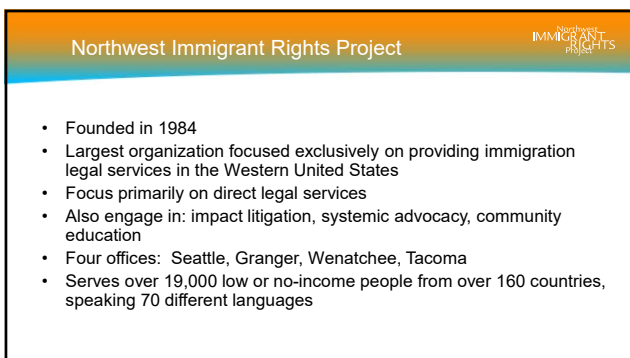
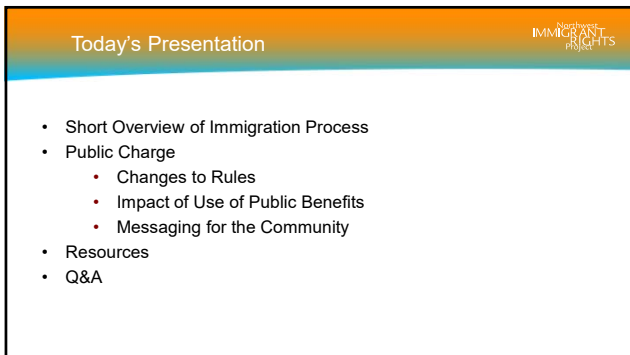


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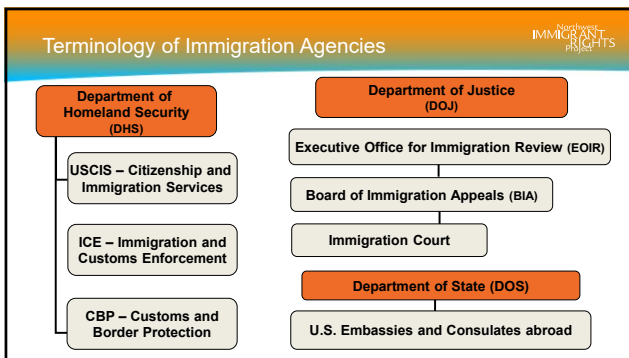
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- Citizens and Non-Citizens**
- **US Citizens (USC):**
 - Born in US, Naturalized, Acquired/Derived (even if born abroad)
 - **Non-Citizens: Three General Categories:**
 - Lawful Permanent Residents (LPR) = "Green Card" Holders
 - Asylees / Refugees
 - Temporary Legal Status:
 - Students, Temporary Workers, Visitors/Tourists, TPS, U visas
 - Undocumented: Visa Overstays/Entered w/o permission
 - Why "Undocumented Immigrant"?

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How to get a Green Card? New York
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How to get a Green Card? New York
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Main avenues of obtaining Lawful Permanent Residence (LPR) or "Green Card" Status:

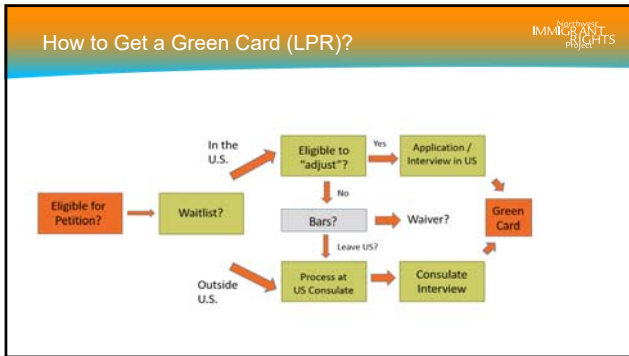
- Through a Family Member (around 65%)
- Through Employment Visa (around 14%)
- Asylum / Refugee Status (14%)
- Others
 - VAWA
 - Special Immigrant Juvenile Status (SIJS)
 - U / T Visas – Lead to LPR status after 3-4 years

