Public Charge

On July 29, 2020, the U.S. District Court for the Southern District of New York in State of New York (SDNY), et al. v. DHS, et al. and Make the Road NY et al. v. Cuccinelli, et al. enjoined the Department of Homeland Security from enforcing, applying, implementing, or treating as effective the Inadmissibility on Public Charge Grounds Final Rule (84 FR 41292, Aug. 14, 2019, final rule; as amended by 84 FR 52357, Oct. 2, 2019, final rule correction) for any period during which there is a declared national health emergency in response to the COVID-19 outbreak.

As long as the July 29, 2020, SDNY injunction is in effect, USCIS will apply the 1999 public charge guidance that was in place before the Public Charge Rule was implemented on Feb. 24, 2020 to the adjudication of any application for adjustment of status on or after July 29, 2020. In addition, USCIS will adjudicate any application or petition for extension of nonimmigrant stay or change of nonimmigrant status on or after July 29, 2020, consistent with regulations in place before the Public Charge Rule was implemented; in other words, we will not apply the public benefit condition. For more information, see our page on the injunction.

Inadmissibility on Public Charge Grounds Final Rule

On Feb. 24, 2020, USCIS implemented the Inadmissibility on Public Charge Grounds final rule nationwide, including in Illinois. USCIS will apply the final rule to all applications and petitions postmarked (or, if applicable, submitted electronically) on or after that date. For applications and petitions sent by commercial courier (for example, UPS, FedEx, or DHL), the postmark date is the date reflected on the courier receipt. USCIS will reject any affected application or petition that does not adhere to the final rule, including those submitted by or on behalf of aliens living in Illinois, if postmarked on or after Feb. 24, 2020.

Background

Self-sufficiency has long been a basic principle of U.S. immigration law since our nation's earliest immigration statutes. Since the 1800s, Congress has put into statute that aliens are inadmissible to the United States if they are unable to care for themselves without becoming public charges. Since 1996, federal laws have stated that aliens generally must be self-sufficient. On Aug. 14, 2019, DHS

published a final rule regarding how DHS determines if someone applying for admission or adjustment of status is likely at any time to become a public charge.

This final rule also requires aliens seeking to extend their nonimmigrant stay or change their nonimmigrant status to show that, since obtaining the nonimmigrant status they seek to extend to change, they have not received public benefits (as defined in the rule) over the designated threshold.

The Statutory Basis of the Inadmissibility on Public Charge Grounds Final Rule

The primary immigration law today is the Immigration and Nationality Act of 1952 (the INA, or the Act), as amended.

Section 212(a)(4) of the INA (8 U.S.C. § 1182(a)(4)): "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[…] In determining whether an alien is excludable 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 . . . ."

Section 213 of the INA (8 U.S.C. § 1183): "An alien inadmissible under [section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4)] may, if otherwise admissible, be admitted in the discretion of the Attorney General (subject to the affidavit of support requirement and attribution of sponsor's income and resources under section 1183a of this title) upon the giving of a suitable and proper bond . . . ."

Section 214(a)(1) of the INA (8 U.S.C. § 1184(a)(1)): "The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 1258 of this title, such alien will depart from the United States."

Section 248(a) of the INA (8 U.S.C. § 1258(a)): "The Secretary of Homeland Security may, under such conditions as he may prescribe, authorize a change from any nonimmigrant classification to any other nonimmigrant classification in the case of any alien lawfully admitted to the United States as a nonimmigrant who is continuing to maintain that status and who is not inadmissible under section 1182(a)(9)(B)(i) of this title (or whose inadmissibility under such section is waived under section 1182(a)(9)(B)(v) of this title) . . . ."

8 U.S.C. § 1601 (PDF)(1): "Self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes."

8 U.S.C. § 1601 (PDF) (2)(A): "It continues to be the immigration policy of the United States that – aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations."

8 U.S.C. § 1601 (PDF) (2)(B): It is also the immigration policy of the United States that "the availability of public benefits not constitute an incentive for immigration to the United States."

The DHS Inadmissibility on Public Charge Grounds Final Rule

Timeline of the Rule's Implementation

On Aug. 14, 2019, the U.S. Department of Homeland Security (DHS) published the Inadmissibility on Public Charge Grounds final rule that codifies regulations governing the application of the public charge inadmissibility grounds. See section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4).

