December 10, 2018

Samantha Deshommes
Chief Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW.
Washington DC 20529-2140

Via online submission: https://www.regulations.gov/comment?D=USCIS-2010-0012-0001

RE: CIS No. 2499-10, DHS DOCKET No. USCIS-2010-0012, Inadmissibility on Public Charge Grounds; OMB Number 1615-0116, Document Number 2018-21106;

Dear Ms. Deshommes:

I am writing to submit the Coalition to Abolish Slavery and Trafficking’s (CAST) comments to CIS No. 2499-10, DHS DOCKET No. USCIS-2010-0012, Inadmissibility on Public Charge Grounds; OMB Number 1615-0116, Document Number 2018-21106.

Founded in 1998 in Los Angeles, California, CAST was one of the first organizations in the United States to provide comprehensive social and legal services for survivors of human trafficking. Additionally, CAST opened the first shelter in the country exclusively dedicated to providing physically and psychologically safe housing for survivors. CAST serves male, female, and minor victims of trafficking. CAST clients come from almost every region of the world including Asia, Latin America, Eastern Europe, Africa, and the United States. To date, CAST has provided services to over 1,000 survivors and their family members, as well as thousands of hours of technical consultation to organizations working on this issue across the country and internationally, especially related to filing T-visas and other humanitarian relief for victims of human trafficking. Our daily experience providing legal and social services to survivors gives us critical information about the real-life experiences of trafficking victims and how the proposed request for fee waiver changes will impact victims from equitably and efficiently accessing the immigration relief that they are entitled to obtain.

First, we would like to commend DHS for allowing an opportunity for the public to comment on the proposed changes to inadmissibility on public charge ground. However, CAST is extremely worried about the impact these changes will have on survivors of human trafficking and other vulnerable immigrant populations. Based on CAST’s on the ground experience serving survivors
of human trafficking and providing national technical assistance and training to other attorneys, CAST hopes our public comments will provide additional information from the experiences of survivors of human trafficking and practitioners to better support DHS in carrying out the congressional intent to protect and serve victims of severe form of trafficking in persons and their immediate family. Thank you for continuously updating these immigration forms and for implementing changes that CAST has suggested in the previous public comments to other proposed rule and form changes.

The comments below are based on our experiences providing direct legal representation and providing national technical assistance to advocates assisting their clients file T visa applications and other forms of humanitarian immigration relief for victims and our understanding of congressional intent behind the enactment of the Trafficking Victims Protection Act (TVPA) of 2000 and its subsequent 4 authorizations, all of which CAST has been actively involved in passing and implementing for the past 18 years.

Proposed Change to Inadmissibility Ground of Public Charge is Contrary to Existing Law

We strongly oppose USCIS’s proposal to change the inadmissibility ground of public charge as this new proposed rule fails to recognize the complete statutory exemption for public charge for all T nonimmigrants, including when T-visa holders adjust to become a legal permanent resident. The proposed rule correctly recognizes that T visa applicants are statutorily exempt from the public charge ground of inadmissibility, but erroneously states that this public charge exemption does not apply to T-visa holders at the adjustment of status phase. Section 107(b)(1) of the Trafficking Victim Protection Act (TVPA) of 2000 first created an obligation under federal law to extend access to public benefits to T visa applicants.1 Congress explicitly provided T-visa holders access to public benefits to the same extent as refugees, including an explicit exemption to the public charge ground of inadmissibility that refugees obtain pursuant to Immigration and Nationality Act (INA) §207(c)(3) as refugees and INA §209(c) as the refugee files for adjustment of status.2 After the enactment of TVPA 2000, Congress realized that human trafficking survivors were still encountering barriers to accessing public benefits. In response, Congress codified its intent for human trafficking survivors to access public benefits without fear of penalty through creating an explicit statutory exemption to the public charge ground of inadmissibility for T-visa holders in two separate locations. First, Congress created the explicit public charge exemption with T applications in INA §212(d)(13) with the Trafficking Victim Protection Reauthorization Act (TVPRA) of 2003.3 Congress then specifically further clarified its intention to explicitly exempt T-visa holders applying for adjustment of status from the public charge inadmissibility

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2 Id.
ground pursuant to modifications of INA §212(a)(4)(E)(iii), the statute for the public charge ground of inadmissibility, through the Violence Against Women Reauthorization Act (VAWA) of 2013. Therefore, the proposed changes to the public charge ground of inadmissibility proposed by DHS is legal incorrectly as it erroneously states that T-visa holders are subjected to the public charge ground of inadmissibility at the adjustment phase. This erroneous proposed new standard will cause significant harm to trafficking survivors.

