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Welfare and Immigration Reform: Refusing Aid to Immigrants

Emily Stubbs†

I. INTRODUCTION

In 1996, Congress enacted two pieces of legislation that have radically changed the nature of public assistance for immigrants. One is the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("Welfare Act"),¹ and the other is the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("Immigration Act").² The Welfare Act denies most federal benefits to immigrants and imposes substantial restrictions on state-based aid. The Immigration Act provides for further restrictions on benefits to immigrants, although it also provides some exceptions for battered immigrant women.

II. THE REFORMS: CATEGORIZING IMMIGRANTS TO DENY ELIGIBILITY

The Welfare Act and Immigration Act both will have a detrimental effect on immigrant women. In 1996, almost 800,000 non-U.S. citizens received Supplemental Security Income ("SSI").³ On the broadest level, the Welfare Act denies federal benefits, such as SSI and food stamps, to immigrants.⁴ The ban applies to all immigrants, including legal immigrants who have resided in the U.S. for years, unless they qualify for an exemption.⁵ This change in the law will have a widespread effect, since the United States Budget Office has estimated that as many as 500,000 legal immigrants nationwide

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1. Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified in scattered sections of 42 U.S.C.).

2. Pub. L. No. 104-208, 110 Stat. 3009, Div. C (1996) (codified in scattered sections of 8 U.S.C.).

3. STAFF OF HOUSE COMM. ON WAYS AND MEANS, 106TH CONG., 1ST SESS., 1996 GREENBOOK: BACKGROUND MATERIALS AND DATA ON PROGRAMS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS 1329 (Comm. Print 1996). As used in this paper, the term "non-U.S. citizens" embraces all aliens, including legal permanent residents, undocumented (illegal) immigrants, refugees, and numerous other categories of immigrants.

4. See Welfare Act, *supra* note 1, § 401, 110 Stat. at 2261-62.

5. See *id.* § 401(a), 110 Stat. at 2261.

could lose federal benefits.⁶ Prior to the passage of the Welfare Act, SSI and food stamps were available to legal immigrants, although they were denied to illegal immigrants.⁷

Some immigrants will be exempt from the Welfare Act's broad ban on federal benefits. Exemptions fall into four main categories: (1) refugees/asylees, (2) those granted a withholding of deportation by the Immigration and Naturalization Service ("INS"), (3) military personnel, and (4) working non-U.S. citizens.⁸ A refugee is a person having no nationality and unwilling to return to his/her country because of a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.⁹ Asylum is a discretionary status, granted by the U.S. Attorney General, which confers the right to stay in the U.S. because of a well-founded fear of persecution.¹⁰ Military personnel include noncitizens on active duty, veterans, their spouses, and dependent children.¹¹ Working non-citizens are legal permanent residents who have worked for forty "qualifying quarters."¹² This means noncitizens who have legally worked in the United States for at least ten years are exempt. The children of work-qualifying non-citizens may be exempt if under age eighteen.¹³ A spouse may be exempt using his/her spouse's qualifying quarters if the couple is still married or if the working spouse is deceased.¹⁴ Spouses may also aggregate their qualifying quarters to obtain benefits for both.¹⁵ Even exempt immigrants, however, are subject to a new general five-year lifetime limit on welfare benefits.¹⁶

The Welfare Act further categorizes immigrants as "qualified" and "unqualified."¹⁷ Qualified immigrants are legal permanent residents, refugees, asylees, or other legal aliens.¹⁸ All other immigrants are unqualified, including illegal immigrants.¹⁹

Under the Welfare Act, states will be given broader authority regarding benefits.²⁰ States are authorized to determine the eligibility of "qualified" immigrants for *state-funded* programs.²¹ Prior to the Welfare Act, states could

6. See Sara Rimer, *A Crucial Test for Immigrants to Retain Aid*, N.Y. TIMES, Dec. 23, 1996, at B8.

7. See NATIONAL IMMIGR. LAW CTR., OVERVIEW OF BENEFIT RESTRICTIONS TO IMMIGRANTS IN 1996 WELFARE AND IMMIGRATION LAWS 1 (1996). In the context of this paper, I will use "illegal" and "undocumented" interchangeably in regard to immigration.

