Public Charge Provisions of Immigration Law:

A Brief Historical Background

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August, 2018

Historical Origins of the Likely to Become a Public Charge (LPC) Exclusion

Strong sentiments opposing the immigration of "paupers" developed in the United States well before the advent of federal immigration controls. During the colonial period, several colonies enacted protective measures to prohibit the immigration of individuals who might become public charges.[1] In the nineteenth century, before the existence of a federal agency responsible for overseeing immigration policies, eastern seaboard states such as New York and Massachusetts enacted state laws that restricted the immigration of aliens deemed likely to become dependent on public institutions such as poor houses. These states also charged steamship companies a "head tax" for each foreign passenger they landed in order to defray the cost of caring for, and sometimes removing, indigent immigrants who ended-up in state-funded facilities.[2]

Steamship companies and merchants who favored open immigration challenged state head-taxes as impediments to free commerce. In response, state charity boards argued for the necessity of the head-tax in funding the care of foreign-born paupers and favored stronger protective laws to prevent additional influxes of destitute immigrants who could not care for or support themselves.[3] The legal

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[1] E.P. Hutchinson, *Legislative History of American Immigration Policy*, (Philadelphia: University of Philadelphia Press, 1981), 390-393; Hidetake Hirota, *Expelling the Poor: Atlantic Seaboard States & the Origins of American Immigration Policy*, (New York: Oxford University Press, 2017).

The Massachusetts colony led these efforts and as early as 1645 the colony passed a law forbidding the admission of indigent migrants. This law was followed in the 18th century by other laws prohibiting the landing of "Sick, Lame, or Otherwise Infirm Persons," and calling for bonds that were forfeited if immigrants of questionable means became public charges.

[2] Hirota, *Expelling the Poor*, 180-204.

[3] States used the funds collected from the immigrant head-tax to reimburse hospitals and charitable institutions ("poor houses," orphanages, asylums, etc.) that cared for indigent immigrants. For example, in 1873, the Commissioners of Emigration for the State of New York reported that the state paid $24,993.64 to county and city poor houses and $7,684.60 to various charitable institutions for the care of destitute immigrants. For the years 1841-1873, the state paid out a total of $1,411,474.33 for the care and maintenance of Immigrants. See *Annual Report of the Commissioners of Emigration of the State of New York for the Year Ending December 31, 1873* (New York: F.R. Fisher, 1873), 175-176, 240.

19th century state exclusion laws were in part a reaction against "assisted emigration," the practice of European governments, charitable organizations, landowners, and others funding the emigration of paupers to the United States. Concerns about this practice later found expression in federal laws excluding "assisted

dispute over the state head-taxes reached a turning-point in 1875, when a lawsuit challenging the practice brought by a shipping company against the Mayor of New York reached the Supreme Court.[4] The Court decided that the state-imposed head-taxes interfered with Congress's authority to regulate commerce and struck them down. Fearing the loss of funds needed to administer immigration policies and care for poor immigrants, eastern states immediately began to lobby Congress for a federal immigration head-tax to replace the defunct state taxes.

The eastern states' concerns about poor immigrants and the cost of caring for them found expression in the first general federal immigration statute of 1882.[5] The 1882 law excluded "any person unable to take care of himself or herself without becoming a public charge."[6] The 1882 Immigration Act also created a federal immigration head-tax, which was used to defray the cost of regulating immigration and to care for immigrants who arrived in the U.S., including those who fell into economic distress. However, the law did not create a federal immigration agency; instead it authorized the Secretary of the Treasury to enter into contracts with state immigration commissions to administer federal policies. Thus, in many ways, the 1882 federal law depended on state immigration commissions, who enforced the public charge exclusion policy and used money from the federal immigration head-tax fund to pay state and local charities that cared for immigrants.

