The Effect of Welfare Reform on Immigrant Children

Gillian Dutton

Follow this and additional works at: https://digitalcommons.law.seattleu.edu/faculty

Part of the Social Welfare Law Commons

Recommended Citation

https://digitalcommons.law.seattleu.edu/faculty/363

This Article is brought to you for free and open access by Seattle University School of Law Digital Commons. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Seattle University School of Law Digital Commons. For more information, please contact coteconor@seattleu.edu.
The Effect of Welfare Reform on Immigrant Children

by Gillian Dutton

These changes, enacted as part of welfare reform, emerged from highly contentious debates about the role of working-age immigrants in today's society—their impact on labor markets, dependence on public assistance, and contributions to the changing ethnic composition of our citizenry. Immigrant children, who will be profoundly affected, were essentially invisible in those debates.¹

The enactment of new welfare reform and immigration laws in the summer of 1996 occurred at the apogee of a period characterized by intense hostility toward immigrants, including both those who were legally residing in the United States as well as those who were here without documents. During the two and a half years since then, federal legislation has restored some of the public assistance safety net for immigrants residing within the United States as of August 22, 1996. Most immigrants arriving after that date, however, face serious obstacles to eligibility. State programs created to bridge some of the gaps in the federal safety net remain underutilized.

Access for those still eligible for federal and state assistance has been severely hampered by a number of indirect consequences of the new laws. The complexity of eligibility determinations and ongoing barriers to assistance caused by limited English skills make it likely that agencies will incorrectly deny benefits to immigrants who do apply. Increased fear that receipt of benefits may preclude obtaining legal permanent residence status or citizenship and the chilling effect of new verification and reporting procedures have further reduced the likelihood that immigrants will even seek assistance. Research reflects a startling decline in immigrant access to assistance and supports the growing fear that vulnerable groups such as children may bear lasting impact of these years even as anti-immigrant sentiment begins to wane.²

¹ From Generation to Generation: The Health and Well-Being of Children in Immigrant Families (Donald J. Hernandez & Evan Charney eds., 1998). The views expressed in this article are mine and do not necessarily reflect those of the Northwest Justice Project or the University of Washington. I would like to thank the National Immigration Law Center, and in particular Tanya Broder and Josh Bernstein, for materials used in this article.

² Recent data from Los Angeles County show a 70-percent decline in the number of monthly approved CalWORKS (California's Temporary Assistance for Needy Families program) applications for legal-immigrant-headed households between January 1996 and January 1998. This decline occurred even though there was no change in eligibility, as state programs filled the gaps left by changes in federal law. See Wendy Zimmerman & Michael Fix, Urban Inst., Declining Immigrant Applications for Medi-Cal and Welfare Benefits in Los Angeles County (July 1998) <www.urban.org/immig/laconnty/html>.
the most common barriers to assistance and ways to overcome them, advocates can do much to help immigrant children access the benefits they need to lead better lives.

I. Introduction

The decline in access to benefits often falls hardest upon children in immigrant families. For children, access to good nutrition and preventive health care is crucial to both physical and intellectual development. Studies have shown that access to health care is greatly dependent upon both health insurance coverage and contact with a usual source of care; immigrant children are three times less likely as children born in the United States to have these important protections. Then, too, children in immigrant families have higher poverty rates than children in native families, and the rates are much higher for certain immigrant groups from Southeast Asia and Central America.

Children in immigrant families also have higher rates of other factors associated with negative impact on health. They are more likely to live in overcrowded housing, in families with many siblings where the language spoken at home is not English, and with parents who have less than an eighth-grade education. Children in refugee families who fled their native countries because of war and other catastrophic events are at increased risk of mental health problems due to these traumatic experiences. Studies have shown that children in immigrant families are at particular risk of certain infectious diseases, such as drug-resistant tuberculosis and hepatitis B. These children are also at higher risk of environmental factors, such as pesticides and lead exposure, which are associated with a number of health problems, including negative effects on brain development. They have higher rates of poor vision, poor dental health, and unintentional injury.

State and federal legislators, even those who have been eager to cut benefits for immigrant adults, are aware of the special vulnerability of children. This concern for children has led to the decision by a number of states to provide some limited coverage for nonqualified children particularly in the area of health care. Moreover, research has shown that providing for regular preventive health care is more cost-effective than paying for emergency intervention, which is still provided to nonqualified low-income children eligible for emergency Medicaid under federal law. Providing prenatal care is also more cost-effective. These are many states’ considerations in deciding to supplement the federally funded Women, Infant, and Child Nutrition program, Head-Start, school lunches, and emergency Medicaid programs with state-funded medical assistance for pregnant women and children regardless of immigration status.

Ironically, while some states have continued programs that benefit children regardless of their immigration status, access to benefits for legal permanent res-
ident and citizen children in immigrant families has declined due to new verification and reporting requirements and stricter requirements for obtaining legal permanent residence. Many children eligible to become legal permanent residents remain without permanent legal residence status because of their parents' inability to pay to file papers or to meet the new financial support requirements. Other children are in fact already legal permanent residents or citizens but live with families with a parent or a sibling whose undocumented status is behind a fear of accessing care.

