act of 1891 provided for removing public charges and members of other excludable classes to one's country of origin. This law called for the deportation of "'any alien who becomes a public charge within one year after his arrival in the United States from causes existing prior to his landing therein . . . .'"[20] The time in which public charges faced deportation was successively extended. The time limit culminated in the 1917 Immigration Act, which provided for a five-year period after arrival in which someone becoming a public charge would be deported. The 1917 Act also placed the burden of proof on the immigrant to show that the causes of his becoming a public charge arose after arriving in the United States.[21]

The Immigration and Nationality Act, the basic U.S. immigration statute that was enacted in 1952 and fundamentally amended in 1965, provides for both exclusion and deportation of public charges. "Any alien likely at any time to become a public charge" is not to be admitted into the country.[22] Immigrants who become public charges within five years of entry are subject to being deported, unless they prove the causes of their reliance on public assistance developed after they entered the United States.[23]

Public Charge Doctrine Today

Public charge doctrine has risen in prominence since the 104th Congress enacted immigration and welfare reforms. This renewal demonstrates that the American public maintains its support for this principle. However, the empowered public charge doctrine has resulted in uncertainty, in part for a simple reason: Public charge is not defined in the law.

In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (Public Law 104-208) strengthened public charge doctrine. This broad reform legislation raised the qualifications and obligations of individuals who "sponsor" an immigrant. Immigrant sponsors, who petition on behalf of a prospective immigrant, must pledge that they will assume financial responsibility for that immigrant, signing a legally binding affidavit of support. The immigration reform law also expressly authorized consular agents to deny immigrant visas on the grounds that applicants were likely to become a public charge and clarified that illegal aliens were ineligible for Social Security benefits.

Sponsors are required to file an affidavit of support and demonstrate that they earn an income at least 125 percent of — i.e., one-fourth more than — the federal poverty line. In 2000, the poverty level was $17,050 for a family of four, and the 125 percent

income threshold was $21,313 for a family of four. Sponsors who can maintain at least 125 percent income above the poverty level, not counting any means-tested public benefit, may file a sponsorship affidavit of support. Those without household income at this level must secure a joint sponsor who does meet the 125 percent income threshold. Joint sponsors must also submit an affidavit of support, which makes the co-sponsor jointly and separately liable for the immigrant.[24]

The sweeping 1996 welfare reform, the Personal Responsibility and Work Opportunity Reconciliation Act (Public Law 104-193), contained provisions affecting immigrants, as well. States became empowered to deny welfare benefits to most illegal and legal immigrants. The law said illegal aliens do not qualify for federal welfare or programs that receive federal funds. However, illegal aliens and legal nonimmigrants may receive emergency medical care under Medicaid (referenced earlier) and a few other exceptions. Legal immigrants present when the law was passed became ineligible for Supplemental Security Income and food stamps until they had naturalized.[25] Future immigrants were ineligible for means-tested federal benefits for five years after arrival, with certain exceptions. These reforms did not apply to refugees and asylees.[26]

The welfare reform law enforced sponsorship requirements. Sponsor income and resources are "deemed" as available to the sponsored immigrant who applies for federal means-tested programs. In assessing an immigrant's welfare eligibility, the sponsor's financial responsibility applies until the sponsored alien has worked 10 years in the United States or has naturalized. Affidavits of support are now legally enforceable, meaning the sponsored immigrant or the administering government agency may hold the sponsor liable under the contract. Sponsors may be sued to reimburse any government agency that supplies the sponsored alien with a means-tested benefit. Sponsors may be sued for up to 10 years after the benefit was received.[27]

The 1996 immigration and welfare reforms limited immigrant eligibility for public assistance and reinvigorated the public charge doctrine. However, Congress also attempted to define public charge in law. The immigration reform bill's conference report contained language to define "public charge" as any alien who receives public benefits for an aggregate of 12 months during the first seven years after becoming a lawful permanent resident.[28] This pertained specifically to deportation (now called removal) on public charge grounds. However, the Clinton administration had that provision removed from the bill during final negotiations at the end of the 1996 congressional session.[29]

Table 1. Aliens Deported on Public Charge Grounds by Decade,1908-1990*

Decade	Number
1908-10	474
1911-20	9,086
1921-30	10,703
1931-40	1,886
1941-50	143
1951-60	225
1961-70	8
1971-80	31
1981-90	12
Total 1908-1990	22,568

Source: Statistical Yearbook of the INS.

