

NLWJC - Kagan

DPC - Box 064 - Folder-005

Welfare-Public Charge

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08/25/98 04:31:50 PM
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Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Laura Emmett/WHO/EOP, Cynthia A. Rice/OPD/EOP, Jack A. Smalligan/OMB/EOP
Subject: Battered women and public charge

Elena,
I received a memo a few weeks ago from AYUDA (advocates for battered immigrant women and abused immigrant children) re: battered women and public charge. AYUDA wants the INS to issue guidance (and possibly a regulation) that clarifies that battered immigrant women and children who qualify for relief under the Violence Against Women Act (VAWA) are exempt from the "public charge" ground of inadmissibility.

In short, the 1996 Immigration Act provided that VAWA self-petitioners (even those who are here illegally) would be considered "qualified aliens" for purposes of their access to public benefits. Thus, they are eligible to receive food stamps, Medicaid, TANF, etc. -- essentially all benefits that they could receive as lawful permanent residents. At the same time, however, the INA generally requires an assessment of whether a person requesting "admission" (which includes adjustment of status) is a "public charge" (as you know, we are in the midst of making a final determination as to which benefits should be considered in the public charge analysis generally).

According to AYUDA, the best interpretation of the INA is that battered immigrants with an approved VAWA self-petition are exempt from the public charge provision; however, they think that there is some confusion within the battered immigrant community about this question. INS, as a preliminary matter, agrees that VAWA self-petitioners are exempt. To be sure, INS is going to ask its General Counsel (at INS) to review the question and will let us know. If this is the correct interpretation, we could include this guidance as part of the general public charge guidance.

julie