Although the 1996 welfare law significantly reduced immigrant eligibility for benefits, advocates—including those working within organizations restricted by Legal Services Corporation regulations limiting representation to certain immigrants and prohibiting challenges to welfare reform—can take many steps to give immigrant children a better chance. In this article I focus on specific areas where children's access to care can be improved, even within the current restrictions. I describe concrete approaches and identify resources for advocates who would maximize the chance for immigrant children to receive the federal and state benefits for which they are eligible without jeopardizing their or family members' immigration status and safety.

II. Immigrant Eligibility Determinations and Services

Determining public assistance eligibility for immigrants has always been complicated by most agency staff's very little knowledge of immigration status; too often agency staff deny assistance as a result. Recent laws have added to the confusion in several ways. First, the federal definition of eligibility for certain programs has changed several times due to both subsequent legislation and detailed regulations, making it difficult for staff to apply eligibility determinations correctly unless their manuals are both up-to-date and thorough. Second, press coverage about the harsh measures, while serving to alert both voters and their representatives to the injustice of some of the cuts, has also had the effect of making immigrants and agency staff alike believe that few programs are available to them.

One initial step advocates should take is to review their state's implementing legislation and regulations to ensure that eligibility rules include recent changes and sufficient explanation of immigration categories for making correct determinations. This is especially true in states with a recent immigrant population but no long history of immigrant settlement. A subsequent...
step is to ensure that once the laws are implemented, immigrant access is not hampered by lack of interpreter services or by discriminatory treatment by staff.

A. Immigration Status and Eligibility

The failure of agency staff to understand the variety of immigration documents and the information the documents convey is a most common reason for incorrect denials.

1. Understanding Immigration Documents

While immigrants who have adjusted to permanent legal resident status usually have a document called an I-551 ("green card"), many others who are legally in the United States, even in "qualified" status, may not. Other documents commonly used by immigrants are an I-94, or Arrival/Departure Record, and an Employment Authorization Document I-688B. All three use a different set of codes to indicate the holder's immigration status.19

Further, some states have enacted state-funded programs which are not limited to "qualified" immigrants but instead assist "legal" residents or a group referred to as "permanently residing under color of law."20 Advocates should check to see what definitions are given of these terms and should ensure that state welfare department manuals contain lists of these distinct immigration categories and explanations of what documents may be supplied. Every manual should contain guidelines explaining that immigration documents vary widely.

Although most states adopt federally prescribed verification procedures, such procedures should not ignore individual program requirements that direct agency staff to assist the individual in obtaining necessary documentation. This is especially true for documents necessary to prove citizenship. Persons who were born abroad but who derived citizenship from one or both of their parents being a citizen are examples of citizens who often have no documents to prove citizenship.21 Children whose parents both "naturalize" or become citizens before the child's 18th birthday, and thereby cause the child to be naturalized as well, are other examples (increasingly discovered as many legal permanent residents rush to become citizens). Such naturalized children are often completely unaware of their having become citizens.22

---

19 Thus, for instance, a refugee who first enters the United States typically has an I-94 marked "admitted under Section 207." Once that same refugee adjusts to legal permanent resident status, he or she is issued a legal permanent resident card with a code that is usually RE6, RE7, RE8, or R86 to indicate refugee status. The code on that same person's employment authorization card is listed as 274a.12(a)(4). For a list of typical codes see NATIONAL IMMIGRATION LAW CTR., GUIDE TO ALIEN ELIGIBILITY FOR FEDERAL PROGRAMS (3d ed. 1994). For a list of documents that may be used see Interim Guidance on Verification of Citizenship, Qualified Alien Status, and Eligibility Under Title XVI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61344 (1997).

20 "Permanently residing under color of law" (PRUCOL) is a public assistance term referring to a group of immigration classifications. It is most often found as a list of immigration statuses, including precise terms such as "registry applicant" as well as broad terms such as "person known to the INS whom the INS does not intend to deport." While PRUCOL has been replaced by the narrower term "qualified" for federal programs, many states are still covering a broader group of immigrants for state programs. For a discussion of the evolution of the term see Robert Rubin, Walking a Gray Line: The "Color of Law" Test Governing Noncitizen Eligibility for Public Benefits, 24 SAN DIEGO L. REV. 411 (1987).

21 See Interim Guidance, supra note 19, for some examples. The Interim Guidance lists only a few of the more common examples and refers the welfare agency to INS for more information. Advocates should check to see whether guidelines specify the provision of assistance pending verification and help, including payment, to individuals who may need to pay to obtain documentation. For a detailed explanation of derivative naturalization see DANIEL LEVY, NATIONAL IMMIGRATION LAW CTR., U.S. CITIZENSHIP & NATURALIZATION HANDBOOK (1999).