On Oct. 2, 2019, DHS issued a corresponding correction document, which contains provisions that are effective as if they had been included in the final rule published on Aug. 14, 2019.

On Oct. 10, 2018, DHS issued a Notice of Proposed Rulemaking, which was published in the Federal Register for a 60-day comment period. DHS received and considered over 266,000 public comments before issuing the final rule. The final rule provides summaries and responses to all significant public comments.

The Purpose of the Rule

The final rule enables the federal government to better carry out provisions of U.S. immigration law related to the public charge ground of inadmissibility.

The final rule clarifies the factors considered when determining whether someone is likely at any time in the future to become a public charge, is inadmissible (under section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4)) and, therefore, ineligible for admission or adjustment of status.

The final rule also requires aliens in the United States who have a nonimmigrant visa and seek to extend their stay in the same nonimmigrant classification or to change their status to a different nonimmigrant classification to demonstrate, as a condition of approval, that they have not received, since obtaining the status they seek to extend or change, public benefits for more than 12 months, in total, within any 36-month period.

The final rule does not create any penalty or disincentive for past, current or future receipt of public benefits by U.S. citizens or aliens whom Congress has exempted from the public charge ground of inadmissibility.

Applicability and Exemptions

The final rule applies to applicants for admission and aliens seeking to adjust their status to that of lawful permanent residents from within the United States. The final rule also applies to applicants for extension of stay and change of status.

The final rule does not apply to:

- U.S. citizens, even if the U.S. citizen is related to a noncitizen who is subject to the public charge ground of inadmissibility; or
- Aliens whom Congress exempted from the public charge ground of inadmissibility, such as:
- Refugees;
- Asylees;
- Afghans and Iraqis with special immigrant visas;

- Certain nonimmigrant trafficking and crime victims;
- Individuals applying under the Violence Against Women Act;
- Special immigrant juveniles; and
- Those to whom DHS has granted a waiver of public charge inadmissibility.

Public Benefits that DHS Will Not Consider

Benefits received by U.S. service members. Under the final rule, DHS will not consider the receipt of public benefits (as defined in the final rule) by an alien who (at the time of receipt, or at the time of filing or adjudication of the application for admission, adjustment of status, extension of stay, or change of status) is enlisted in the U.S. armed forces, or is serving in active duty or in any of the Ready Reserve components of the U.S. armed forces

Benefits received by spouse and children of U.S. service members. DHS also will not consider the receipt of public benefits by the spouse and children of such service members (described above).

Benefits received by children born to, or adopted by, U.S. citizens living outside the United States. The rule further provides that DHS will not consider public benefits received by children, including adopted children, who will acquire U.S. citizenship under section 320 of the INA, 8 U.S.C. 1431, or children, residing outside the United States, of U.S. citizens who are entering the United States for the purpose of attending an interview under section 322 of the INA, 8 U.S.C. 1433.

Certain Medicaid benefits. DHS will not consider the Medicaid benefits received:

- For the treatment of an "emergency medical condition;"
- As services or benefits provided in connection with the Individuals with Disabilities Education Act;
- As school-based services or benefits provided to individuals who are at or below the oldest age eligible for secondary education as determined under State or local law;
- By aliens under the age of 21; and
- By pregnant women and by women within the 60-day period beginning on the last day of the pregnancy.

Benefits received on behalf of a legal guardian. DHS will only consider public benefits received directly by the applicant for the applicant's own benefit, or where the applicant is a listed beneficiary of the public benefit. DHS will not consider public benefits received on behalf of another as a legal guardian or pursuant to a power of attorney for such a person. DHS will also not attribute receipt of a public benefit by one or more members of the applicant's household to the applicant unless the applicant is also a listed beneficiary of the public benefit.

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Q. When does the final rule go into effect?

Q. What does the final rule change?

Q. Who is subject to the public charge inadmissibility ground?

Q. Who is exempt from this rule?

Q. Which benefits are considered for the purposes of this rule?

Q. What amount/duration of public benefits matters?

Q. Whose receipt of benefits is considered under this rule?

Q. Which benefits are not considered?

Q. How will DHS determine whether someone is likely at any time to become a public charge for admission or adjustment purposes?

Q. What factors weigh heavily in favor of a determination that someone is likely at any time to become a public charge?

Q. What factors weigh heavily against a determination that someone is likely at any time to become a public charge?

Q. How can I learn more about public charge?

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Last Reviewed/Updated: 07/31/2020

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