While the 1882 federal law did not provide any definition of a "public charge" or any guidelines for determining who was likely to become one, state Immigration Commission reports suggest that officials took numerous factors into account, including an immigrant's willingness to work, when making decisions in LPC cases. For example, in 1884 the Pennsylvania Board of Commissioners of Public Charities reported that a large number of Hungarians who were "poor, pecuniarily" were permitted to land because they were "strong, hearty people, and quite willing to work…"[7] In other cases the state boards landed questionable immigrants upon receiving guarantees from charitable organizations and/or bonds from the steamship companies that would be paid if the immigrants became public charges.

The general Immigration Act of 1891 completed the federalization of immigration regulation by creating the office of the Superintendent of Immigration and a federal Immigration Service to inspect all arriving aliens.[8] The 1891 law also retained the head-tax provision and the exclusion of "paupers or persons

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immigrants," which provided another method of excluding the poorest potential immigrants. See Hirota, *Expelling the Poor*, 70-82.

[4] Henderson v. Mayor of City of New York, 92 U.S. 259 (1875).

[5] Act of August 3, 1882 (22 Stat. 214; 8 U.S.C.).

[6] In addition to public charges, the law also excluded any "convict, lunatic, [and] idiot." These categories would be added to as American immigration law evolved.

[7] *Second Immigration Report of the Board of the Commissioners of Public Charities of the State of Pennsylvania for Year Ending June 30, 1884* (Philadelphia: Jos. H. Weston & Son, 1884), 14.

[8] At various time in its organizational history, the Immigration Service was formally known the Bureau of Immigration, the Bureau of Immigration and Naturalization, and the Immigration and Naturalization Service

likely to become a public charge."[9] In the Act of March 3, 1903 Congress added "professional beggars" as a class of exclusion.[10] A 1907 law then added additional language that excluded potential immigrants with a "mental or physical defect being of a nature which may affect the ability of such an alien to earn a living."[11] The Immigration Act of 1917 added "vagrants" to the LPC provision and this version of it remained substantially unchanged when it was incorporated into the 1952 Immigration and Nationality Act.[12] The INA left the LPC policy substantively the same, but added language explicitly emphasizing the discretionary authority of administrative officers in the Department of State and the Immigration Service to determine the definition of "LPC."[13] In sum, a version of the LPC provision has been part of federal immigration policy from its foundations and it has consistently remained one of the most common grounds for immigrant inadmissibility.[14]

Brief History of Laws Providing for the Removal of Aliens Who Have Become Public Charges

In addition to providing for the exclusion of likely public charges, U.S. immigration law has long provided for the removal of immigrants who become dependent on public aid. The Immigration Act of 1891 established the federal government's authority to remove aliens who entered unlawfully, a category that included immigrants who could be shown to have entered when they were LPC.[15] The 1891 Act also provided a deportability period of one year after arrival for immigrants who *actually became* public charges as the result of a condition that existed prior to their arrival. Congress extended this

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(INS). Throughout these name changes, the organization responsible for administering federal immigration policies remained largely intact and referred to their agency and the corps of federal employees who staffed it as the "Immigration Service." Likewise, this paper uses that term to refer the agency that administered federal immigration policy from 1891-2003.

[9] Act of March 3, 1891 (26 Stat. 1084; 8 U.S.C. 101).

See Charles Gordon, Stanley Mailman, and Stephen Yale-Loehr, *Immigration Law and Procedure*, Volume 5 (Newark, New Jersey: Matthew Bender & Company, 2008), 2-281. The Immigration Act of 1891 also excluded aliens whose passage was paid by others or whose journey had been financially assisted by others.

[10] Act of February 14, 1903 (32 Stat. 825; 8 U.S.C.).

[11] Act of February 20, 1907 (34 Stat. 898; 8 U.S.C.).

[12] Act of February 5, 1917 (29 Stat. 874; 8 U.S.C.).

[14] INS statistics do not reflect the true number of aliens excluded due to the LPC provision after roughly 1930, when the majority of exclusion decisions began to be made abroad by consular officials and not at ports of entry by the Immigration Service. See below.