22 Advocates can often assist immigrants who have lost immigration documents by filing a Freedom of Information Act request with INS. However, advocates must be aware that even such a request is not undertaken without some risk to the client since a review of the file may trigger adverse action from INS. If in doubt, advocates should consult an immigration specialist first.
2. Determining Date of Arrival

When determining immigrant eligibility for assistance, knowing the immigrant's date of arrival is most important after ascertaining what kind of status the immigrant has. The Personal Responsibility and Work Opportunity Reconciliation Act provided that most immigrants arriving on or after August 22, 1996, would be barred from receiving federal means-tested benefits for a period of five years. In Verification Guidelines issued on November 19, 1997, the Immigration and Naturalization Service (INS) clarified that "arriving" meant physically arriving and stated that the bar did not apply to those who "entered the United States prior to August 22, 1996, and were continuously present in the United States until attaining qualified alien status." Many currently undocumented children, some of whom have not yet adjusted to legal permanent resident status because of long waiting lists for visas, others because their parents have still not applied for them, will eventually receive a legal permanent resident card. In most cases the date on the card is the date of adjustment—not the date of physical entry. Both immigrants and state welfare staff have to be alerted to the children's exemption from the five-year bar.

3. Understanding Exemptions

Like their parents, immigrant children now face one new hurdle that is as problematic as it is mundane. The incredibly complex determination of immigrant eligibility is now one that varies among federal and state programs and that can result in denials unless workers are well trained, careful, and experienced. For federal programs, in addition to determining the date of arrival and whether the immigrant is "qualified," eligibility workers must take into account whether an immigrant applicant falls within a special group of "humanitarian" immigrant categories. These include refugees, asylees, Amerasians, Cuban Haitian entrants, persons granted withholding of deportation/removal, and persons granted conditional entry. In most cases workers must also consider two other factors to determine eligibility—whether the children and their parents have a work history totaling 40 quarters and whether an applicant or applicant's parent or spouse is either a veteran or active-duty service member of the U.S. armed forces.

---


24 Interim Guidance, supra note 19, at 61350.

25 Although U.S. citizens may petition for a visa for spouses, parents, and children without a long wait, legal permanent residents who may petition for their spouses and unmarried children under 21 often face long waits for visas, especially if they come from countries with a large number of pending applications, such as Mexico and the Philippines.

26 These immigrants, even if they arrived after August 22, 1996, are exempt from the five-year bar. If they meet program eligibility requirements, they must be provided with SSI, food stamps, and SSI-related Medicaid during the first seven years after arrival.

27 Special protection is provided to immigrants in the "qualified" category who can show that they have 40 quarters (or ten years) of work history established by Social Security Administration records. Although the amounts vary according to the year, a worker in 1997 could earn four work quarters by earning approximately $2,680 during the year. Work quarters can be "credited" to a spouse and to children under 18. The spouse loses the credited quarters upon divorce. The children do not ever lose the credited quarters and even get credit for quarters earned before they were born. For purposes of this exemption, no "credit" may be given for quarters earned after January 1, 1997, if a federal means-tested benefit is received in that quarter. The 40-quarter credit ensures that these immigrants must be provided TANF, SSI, food stamps, and Medicaid as long as otherwise eligible. This exemption does not protect immigrants arriving after August 22, 1996, from the five-year bar. The armed forces or "veteran" exemption ensures eligibility for federal public benefits and protects against the five-year bar.
Security Income (SSI), public assistance agencies must determine whether the individual was receiving benefits or at least present in the United States on August 22, 1996.\textsuperscript{28} For food stamps, the worker needs to know if the person was present in the United States on August 22, 1996, and the person’s age at that time.\textsuperscript{29}

Frequent problems in determining immigrant eligibility include failure to ask about a parent’s work quarters and confusion about applying the veteran exception. Advocates should review welfare agency manuals to make sure they clearly explain how to apply these exemptions. They should also assist immigrants in checking that work quarters are correctly credited since the 40 quarters of work history is used not only to determine eligibility for a program but also increasingly to determine when the obligations under the new affidavit of support are no longer in effect. Immigrants who wish to obtain credit for unreported work should consult with an advocate if some of the work was performed without proper work authorization. Advocates should not forget to advise a client anxious to obtain credit for 40 quarters that as of December 1, 1997, a quarter may be counted only if the client received no federal means-tested benefit in that quarter.

To ensure that immigrants are familiar with the programs for which they are eligible, advocates should encourage states to target community-based organizations and ethnic media with information about the availability of new programs.

4. Ensuring That State Programs Are Utilized

States have responded to the needs of immigrants by enacting a whole series of programs, from SSI replacements to cash assistance for families, food stamp programs, and medical assistance programs.\textsuperscript{30} Unfortunately these programs continue to be underused, in part because of fear of verification and reporting and in part because state programs have not done sufficient outreach to counteract the impression of ineligibility left by terminations from the federal programs.\textsuperscript{31} This problem is particularly severe in programs sending out conflicting information in successive letters and notices. To ensure that immigrants are familiar with the programs for which they are eligible, advocates should encourage states to target community-based organizations and ethnic media with information about the availability of new programs. Advocates also may find that participating with state and local offices that develop these campaigns can be useful in ensuring that the information sent out in such campaigns is culturally appropriate.