*The INS no longer lists public charge deportations as a separate category because of the infrequency of removals on that ground.

Table 2. Aliens Excluded at a Port of Entry on Public Charge Grounds by Decade, 1892-1980*

Decade	Number
1892-1900	15,070
1901-10	63,311
1911-20	90,045
1921-30	37,175
1931-40	12,519
1941-50	1,072
1951-60	149
1961-70	27
1971-80	31
Total 1892-1980	219,399

Source: Statistical Yearbook of the INS.

*The INS no longer lists public charge deportations as a separate category because of the infrequency of removals on that ground.

Public Charge Policy Applications

In the law, public charge doctrine applies both to foreigners seeking to immigrate and to lawful permanent residents for the first five years after entry. In fact, most public charge determinations result in exclusion abroad, while few public charges are actually deported once admitted into the United States.[30] About 10 percent of applicants are denied a U.S. visa on public charge grounds,[31] while just 12 individuals were deported on public charge grounds from 1981 to 1990.[32]

The federal government took public charge doctrine seriously for much of the past century. From 1892 through 1980, 219,399

aliens were excluded at a U.S. port of entry as public charge risks. Such public charge exclusions ranged from 90,045 in the 1911-1920 period to 27 in the 1961-1970 period, with most occurring between 1892 and 1930. From 1908 through 1990, 22,568 aliens were deported as public charges. Public charge deportations ranged from 10,703 during the 1921-1930 period to eight in the decade from 1961-1970. As Tables 1 and 2 show, such public charge deportations and port-of-entry exclusions declined after 1930.

Now, it is the State Department that exercises most public charge enforcement, through refusal of visas. In fiscal year 1997, consular officers denied 39,077 applicants as ineligible for an immigrant visa on public charge grounds. That same year, the State Department issued 418,889 immigrant visas at offices abroad. This was by far the chief ground for denial of a permanent visa, with the exception of applications that do not comply with the legal requirements (and a majority of those ineligibility determinations are subsequently overcome as applicants correct their applications).[33]

When applying to immigrate, prospective immigrants must undergo assessment at a U.S. consular office abroad. Consular officers assess would-be immigrants on a number of factors, including their likelihood of becoming a public charge. Those seeking to immigrate in a family-based category or in certain employment-based categories must secure an affidavit of support from a sponsor.[34] Consular officers consider "the alien's age, health, family status, assets, and education and skills."[35] In addition to a valid affidavit of support from a qualified sponsor, these factors help consular officers to determine a visa applicant's likelihood "at any time" of becoming a public charge.[36] These factors and the sponsorship affidavit help compose the visa applicant's "totality of circumstances," on which public charge determinations are based.

The welfare reform provisions relating to immigrants who have received public cash assistance probably will affect the admissibility determinations of few immigrants. Only those immigrants seeking to adjust their status after having been paroled into the United States for more than a year or those returning to the country after more than 180 days' absence will face inadmissibility as a public charge for having received cash welfare benefits.[37]

Concerning public charge as grounds for removal, the Immigration and Naturalization Service rarely enforces public charge doctrine (INA Sec. 237(a)(5)). This is because the standard has been raised so high. According to the INS, two steps are required to determine that an alien is removable as a public charge. First, the person must have become a public charge within five years of entering the United States. Second, the alien must have failed to demonstrate that the circumstances causing his becoming a public charge arose after entering the United States.[38]

> The immigration reform bill's conference report contained language to define "public charge" as any alien who receives public benefits for an aggregate of 12 months during the first seven years after becoming a lawful permanent resident.