[15] Aliens who entered despite being likely to become public charges were included as "unlawful entries." The period of deportability for unlawful entry was lengthened from one year in 1891, to three years in 1903, to five years in 1917, and to no time limit in 1924 and thereafter. After the fact deportation for LPC required federal officials to retrospectively show that at the time of arrival an individual was likely to use public aid at some point in the future and therefore should have been excluded. Immigration officials often found this argument too difficult to prove in deportation cases. See Charles Gordon, "Aliens and Public Assistance," *Immigration and Naturalization Service Monthly Review* VI, no 9 (March, 1949), 117.

deportability period to two years in 1903 and three years in 1907[16]. The immigration Act of 1917 altered this provision, stipulating that aliens who became public charges "from causes not affirmatively shown to have arisen subsequent to landing" within five years of arrival were subject to deportation.[17] Additionally, the 1917 law removed the time limit on deportation: if an immigrant was shown to have become a public charge within five years of arrival they could be deported at any time, no matter how long they had resided in the U.S. The 1952 INA retained the provision that aliens who became public charges within five years of their arrival due to causes not affirmatively shown to have arisen since their entry could be deported at any time, and this has remained in the law since.

Additionally, the Immigration Act of 1917 provided for the removal at public expense of aliens who "fall into distress or need public aid from causes arising subsequent to their entry and are desirous of being so removed."[18] Though not formal deportation, this law provided a means for the federal government to remove indigent aliens who desired to return to their home countries. During the Great Depression many aliens departed the United States under this voluntary provision.

Brief History of Administrative Enforcement of Likely to Become Public Charge Policies

For several decades, immigration laws and regulations included no exact standard for determining which aliens should be deemed LPC. Instead, enforcement of the LPC exclusion provision relied upon immigration officers' and consular officials' subjective discretion and required them to use "prophetic judgement" to determine whether the entrant offered an acceptable risk for the future.[19] As a result, officials applied the provision widely and often inconsistently.

From 1892 to 1924 the public charge exclusion was enforced at ports-of-entry by immigration officers who examined arriving immigrants. Officers generally relied upon immigrants' appearances and the amount of money they carried to make an initial LPC determination. Like other immigrants initially categorized as inadmissible, immigrants deemed LPC during primary inspection appeared before a Board of Special Inquiry (BSI), in most cases a panel of three immigration officers, who gathered more information from the immigrant. In LPC cases the BSI normally inquired about the immigrant's health, financial situation, willingness to work, and family members in the U.S. who could contribute to their support.[20] In general, immigrants who showed they had no physical or mental conditions that could

[16] Act of February 20, 1907 (34 Stat. 898; 8 U.S.C.).

[17] Act of February 5, 1917 (29 Stat. 874; 8 U.S.C.). The change in wording to "from causes not affirmatively shown to have arisen subsequent to landing," placed the burden of proof on the alien to demonstrate that the cause of becoming a pubic charge arose after his arrival to the U.S.

[18] In 1937 this law was amended so that it also stipulated that individuals removed at government expense be deemed "forever ineligible for readmission," making it more closely resemble formal deportation. Act of May 14, 1937 (50 Stat. 164; 8 U.S.C. 102).

[19] Gordon, Et al., *Immigration law and Procedure*, 2-281

[20] Passenger manifests included a column in which shipping companies listed the amount of money each passenger claimed to be carrying, which in some years stipulated a minimum amount, such as $50. While this

prevent them from working and who demonstrated a willingness to work were admitted. Aliens held as inadmissible by the BSI could appeal the decision to Immigration Service Headquarters. A majority of immigrants who appealed the BSI decision were admitted on appeal. In many of these cases the Immigration Service required a bond of financial support from a friend or family member as a condition of admission.[21]

Overall, during the early twentieth century, only about 2% of newly arrived aliens were excluded for any reason. Of these, roughly 2/3 were excluded as LPC.[22] Because of the LPC exclusion's widespread usage, as well as its reliance on Immigration Officials' discretion rather than any formal standardized definition, contemporary observers often noted that it worked as a "catchall" category of exclusion. Immigration Examiners often used the LPC exclusion when they doubted an alien's qualifications for admission but could not find them excludable under any other section of the law.[23] Examiners labeled doubtful immigrants as LPC so that officers could gather more evidence against them during BSI hearings and examiners also routinely listed LPC as a secondary (or backup) reason for exclusion along with the primary, and sometimes more difficult to establish, reason for exclusion.