8. See Welfare Act, *supra* note 1, § 402, 110 Stat. at 2262-63.

9. See 8 U.S.C.A. § 1101(a)(42)(A) (West Supp. 1995).

10. See *id.* § 1158(a).

11. See Welfare Act, *supra* note 1, § 402(a)(2)(C), 110 Stat. at 2263.

12. See *id.* § 402(a)(2)(B), 110 Stat. at 2262-63.

13. See *id.* § 435(1), 110 Stat. at 2275. A child is credited with the qualifying quarters worked by his/her parents while the child is under eighteen.

14. See *id.* § 435(2), 110 Stat. at 2275-76.

15. See *id.*

16. See *id.* § 402(a)(2)(A), 110 Stat. at 2262.

17. See *id.* § 401, 110 Stat. at 2261-62.

18. See *id.* § 431, 110 Stat. at 2274.

19. See, e.g., *id.* § 401(a), 110 Stat. at 2261-62.

20. See *id.* § 412(a), 110 Stat. at 2269.

21. See *id.*

not discriminate against legal immigrants in the provision of assistance.²² Now, states may design their own eligibility rules for qualified immigrants, ranging from extending all benefits to qualified legal immigrants to denying all benefits.²³ States may also choose to limit legal immigrants' access to state or locally funded aid, such as cash general assistance.²⁴

The Welfare Act also contains a prospective five-year ban on *federal benefits* to qualified immigrants who have entered the United States after August 22, 1996.²⁵ Before enactment of the Welfare Act, qualified legal immigrants were eligible for welfare and other benefits immediately upon gaining legal status.²⁶ Since states will be making many of the major decisions regarding the benefit eligibility of qualified immigrants,²⁷ they will also have the option of extending the ban on aid to new qualified immigrants for longer than five years.²⁸

"Unqualified" immigrants are barred from receiving most federal, state, and local public benefits, including welfare and food stamps.²⁹ Before passage of the Welfare Act, immigrant eligibility sometimes varied by program.³⁰ However, unqualified immigrants are still eligible to receive emergency medical treatment and participate in programs such as immunizations, testing for communicable diseases, and short-term disaster relief.³¹ States may choose to reject the general federal provision barring state and local assistance to illegal immigrants, but they must affirmatively pass legislation to that effect.³²

Citizenship is the best way for an immigrant to become eligible. The usual path towards citizenship requires that an immigrant be: (1) legally documented and continuously residing in the U.S. for at least five years; or (2) documented and married to a citizen while continuously residing in the U.S. for three years.³³ Undocumented immigrants will have a particularly difficult time meeting citizenship requirements for two reasons. First, they face possible deportation when they apply for documentation. Second, the Immigration

22. See *Graham v. Richardson*, 403 U.S. 365 (1971).

23. See Welfare Act, *supra* note 1, § 412(a), 110 Stat. at 2269.

24. See Immigration Act, *supra* note 2, § 553(a). "General assistance is [considered] the safety net of last resort. Mandated [in California] since 1931, it is run and paid for entirely by the counties." See Robert B. Gunnison, *A Crucible for California: Stakes High as Wilson Outlines Welfare Plan Tomorrow*, S.F. CHRON., Jan. 6, 1997, at A1.

25. See Welfare Act, *supra* note 1, § 403(a), 110 Stat. at 2265-66.

26. See NATIONAL IMMIGR. LAW CTR., *supra* note 7, at 2.

27. See *id.* § 412(a), 110 Stat. at 2269.

28. See *id.*

29. See *id.* § 411, 110 Stat. at 2268-69. Other benefits barred are retirement, health, disability, assisted housing, post-secondary education, unemployment benefits, and "any other similar benefits." See *id.*

30. Cf. NATIONAL IMMIGR. LAW CTR., *supra* note 7, at 3.

31. See Welfare Act, *supra* note 1, § 411(b), 110 Stat. at 2268. These benefits are available to all immigrants, including unqualified immigrants.

32. See *id.* § 411(d), 110 Stat. at 2269.

33. 8 U.S.C.A. §§ 1427(a), 1430(a) (West Supp. 1995). There are several other lesser used methods.

