

Who does 'public charge' apply to? 5 sample scenarios

*Note: The following scenarios are updated and lightly adapted from the Protecting Immigrant Families campaign's October 2018 handout **The Trump Test: Who does 'public charge' apply to?***

SCENARIO 1: EDDIE



Eddie is a 26-year-old graduate student. He works as a student instructor and research assistant to pay for school, as he's not eligible for federal loans. He has lived in the U.S. for as long as he can remember but was born in Mexico. He's had DACA since 2012. Eddie married a U.S. citizen (Irma) last year and has a 2-year old daughter. Irma works as a teaching assistant, earning \$30,000 per year. Eddie's daughter receives Medicaid. Eddie is not eligible for subsidized health insurance and relies on his school clinic to treat his severe asthma. Last year, he incurred a large medical bill for an emergency room visit during an asthma attack. Eddie has had trouble making regular payments the bill and this caused his credit score to plummet. Eddie's wife is now petitioning for his green card.

Eddie's public charge test: The receipt of Medicaid by Eddie's daughter shouldn't be held against him in the public charge test. However, the family's low income and Eddie's health condition and low credit score could be negative factors in the public charge test.

SCENARIO 2: SASHA



Sasha is a 35-year-old woman from Russia who recently escaped a physically and verbally abusive relationship with her husband, a green card holder. Sasha has filed a self-petition for a green card under the Violence Against Women Act (VAWA). She received a prima facie determination that her case will be approved, but the process can take several years. Because Sasha does not speak English well and suffers severe emotional distress, so she has not been able to find work since leaving her husband. She recently moved into a Section 8 housing unit, which will allow her to live safely with her children. Sasha's U.S. citizen brother petitioned for her green card, and Sasha has just learned she is eligible to adjust status through his petition instead of waiting for her VAWA petition to be approved.

Sasha's public charge test: Although VAWA petitioners are exempt from the public charge determination, if Sasha adjusts her status through a family-based petition, she will be subject to the public charge test. The fact that she does not speak English well, is not employed and has received Section 8 housing can be held against her when she applies to adjust status. However, it would not count against her if she was only enrolled in Section 8 before the effective date of the final rule.

SCENARIO 3: KAREENA



Kareena is from India. Kareena's son petitioned for her and she has been living in the United States for the past 12 years as a green card holder. She is 58 and recently retired from her job as a cashier. Kareena gets her health coverage through MassHealth. Her sister recently became ill and she wants to travel back to India to support her family for a few months. Kareena is worried that if she leaves, she won't be able to come back to the United States to be with her son and grandchildren.

Kareena's public charge test: If Kareena is outside of the U.S. for more than 180 days (6 months), she may be subject to a public charge test when she seeks to reenter the United States. The fact that Kareena is unemployed and has used MassHealth would be heavily weighed negative factors against her. Her age could also be weighed against her.

SCENARIO 4: ROBERTO



Roberto is a 68-year-old man from El Salvador with Temporary Protected Status (TPS). He has been living in the United States for more than 30 years, working in a factory. Roberto has several chronic medical conditions including sleep apnea, COPD, diabetes, high blood pressure and lower back pain. He had to reduce his work hours to manage his pain and now earns \$14,000 per year, which is barely enough to pay his rent and utilities. Due to his immigration status, Roberto is not eligible for Medicaid or SNAP benefits and relies on assistance from his church and local food pantry to get by. Roberto's daughter recently became a U.S. citizen and would like to petition for her father's green card.

Roberto's public charge test: Even though he has never used public benefits, Roberto's low income (below 125% FPL), advanced age, and medical conditions could be held against him under the public charge test. His daughter's income will be considered as well, and if it's high enough, they may be OK.

SCENARIO 5: MAE



Mae is a 46-year-old single mother with two children. She and her family came to the U.S. from Thailand as part of the Hmong diaspora after the Vietnam War in 1974 when she was 2 years old. Her sister later became a U.S. citizen through marriage and petitioned for Mae's green card in 2005. Because of limits to family-based immigration, Mae has been on the waiting list for 13 years and she is finally getting close to having the last step of her application processed. Mae is finishing her nursing degree and works part-time so she can pick up her children from school. She and her children are enrolled in SNAP, as members of the Hmong community that helped the U.S. during the Vietnam War. Mae heard that if she continues to receive nutrition assistance, she may not be able to get her green card; without SNAP, her children would have no nutritional support.

Mae's public charge test: The use of SNAP by Mae (but not her children) would be a heavily weighed negative factor in the public charge test. Her low income could also be counted against her, especially if it's below 125% of the poverty line for her household of 3 people (\$26,662 per year). However, Mae's employment history and nursing degree would also be considered and would weigh in her favor. Her sister's income would also be a factor and could offset Mae's low income.