B. Access to Interpreter Services

Research has long shown that, for immigrants who speak limited English,
adequate access to social and health services can be assured only when the agencies provide interpreter and translation services. Advocates, prompted in part by this research, have for years sought to ensure that programs receiving federal financial assistance comply with the Civil Rights Act's Title VI requirements prohibiting discrimination on the basis of national origin.

1. Access to Social Services and Health Services

While many state welfare departments use bilingual staff or interpreters for oral communication and give recipients translated notices, advocates should check that their state has implemented an effective program to provide such services. At a minimum the state should have a system for identifying the applicant's language, should have qualified bilingual staff or interpreters, and should have a system for translating documents which require a response from the applicant/recipient or give information about the reduction or termination of benefits.

Particular care should be taken to monitor the provision of interpreter services in the context of managed care. Implementation of managed care in medical assistance programs for low-income residents requires translated materials explaining patient rights to emergency services. Telephonic interpreter services are also increasingly needed for emergency contacts since, under managed care, screening for urgent health needs no longer takes place in hospitals but by phone with on-call nurses, health insurance company representatives, or individual doctor's offices. Advocates should be sure to work with their regional U.S. Department of Health and Human Services Office for Civil Rights, which routinely investigates compliance with regulations.

2. English as a Second Language and Training under Welfare-to-Work Programs

With the implementation of welfare-to-work programs, parents of immigrant children in low-income families face the same work requirements and time limits as their citizen counterparts. Immigrant children and their families are even more vulnerable to the potential loss of cash assistance for two reasons. First, although immigrant families, with the exception of refugees, receive proportionally no more assistance than nonimmigrant families, their incomes are lower, that is, children in these families have less disposable income to meet needs for health care, nutrition, and clothing.

For a brief history on the evolution of interpreting services in health care see Robert W. Putsh, Cross-cultural Communication: The Special Case of Interpreters in Health Care, 254 JAMA 3344 (1985).


The National Health Law Program cites the large number of different languages spoken, inadequate funding for interpreter services, lack of familiarity of legal requirements, and failure to enforce applicable laws as reasons why so many Medicaid providers lack necessary services. See Ensuring Linguistic Access in Health Care Settings, HEALTH ADVOCATE, Winter 1998, at 1.

Office for Civil Rights, Guidance Memorandum, supra note 33.

On nonimmigrant families see Zimmerman & Fix, supra note 18, at 1586.
Second, limited-English speakers are not always given the interpreter assistance necessary for successful completion of job search and other welfare participation requirements and are then sanctioned for failing to contact employers or follow through on orientation programs. Because they often receive only English-language notices and lack knowledge about the programs, many are not familiar with the due process rights accorded them in eligibility determinations and often resign themselves to accepting a reduced grant. For some, lack of appropriate interpreters means that they are never screened for family violence, physical or mental impairment, or the presence of a disabled family member needing care. For those who are lucky enough to find jobs despite being unable to speak English, wage and skill improvement is particularly difficult, as they usually work full-time and must learn English before gaining access to postemployment training programs.

Children in refugee families are particularly at risk since they are members of a group that historically has had more trouble earning enough to work their way off assistance. While this is obviously not true of all refugees, a number of factors may explain this phenomenon. For some, the inability to work is due to the psychological and physical impairments that they suffered as a result of the strife and persecution from which they fled in their home countries. For others, the inability to work stems from their limited English and educational background or the lack of recent job history due to months and years spent waiting for resettlement in refugee camps.

The same laws that ensure the availability of interpreters and translated notices from the welfare department can be used to ensure such services in work search and job orientation programs, whether provided by welfare department staff or by contracted agencies. Advocates can play a vital role in working with community colleges, vocational programs, and other private and public funders in developing programs to meet immigrant needs.

C. Discrimination

One of the rarely mentioned effects of the antiimmigrant legislation is the increase, both real and perceived, of discrimination against adult and child immigrants. Immigrants regularly report being scorned for their inability to speak English or being told to go back where they came from. While advocates may often feel that such complaints are best dealt with on an individual basis, a number of complaints can indicate a need for cultural sensitivity training. Several such complaints may also indicate problems in assisting immigrants. In such cases the written documentation of a problem is extremely useful in determining whether the agency response to the problem is adequate. The Office for Civil Rights investigates complaints to determine any violation patterns and practices.