With the advent of the visa system in 1924, the primary inspection of immigrants moved to American consuls overseas and consular officers became the principal officials who determined if an alien should be excluded as a LPC. Under this system, immigrants still faced inspection by Immigration Service officers upon arrival at a U.S. port-of-entry; despite the visa requirement, a visa did not guarantee admission. Immigration officers could determine that an immigrant holding a visa issued abroad by the State Department was inadmissible and order him or her excluded. This two-tiered inspection system made it less likely that an alien with questionable means of support would arrive at a U.S. port for inspection. As a result, the number of LPC exclusions issued by Immigration Service officials dropped precipitously during the 1920s and later. However, this did not necessarily equate to a decline in LPC denials, since the vast majority of denials now took place abroad [See Tables 1 and 2].[24]

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information was used to help determine whether an immigrant was likely to fall into economic distress after arrival, it was one of several factors considered and there was no amount of money required of immigrants entering the U.S.

[21] Prior to 1952, laws preventing the immigration of contract laborers made it impossible for immigrants to use an existing employment offer as a defense against the LPC charge. After the 1952 repeal of contract labor laws, an offer of employment became one of the most common ways for immigrants to avoid LPC exclusion. For contract labor, see the Act of March 3, 1875 (18 Stat. 477; 8 U.S.C.), for example.

[22] Dorothee Schneider, *Crossing Borders: Migration and Citizenship in the Twentieth-Century United States* (Harvard University Press: Cambridge, Massachusetts, 2011), 84.

[23] See, for example Jane Perry Clark, *Deportation of Aliens from the United States to Europe* (New York: Columbia University Press, 1931), 104.

[24] Gordon, "Aliens and Public Assistance," 115.

After the onset of the Great Depression, President Herbert Hoover, citing poor economic conditions and widespread unemployment, directed U.S. consular officials to more strictly enforce the LPC exclusion. Under the new instructions, consular officials were to deny a visa to any applicant who "may probably be a public charge at any time, even during a considerable period subsequent to his arrival."[25] To enforce the directive, consuls began requiring that applicants demonstrate substantial assets or present an affidavit of support from a U.S.-based sponsor.[26] Under this policy, the LPC provision excluded poor, able-bodied, and willing-to-work immigrants.[27] This interpretation represented a shift away from the original intent of the policy, which was meant to exclude only those who could not or would not work, as opposed to those who were capable of work and were merely poor at the time of applying for admission. Hoover requested that this new, more strict administrative interpretation of the LPC exclusion be backed by law, but Congress failed to act upon his proposal. Administratively, however, affidavits of support from U.S. based sponsors and/or proof of existing means of support became essential in the State Department's enforcement of the LPC exclusion and have remained so since.

After the Department of State adopted the affidavit of support policy, fewer indigent aliens arrived at U.S. ports and the Immigration Service faced fewer LPC cases.[28] In the cases they adjudicated, however, the Service continued to consider a variety of factors beyond the applicant's current financial conditions when making decisions. For example, the Immigration Service's 1949 regulations reads: "In the absence of a statutory provision, no hard and fast rule can be laid down as to the amount of money an alien should have. This is only one element to be considered in each case, but generally he should have enough to provide for his reasonable wants and those of accompanying persons dependent upon him until such time as he is likely to find employment and when bound for an interior point, railroad ticket or funds with which to purchase same." [29]

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[25] Roger Daniels, *Guarding the Golden Door: American Immigration Policy and Immigrants since 1882* (New York: Hill and Wang, 2004), 60-61. Daniels also points out that this stricter interpretation of the LPC clause began even before the Great Depression in 1928, when it was used on a localized basis on the southern border to reduce Mexican immigration. The practice then expanded to the Canadian border and finally to all ports.

[26] Daniels, *Guarding the Golden Door*, 61 and Charles Gordon, "Aliens and Public Assistance," 115.