Further, the Board of Immigration Appeals, in a 1948 decision, constructed a three-part test for concluding that an alien is a public charge for deportation purposes:

- "The state or other government entity that provides the benefit must, by law, impose a charge or fee for the services rendered to the alien. In other words, the alien or designated relatives or friends must be legally obligated to repay the benefit-granting agency for the benefits or services provided; if there is no reimbursement requirement under law, the alien cannot be said to be a public charge.
- "The responsible benefit-granting agency officials must make a demand for payment for the benefit or services from the alien or other persons legally responsible for the debt under federal or state law (e.g., the alien's sponsor).
- "The alien and other persons legally responsible for the debt fail to repay after a demand has been made."[39]

All three prongs must be met. The 1996 laws authorized, but did not require, federal agencies to pursue repayment of aliens' means-tested benefits from immigrant sponsors liable under an affidavit of support. Given the five-year bar to receipt of federal means-tested welfare in the 1996 reforms, the likelihood of an alien's being determined to be dependent on such benefits for income in his first five years after entry diminishes further. Thus, high hurdles now block the road to removal on public charge grounds.

With respect to naturalization, no public charge test exists, nor does any general requirement for repayment of public assistance one may have received. Further, certain aliens are exempt from public charge inadmissibility provisions. These include asylees and

refugees, Amerasians, certain Central Americans and Caribbean aliens, and those adjusting to legal status under the registry provision (INA Sec. 249).[40]

The Clinton administration in 1999 proposed its own definition of "public charge" by regulation. Its definition allows immigrants broad usage of public assistance.[41] The INS rule defines "public charge" as an alien who has become or likely will become "primarily dependent on the government for subsistence, as demonstrated by either: (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense."[42] The INS rule lists welfare programs counted under the rule as cash assistance for income maintenance or long-term institutionalization: Supplemental Security Income, Temporary Assistance for Needy Families (formerly AFDC), state and local cash assistance programs helping recipients maintain income (known as "general assistance"), and programs that support institutionalized long-term care.[43] The INS also lists a number of non-cash benefit programs that it does not count in a public charge determination (see Table 3). These include Medicaid and other public health benefits, housing assistance, and child care services.[44] Even receipt of cash assistance does not automatically render an alien a public charge, but must be considered in one's "totality of circumstances."

Table 3. Welfare "Special Purpose" Benefits Not Considered for Public Charge Purposes Under the New INS Field Guidance*

- Medicaid and other health insurance and health services (including immunizations, screenings, use of clinics, short-term rehabilitation, emergency care) other than support for long-term institutional care;
- State Children's Health Insurance Program;
- Nutrition programs, including food stamps, school lunch, and emergency food assistance;
- Housing benefits;
- Child care services;
- Energy assistance, including the Low Income Home Energy Assistance Program;
- Emergency disaster relief;
- Foster care and adoption assistance;
- Educational benefits, including Head Start;
- Job training programs; and
- In-kind, community-based programs, services, or assistance.

Source: INS Field Guidance on Deportability and Inadmissibility on Public Charge Grounds.

*The INS does not consider this to be an exhaustive list of possible public assistance deemed not to be included as part of the recipient's income.

The latest data confirm that the 1996 immigration and welfare reforms did not "end welfare as we know it" with regard to immigrant welfare usage. Despite a very strong economy and welfare reform, data that include illegal aliens (who are ineligible for welfare under the law, and thus whose inclusion in the data dilutes the figures for immigrant welfare usage) show that immigrants persist in becoming charges of the public – in fact, if not under prevailing legal standards. Now, 13.2 percent of immigrants enroll in welfare programs (TANF, general assistance, and state and local cash assistance), compared with 2.1 percent of native-born Americans. In SSI, 5.3 percent of immigrants enroll, compared with 3.9 percent of native-born. In Medicaid, 18.6 percent of immigrants participate, as opposite 12.1 percent of native-born. In food stamps, 6.7 percent of immigrants enroll, compared with 5.3 percent of native-born. As for participation in any welfare program, 19.7 percent of immigrants are on welfare, while just 13.3 percent of native-born are recipients.[45]