III. Immigration Consequences of Using Benefits

While the 1996 federal welfare law restricts immigrant access to benefits in several important ways, a number of states have created programs both for those who are not "qualified" and for those who are "qualified" but arriving after August 22, 1996, and not exempt from the five-year bar. Advocates have been surprised by how few immigrants are using these state-funded programs. For an explanation of the alarming decrease in access to services, especially access to health care, one must understand the immigration consequences, both real and perceived, of the new welfare and immigration laws. Advocates can do much to improve access to services by monitoring their state welfare office's and local INS district office's implementation of these immigration-related laws and by instructing social service workers and

37 For more information on the lower income levels of refugees see id. at 1582.
38 The Office for Civil Rights points out that all subcontractors who receive federal funds are also affected. See Office for Civil Rights, Guidance Memorandum, supra note 33.
39 This treatment is particularly painful for refugees and asylees who are unable to return to their country of origin and are often dealing with mental and physical problems in addition to the trauma of resettlement.
clients themselves. Because immigrants usually discuss the immigration consequences of receiving public assistance with an immigration attorney or an immigration advocacy agency, what is crucial is that advocates knowledgeable about immigrant eligibility for public benefits share their knowledge and materials with the immigration bar. Failure to share this information can result in clients feeling further confused as immigration attorneys advise them to do one thing and legal services attorneys and social service and health workers advise them to do another.

A. Refusal to Access Benefits Due to Public-Charge Policies

A little over a year and a half ago the medical community and advocacy community began to hear reports of immigrant clients, mainly children and pregnant women, who were refusing to accept medical assistance. In some states prenatal care and children’s health programs are available to all low-income residents, regardless of immigration status. One reason for this availability is that states have determined that providing preventive care is more cost-effective to waiting for the health problem to become an emergency, even though the immigrant would then be eligible for federally funded Medicaid. Another reason for such preventive-care programs—controlling communicable disease and avoiding the poor birth outcomes and lifetime effects on child health and development of undiagnosed and untreated child illnesses—was underscored by reports of outbreaks of contagious disease, untreated high-risk pregnancies, and childhood diseases around the country.

Investigation of the problem revealed that immigrants’ decisions not to access care were the result of a combination of factors. One factor was a new, unauthorized INS policy of detaining legal permanent residents seeking to reenter the United States after brief visits abroad. These legal permanent residents were questioned about their receipt of benefits (including medical assistance) while living in the United States. Many immigrants were being asked to repay their medical assistance before they could be let back into the country. Although INS subsequently clarified that this practice was illegal, many immigrants remained afraid.

41 See, e.g., Letter from Howard Koh, Massachusetts Department of Public Health, to Donna Shalala, Secretary, U.S. Department of Health and Human Services (June 8, 1998) (complaining that failure to use primary care, such as prenatal care, which saves $3 for every dollar spent, resulted in a high cost to society from emergency room services).
42 Examples of these problems include outbreaks of rubella in New York City because of decreased vaccination rates among Hispanic residents, untreated ear infections in a citizen child in Washington, and an untreated pregnancy-related diabetes in a California woman married to a U.S. citizen. See Schlosberg & Wiley, supra note 40.
43 The State Department instituted a Public Charge Lookout System, which connected consular offices with state welfare departments in order to relay information about the immigrant’s use of state and federal benefits in the United States.
44 Abuses of the Public Charge Lookout System are documented in Schlosberg & Wiley, supra note 40.
45 INS explained that no authority required legal permanent residents (LPRs) to repay benefits correctly received and that, with very limited exceptions, LPRs absent from the United States for 180 days or less were not to be denied readmission due to public charge. Immigration & Naturalization Serv., Public Charge: INA Section 212(a)(4) and 237(a)(5)—Duration of Departure of LPRs and Repayment of Public Benefits (Dec. 16, 1997) (memorandum in my file). The Health Care Financing Administration also sent to State Medicaid Directors a letter explaining that States were not to disclose information about an individual’s receipt of Medicaid benefits to INS for public-charge determinations since such a disclosure was not directly connected to the administration of the State plan. The letter also explained that States generally were not to accept repayments of Medicaid benefits unless the benefits were fraudulently received or an overpayment had occurred. Letter from Sally Richardson, Health Care Financing Administration, to State Medicaid Directors (Dec. 17, 1997).
National Resources for Immigration-Related Materials and Information

These organizations can be contacted for advice, community education material, and publications covering specific legal areas. They also may provide technical support, counseling, brief banks, and training materials.

American Immigration Lawyers Association
1400 Eye St. NW, Suite 1200
Washington, DC 20005
AILA Infonet: 202.216.2400; fax 202.371.9449
For the AILA Monthly contact 202.371.9377.

Asian Pacific American Legal Center
1010 S. Flower St., Suite 302
Los Angeles, CA 90015
213.748.2022; fax 213.748.0679
apalc@earthlink.net
For The Annual Report newsletter contact Citizenship Project Department.

Ayuda
1736 Columbia Rd. NW
Washington, DC 20009
202.387.4848; fax 202.387.0324
immayuda@erols.com
www.incacorp.com/ayuda
For Ayuda Newsletter contact the office manager.