Proposed Changes to Public Charge Inadmissibility Ground If Implemented will Penalize Trafficking Survivors for Accessing Public Benefits

If the proposed changes to the ground of inadmissibility for public charge goes forward as drafted, human trafficking survivors will suffer significant harm. Many trafficking survivors escaping their victimization were in vulnerable situations often requiring immediate medical treatment, emergency housing, emergency cash aid, and access to counseling and therapy to address the trauma received from the trafficking victimization. Congressional intent to protect trafficking survivor’s recovery by creating specific public benefits would be undermined by the current proposed changes to the public charge ground of inadmissibility. First, under the proposed change, the definition of public charge would be broaden so that the government would find that even the modest use of public benefits would make a person likely to become a public charge in the future regardless of whether the public benefit was to meet basic needs for medical treatment or food or where access to the public benefits would be for a limited period of time. Currently, even if a trafficking survivor were not already exempt from public charge, accessing emergency, temporary public benefits, would not necessarily trigger the public charge ground of inadmissibility. The proposed broadening of the definition of public charge does not have a direct correlation of the future likelihood that a person would become a public charge on the government. These temporary public benefits are crucial for trafficking survivors’ recovery as well as adjustment of their family members that are newly arriving to live in the United State and many survivors and their families go on to becoming independent, contributing members to the U.S. once stabilized. Accessing temporary benefits or obtaining assistance for basic living needs do not directly correlate to future reliance on government benefits. The proposed changes to the public charge ground of inadmissibility are too broad and are contrary to congressional intent of welcoming new immigrants to the U.S.

Secondly, the current proposed change would erroneously find that T-visa holders are not exempt from public charge at the adjustment phase, and would penalize all T-visa nonimmigrants who would access these congressionally mandated public benefits that are only available to trafficking survivors after they were granted T-visas. If a trafficking survivor would elect to access

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4 VAWA 2013 §804 grants the exact same exemptions from public charge inadmissibility to all other immigrant victims who are qualified immigrants under Section 431(c) of PRWORA, including T nonimmigrant holders 8 U.S.C. 1641(c)(4). See Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, Section 804, 127 Stat. 111 (2013). See also 8 U.S.C. 1641(c)(4) (2018).
these congressionally mandated public benefits after being granted a T visa, under the proposed rule with the broader definition of public charge, they would then become inadmissible to become a legal permanent resident and would need to receive a discretionary waiver of inadmissibility, which is not guaranteed, to adjust statuses. This waiver of inadmissibility at adjustment phase is a separate form with a filing fee of $930, a staggeringly expensive additional fee that most trafficking survivors who have just begun to stabilize cannot afford. If adopted, the proposed change to the public charge inadmissibility ground creates the possibility that many trafficking victims will not access statutorily allowed benefits because of fear of not being able to adjust status.

