

NATIONAL COUNCIL ON DISABILITY
Impact of the Welfare Reform Legislation
on Legal Immigrants with Disabilities
June 23, 1997

It is the statutory mandate of the National Council on Disability to advise the Congress and the President when the laws and policies of the United States adversely affect the well-being and progress of individuals with disabilities. The National Council on Disability therefore must convey its serious concern, and that of the members of this community, at the economic, physical and emotional injury that the 1996 welfare reform legislation will inflict, in fact has already inflicted, on certain members of the community, legal immigrants with disabilities.

The welfare law's toll on the community of persons with disabilities has already been enormous. Letters mailed earlier this year by the Social Security Administration ("SSA"),¹ **warning legal immigrants of the U.S. Government's plans to terminate their benefits this summer, created such dismay and panic in the community that disability advocates fear a rash of suicides as the deadline for termination of benefits approaches. The bipartisan budget accord reached last May purported to restore certain benefits to legal immigrants who arrived in the country before August 23, 1996. However, the budget accord did not go far enough in restoring benefits desperately needed by individuals with disabilities. Moreover, recent Congressional proposals to implement the budget accord have stripped certain of the benefits that were restored to individuals with disabilities by the budget accord, despite new official estimates that sufficient funding could be made available within the budgetary limits established by the accord to restore all such benefits to persons with disabilities and to restore benefits to aging legal immigrants as well.**²

While any effort to restore benefits deserves support, none of the proposals currently working through the system goes far enough to prevent numerous vulnerable human beings from losing their only means of support and medical care. The loss of government aid will not move these individuals from welfare to work, the stated goal of welfare reform. It is not the existence of federal benefits, but barriers of discrimination, transportation and others, that prevent them from working to support themselves. The United States must be able to balance its budget in a manner that is less destructive to human lives. It is imperative that action be taken to restore eligibility of legal immigrants who have, or who in the future may experience, disabilities for all federal benefits for which they were eligible prior to the enactment of the

¹The SSA has been sending notices to nearly 900,000 non-citizens nationwide informing them of the possibility that SSI benefits may be discontinued. Statement by John J. Callahan, Acting Commissioner of Social Security, *Welfare Reform: A Need for Change* (March, 21, 1997).

²Judith Havemann and Eric Pianin, *House Panel Votes to Maintain Limits on Disability Payments to Noncitizens*, The Washington Post (June 11, 1997).

1996 welfare reform law.

What Benefits Will Be Denied?

Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWOR”),³ **current and future legal immigrants will be barred from receiving Supplemental Security Income (“SSI”) benefits under a program managed by the SSA and food stamps under a program financed through the U.S. Department of Agriculture and administered by the States.**⁴ **Legal immigrants who do not requalify for benefits under the PRWOR's new criteria will have their benefits cut-off in August of this year.**⁵ **In addition, with limited exceptions, the PRWOR gives the States the discretion to determine whether or not legal immigrants will continue to be eligible for Federal cash assistance under three Federal programs: (I) temporary assistance for needy families; (ii) services under the Social Services Block Grant; and (iii) Medicaid.**⁶ **In a number of States, where eligibility to receive Medicaid depends upon eligibility to receive federal SSI benefits, Medicaid will be discontinued to existing recipients when SSI benefits are cut off, unless the State laws are changed.**⁷

In addition to the benefits withheld above, with limited exceptions for federal programs such as limited emergency medical assistance and public health assistance for immunizations, immigrants who arrive legally in the United States after the enactment of PRWOR are not eligible for Federal means-tested public benefits for five years after their date of entry.⁸ **While the PRWOR exempts certain legal immigrants from its coverage,⁹ an incapacitating disability**

³Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWOR), Public Law 104-193 (August 22, 1997).

⁴ PRWOR, Section 402(a)(1). SSI provides cash assistance averaging \$425 per month to persons with disabilities and the elderly poor. Statement by John J. Callahan, *supra*, Note 1.

⁵Stephen Green, *Panel Eases Welfare Ban For Immigrants, Senate Plan Would Grant Medicaid Benefits to Children*, The San Diego Union-Tribune (June 20, 1997).

⁶PRWOR, Section 402(b)(I).

⁷Celia W. Dagger, *U.S. Says Mental Impairment Might Be a Bar to Citizenship*, The New York Times (March 19, 1997).

⁸PRWOR, Section 403(a).

⁹The PRWOR exempts certain immigrant groups from the exclusion from benefits: (I) refugees and asylees during their first five years in the United States; (ii) lawful permanent residents who have worked in the United States for approximately 10 years (40 qualifying quarters as defined in the Social Security Act), provided they have not received any Federal means-tested public benefit with respect to any qualifying quarter after December 31,

does not prevent a legal immigrant from having his or her means of support terminated under the PRWOR.