Conclusion

Public concern over high rates of immigrant welfare usage led to the limitations of welfare eligibility and tightening of public charge doctrine in the 1996 welfare and immigration reform laws. This fits with the trend among federal legislators that immigration has become increasingly associated with redistributive programs. Since 1965, congressional votes on immigration issues have grown more divisive and more apt to split along partisan lines.[46] The reason is the cost to taxpayers that the current mass immigration imposes. The increased responsibility now placed upon immigrant sponsors and stronger eligibility requirements for immigrant participation in public assistance programs will likely serve as the standard set in law for some time to come. This is because of the deep-seated American value of self-sufficiency.

However, those reforms that reflect the ideal of individual responsibility were weakened in the legislative process and are muted by contradicting legal standards and regulatory implementation. Further, public opinion has apparently subsided somewhat

amidst the sustained strong U.S. economy and low unemployment rate, despite persistently high immigrant welfare participation. As long as times are good, Americans are apparently willing both to tolerate high levels of immigration and to countenance a high level of immigrant welfare participation.

Most Americans would agree that immigration policy should exclude those who are likely to rely on public assistance and require those who are admitted to look to their legally responsible sponsors for support, rather than government assistance. But, of course, when the spotlight of public attention subsides, as it has on the immigration issue in Congress, special interests and activists may more easily undermine the public will. Add a willing administration that can foul up the implementation of new laws, and progress slows or turns into regress. Such has been the recent fate of public charge doctrine.

Still, public charge doctrine remains one of America's fundamental immigration policies, even if it presently plays a less commanding role than it did a century ago. Immigrants turning to government programs at disproportionate rates tends to undermine public backing for mass immigration and lays the predicate for changing the immigrant flow. Should the economy cool and unemployment rise, public charge doctrine may regain a stronger role, in keeping with its traditional place in American immigration policy.

End Notes

[1] Ellen Nakashima, "Restoration of Aid to Immigrants Sought," *The Washington Post*, October 22, 2000; Robert Pear, "Clinton Raises Stakes in a Battle With House Republicans Over a Bigger Medicare Pot," *The New York Times*, November 1, 2000.

[2] Statement of the President, October 16, 2000 (http://www.pub.whitehouse.gov/uri-...oma.eop.gov.us/2000/10/17/2.text.1).

[3] Quoted by Nakashima, October 22, 2000.

[4] Lucette Lagnado, "Rx for Misery: Medicaid 'Fix' Binds Immigrants in System Many Find Appalling," *The Wall Street Journal*, October 18, 2000; Donald Cook, Letter to the Editor, *The Wall Street Journal*, October 31, 2000.

[5] David Ford, Letter to the Editor, *The Wall Street Journal*, October 31, 2000.

[6] James G. Gimpel and James R. Edwards, Jr., *The Congressional Politics of Immigration Reform* (Boston: Allyn & Bacon, 1999), 78.

[7] E. P. Hutchinson, *Legislative History of American Immigration Policy, 1798-1965* (Philadelphia: University of Pennsylvania Press, 1981), 410.

[8] Hutchinson (1981), 390.

[9] Marilyn C. Baseler, *"Asylum for Mankind": America, 1607-1800* (Ithaca, N.Y.: Cornell University Press, 1998), 71.

[10] Hutchinson (1981), 397.

[11] Hutchinson (1981), 390.

[12] Baseler (1998), 71.

[13] Hutchinson (1981), 391.

[14] Hutchinson (1981), 392.

[15] Hutchinson (1981), 397; Baseler (1998), 197-8.

[16] Hutchinson (1981), 398.

[17] Hutchinson (1981), 403.

[18] Hutchinson (1981), 412.

[19] Hutchinson (1981), 412.

[20] Hutchinson (1981), 449.

[21] Hutchinson (1981), 450.

[22] Immigration and Nationality Act, Sec. 212(a)(4).

[23] Immigration and Nationality Act, Sec. 241(a)(5).