Act places increased burdens on illegal immigrants seeking citizenship. Undocumented immigrants living in the U.S. for one year or more are barred from admission to the U.S. for ten years.³⁴

III. HOW THE REFORMS WILL AFFECT WOMEN AND CHILDREN

Losing important governmental benefits will substantially harm immigrant women and children. Especially significant for immigrant women is the fact that both Medicaid and Women and Infant Children ("WIC") have been transformed under the Welfare Act.

Many immigrant women receive prenatal care through Medicaid or state-financed programs.³⁵ Under the Welfare Act, states can no longer give aid to illegal immigrant women using state funds unless they pass a law specifically allowing it.³⁶ Yet, without prenatal care, immigrant women's babies may end up in neonatal intensive care units, costing the states significantly more than prenatal care.³⁷ In Florida prenatal care has been paid for by federal funds available through a Medicaid loophole, which allowed forty-five days of federally funded coverage while a pregnant woman's eligibility and immigration status were checked.³⁸ Under the Welfare Act, that loophole is no longer available.³⁹ Florida intends to use state revenue to continue to fund child and prenatal health care, regardless of immigration status.⁴⁰ In California, Governor Pete Wilson ordered the cessation of prenatal benefits to illegal immigrants by December 1, 1996, to prevent "the incentive for illegal immigration provided by the availability of public benefits,"⁴¹ and to bring California into compliance with the Welfare Act.⁴² Wilson's order was enjoined, however, until the state develops new regulations, thus delaying the termination of benefits to illegal immigrants until at least February 1997.⁴³ According to official California estimates, the state will spend close to \$70 million during the 1996-97 fiscal year to subsidize prenatal care for 70,000 illegal immi-

34. See Immigration Act, *supra* note 2, § 301(b)(1)(B)(i)(II). See also Patrick J. McDonnell, *Ahead of the Curve: The Great Social Laboratory*, L.A. TIMES, Dec. 10, 1996, at B2 [hereinafter McDonnell, *Ahead of the Curve*].

35. Cf. Tim Golden, *Californians Split Over Care for Pregnant Immigrants: Welfare Changes Forcing a Choice Between Finances, Prenatal Help*, DALLAS MORNING NEWS, Oct. 20, 1996, at 6A, available in 1996 WL 10989247. Undocumented immigrants are ineligible for most Medicaid programs, but prior to the Welfare Act, states were federally required to provide labor and delivery services for pregnant women and other emergency care. State-financed programs also provided many illegal immigrant women with prenatal care.

36. See Welfare Act, *supra* note 1, § 411(d), 110 Stat. at 2269.

37. See Golden, *supra* note 35.

38. Cf. *id.*

39. See Welfare Act, *supra* note 1, § 401(a), 110 Stat. at 2261 (stating that an unqualified alien "is not eligible for any public benefit"); § 401(c)(1)(8), 110 Stat. at 2262 (defining "public benefit" to include any health benefit).

40. See Golden, *supra* note 35.

41. See Claire Cooper, *Judge Halts Prenatal Care Cutoff*, FRESNO BEE, Nov. 27, 1996, at A1.

42. See *id.* Regardless of state policy, San Francisco and six other counties in Northern California have stated their intention to continue providing prenatal care for illegal immigrant women.

43. See Cooper, *supra* note 41.

grants.⁴⁴ If prenatal care is denied, the cost may be much higher. Public health officials predict increased illness and death for immigrant women and children as a result of denied prenatal care.⁴⁵

The aid given to immigrant women under a federally funded program known as WIC is also in jeopardy. WIC has provided baby formula, cereal, milk and other nutritious food to women and their children regardless of immigration status since 1972.⁴⁶ The program provides food coupons to pregnant women, new mothers, and children under age five who meet low-income guidelines.⁴⁷ Under the Welfare Act, states have the option to ban unqualified immigrants from the program, placing the benefits of significant numbers of women and children nationwide in jeopardy.⁴⁸ In California, illegal immigrants constitute between 5% and 40% of the 1.25 million WIC recipients in the state.⁴⁹ New York Governor George Pataki has indicated that he will not change eligibility requirements in New York, thus continuing to provide WIC to immigrant women there.⁵⁰

While it is uncertain what will happen when immigrant women and children lose access to benefits, there will likely be a significant increase in the homeless population.⁵¹

