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BY U.S. MAIL:
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Re: DHS Docket No. USCIS-2010-0012. RIN 1615-AA22.

To the Department of Homeland Security:

These Comments concern changes to Public Charge Rules proposed by the DHS. The previously filed Comments, UNAUTHORIZED AND MISDIRECTED filed on 12.01.18, are expressly incorporated herein by reference.

DHS's proposal to redefine Congress' statutory standard, "likely to become a public charge," is unauthorized by Congress. Instead of a permissible interpretation, the DHS proposed rules changes which set forth an impermissible re-write of the statute enacted by Congress. The DHS's proposed rules changes are also invalid with regard to who is "likely to become a public charge" because DHS's proposed rules changes are not supported by evidence. Further, they do not take account of catastrophic circumstances that can cause people to apply for admission to the United States. For all these reasons, whether taken separately or together, the DHS's proposed rules are an invalid attempt to change the Congressional standard for excluding a person on the ground that she or he is "likely to become a public charge."

Likely to become a public charge does not mean what the DHS says it means. The starting point for Courts and for administrative agencies interpreting a statute is the statute itself. Here, the task of determining who is "likely to become a public charge" is principally set forth as one among many potential grounds for excluding people from the United States, in 8 USCA § 1182(a)(4)(A) & (B):

> **(4) Public charge**
>
> **(A) In general**
> Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.

(B) **Factors to be taken into account**
(i) In determining whether an alien is inadmissible under this paragraph, the consular officer or the Attorney General shall at a minimum consider the alien's--
(I) age;
(II) health;
(III) family status;
(IV) assets, resources, and financial status; and
(V) education and skills.
(ii) In addition to the factors under clause (i), the consular officer or the Attorney General may also consider any affidavit of support under section 1183a of this title for purposes of exclusion under this paragraph.

The DHS's proposed rules changes, including proposed 8 CFR § 212.21(c) at 83 FR 51290, attempt to re-write the determination required by Congress to say that "likely at any time to become a public charge" instead "means likely at any time in the future to receive one or more public benefits[.]" The Congressional statute has been transformed from considering the totality of the circumstances of who is "likely to become a public charge" to the totality of the circumstances of who is "likely to receive public benefits." The difference between the two is illustrated by the fact that the Congressional determination would take natural and man-made catastrophes into account; the re-written standard proposed by DHS would ignore disasters entirely even though catastrophes are a time when want is most keenly felt to paraphrase Charles Dickens. Experience teaches -- the evidence shows beyond dispute -- that disasters frequently require people to turn to receiving public benefits, and yet the DHS would allow no discretion to consider the circumstances.

Moreover, the DHS's proposed rules changes would place a burden of proof on applicants for admission which applicants currently do not face. Evidence under existing law is not the same as the DHS's proposed changes. It is irrational to impose a burden to prove a negative. This would render the Congressional statute meaningless. The proposed rules changes in this regard are therefore not a valid interpretation of the Congressional statute.

For example, the DHS proposes by defining an "alien's household" such that an alien "would have to demonstrate that his or her own assets, resources and financial status and his or her parent's or legal guardian's assets, resources and financial status are sufficient to support the alien and the rest of the household." 83 FR at 51184, with the proposed rules change in 8 CFR § 212.21(d) at 83 FR 51290-51291. It bears constant repetition apparently that under existing law whether a person is "likely to become a public charge" is determined by a consular officer or the Attorney General under the above-quoted statute. "In determining whether an alien is inadmissible under this paragraph [8 USCA § 1182(a)(4)(A)] the consular officer or the Attorney General shall at a minimum consider" factors to be taken into account. ***This is not a burden of proof on the applicant for admission but a requirement that the consular officer or the Attorney General -- or in this case the AG's designate, <u>the DHS</u> -- <u>must make a determination</u>, that the FEDERAL GOVERNMENT'S representative <u>must consider</u> certain***

things including "at a minimum" those factors which Congress ordered to be taken into account.

In law, the determination of whether a party has met its burden of proof, whether she or he has for example "demonstrated" certain things, is different from whether there is enough evidence to support the claim at bar. In the case of a person applying for admission into the United States, Congress set the standard at whether there is enough evidence to support the application at issue. DHS may not impose a burden that Congress itself chose not to impose.

Another illustration of the DHS imposing burdens that Congress itself chose not to impose is in the DHS's proposed consideration of Congressionally mandated consideration of "education and skills." The DHS proposals apparently conflate them with education and skills "if authorized for employment," to quote the DHS rationale for this proposal, 83 FR at 51189. The proposed rule is 8 CFR § 212.22(b)(5), at 83 FR at 51291.

Labor certification is a separate and distinct ground for exclusion. It is set out in 8 USCA § 1182(a)(5), not 1182(a)(4) which is the stated subject of DHS's proposals. Subsection 1182(a)(5) governs both skilled and unskilled labor, which is a different consideration entirely.

"USCIS Evidentiary Requirements" set out by the DHS at 83 FR at 51196 mandate "[e]vidence of the alien's most recent history of employment" in any consideration of "education and skills." The proposed rule is 8 CFR § 212.22(b)(5)(ii)(A), in 83 FR at 51291. This mandated evidence simply does not relate to a consideration of education and skills. If it did, the DHS would have put on evidence in its rationale to support this, but the DHS did not support this mandate with any evidence linking these separate concepts.

A good example -- evidence if you will -- of how education and skills simply do not depend on the four factors listed on 83 FR at 51196 -- "the alien's most recent history of employment;" her or his "academic degree or certifications[;]" "occupational" skills or certificates, and "proficiency in English" -- was provided by the real-life experience of Albert Einstein. He famously failed mathematics, not because he was dull, but to the contrary he was too intelligent for the teacher. The DHS's rigid rules for considering the statutorily mandated evidence of "education and skills" do not allow for considering the actual circumstances of experience.

In particular, Congress's word, "skills," would be transformed by the DHS proposed rules into "***occupational*** skills." (Emphasis added.) The proposed rule is 8 CFR § 212.22(b)(5)(ii)(C), in 83 FR at 51291.

The DHS's proposed rules refashioning Congress's words, here, refashioning both "education" and "skills," are unauthorized, contrary to Congressional intent, unsupported by any evidence, and to the contrary the available evidence militates against adoption of such proposed rules.

Conclusion.

The unnatural effect of the changes proposed by the DHS to who is "likely at any time to become a public charge," including imposing new burdens of proof and re-defining "education and skills" to be taken into account in making the determination, would if they were in effect have required the exclusion of immigrant Mary Anne MacLeod. She arrived in the United States from Scotland with the skills of a domestic and several hundred dollars in currency at present-day values.

However, she was allowed to come into the United States and eventually married one Fred Trump with whom she had several children. One of those children became President of the United States.

In sum, the changes proposed by the DHS to who is "likely at any time to become a public charge," including imposing new burdens of proof and re-defining "education and skills" to be taken into account in making the determination, are unauthorized by Congress. In addition, they are contrary to Congress's statutory intent. Finally, they are not supported with evidence provided by the DHS, but to the contrary, the available evidence proves them to be invalid.

They are in short the product of still another Federal administrative agency's regulatory overreach.

Thank you for your consideration.