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Can you get Green Card in U.S.? New York
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- Key Point: If individual is in the U.S., they must be eligible to "adjust status" to Lawful Permanent Resident (LPR)
- People who crossed the border without permission generally cannot adjust status (get green card in U.S.) via family or work
 - Minor exceptions (VAWA, pre-April 2001 petition, TPS, parole)
 - This rule does not apply to asylees, U/T visas, SIJS
- If person entered on a visa (with permission), may be eligible if "immediate relative"
- If not eligible for adjustment, will need to leave U.S. to complete process (consular processing), BUT may be barred from returning

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Petitioning and Sponsoring

- Family Visa Petitions Require “Sponsor” To Make Commitment to Financially Support Intending Immigrant
 - Sponsor submits I-864 “Affidavit of Support” (Generally, same person who is petitioning for immigrant)
 - If petitioner can’t meet criteria, could use joint sponsor;
- These requirements were in place before recent changes, but now the “affidavit of support” not enough to overcome public charge finding.

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Public Charge

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What is Public Charge?

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- **Public Charge** is a “Ground of Inadmissibility” under immigration law
- “Grounds of inadmissibility” means a reason to deny someone a green card or entry to the US
- Other grounds of inadmissibility relate to:
 - Immigration violations
 - Criminal convictions
 - National security / Terrorism

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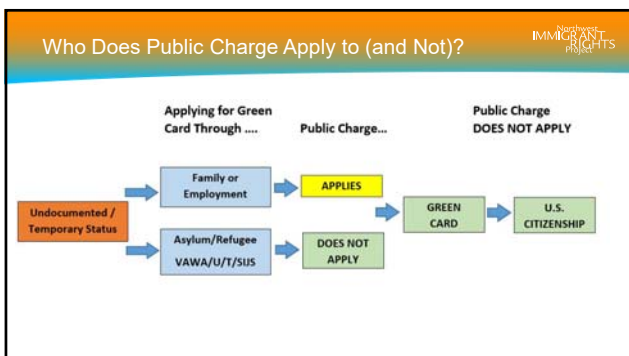
Who Does Public Charge Apply to (and Not)?

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- **Public Charge inadmissibility applies to:**
 - Immigrants applying for green card (inside or outside US) based on family relationship and some employment categories
 - Indirectly: applies to family members petitioning for someone else
 - Immigrant seeking many other types of visas (but this is not as much of an issue)
- **Public Charge inadmissibility does NOT apply to:**
 - US citizens
 - Immigrants seeking a green card through asylum, refugee status, VAWA, U & T visas, Special Immigrant Juvenile Status (SIJS)
 - Immigrants who already have green cards* and are naturalizing

*Note: A green card holder who leaves the US for 180+ days and reenters is subject to inadmissibility grounds, like the public charge ground

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Public Charge Before 2018 NEWARK
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- For decades before 2018, concept of “public charge” had been understood to apply narrowly:
 - In terms of public assistance, only issue if person:
 - Relied on cash assistance for income maintenance (and most were ineligible), OR
 - Person was in long-term institutional care that was gov’t funded
 - Related requirement:
 - Intending immigrant has to secure a financial “sponsor” who can demonstrate they will support immigrant (files “Affidavit of Support”)
 - In most cases, this is same person petitioning for immigrant, but sometimes a joint sponsor is needed

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Public Charge Before 2018 & New DHS Regulation NEWARK
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- In 2018-2019, Trump Administration rolls out proposals and policy changes broadening concept of public charge:
 - Jan. 2018: policy change at Dept of State – impacts immigrants consular processing (applying for a green card) abroad
 - Aug. 2019: new DHS regulation issued – impacts immigrants getting green card in U.S.:
 - Was to go into effect in Oct. 2019
 - Blocked by federal courts from Oct. 2019-Feb. 2020
 - Goes into effect for applications filed on/after Feb. 24, 2020

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New DHS Regulation – What Does It Say? NEWARK
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- New regulation creates new “totality of circumstances” standard with many positive and negative factors.
- Examples:
 - Income & Assets
 - Health
 - Age
 - Family Status
 - Education and Skills:
 - Including employment history, language skills
 - Affidavit of Support
 - Certain Public Benefits Received