SSA anticipates that less than half of the legal immigrants receiving notification letters from SSA will qualify for an exemption from losing their SSI benefits under the PRWOR as currently in effect.¹⁰ The Congressional Budget Office estimated that the PRWOR, as currently in effect, will result in denial of SSI benefits to approximately 500,000 legal immigrants, and of food stamps to approximately 1 million of the roughly 1.5 million legal immigrants currently receiving federal assistance.¹¹

The PRWOR will hit hardest the permanently disabled who are dependent on SSI, food stamps and Medicaid for their support and medical care. The denial of benefits will require disabled immigrants to rely even more heavily on others, stretching the resources of their families and sponsors (if they have family and sponsors) who, though gainfully employed, in many cases do not have sufficient resources to support them. Without SSI payments, food stamps and Medicaid, state and local governments and private charities will become the prime source of assistance to legal immigrants with severe disabilities, and there is reason to fear that competing interests and agendas and thinning budgets will prevent these groups from adequately filling the gap.

Naturalization

In an effort to stave off the impending loss of their sole means of support, many legal immigrants with disabilities who have held their green cards long enough to be eligible to file for citizenship have commenced the process of becoming naturalized U.S. citizens.¹² **While some will be successful at becoming U.S. citizens prior to the cessation of their benefits, many legal immigrants eligible to apply for citizenship will still be waiting in line to complete the naturalization process when their benefits are cut off. There is now a backlog of applicants and the applications will take months to process.**¹³

1996; and (iii) veterans and persons on active duty in the armed services and their spouses and dependents. PRWOR, Section 402(a)(2); 402(b)(2); 403(b).

¹⁰ Statement by John J. Callahan, *supra*, Note 1.

¹¹Molly Peterson, *ISSUE FOCUS: GOP Mulls Aid to Legal Immigrants As Welfare Deadlines Near*, Copyright © 1997 Legi-Slate, Inc. (April 14, 1997).

¹²*New INS Rules Could Waive Civics Tests for Thousands - 300,000 Facing Aid Cutoff May Be Helped*, The Washington Post (March 19, 1997).

¹³Dagger, *supra*, Note 7.

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The PRWOR has served to highlight a fundamental problem with the immigration laws of this country - the inability of individuals with severe disabilities to become U.S. citizens. Until very recently, the U.S. naturalization requirements made citizenship nearly impossible to obtain for severely disabled legal immigrants. On October 25, 1994, Congress enacted the Immigration and Nationality Technical Corrections Act of 1994 which exempts immigrants with "physical and developmental disabilities" or "mental impairments" seeking citizenship from requirements that they prove their English proficiency and knowledge of U.S. civics (such as the number of states, the name of the president and the colors of the flag).¹⁴ However, the United States Immigration and Naturalization Service's (INS) regulations implementing the legislation did not go into effect until March of this year, over two years after Congress passed the law. The INS has estimated that 300,000 disabled legal immigrants may now apply for the exemption from the English and civics tests.¹⁵ However, given the backlog of citizenship applicants, there are no assurances that newly exempted immigrants will be able to take advantage of the new rules in time to prevent their benefits from being cut off.

Moreover, the adopting release to the new INS regulations makes clear that immigrants with disabilities are not exempt from the requirement that an applicant for U.S. citizenship take the citizenship oath and renounce his or her former citizenship. Thus, the most severely mentally disabled, such as people with Alzheimer's, victims of stroke, and persons with severe retardation, will not be able to become citizens. The INS responded to this criticism, pointing out that the legislation passed in October 1994 does not give the agency the discretion to eliminate the citizenship oath requirement for such persons. INS policy requires naturalization examiners to be flexible about the manner in which disabled immigrants can demonstrate their comprehension that they are giving up their former citizenship in favor of U.S. citizenship.¹⁶ However, naturalization examiners are not trained to evaluate a disabled applicant's ability to comprehend what is taking place.

In response to the outcry of disability advocacy groups and the public legislative measures have been introduced that attempt to ameliorate the situation by giving the naturalization process the flexibility to accommodate the needs of individuals with disabilities. One such measure would amend the Immigration and Nationality Act to permit the Attorney General to waive the oath requirement for naturalization where the applicant is unable to understand its meaning because of a disability or mental impairment.¹⁷ The National Council

¹⁴Immigration and Nationality Technical Corrections Act of 1994, Section 312.

¹⁵Id.

¹⁶U.S. Department of Justice, Immigration and Naturalization Service Fact Sheet, *Exceptions from English and Civics Testing Requirements For Naturalization Applicants With Disabilities* (March 19, 1997).

¹⁷ H.R. 1239, 105th Cong., 1st Sess. (April 8, 1997); H.R. 1133, 105th Cong., 1st Session, §§1-2 (1997).

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on Disability applauds the effort to facilitate the naturalization of immigrants with the severest disabilities and makes the following recommendations with respect to the naturalization process:

- a) Naturalization must be afforded to all qualifying individuals with disabilities, regardless of the severity of the disability.**
- b) The naturalization process must be sensitive to the unique needs of individuals with disabilities and the naturalization examiners must receive adequate training to evaluate when the English and civic tests and oath requirements should be waived.**
- c) The naturalization process should be in accord with the requirements of the Americans with Disabilities Act.**

Amendments to PRWOR.