[24] *Congressional Quarterly*, "White House Calls the Shots, As Illegal Alien Bill Clears," Congressional Quarterly Almanac LII (1997): 5-9, 5-17; Gimpel and Edwards (1999), 284, 292; Joyce C. Vialet, "Immigration: The Affidavit of Support -- Questions, Answers, and Issues," CRS Report for Congress 97-1054 EPW, Sept. 28, 1998, 2-3.

[25] However, in 1997 Congress reversed this policy and made most legal immigrants who were present when welfare reform was passed eligible for SSI. In 1998, Congress further backtracked, making elderly, disabled, and under-18-years-old immigrants eligible for food stamps if they were present in the United States when the law passed, and extending SSI eligibility even further to certain "not qualified" immigrants. See Michael Fix and Wendy Zimmermann, "The Legacies of Welfare Reform's Immigrant Restrictions," *Interpreter Releases*, 75:44, November 16, 1998, 1578.

[26] A means-tested benefit is public assistance for which one qualifies based on low income.

[27] Vialet (1998), 4; *Congressional Quarterly*, "After 60 Years, Most Control Sent to States," Congressional Quarterly Almanac LII (1997): 6-17, 6-18.

[28] Conference Report on H.R. 2202, the Illegal Immigration Reform and Immigrant Responsibility Act, House Report 104-828, September 24, 1996, Sec. 532 (http://travel.state.gov/illimm.html).

[29] Joyce Vialet, "Immigration: INS's Proposed Public Charge Rule," CRS Report for Congress RS20265, July 16, 1999, 6.

[30] David Aronson, "Immigrants and Welfare," *Research Perspectives on Migration* 1:1, September/October 1996, 2 (www.ceip.org/rpm1main).

[31] Aronson (1996), 1. See the Report of the Visa Office of the U.S. State Department for various years.

[32] Aronson (1996), 2. See the *Statistical Yearbook of the Immigration and Naturalization Service* for various years.

[33] U.S. Department of State, Bureau of Consular Affairs, Report of the Visa Office 1997, September 1998, 7, 146-7.

[34] Employment-based immigrants must secure an affidavit of support if the business for which they are coming to work is 5 percent or more owned by a relative.

[35] Vialet (1999), 4.

[36] Immigration and Nationality Act, Sec. 212(a)(4).

[37] Vialet (1999), 4.

[38] Federal Register (1999), 28691.

[39] Federal Register (1999), 28691.

[40] Vialet (1999), 4-5.

[41] Federal Register (1999), 28693; Vialet (1999), 2-3.

[42] Federal Register (1999), 28689.

[43] Federal Register (1999), 28692.

[44] Federal Register (1999), 28693.

[45] Steven Camarota, "Immigrants in the United States 2000: A Snapshot of America's Foreign-born." *Backgrounder*, Center for Immigration Studies, January 2001. Dr. Camarota analyzed the Census Bureau's March 2000 Current Population Survey data.

[46] Gimpel and Edwards (1999), 297-8.

Center for Immigration Studies
1522 K Street NW, Suite 820
Washington, DC 20005-1202
(202) 466-8185
center@cis.org
www.cis.org

Backgrounder

Public Charge Doctrine

A Fundamental Principle of American Immigration Policy

By James R. Edwards, Jr.

In an age when the welfare state has grown in the United States, many people have lost sight of the historical role of public charge doctrine. An overview of this long-standing principle of immigration policy is both timely and needed. Public charge doctrine was intended to preserve a flow of qualified, capable immigrants. It is a tool for keeping out or expelling unproductive immigrants who place a drain on society. It is similar to a qualifications or skills test that may be required of prospective immigrants.

A "public charge" is defined as someone who cannot provide for himself and thus relies on public assistance for a substantial part of his livelihood; it is someone who is a charge, or responsibility, of the public.

This Backgrounder examines the principle of public charge doctrine. It sets out the principle's deep historical roots in American law, both at the state and federal level. It explains congressional attempts to restore and strengthen this part of the law through landmark immigration and welfare reform laws enacted in 1996. It finally discusses the application of public charge doctrine today.

7-01