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New DHS Public Charge: TOC Test NEWARK IMMIGRANT RIGHTS PROJECT

- **Income and Financial Status**
 - Under 125% FPL (negative); Over 250% FPL (heavy positive)
- **Age**
 - Under 18 or over 61 (negative)
- **Education and Skills**
 - includes proficiency in English
- **Health**
 - Medical condition likely to require extensive treatment, institutionalization or interfere with ability to care for self, attend school or work
- **Family Status**
- **Affidavit of Support**
 - **No longer sufficient on its own to overcome a finding of public charge inadmissibility**

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Impact of Public Benefits on Those Seeking GCs NEWARK IMMIGRANT RIGHTS PROJECT

- **New DHS Regulation Takes Into Account Receipt of These after Feb. 24, 2020:**
 - Any federal, state, local or tribal cash assistance for income maintenance (this was true before) (includes TANF, SSI)
 - Medicaid (except emergency services, children under 21, pregnant women and post-partum services)
 - SNAP (formerly known as "food stamps")
 - Federal public housing, section 8 vouchers & project-based rental assistance
- **Only benefits received BY the intending immigrant count (benefits received by family members do NOT count under DHS rule)**
 - Receipt of one or more public benefits for more than 12 months in the aggregate within any 36-month period (receipt of two benefits for one month counts as two months)

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Impact of Public Benefits on Those Seeking GCs (p.2) NEWARK IMMIGRANT RIGHTS PROJECT

- **Key point:**
 - Virtually everyone applying for a green card (either undocumented or temporary status) is NOT eligible for the federally funded benefits considered by the rule
 - So, as far as DHS rule is concerned, receipt of listed public benefits should NOT actually bar a person from being able to get a green card
 - However, remember this is just ONE of the many factors under the new DHS rule and many of the issues that may require benefits (income, health, etc...) may be considered in other ways
- **AND, there are more issues...**

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Remaining Concerns About Public Benefits RESEARCH
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- Treatment of Benefits by Consulates:
 - From Jan. 2018 until Feb. 2020: consulates abroad have been applying a much broader policy that took into account much wider range of public benefits (including state and local and including receipt of benefits by family members)
 - New Dept. of State rule is supposed to go into effect on Feb. 24 and should match DHS rule but concerns remain about consulates based on prior history
- Benefits Received by People Petitioning for Other Immigrants:
 - DHS and DOS can take that into account and might make it more difficult to re-unify

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What Is the Bottom Line? RESEARCH
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- Public Charge Is Likely to Make It More Difficult for People to Obtain Green Cards:
 - BUT NOT because of receipt of public benefits
 - Instead because of other vague factors (income, age, health, employment history, etc...)
- Complicated messaging with regard to benefits:
 - Do not recommend they drop benefits unless they have received individualized advice
 - But also can't say it's completely safe for everyone (because it could be a problem for a few)

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What Is the Messaging for Community? (Part 1) RESEARCH
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- If you are filing an immigration petition for a family member (even if you yourself are USC or LPR):
 - Receipt of public benefits COULD make it more difficult for you to pursue the petition
 - Talk to an immigration lawyer before you make a decision
- If you are a green-card holder (LPR):
 - Receipt of public benefits for which you are eligible is not a problem
 - But: Do NOT travel outside of U.S. for over 180 days w/o consulting immigration attorney, AND
 - Use caution re: receipt of benefits while outside US

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What Is the Messaging for Community? (Part 2) NO BARRIER
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- If you are undocumented / only have temporary status:
 - Receipt of public benefits is not an issue if you're getting green card through asylum, refugee, VAWA, U/T, SIJS
 - Receipt of public benefits should not affect your ability to get a green card through family member INSIDE the US
 - There is more risk if you have to apply outside the US (generally the case if you entered US w/o a visa)
 - If you are pursuing a petition, talk to an immigration attorney about your specific case
 - If you are not pursuing a petition, do NOT drop benefits until you've sought legal advice and remember that every situation is different