Center on Budget and Policy Priorities
820 First St. NE, Suite 510
Washington, DC 20002
202.408.1080; fax 202.408.1056
www.cbpp.org

Immigrant Legal Resource Center
1663 Mission St., Suite 602
San Francisco, CA 94103
415.255.9499; fax 415.255.9792
ilrc@ilrc.org
For Citizenship Alert! contact alert@ilrc.org.
“ILRC Attorney of the Day” is available for free consultation (phone, fax, or e-mail) to people working with seniors, people with disabilities, advocates, and teachers who are assisting citizenship applicants (not individual applicants).

National Asian Pacific American Legal Consortium
1140 Connecticut Ave. NW, Suite 1200
Washington, DC 20036
202.296.2300; fax 202.296.2318
For The NAPALC Review contact 202.296.2300.

National Asian Pacific Center on Aging
1511 3d Ave., Suite 914
Seattle, WA 98101
206.624.1221; fax 206.624.1023
For The Fax contact 206.624.1221.

Continued on next page
National Resources for Immigration-Related Materials and Information (continued)

National Citizenship Network/Immigration & Refugee Services of America
1717 Massachusetts Ave. NW, Suite 701
Washington, DC 20036
202.797.2105; fax 202.797.0837
www.irsa_uscr.org
For fax and e-mail list materials on naturalization contact the program director.

National Immigration Law Center
1101 14th St. NW, Suite 410
Washington, DC 20005
202.216.0261; fax 202.216.0266
1102 S. Crenshaw Blvd., Suite 101
Los Angeles, CA 90019
213.938.6452; fax 213.964.7940
For Immigrants' Rights Update and Public Benefits Alert contact 213.938.6452.

National Immigration Project of the National Lawyers' Guild
14 Beacon St., Suite 602
Boston, MA 02018
617.227.9727; fax 612.227.5495
nip@nlg.org
www.nlg.org
For Immigration Newsletter contact the office manager.

National Immigration Forum
220 I St. NE, Suite 220
Washington, DC 20002-4362
202.544.0004; fax 202.544.1905
www.immigrationforum.org
For The Golden Door newsletter contact the office manager.

National Network for Immigrant and Refugee Rights
310 8th St., Suite 307
Oakland, CA 94607
510.465.1984; fax 510.465.1885
nnirr@nnirr.org
www.nnirr.org
A second factor was that immigrants applying for adjustment to legal permanent residence were being denied for being a "public charge" if they were receiving any benefits, including medical assistance, at the time of adjustment. Here, too, some INS district offices and consular offices were conditioning the grant of legal permanent residence upon repayment of benefits received. A third factor was that immigrants (even those who were legal permanent residents or naturalized citizens) feared that if they received benefits, they would then not be able to petition for family members to join them as immigrants.

Advocates should inform both immigration officers and attorneys about the expansion of health care programs, particularly those for children, for reasons of public health policy and lack of private or employer-provided insurance. Advocates can distribute relevant INS documents and community education materials to health care providers who are often desperate for information when talking to immigrants unable to get necessary medical treatment without medical assistance to pay for it. Advocates can educate immigrants themselves about the risks of forgoing health care and about the need to get individual advice from an immigration attorney before deciding whether to accept assistance.

B. Affidavits of Support

Many undocumented immigrants are declining benefits because they fear they will not qualify for legal permanent residence. Many citizens and legal permanent residents are worried about the effect of their past receipt of benefits on their new binding affidavits of support, required in almost all family visa petitions. The new income requirements, rather than past receipt of benefits, often pose the greater barrier to immigrating family members. New regulations require that the sponsor filling out the affidavit of support show income at 125 percent of poverty guidelines for the sponsor and the sponsor's dependents in addition to the immigrants being sponsored.

46 See Schlosberg & Wiley, supra note 40.
47 INS's concern about the use of benefits by immigrants can be traced back to a long existing policy commonly known as "public charge"—a term INS uses to describe an immigrant who has become or is likely to become dependent on government benefits. See Yolanda Vera, National Immigration Law Ctr., Public Charge (1997); Broder, supra note 17, at 519–20. While the decline in access to benefits is in part related to the fear of public charge, it is also due to concern about increased verification and reporting procedures. See Schlosberg & Wiley, supra note 40. For a broader discussion of public charge and verification and reporting procedures see my forthcoming article in CLEARINGHOUSE REVIEW.
48 This expansion has recently increased due to the Child Health Insurance Program. Some states now cover children in families with incomes as high as 300 percent of the federal poverty level. Studies show that children make up half of the estimated 37 million people who receive Medicaid. The majority of these children live in households with parents who work. Schlosberg & Wiley, supra note 40, at 6.
49 An INS survey found that one-third of immigrants petitioning family members in 1994 would not have met the new requirement. A survey by the Urban Institute put the number at 40 percent for immigrants and 25 percent for U.S.-born citizens. Both studies pointed to how the requirements would fall hardest on immigrants from countries in Central America and Asia, particularly Southeast Asia. Celia W. Dugger, Immigration Law's Fine Print Emerges, Setting off a Debate About Welfare Provisions, N.Y. TIMES, Oct. 20, 1997.
The new Section 213A affidavit of support (Form I-864) replaces the old nonbinding form (I-134) and is required for family-based visas and adjustment-of-status applications filed on or after December 19, 1997. The new forms are required in almost all new family visa petitions, with an exception for widows or widowers filing petitions based on prior marriage to a citizen and for battered spouses and children filing self-petitions based on a relationship to a citizen or legal permanent resident spouse responsible for the battery.

