

THE ABILITY CENTER

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01/18/2022

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

SUBMITTED VIA: <https://www.regulations.gov/>

Re: Docket DOS-2021-0034 and RIN 1400-AE87
Visas: Ineligibility Based on Public Charge Grounds

Dear Ms. Lage,

I am writing on behalf of The Ability Center of Greater Toledo to offer comment in response to the U.S. Department of State's Federal Register notice *Visas: Ineligibility Based on Public Charge Grounds* published on November 17, 2021. Thank you for the opportunity to offer comment on the intention to either revise or rescind the Public Charge Rule.

The Ability Center of Greater Toledo is a Center for Independent Living that serves Northwest Ohio. Our mission is to assist people with disabilities to live, work, and socialize within a fully accessible community. Thus, we have great interest in matters, federal and local alike, that impact the lives of people with disabilities, including visa ineligibility on public charge grounds. As an agency, we are in favor of a full revision of the Interim Final Rule (IFR). Our concerns with the IFR are outlined below.

Discrimination based on disability:

People with disabilities often face exclusion due to stigma on presumed "undesirable" characteristics. The Immigration Act of 1882¹ set a precedent for the Final Charge Rule of 2019, which placed undue burden on immigrants seeking visas to the United States. Moving from the Final Rule to the Interim Final Rule (IFR) is an appropriate first step to ensure disability discrimination is eradicated from immigration law.

¹ "Immigration Act of 1882." *Immigration History*, The University of Texas at Austin, Department of History, 29 July 2019, <https://immigrationhistory.org/item/1882-immigration-act/>.

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In repealing and reverting to the Public Charge rule of 1999, immigrants with disabilities remain the most likely to be assigned a negative health factor, which stands in opposition to Section 504 of The Rehabilitation Act of 1973.²

Public health as a policy concern:

As the COVID-19 swept the globe, immigrants increasingly showed fear of seeking medical care.³ The Center for Disease Control has published a statement on post-covid conditions:

“Post-COVID conditions are a wide range of new, returning, or ongoing health problems people can experience four or more weeks after first being infected with the virus that causes COVID-19. Even people who did not have COVID-19 symptoms in the days or weeks after they were infected can have post-COVID conditions. These conditions can present as different types and combinations of health problems for different lengths of time.

These post-COVID conditions may also be known as long COVID, long-haul COVID, post-acute COVID-19, long-term effects of COVID, or chronic COVID. CDC and experts around the world are working to learn more about short- and long-term health effects associated with COVID-19, who gets them, and why.”⁴

In addition to the guidance provided by the CDC, the Office for Civil Rights of the Department of Health and Human Services and the Civil Rights Division of the Department of Justice have joined together to provide this guidance:

“Long COVID can be a disability under the ADA, Section 504, and Section 1557 if it substantially limits one or more major life activities...

² “Your Rights Under Section 504 of the Rehabilitation Act.” U.S. Department of Health and Human Services. Office for Civil Rights, June 2006.

<https://www.hhs.gov/sites/default/files/ocr/civilrights/resources/factsheets/504.pdf>

³ Jordan, Miriam. “‘We’re Petrified’: Immigrants Afraid to Seek Medical Care for Coronavirus.” *The New York Times*, The New York Times, 18 Mar. 2020, <https://www.nytimes.com/2020/03/18/us/coronavirus-immigrants.html>.

⁴ “Post-Covid Conditions.” *Centers for Disease Control and Prevention*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects/index.html>.



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People whose long COVID qualifies as a disability are entitled to the same protections from discrimination as any other person with a disability under the ADA, Section 504, and Section 1557. Put simply, they are entitled to full and equal opportunities to participate in and enjoy all aspects of civic and commercial life.

For example, this may mean that businesses or state or local governments will sometimes need to make changes to the way that they operate to accommodate a person's long COVID-related limitations.⁵

Due to COVID-19 shifting the medical landscape of the globe, any person could be considered likely to become a public charge by mere exposure to the virus, which creates an entirely new category of inadmissible immigrants.

Reinforcing stereotypes:

In 1999 the Supreme Court held in *Olmstead v. L.C.* that unjustified segregation of persons with disabilities constitutes discrimination in violation of title II of the Americans with Disabilities Act.⁶ Rather than simply reverting to the 1999 policies, a better option would be to redraft the public charge rule to take into account the requirement of reasonable accommodations when evaluating the opportunity for self-support through employment. Exclusion from the community based on disability reinforces stereotypes and is precisely what Congress meant to prevent with the disability discrimination laws.

It is imperative that in 2022 and beyond we recognize that people with disabilities are full participants in our communities, are self-reliant, and can be quite healthy. To create a sub-category of inadmissible immigrants is to deny entry to people with disability by "proxy" if not directly.

For these reasons we encourage the Department of State, the Department of Homeland Security, and the Department of Justice to reevaluate the necessity of the Public Charge Rule. We encourage

⁵ "Guidance on 'Long Covid' as a Disability under the Ada, Section 504, and Section 1557." *HHS.gov*, Office for Civil Rights, 11 Aug. 2021, <https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/guidance-long-covid-disability/index.html>.

⁶ "Olmstead: Community Integration for Everyone." *Information and Technical Assistance on the Americans with Disabilities Act*, *ADA.gov*, https://www.ada.gov/olmstead/olmstead_about.htm.



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revising and undoing language that creates stipulations based on disability.

Thank you for the opportunity to submit public comment. Please see my contact information below, and do not hesitate to contact me if you have any additional questions.

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