[27] Daniels argues that this shift in practice moved the policy away from the original intent of the law. See Daniels, *Guarding the Golden Door*, 28.

[28] In 1934, the Commissioner of Immigration credited the State Department's rigorous enforcement of the LPC clause with effectively reducing immigration and lessening the helping to solve the unemployment problem:

A further reduction in immigration was effected, beginning in 1930, through strict interpretation of the "liable to become a public charge" clause in the Immigration Act of 1917. Under this policy immigration from both quota and nonquota countries has been reduced to an annual average of 46,313 (1931-34). As a result, the problem of caring for the unemployed has not been aggravated by an influx of aliens to compete in the labor market with those born in this country or previously admitted." See, *Twenty-Second Annual Report of the Secretary of Labor for the Fiscal Year Ended June 30* (Washington, D.C.: United States Government Printing Office, 1935), 48.

[29] *8 CFR 110.42*, 1949.

Or, as Immigration and Naturalization Service (INS) Counsel Charles Gordon put it in 1949:

> "It is wrong to assume that poverty alone will disqualify an immigrant. Such an assumption is refuted by the epic American story which tells of millions of immigrants—largely the poor and oppressed of other lands—who have found vast opportunities in America… What is more important than immediate assets is the desire to become a productive member of the community, coupled with freedom from serious physical and mental deficiencies."[30]

Deportation for becoming a pubic charge while already residing in the U.S., as opposed to exclusion for being likely to become a public charge, also continued to be enforced throughout the twentieth century, although at much lower numbers than LPC exclusion rates.[31] For example, even during the Great Depression, in some years, less than 100 individuals were removed as public charges.[32] In 1950, the Immigration Service reported that in the previous three and a half years, only 80 individuals had been deported as public charges, most because they had been institutionalized for debilitating psychological and physical conditions.[33] By the 1950s, deportations of public charges dipped into the single digits, where they remained until INS stopped reporting them separately in the 1980s. In part, this was likely due to stricter overseas enforcement of LPC admissions policy by the State Department as well as INS's increased use of alternate methods of removal such as voluntary repatriation [See Table 3].[34]

Over the course of the twentieth century, the widespread use of the public charge provisions of immigration law, as well as their discretionary nature, led to several disagreements over how they should be interpreted.[35] Because the law contained no specific definition for LPC or for what types of aid constituted grounds for deportation as a public charge, judicial and administrative decisions played important roles in determining how the public charge provisions were defined. Significantly, in 1915, the Supreme Court decided that the LPC determination should be made using the personal characteristics of the aliens applying for admission rather than external factors such as the local economic conditions at

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[30] Gordon, "Aliens and Public Assistance," 116.

[31] Watson B. Miller, Commissioner of Immigration and Naturalization, "Aliens Deported as Public Charges," *Immigration and Naturalization Service Monthly Review* VII, no 11 (May, 1950), 144.

[32] This was in part due to the Immigration Service increasingly allowing deportable immigrants to depart voluntarily rather than go through full removal proceedings. Also, during the Great Depression the Immigration Service did not deem mere acceptance of public aid as grounds for removal. Clark, *Deportation of Aliens*, 80-81.

[33] Miller, "Aliens Deported," 144.

[34] Additionally, in the early 20th century some states (most prominently New York) passed laws of their own providing for the deportation of aliens who had become dependent of public aid. In most cases these aliens were removed by the states without federal cooperation and are not included in federal deportation statistics. See Clark, *Deportation of Aliens*, 122-132.

[35] Clark, *Deportation of Aliens*, 73.

the aliens' intended destinations, a guideline that remained a guiding principle in the Immigration Service's enforcement of the law.[36] In 1948, the Board of Immigration Appeals (BIA) defined the criteria for determining if an alien was *deportable* as public charge. Under this decision, to remove an alien, the government had to show that: (1) The State or other governing agency imposed a charge for the services rendered to the alien; (2) the authorities demanded payment of the charges; and (3) the alien failed to pay the charges.[37] In 1974, the BIA determined that the government needed to consider a "totality of circumstances" when determining if an alien was *excludable* as LPC.[38] Relying in part on legislative history and the INS's previous policies, the Board determined that government officials should consider many factors including physical and mental health, age, financial status, and availability of familial support when determining LPC status. While these decisions provided guideposts for determining INS policy, the courts did not set strict criteria for deciding LPC cases and the category remained elastic and largely dependent on the enforcing agency and officers' discretion.

