

THE PHILIPPINO EXPRESS

June 7-13, 1999



LEGAL NOTES

Ruben S. Seguritan

Receipt of public benefits won't affect status

An alien may be denied admission or denied adjustment of status to permanent residence if he is likely to become a public charge. He may be deported on public charge grounds.

But the term "public charge" has never been clearly defined. As a result aliens have refused to apply for public benefits for which they may be eligible because of possible adverse immigration consequences.

In an attempt to clear up the public confusion over the meaning of the term and its relationship to the receipt of Federal, State or local public benefits, especially in light of recent immigration and welfare reforms, the Clinton administration has issued a guidance and proposed regulations.

Under the rule, an alien is a public charge if he becomes primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long term at

government expense. This definition is effective immediately.

In determining whether an alien is likely to become a public charge, the INS or the State Department is required to take certain factors into account including age, health, family status, assets, resources, financial status, education and skills. It must adopt a "totality of circumstances" approach in making its decision. Thus, although receipt of certain public benefits may be considered in determining whether an alien is a public charge, they do not automatically make him one.

The following public benefits which are considered public cash assistance for income maintenance are relevant factors: (1) Supplemental Security Income (SSI); (2) Temporary Assistance for Needy Families (TANF) but not including supplementary cash benefits excluded from the term "assistance under the TANF program rules or any non-cash benefits and services provided by the TANF program; and (3) State or local cash assistance program for income maintenance (often called state "General Assistance" but which may exist under other names).

In addition, public assistance, including Medicaid, that is used for supporting aliens who reside in an institution will also be considered by the INS and State Department as part of public charge analysis. Short term institutionalization

for rehabilitation is not a relevant factor.

The following non-cash benefits and special purpose benefit that are not intended for income maintenance but rather to avoid the need for ongoing cash assistance are not subject to public charge consideration:

- Medicaid and other health insurance and health services (including public assistance for immunizations and for testing and treatment of symptoms of communicable diseases; use of health clinics, prenatal, etc.) other than support for institutionalization for long-term care Children's Health Insurance Program (CHIP) Nutrition programs, including food stamps, the Special Supplemental Nutrition Program for Women and Children (WIC), the national School Lunch and Breakfast Programs and other supplementary and energy food assistance programs.
- Housing assistance
- Child care services
- Energy assistance, such as Low Income Home Energy Assistance Program (LIHEAP)
- Emergency disaster relief
- Foster care and adoption assistance
- Educational assistance, including benefits under the Head Start Act and aid for elementary, secondary or higher education
- Job training programs
- In kind, community-based programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short term shelter).