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Other issues: NO BARRIER
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- Forms require reporting of application for benefits (even if not received):
 - Might be an issue for those who applied for health insurance as might have to be reported as application for Medicaid even if they were not eligible
 - Impact of this is unclear but suspect it will not be an issue
- Reports of separate rule that might affect green card holders (re: public charge deportability):
 - There have been reports about this but NOTHING has been proposed

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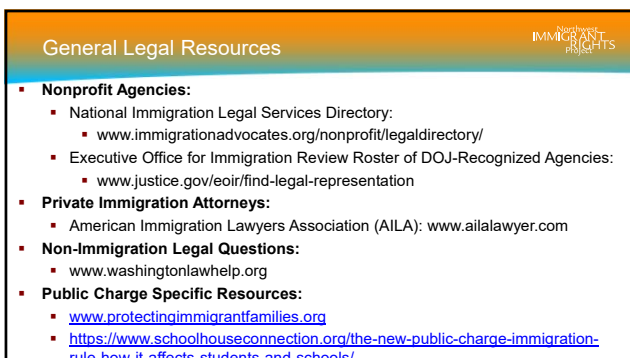
Impact of Public Charge on Certain People: NO BARRIER
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- Health factor:
 - DHS can consider it a "heavily negative" factor if the person has a health condition that requires extensive treatment AND they do not have access to private health insurance or other resources to cover treatment
 - Remember, if eligible to receive Medicaid, some exceptions apply: having an emergency medical condition; services provided under the Individuals with Disabilities Education Act; school-based services or benefits in k-12; and if received by a person under 21 or a pregnant woman, including 6- days following the end of the pregnancy.
- Income factor:
 - Negative weight if income level less than 125% of FPL & no significant assets
 - Positive weight if income is above 250% of FPL
- And many others...

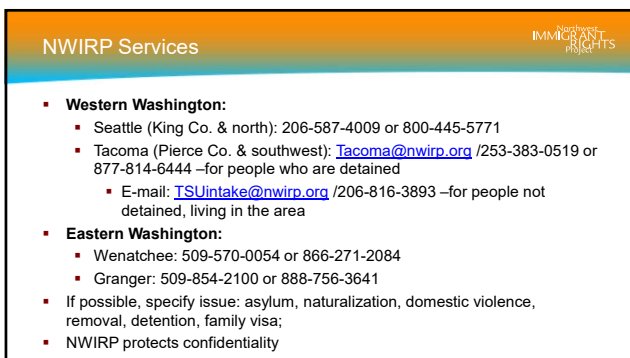
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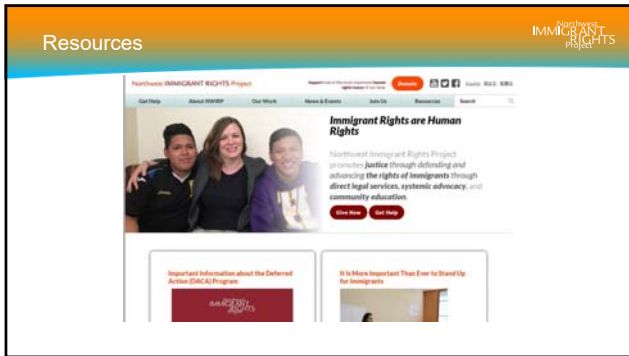
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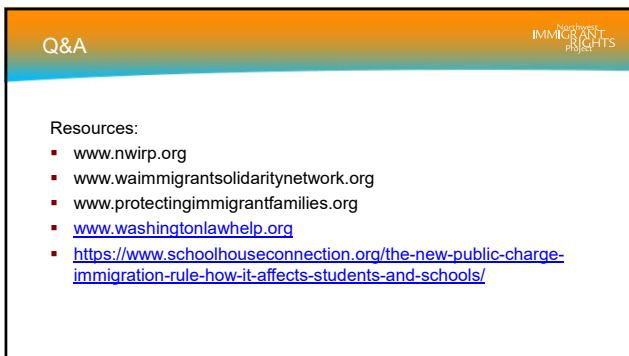
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