Although the new forms add the requirement that the sponsor be a U.S. resident and the petitioning relative, the biggest change is that these forms are now legally enforceable against the sponsor by the sponsored immigrant or any government agency that provides a means-tested benefit to the immigrant while the affidavit is in force. The sponsor's obligation ends only when the sponsored immigrant becomes a citizen, is credited with 40 quarters of employment in the United States, dies, or leaves the country and abandons permanent resident status, or when the sponsor himself or herself dies. Not all benefits are subject to recovery from the sponsor, and advocates should educate immigrants about those available.

Many of these family members are spouses and children who are currently living in the United States and are ineligible for most benefits and fearful of being detected by INS since they do not yet have legal residence. Very often what has prevented the citizen or legal permanent resident parents of these children from applying for legal residence is money. Many of those legal permanent residents and U.S. citizens who wish to petition for spouses and children but are currently unable to meet the 125-percent standard have to wait to increase their incomes before they can file. Although the new regulations allow them to meet the income requirements by finding a joint sponsor to sign the affidavit of support, finding joint sponsors is difficult because of the potentially open-ended liability, especially concerning health costs. For these immigrants, careful advice about the complexities of the new immigration law must be combined with help in increasing their incomes through access to English as a Second Language classes, training programs, and community economic development.

C. Sponsor Deeming

The new affidavits of support (Form I-864) differ from the old ones (Form I-134) in that they are binding on the sponsor. While this no doubt will assist some sponsored immigrants, including children, in suing for support from a sponsor, they also add a new layer of complexity to a process called "sponsor deeming." Like many other confusing immigration rules, the complexity caused by the new affidavits has often led to blanket denials of assistance by confused welfare workers, even where assistance should have been provided. This has been especially true for women and children who are applying for assistance after fleeing an abusive spouse who, if the wife and children do have legal permanent resident status, is usually the sponsor. Advocates will now have to be vigilant in ensuring that state welfare departments take into account the differences between the old and new affidavits.

Because of sponsor deeming, affidavits of support have always affected the sponsored immigrant's eligibility for certain kinds of public assistance. Prior to

---

52 Id.
55 Including the fees for the application, the necessary medical certification, the adjustment fee, and the fees needed to hire an attorney, the total amount can easily surpass $2,000 per person.
the 1996 welfare law, immigrants who had an affidavit of support filled out on their behalf were required to supply information on the sponsor’s income and resources when applying for three federal programs—SSI, food stamps, and Aid to Families with Dependent Children.\(^5\) A certain portion of the income and resources was then “allocated” for use by the sponsor and the sponsor’s dependents (including other persons for whom the sponsor filled out an affidavit of support), while the remainder was “deemed,” or considered available, to the sponsored immigrant, whether or not the money was actually provided. If the income and resources were above the program eligibility guidelines, the applicant was considered ineligible for assistance. Since many states are still using these rules for immigrants with old affidavits of support, and since the rules differ among programs, advocates must check welfare department regulations to see if these rules are correctly implemented.

The new affidavits of support differ from the old ones in some important ways. They may last indefinitely, or at least until the immigrant becomes a citizen or can be credited with 40 work quarters. They allow the sponsored immigrant or agency providing benefits to sue for reimbursement, and they can be applied to a broad range of benefits, including medical assistance.\(^6\) Currently they are applied to all federal means-tested benefits, but, because most immigrants arriving on or after August 22, 1996, are barred from such benefits for the first five years after they obtain “qualified” status, sponsor deeming in these programs will not take effect for several years.\(^5\) Nonetheless, advocates must familiarize themselves with the potential ramifications of the new affidavits if they are to advise immigrant families of assistance available to them. Predicting the effects of the new affidavits is particularly difficult because most states have not formally determined which, if any, state and local benefits will be subject to the sponsor-deeming rules. Because no federal regulations have been promulgated, advocates should be sure that state programs correctly include at least the exemptions provided for in the statute. These include immigrants who have worked 40 qualifying quarters, domestic violence victims, immigrants facing hunger or homelessness, and immigrants whose sponsors have since died.\(^6\)

In addition to reviewing state regulations, advocates can work to educate social service and health care providers about the many kinds of benefits available to sponsored immigrants even while the affidavit of support is in force. Sponsor deeming is applied to the following federal programs: SSI, Temporary Assistance for Needy Families, food stamps, non-emergency Medicaid, and Children’s Health Insurance Program.