Welfare Reform and Immigration Policy in the 1990s

In 1996, President Bill Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) into law.[39] The PRWORA imposed new restrictions on aliens' eligibility for many federal, state, and local public benefits. In short, the law barred recent immigrants from receiving federal means-tested public benefits, such as Temporary Assistance for Needy Families (TANF), the Supplemental Nutrition Assistance Program (SNAP), and the Children's Health Insurance Program (CHIP). However, the law provided exemptions for certain types of aid, such as emergency medical care, and also exempted certain categories of noncitizens, including refugees and asylees. Though Congress acted to make it clear that certain lawfully present aliens remained eligible for many forms of public aid, confusion about eligibility for aid remained.[40] Many immigrants and their advocates also wondered if accepting any form of aid, even those permitted under PRWORA, could result in immigrants being found deportable as public charges. This caused some immigrants to avoid using essential types of aid, such as medical assistance and basic nutrition programs. As a result, the INS reported that some state and federal aid agencies believed the law had created "significant, negative public health consequences across the country."[41]

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[36] *Gegiow v. Uhl 239 U.S. 3 (1915).* In this case, the court concluded that LPCs had to be excluded based on "the ground of permanent personal objections accompanying them irrespective of local conditions…"

[37] *Matter of B ---,* 3 I. & N. Dec. 323 (BIA 1948).

[38] *Matter of Harutunian*, 14 I. & N. Dec. 583 (BIA 1974).

[39] Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (110 Stat. 2105).

[40] Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998 (112 Stat. 2926, 2927, 2928, 2929 and 2930; 8 U.S.C. 1611 and 1621).

[41] Department of Justice, Immigration & Naturalization Serv., Inadmissibility and Deportability on Public Charge Grounds: Proposed Rule, 64 Fed. Reg. 28676 (May 26, 1999). This proposed rule is discussed in Congressional

Also in 1996, President Clinton signed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).[42] Among its many provisions, this law created a new, legally-enforceable affidavit of support requirement for immigrants who could not show a work history or offer of employment that demonstrated their capability to maintain an income above the poverty level. While the State Department had required low-income applicants to submit affidavits since the 1930s (a process that was formalized with INS Form I-134), the courts had determined that the affidavits were legally unenforceable as an obligation to reimburse the government for public aid rendered.[43] To address this, the IIRIRA created a new, legally enforceable affidavit of support which required that sponsors of all family-based visa applicants demonstrate that they were capable of maintaining the sponsored immigrant at an income level not less the 125% of the poverty level (Form I-864). The new affidavit requirements, combined with restrictions on aid contained in the PRWORA, led to misunderstandings about how INS and the State Department intended to define and enforce the LPC and public charge provisions of immigration law.

As a result of the confusion created by the PRWORA and IIRICA, in 1999 the Clinton Administration issued a proposed regulation that formally defined the "public charge" category and set up rules for determining LPC inadmissibility.[44] The proposed regulations defined a public charge as someone "primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense." The proposed rule also reaffirmed that INS would consider the "totality of circumstances" when considering LPC for Lawful Permanent Resident (LPR) applicants. In addition, the INS stated it would not consider healthcare benefits, food programs, and other non-cash granting public benefits when determining LPC status for admission. However, the INS could consider use of cash welfare, such as Supplemental Security Income (SSI), cash Temporary Assistance for Needy Families (TANF), and state General Assistance; as well as long term institutionalization at the government's expense, when making LPC determinations. The regulations also stated that INS would not consider aid to an applicant's children and family members when determining LPC status.