Recognizing that legal immigrants with disabilities may be unable to become citizens under present law, Representative Ros-Lehtinen and Representative Diaz-Balart introduced amendments to the PRWOR that would assure eligibility for SSI and food stamps for legal immigrants who are not able to naturalize in that they cannot take the required oath due to a disability that arose after their admission to the United States.¹⁸ This bill would also ensure continuation of benefits to qualified legal immigrants who have filed applications for naturalization which have not been processed by the INS.¹⁹ While the National Council on Disability supports the effort to shield individuals with the severest mental impairments from the effects of the PRWOR, and to protect those immigrants waiting in line to attain citizenship, the better approach is not to deprive any legal immigrant with a disability from Federal benefits, regardless of whether the individual chooses to seek U.S. citizenship.

This approach was taken in the bipartisan budget accord reached in May, which purported to restore certain benefits to legal immigrants with disabilities. The accord did not restore food stamp eligibility to legal immigrants with disabilities but did restore SSI and Medicaid for all disabled legal immigrants who are or who become disabled and who entered the United States prior to August 23, 1996. Nonetheless federal officials estimated that nearly 1 million legal immigrants would still lose

¹⁸H.R. 660, 105th Cong., 1st Session, § 1 (1997); H.R. 1360, 105th Cong., 1st Session, § 1 (1997).

¹⁹H.R. 660, 105th Cong., 1st Session, § 1 (1997).

benefits under the accord.¹

While the budget accord represented some improvement for individuals with disabilities, to date Congress' attempts to implement the bipartisan budget accord have failed to live up to this limited relief. In its proposed implementation of the budget accord, the House Ways and Means Subcommittee on Human Resources proposed to restore SSI only to legal immigrants who were already on the SSI rolls prior to August 23, 1996, thus maintaining elderly immigrants on the SSI rolls (who were not covered under the budget accord), but cutting off any legal immigrant who, through accident or illness, acquires a disability only after August 22, 1996.² On June 21, House Budget Committee Chairman John R. Kasich stated that the House Republicans would support the restoration of eligibility for SSI of this latter group when the bill goes to conference.³ The House bill also does not guarantee Medicaid benefits for legal immigrants eligible to receive SSI, although the bipartisan budget accord did so.⁴ Press reports state that the Senate Finance Committee proposed to restore SSI benefits to disabled legal immigrants who were in the country when welfare reform became law last August 22, to give all legal immigrants until September 30 to apply for disability assistance under SSI, and to provide Medicaid benefits for children of legal immigrants.⁵ While the Committee's proposal represents an improvement over the House version, the proposal still restores fewer benefits than the bipartisan budget accord,⁶ an accord that was already deficient in many respects.

The National Council on Disability strongly recommends that the PRWOR be amended to exempt all legal immigrants with disabilities from its provisions whether their disabilities were incurred before, on or after August 23, 1996. SSI, Medicaid and food stamps should be continued for **all** qualified persons with disabilities legally residing in the United States.

¹Lawrence M. O'Rourke, *Deal on Balanced Budget; 5-Year Plan Hailed by Both Clinton, GOP as a Victory*, Sacramento Bee, May 3, 1997 at A1.

²Approximately 75,000 fewer immigrants would receive benefits by 2002 under the Committee's plan than under the bipartisan budget accord. Letter dated June 5, 1997 from Franklin D. Raines, Director, Office of Management and Budget, to Representative E. Clay Shaw, Jr., Chairman, Subcommittee on Human Resources, Committee on Ways and Means. The Committee's bill was opposed by advocacy groups for seniors as well as disability advocates. Statement of Congressman Sander Levin on Restoring Benefits to Legal Immigrants, June 16, 1997; Letter of James Firman, Chair of the Leadership Council of Aging Organizations dated June 6, 1997; *Restoring SSI Eligibility to All Legal Immigrants*, Statement of the American Association of Homes and Services for the Aging. (June 16, 1997).

³*House GOP Retreats on Medicare, Welfare in Budget Legislation*, Associated Press, Saturday, June 21, 1997.

⁴Letter from Franklin D. Raines, *supra.*, Note 21.

⁵Green, *supra.*, Note 5.

⁶*House GOP Retreats on Medicare, supra.*, Note 22.

Conclusion

The primary goal of welfare reform is to move people from welfare to work by removing a perceived disincentive to doing so. Cutting off benefits to persons who are disabled, and who face many barriers in their attempts to return to work, in no way serves that goal. Moreover, denying basic subsistence benefits to disabled legal immigrants, many of whom have worked and paid taxes, and have become disabled only after entering the United States, is unjust and violates common principles of fairness and compassion. Shifting the burden to the States and private charities is not sufficient to avoid driving persons with disabilities into severe hardship.

NCD has consistently supported the restoration of persons with disabilities to the work force. Many barriers to employment for persons with disabilities, other than existence of a disability, need to be addressed to maximize their employment potential.

In the meantime, we must be assured that under the law of this land no person with a disability legally in this country, whether an immigrant or American born, will ever again be faced with the threat of losing his or her only means of financial support or medical services. This community will not tolerate these threats to the welfare of individual lives. The budget must find its balance elsewhere.