Additionally, as attorney’s representing trafficking survivors we would ethically have to advise all clients of this risk, and therefore heighten trafficking survivors fears at one of the most critical phases of their recovery—when choosing to report to law enforcement and pursuing the T-visa. Many foreign national trafficking survivors already have a culturally difficult time accepting support like accessing public benefits. The new proposed changes to public charge compound this barrier to accessing benefits. Currently, service providers can assure foreign national human trafficking survivors that if they decide to seek a T-Visa and assist in cooperating with law enforcement with the criminal investigation of their trafficker they have a right to access public benefits without fear. We can further advise survivors that they will not be penalized for accessing this public benefits and can adjust status to remain permanently in the U.S. away from fear of retribution from their traffickers in their home countries. However, if the proposed changes to the public charge ground of inadmissibility are adopted, service providers will have to explain that they may be may be found to be ineligible to become a legal permanent resident because of public charge, and may have to return to their home country where they are often in most fear of retribution from their traffickers. First, in CAST’s experience most foreign national victims who need assistance have trouble understanding and trusting the current protections the law offers them even when explained repeatedly by lawyers and social service providers. These proposed changes will create a more complex standard of accessing crucial victims’ services and benefits that require the survivor to cooperate with law enforcement at their own peril, yet will not guarantee their ability to remain and receive continued protection in the U.S. from their traffickers if they access these crucial public benefits. This will cause survivors of trafficking to further distrust service providers and less likely to report to law enforcement. Second, foreign national victims will be less likely to seek help and report their traffickers to law enforcement without further protection of their safety placing greater risk to national security. Even if trafficking survivors do report their traffickers to law enforcement, if a survivor does not access crucial benefits, they are more likely to become destabilized during re-traumatizing criminal prosecutions and impede law enforcement investigations allowing more traffickers to remain free to exploit others in the U.S. causing additional risks to national security. The proposed changes to the public charge ground of inadmissibility should not be adopted as it would be detrimental and counterproductive to Congress’s intent to provide full access to crucial victims’ services to specifically support trafficking survivors and assist victims in supporting criminal investigations.
Proposed Changes to Public Charge Inadmissibility Ground will Cause Significant Delays in Applications to Adjust Status for Trafficking Survivors

Current processing times for adjustment of status applications for T-visa holders to become a legal permanent resident is approximately 14 months. If proposed changes to public charge for inadmissibility is adopted, it will be contrary to existing law that exempts T nonimmigrant status from the public charge inadmissibility and will require the adjudicators at the Vermont Service Center (VSC) to have to review and provide a waiver of inadmissibility for public charge for most adjustment of status application for T-visa holders as all T-visa holders automatically receive certification letters from the Department of Health and Human Services to access federal public benefits and case management on the approval of their T visa. The proposed changes will unnecessarily burden VSC adjudicators and human trafficking survivors. The proposed changes will cause even more significant delays in the processing of applications of adjustment of status and will increase adjudication expenses in reviewing all trafficking victims’ adjustment applications. Often traffickers threaten their victims with deportation from the US or threaten their victims that have temporary status or no status to control and force their victims to remain in their trafficking situations. A foreign national trafficking survivor cannot truly move beyond these vulnerabilities that their trafficker’s used to exploit them until they receive legal permanent residency and the proposed changes will cause even further unnecessary delay and harm thousands of T nonimmigrant trafficking survivors.

Proposed Changes to Public Charge will Lower the Numbers of Trafficking Survivors from being Identified

Many trafficking survivors do not self-identify as a trafficking survivor as human trafficking is a less obvious crime that often involves multiple layers of manipulations and lies that diminishes an individual’s right to self-determination. Often, individuals are not identified as a trafficking survivor until they have spoken with first responders like domestic violence or sexual assault advocates, health care professionals, or other community-based advocacy groups. Proposed changes to the public charge ground of inadmissibility will cause an additional chilling effect within immigrant communities and could likely prevent victims from seeking help because of fear of immigration consequence. According to a survey of service providers that serve trafficking survivors, nearly 70% of service providers believed that survivors would remain with their traffickers longer given the recent shift in immigration policies and 82% of service providers affirmed that survivors had concerns about reporting to law enforcement. CAST believes that these numbers will rise and more trafficking survivors will remain in their trafficking situation and be afraid to report the

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trafficking to law enforcement if the proposed public charge rule will be adopted. The proposed changes to public charge will prevent foreign national survivors reaching out for assistance for other crimes like domestic violence, sexual assault, and other crimes and this will cause less trafficking survivors from being identified.