Research Service, "Public Charge Grounds of Inadmissibility and Deportability: Legal Overview," CRS Report R43220, February 6, 2017.

[42] Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (10 Stat. 3009).

[43] *San Diego County v. Viloria* (276 Cal. App. 2d 350, 80 Cal. Rptr 869 (Cal. App. 1969) held: The purpose of the sponsor's affidavit, whether the parties contemplated a legal or moral obligation, was to assure the consular officer those incidents known to the consul indicating the alien was likely to become a public charge would not occur. It was not the purpose of the affidavit to create an obligation to reimburse a governmental agency for services rendered the alien when he became a public charge.

[44] Department of Justice, Immigration & Naturalization Serv., Inadmissibility and Deportability on Public Charge Grounds: Proposed Rule, see note 36.

The INS never finalized this proposed rule but the policies it contained were included in field guidance that covered deportability and inadmissibility on public charge grounds issued by INS in 1999.[45] This guidance, sometimes referred to as the Pearson Memorandum, remained the basis of INS's interpretations of the public charge provisions until INS was abolished in 2003 and USCIS became the agency responsible for administering immigration benefits. In subsequent years, USCIS has largely retained the guidance in the Pearson Memorandum, supplementing it with special guidance for certain classes of immigrants.[46]

Conclusion

Immigration policies barring the admission of aliens likely to become public charges predate federal immigration regulations and have been a part of U.S. immigration policy since the first general immigration law of 1882. For more than 100 years the LPC provision remained one of the most common reasons for excluding immigrants from the United States. Federal policies providing for the deportation of immigrants who have actually become public charges date to 1891 and also remain part of current immigration law. Deportations of public charges already living in the U.S. have been much less common than LPC exclusions of aliens attempting entry, especially in the years since the first decades of the twentieth century.

Historically, immigration laws have not clearly or expressly defined how an immigrant's likeliness to become a public charge should be decided and the policy has largely been determined by judicial decisions, administrative interpretations, and the subjective discretion of enforcing officials. At times, reliance on administrative discretion produced divergent interpretations of how LPC should be defined.

In general, the Immigration Service considered a variety of factors when deciding LPC cases, rather than primarily relying upon the immigrant's economic situation at the time of arrival. The Immigration Service chiefly excluded immigrants with significant physical or mental incapacities that prevented them from working. Immigrants who were poor but capable of working were usually admitted, sometimes under a required bond or affidavit of support. During the Great Depression, the Department of State, which had become the agency responsible for the primary inspection of immigrants overseas after the Immigration Act of 1924, developed policies for determining LPC status that placed more emphasis on the applicants' economic condition at the time of applying, such as requiring income measures and affidavits of support. Since that time, an administratively-defined combination of both interpretations has been used in making LPC determinations.

Use of public aid has long been one consideration used to determine if an alien should be deemed LPC or deported as a public charge. For most of the twentieth century, only immigrants who depended primarily on public aid or had experienced long term institutionalization were subject to deportation as

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[45] Field Guidance on Deportability and Inadmissibility on Public Charge Grounds [64 FR 28689] [FR 27-99], dee https://www.uscis.gov/ilink/docView/FR/HTML/FR/0-0-0-1/0-0-0-54070/0-0-0-54088/0-0-0-55744.html.

[46] Congressional Research Service, "Public Charge Grounds of Inadmissibility," 7. For the continued prominence of the Pearson Guidance, see copies of the public charge page on www.uscis.gov, INS and USCIS Fact Sheets, and other documents (1999-2017) available from the USCIS History Office and Library.

public charges. When excluding aliens, the government usually considered their prior use of public aid as one of many factors contributing to the LPC determination. Welfare reforms during the 1990s greatly reduced noncitizens' access to federal means-tested public benefits and brought new attention to immigrant's use of public aid. As a result, the INS developed more-detailed guidance concerning how the public charge provisions of immigration law should be interpreted with regard to aliens' use of federal public assistance. This guidance never became a formal regulation, but it remains the main source of USCIS's current interpretation of the public charge provisions.

