

EXECUTIVE ORDER NO. 34

MAY 13, 2003

CITY POLICY CONCERNING IMMIGRANT ACCESS TO CITY SERVICES

WHEREAS, approximately forty percent of persons who live in New York City are foreign-born; and

WHEREAS, immigrants have made significant contributions to every facet of the City's economic, educational and cultural life; and

WHEREAS, access to City services by the immigrant communities of New York City is essential to the well-being of those communities and their continued integration into the City's life; and

WHEREAS, meeting the needs of the City's immigrant population is important to maintaining public trust and confidence in city government and its agencies; and

WHEREAS, the City's commitment to protecting its residents and visitors is furthered by the reporting of crimes by immigrant witnesses and victims; and

WHEREAS, the voters of the City of New York reaffirmed the City's commitment to serving immigrant communities by making the Mayor's Office of Immigrant Affairs a Charter Agency in the November 2001 referendum; and

WHEREAS, the U.S. Supreme Court has declared that children of aliens have a right to a free public education; and

WHEREAS, the City's Human Rights Law protects aliens from discrimination in the areas of employment, housing and public accommodations, and the City is committed to enforcing those protections to the maximum extent permitted by federal law; and

WHEREAS, the public health, safety and general welfare of the City will be furthered by promoting access to City programs, services and activities by all residents;

NOW, THEREFORE, by virtue of the power vested in me as Mayor of the City of New York, it is hereby ordered:

Section 1. Executive Order No. 124, dated August 7, 1989, is hereby revoked.

Section 2. Definitions. As used herein,

a. "Alien" means any person who is not a citizen or national of the United States.

b. "Line worker" means a person employed by any City agency whose duties involve contact with the public.

c. "Manager" means a person employed by any City agency whose duties involve supervising a line worker who has contact with the public.

Section 3. Information Respecting Aliens.

a. A City officer or employee, other than law enforcement officers acting in furtherance of law enforcement operations, including criminal investigations, shall not inquire about a person's immigration status unless:

(1) Such person's immigration status is relevant to the determination of program, service or benefit eligibility, or is relevant to the provision of City services; or

(2) Such officer or employee is required by law to inquire about such person's immigration status.

Section 4. Law Enforcement Officers. Police officers and peace officers, including members of the Police Department and the Department of Correction, shall continue to cooperate with federal authorities in investigating and apprehending aliens suspected of criminal activity.

Section 5. Availability of City Services to Aliens. Any service provided by a City agency shall be made available to all aliens who are otherwise eligible for such service unless such agency is required by law to deny eligibility for such service to aliens. Every City agency shall encourage aliens to make use of those services provided by such agency for which aliens are not denied eligibility by law.

Section 6. Agency Policies, Procedures and Training. City agencies may develop individual policies, procedures and training programs, consistent with this Executive Order, to ensure the proper and timely administration of health, safety, and, education programs, and social services.

Section 7. Office of Immigrant Affairs. City agencies shall work with the Office of Immigrant Affairs in the development of policies, procedures and training programs for managers and line workers to ensure the proper implementation of this Executive Order.

Section 8. Effective Date. This order shall take effect immediately.

Michael R. Bloomberg
Mayor

Statement of Basis and Purpose of Executive Order

To promote the public health, welfare, and safety, the City's policy is to ensure that all its citizens, including aliens, have access to essential City services, such as health care, education, and law enforcement. In 1989, Mayor Koch issued Executive Order 124 to promote such access for aliens by requiring that information regarding the immigration status of persons availing themselves of City services be kept confidential. The rationale for the Order was that many aliens who resided in New York City failed to avail themselves of City services, largely because they feared that any contact with a government agency would bring them to the attention of federal authorities. Because the public welfare suffers if aliens do not send their children to school, or do not obtain treatment for illness, or do not report crime because they fear being reported to immigration authorities, Executive Order 124 sought to alleviate that fear by prohibiting City workers from disclosing immigration status except where required by law, where an alien had consented to the disclosure, or where an alien was suspected of engaging in criminal activity.

Federal statutes and case law since 1996, however, have affected the Order's reporting prohibition. Federal law now makes it impermissible for the City to restrict its employees from communicating with the federal government when they learn that a person is an undocumented alien, but it does not impose an affirmative obligation on City employees to report an alien to immigration authorities. The new Executive Order revokes Executive Order 124 and sets forth a revised but similar policy that reflects the recent changes in federal law. Although the new Executive Order does not contain a reporting prohibition, it continues the policy of ensuring that aliens have access to City services.

Under the new Executive Order, City employees, other than law enforcement officers acting in furtherance of any law enforcement operations, including criminal investigations, will only be permitted to inquire about a person's immigration status when such an inquiry is relevant to determining program, service or benefit eligibility, or for the provision of such services; or when it is otherwise required by law. At the same time, the Executive Order makes clear that City law enforcement officers, including members of the Police Department and the Department of Correction, will continue to cooperate with state, federal or international authorities in investigating and apprehending aliens who are suspected of criminal activity. Moreover the Police Department, the Correction Department or any other City agency may report a person's immigration status to appropriate federal, state, or international authorities in furtherance of law enforcement operations, including criminal investigations. Finally, City agencies may develop individual policies, procedures and training programs, consistent with the Executive Order, to ensure the proper and timely administration of health, safety, and education programs and social services. In developing such policies, procedures and training programs, City agencies must work with the Office of Immigrant Affairs.