Secondly, safety net public benefits, like Medi-Cal or emergency shelter can help victims recover and safely escape from abuse and report and assist in any law enforcement investigation. Therefore, these safety net benefits play a significant role in preventing future harm to other potential victims. Yet, under the proposed rule foreign national survivors of trafficking will be penalized for accessing even the modest use of public benefits that are not long-term and for non-financial benefits under the new proposed public benefit test. Regardless of whether waivers of grounds of inadmissibility exist for trafficking survivors, in CAST experience, any chance of jeopardizing a foreign national survivor’s ability to become a legal permanent resident prevents these survivors from accessing public benefits that they are not only legally entitled to receive but often crucially need. The negative impacts of trafficking survivors from accessing public benefits under the proposed rule will feed into the current climate of fear that will keep trafficking victims from being seeking assistance and being identified.

**Proposed Changes to Public Charge Inadmissibility Disproportionately Impacts Survivors of Color and will Specifically Harm non-English Speaking Trafficking Survivors**

First, USCIS proposes to establish 125 percent of the FPL (FPL) as a minimum threshold for evaluating whether an applicant had sufficient resources to avoid becoming a public charge. We strongly oppose the use of this arbitrary and unreasonable threshold. There is no statutory basis for it. The proposed changes to public charge inadmissibility are contrary to existing law and erroneously states that T visa holders are not exempt from the public charge ground of inadmissibility at the adjustment of status phase. If these proposed changes are adopted, then T-visas holders will be subjected to the public charge ground of inadmissibility and would require obtaining a discretionary waiver of inadmissibility for public charge. Many of the proposed changes to public charge will harm trafficking survivors, but we fear that this arbitrary income threshold will have devastating impacts on trafficking survivors as well as other victims of crime. Trafficking survivors are often victims of fraud, financial abuse, and often face dire consequences from their victimization from psychological trauma, a large amount of debt, as well as criminal records from crimes their traffickers forced them to commit. In CAST’s experience, foreign national survivors of trafficking remain in fear of having to return to their home countries where they face the fear of retaliation from their traffickers. It is only when they are able to adjust status to that of legal permanent resident that this fear subsides and they are able to truly recover from their trafficking experience. Congress acknowledge this need and created an expedited process for early adjustment of status for trafficking survivors to become a legal permanent resident. Consequently, at CAST, many of our foreign national trafficking survivors are ready to adjust as
early as six months after they receive their T visas and as early as within two years of escaping their trafficking situation. These survivors of trafficking, in particular, will still be dealing with the repercussions from the trafficking including recovering from their trauma, repairing bad credit history, and vacating crimes their traffickers forced them to commit to repairing their criminal history. Other survivors who have gained full-time employment are still reporting that they are struggling to pay higher than minimum wage jobs and would fail to meet this 125% of FPL income threshold although they are working full-time. As a result, many survivors will not be able to meet this minimum income threshold and would be further harmed if found to be inadmissible due to public charge.

Secondly, USCIS also proposes to include English proficiency as a factor to be considered in an individual’s assessment of the likelihood of the individual becoming a public charge. CAST believes that this proposed English proficiency factor is without merit as it is not authorized by the public charge statute nor supported with congressional intent. Many of the trafficking survivors that we have served at CAST are from non-English speaking countries. For many trafficking survivors, return to home country is not a choice due to fear of retaliation in home country by their traffickers or lack of victims’ specific resources in home country that are needed for their recovery. As a result, for many trafficking survivors, remaining in the U.S. is the safest option. However, the new proposed rule will cause additional harm to trafficking survivors who have yet to gain proficiency in English as they have newly entered the U.S. or have been intentionally barred from learning English or accessing education by their traffickers.

These proposed changes would be contrary to congressional intent to protect and assist trafficking survivors’ recovery from their victimization. CAST opposes the proposed changes to the public charge ground of inadmissibility.

We appreciate the opportunity to comment on the proposed changes to the Inadmissibility on Public Charge Ground. Thank you in advance for your consideration and we look forward to a continuing dialogue with USCIS on these important issues. For more information, contact Kay@castla.org.

Respectfully submitted,

Kay Buck
Executive Director