Table 1:

Aliens Excluded as Likely to Become a Public Charge, by Decade

Decade	Aliens Excluded as Likely to Become a Public Charge	Total Aliens Excluded	Percentage Excluded as Likely to Become a Public Charge
TOTAL	**219,421**	**633,918**	**35%**
1892-1900	15,070	22,515	66%
1901-1910	63,311	108,211	59%
1911-1920	90,045	178,109	51%
1921-1930	37,175	189,307	20%
1931-1940	12,519	68,217	18%
1941-1950	1,072	30,263	4%
1951-1960	149	20,585	<1%
1961-1970	27	4,831	<1%
1971-1980	31	8,455	<1%
1981-1984	3	3,425	<1%

Note: The Immigration and Naturalization Service stopped reporting exclusions for likelihood to become a public charge in the 1980s because they had become so infrequent. This does not mean that the exclusion had become insignificant. Instead, it reflected the fact that the majority of exclusions were issued by the State Department at consular offices abroad.

Source: *Immigration and Naturalization Service Statistical Yearbook*, 1995.

Table 2:

Visa Applicants Denied as Likely to Become a Public Charge, 1966-2017

	Immigrant		Non-Immigrant	
YEAR	Ineligible	Overcome	Ineligible	Overcome
2017	3,237	2,016	51	4
2016	1,076	912	33	5
2015	897	1,011	35	9
2014	3,112	3,311	249	12
2013	3,544	3,374	349	14
2012	4,901	5,218	261	19
2011	6,861	6,742	208	17
2010	10,869	7,516	171	16
2009	9,521	6,140	386	35
2008	6,862	5,198	743	52
2007	5,034	4,247	560	43
2006	6,650	6,155	717	83
2005	9,559	13,665	1,341	223
2004	14,271	14,603	2,302	878
2003	10,301	13,988	3,033	296
2002	17,511	17,825	2,472	300
2001	27,580	21,689	1,182	210
2000	46,450	30,165	825	62
1999	75,608	36,320	1,674	65
1998	78,395	21,868	7,528	192
1997	39,077	12,888	5,589	555
1996	33,230	11,327	3,430	362
1995	25,782	11,447	3,299	370
1994	24,835	11,593	4,960	249
1993	19,315	8,510	4,500	132
1992	8,811	4,285	3,502	636
1991	7,287	5,654	3,701	1,095
1990				
1989	64,337	9,875	3,108	1,217
1988				
1987	15,895	12,981	4,350	1,230
1986	23,108	11,360	2,350	991
1985	19,886	10,087	3,095	641
1984	20,129	12,649	2,582	374
1983	17,669	13,042	3,780	745
1982				

1981				
1980	25,537	14,077		
1979	28,468	17,200	7,741	1,469
1978	47,101	25,564	11,227	1,913
1977	46,470	18,207	23,950	
1976	47,786	16,837	14,905	4,298
1975	39,062	13,985	14,826	4,572
1974	23,878	11,639	14,596	3,052
1973	18,284	10,117	10,320	2,778
1972	14,323	7,324	10,283	2,178
1971	11,820	6,065	12,011	2,920
1970	8,011		13,818	
1969	9,521		6,108	
1968	10,506		6,094	
1967	13,367		4,410	
1966	24,145		4,945	

Source: *Annual report of the Visa Office*

Note: Data is not available for all years. Data for the years 1924-1966 was not accessible to the authors of this paper.

Table 3:

Aliens Deported as Public Charges, 1908-1980

YEAR	TOTAL	PUBLIC CHARGE	PERCENTAGE PUBLC CHARGE
1908-1910	6,888	474	7%
1911-1920	27,912	9,086	33%
1921-1930	92,157	10,703	12%
1931-1940	117,086	1,886	2%
1941-1950	110,849	143	<1%
1951-1960	129,887	225	<1%
1961-1970	96,374	8	<1%
1971-1980	231,762	31	<1%

Source: 1995 Statistical Yearbook of the Immigration and Naturalization Service

Note: INS stopped separately reporting deportations of public charges in 1987 because they had become so uncommon.