Advocates should share this information with immigration lawyers and advocacy groups so that they do not incorrectly advise potential sponsors and sponsored immigrants that no benefits are available. Until sponsor-deeming policies become clearer, families may want to take

---


\(^5\) Immigrants who are on active duty, veterans, and their family members are exempt from the five-year bar but not exempt from sponsor deeming. These groups are allowed to execute a new affidavit of support if they meet 100 percent of federal poverty guidelines, not the 125 percent required of all other immigrants. However, because no federal regulations have been issued regarding the implementation of sponsor deeming, states are for the most part waiting to enforce it.

\(^6\) Domestic violence victims must meet two additional requirements. They must no longer live with the batterer, and the domestic violence must have a substantial connection to the need for benefits. With a court order documenting the abuse, the exemption may be extended. 8 U.S.C. § 1631(f), as amended by Pub. L. No. 105-33, § 5571, 111 Stat. 251. If the assistance is necessary to prevent hunger or homelessness, it can be provided for a period of up to 12 months. 8 U.S.C. § 1631(e).
advantage of regulations allowing them to count some resources toward the 125-percent income requirement rather than looking for additional sponsors outside the family. Advocates should help in proving work history (the 40-quarter exemption), especially where the spouse and children of a citizen or legal permanent resident may be able to share the credits. Similarly naturalization assistance should also be continued as an important avenue for putting an end to sponsor deeming.61 Advocates should inform state administrators about the need to explain clearly whether a particular benefit utilizes sponsor deeming or requires reimbursement, as programs providing such benefits are likely be underutilized.

IV. Conclusion
The issues discussed above underscore the complex questions faced by all immigrants seeking access to benefits for which they are eligible. Public debate about immigration policy has moved slightly from intense antiimmigrant sentiment toward some appreciation for immigrants' contributions to the country's economy and culture. This swing has had little effect on most immigrants themselves. Confused and fearful, they are reluctant to seek assistance, even if thereby their children go hungry and without medical care.

The new laws have brought changes that many still hope to reverse, particularly where children are affected. In the meantime, advocates can play an important role in ensuring that state agencies do not go beyond those laws in denying benefits and that immigrants and those assisting them are appropriately advised about eligibility for benefits and any negative effects of such benefits. Advocates must see that the consequences—whether intentional or not—of these laws for immigrants and their children do not go unnoticed and undocumented.

The Clearinghouse Web site, www.povertylaw.org, offers advocates much more content than ever before. We are continually adding more and more case pleadings to our electronic library. Our editorial staff selects cases for scanning and uploading while converting newly reported cases into electronic form as well. We have made available the 1990–96 full-text CLEARINGHOUSE REVIEW articles and are converting any missing articles from that time period. Our hope is to have full-text articles back to 1984 online by mid-1999. We will also begin charging for documents by the end of the first quarter in 1999.

Our documents are downloadable in one of two formats: Portable Document Format (PDF) and Rich-Text Format (RTF). Articles are available as PDF files, and case documents are available in either RTF or PDF, depending on how we receive them.

PDF Documents

PDF is one standard for electronic distribution of documents. With the Acrobat Reader, almost anyone can view, print, navigate, and search PDF files.

In order to download and view PDF documents from the Clearinghouse Web site, users will need to install Adobe's Acrobat Reader on their computers. Once it is installed, it does not have to be installed again. The Acrobat Reader is a free viewing software program provided by Adobe. It is available for Macintosh or IBM-compatible computers running any version of Windows. To download the Adobe Acrobat Reader, go to www.adobe.com/prodindex/acrobat/readstep.html. Adobe's step-by-step instructions will walk you through the process. The Adobe Reader software is about 3.5 megabytes.

Once the Adobe Reader is installed, PDF documents should download and open automatically on your desktop when you click the document hyperlink from our Web site.

RTF Documents

RTF is a basic file type that can be viewed in any word processor. Once loaded into a word processor, RTF documents can be searched and cut and pasted into a new document. You can set preferences in your browser to download RTF documents from the Clearinghouse's Web site directly into your word processing program.

If you are using Netscape, choose Options, General Preferences, and click on the Helpers tab. Scroll through the list of file types and highlight "application/rtf." On the bottom of this window, click on the box "Launch the Application" and then click on the Browse button. Find your word processing program on your computer's hard drive and click on the Open button. This will put the path to your word processor at the bottom of the Helper window, telling your computer to launch your word processing program when you download documents in RTF.

If you are using Microsoft's Internet Explorer, choose View, Options, and click on the File Types tab. Scroll through the list of file types, and highlight Rich-Text Format. Click on the Edit button. In the Actions window, choose Open, and click on the Edit button. Click on the Browse button, and find your word processing program on your computer's hard drive. Click on the Open button. This will put the path to your word processor in the "Application used to perform action" field. Click on OK to close the "Editing action for type: Rich-Text Format" window. Once again, highlight Open in the Edit File Type window, and click on the Set Default button. Click OK. Close the Options window.