New “Public Charge” Rules – 2020

Public Charge: Definition

Under the Immigration and Nationality Act (INA), an immigrant seeking admission to the United States or seeking to adjust status to that of a lawful permanent resident (obtaining a Green Card) is inadmissible if the immigrant, “at the time of application for admission or adjustment of status, is likely at any time to become a public charge.” If an immigrant is inadmissible, the application will be denied.

Background

- The “public charge” obstacle (ground of inadmissibility) has been a part of the U.S. immigration law for more than 100 years.

- 1999 Guidance: In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) raised the standards for finding a public charge. It caused many problems in interpreting the provision. In May 1999, the Immigration & Naturalization Service, INS, issued a guidance, defining a public charge as someone “primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance, or institutionalization for long-term care at government expense.” Therefore, it was limited to the public cash assistance and long-term institutionalization.

- 2019 New Public Charge Rules: On August 14, 2019, the Trump Administration announced the Inadmissibility on Public Charge Grounds final rule, which discards the 1999 Guidance and expands the definition of public charge to include other public benefits. After the announcement, several federal courts enjoined or blocked the rule. However, the U.S. Supreme Court allowed the Trump Administration to implement the new rule on January 17, 2020. Beginning on February 24, 2020, USCIS will reject any affected application or petition that does not adhere to the new public charge rule.

New Definition of Public Charge

- The new rule defines public charge as an immigrant who has received one or more public benefits (as defined in the final rule) for more than a total of 12 months within any 36-month period for instance, receipt of 2 benefits in one month counts as 2 months).
In determining public charge, the US Citizenship & Immigration Service, USCIS, does not consider any application for, certification or approval to receive, or receipt of certain previously excluded non-cash public benefits (for example, the Supplemental Nutrition Assistance Program, Medicaid, and public housing) before February 24, 2020. However, any cash public benefits and long-term institutionalizations before February 24, 2020 will be considered.

Who is Subject to the New Rules?

Those subject to the Public Charge Rule are those who are seeking:

- Immigrant or nonimmigrant visas abroad
- Admission to the United States on immigrant or nonimmigrant visas
- Adjustment of their status to that of a lawful permanent resident from within the United States
- Extension of a nonimmigrant visa and extension of their stay in the same nonimmigrant classification or to change their status to a different nonimmigrant classification
- (Some) lawful permanent residents upon return from a trip abroad because specific circumstances dictate that they be considered applicants for admission.

Who is NOT Subject to the New Rules?

- Refugees
- Asylees
- Certain T and U nonimmigrant visa applicants (human trafficking and certain crime victims, respectively)
- Certain self-petitioners under the Violence Against Women Act
- Applicants for Naturalization (Citizenship)

Benefits Considered in Determining Public Charge

- Any federal, state, local, or tribal cash assistance for income maintenance
  - Supplemental Security Income
  - Temporary Assistance for Needy Families
  - Federal, state, local, or tribal cash benefit programs for income maintenance (often called General Assistance in the state context, but which may exist under other names)
• Supplemental Nutrition Assistance Program (formerly called Food Stamps)
• Section 8 Housing Assistance under the Housing Choice Voucher Program
• Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation)
• Public Housing under section 9 of the Housing Act of 1937, 42 U.S.C. 1437 et seq.
• Most forms of federally funded Medicaid (with certain exclusions)

USCIS will only consider the direct receipt of benefits by an immigrant for the immigrant’s own benefit, or where the immigrant is a listed beneficiary of a public benefit. USCIS will also not attribute receipt of a public benefit by one or more members of the alien’s household to the applicant, unless the applicant is also a listed beneficiary of the public benefit.

Benefits NOT Considered in Determining Public Charge

• Emergency medical assistance
• Disaster relief
• National school lunch programs
• The Special Supplemental Nutrition Program for Women, Infants, and Children
• The Children’s Health Insurance Program
• Subsidies for foster care and adoption
• Government-subsidized student and mortgage loans
• Energy assistance
• Food pantries and homeless shelters
• Head Start
• Benefits received by U.S. service members
• Benefits received by the spouse and children of U.S. service members
• Benefits received by children born to, or adopted by, U.S. citizens living outside the United States
• Certain Medical Benefits:
  • 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;
  • Received by aliens under the age of 21
  • Received by pregnant women and by women within the 60-day period beginning on the last day of the pregnancy
• State-Funded Medical Programs
How to Determine Public Charge?

- Inadmissibility (or ineligibility) due to public charge is determined based on the totality of the circumstances. A USCIS officer must consider the applicant's age, health, family status, assets, resources, and financial status, education and skills, prospective immigration status, expected period of admission, and Sufficient Form I-864.

- In limited circumstances, and in USCIS' discretion, an alien who wants to adjust their status may post a bond and obtain adjustment of status, despite being determined inadmissible on public charge grounds. The final rule sets the minimum bond amount at $8,100; the actual bond amount would be dependent on the immigrant’s circumstances.

New Form I-944: Declaration of Self-Sufficiency

- Any applications for adjustment of status postmarked on or after February 24, 2020, must include an additional Form I-944 along with your Form I-485, Application to Register Permanent Residence or Adjust Status, to demonstrate that the applicant is not inadmissible (ineligible for legal permanent residence) based on the public charge ground.

DO NOT STOP YOUR BENEFITS WITHOUT CHECKING THE LIST

- Not all benefits are considered. First, you have to check the list of the benefits considered.

- State-funded health care programs, such as Essential Plan, Child Health Plus, and Qualified Health Plus of New York, are not considered for public charge.

- Remember that even benefits that do count are only problematic if the total benefits continue for 12 months within any 36-month period (3 years).
COVID-19 & Public Charge

USCIS has announced that testing, prevention, or treatment for COVID-19 will **NOT** be used against immigrants in a public charge test. **All those**, including immigrants with symptoms that resemble COVID-19 (fever, cough, shortness of breath), have to seek necessary medical treatment or preventive services. Such treatment or preventive services will not negatively affect any immigrant as part of a future Public Charge analysis.

Sources:
- [https://info.nystateofhealth.ny.gov/sites/default/files/Public%20Charge%20Facts%20-%20NYSOH_0.pdf](https://info.nystateofhealth.ny.gov/sites/default/files/Public%20Charge%20Facts%20-%20NYSOH_0.pdf)

This material was prepared by Chejin Park, Esq., in 2020 with funds from NY City Councilmembers Adams, Cabrera, Cornegy, Deutsch, Diaz Sr., Dromm, Grodenchik, Kallos, Koo, Levine, Rose and NYS Sen. Ramos. Please note the information provided is intended to be helpful general material and should not be relied on as legal advice.