IV. DOMESTIC VIOLENCE EXCEPTIONS IN THE WELFARE AND IMMIGRATION ACTS

Domestic violence is an extremely critical problem for women who are not U.S. citizens because they do not have access to the welfare benefits they often need to escape abusive situations.⁵² However, the Immigration Act includes exceptions for women who are unqualified immigrants in situations of domestic violence to become eligible to obtain benefits.⁵³

The Immigration Act amends the Welfare Act by providing an exception to ineligibility for battered unqualified women.⁵⁴ The Immigration Act allows certain unqualified battered women to be treated by states as qualified immi-

44. See Patrick J. McDonnell, *Wilson Moves to Limit Benefits for Illegal Immigrants*, L.A. TIMES, Nov. 5, 1996, at A3.

45. See *id.*

46. See Patrick J. McDonnell, *Welfare Cuts Could Extend to Food Program*, L.A. TIMES, Nov. 29, 1996, at A1.

47. See *id.*

48. See *id.*

49. See *id.*

50. See *id.*

51. See McDonnell, *Ahead of the Curve*, *supra* note 34.

52. See Deana L. Jang, *Caught in a Web: Immigrant Women and Domestic Violence*, 28 CLEARINGHOUSE REV. 397, 403 (1994).

53. See Immigration Act, *supra* note 2, § 501(c) (amending § 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996).

54. See *id.*

grants and thus eligible to receive benefits under the rules of that state.⁵⁵ To be eligible for the exception, the battered woman must have been approved or have a petition pending under the Violence Against Women Act of 1994⁵⁶ ("VAWA").⁵⁷ The battered unqualified immigrant woman must also prove a "substantial connection" between the need for the benefits to be provided, such as Temporary Aid to Needy Families ("TANF"), and the battering.⁵⁸ When the battered unqualified immigrant woman has met these two conditions, she will then be treated as a qualified immigrant by her state of residence.⁵⁹ Thus, she may receive benefits, subject to the eligibility rules for qualified immigrants of her state of residence.⁶⁰

Together, the Immigration Act and VAWA may provide a way for immigrant women to obtain welfare benefits when they are being abused at home.⁶¹ This exception to the Immigration Act's increased tightening of immigration laws and the Welfare Act's restrictions on eligibility for welfare benefits is an important safeguard of women's safety, and represents a significant improvement in the treatment of immigrant women.

V. CONCLUSION

Under the Welfare Act and the Immigration Act, immigrant women and children will face severe hardship as access to benefits is restricted. Immigrant women could lose almost all federal aid, unless they qualify under an exemption. Illegal immigrant women may lose all benefits, depending on their state of residence. Legal immigrants face similar restrictions on eligibility for federal, state and local aid. The restrictions on benefits may have the greatest effect on immigrant women who are pregnant, new mothers and young children. Yet, while the restrictions are increasing, the Immigration Act provides some hope for victims of domestic violence. The Immigration Act's provisions are important for helping immigrant women obtain citizenship and benefits in battering situations. These provisions represent an increased

55. *See id.*; *see also supra* notes 21-27 and accompanying text (discussing states' authority to determine eligibility of qualified immigrants for state based programs under the Welfare Act).

56. Pub. L. No. 103-322, 108 Stat. 1902 (1994) (codified in scattered sections of 8 U.S.C., 18 U.S.C., 42 U.S.C.).

57. *See* Immigration Act, *supra* note 2, § 501(c); *see also* 8 U.S.C. 1154(a)(1). The VAWA petition requires an immigrant woman to show: (1) she is subject to spousal battery or extreme cruelty, and (2) deportation would result in extreme hardship to her or her child. "Extreme hardship" is often more difficult to prove than battering. *See* Jang, *supra* note 52, at 401.

58. *See* Immigration Act, *supra* note 2, § 501(c)(1)(A). The exception will not apply if the battered woman is residing in the same household or family eligibility unit as the batterer.

59. *See id.*

60. *See id.*; *see also* Welfare Act, *supra* note 1, § 412(a), 110 Stat. at 2269. Thus, if the woman's state of residence does not extend benefits to qualified immigrants, the battered woman may still be ineligible for benefits under the state regulations.

61. *See* Immigration Act, *supra* note 2, § 501. A woman's access to benefits also depends on whether her state of residence extends benefits to qualified immigrants. *See also supra* notes 21-27 and accompanying text.

awareness of the problem domestic violence poses for underrepresented immigrant women.

